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**CRITICAL ANALYSIS OF MARRIAGE CONTRACT AND ITS EFFECT
UNDER THE NIGERIAN LAW**

A dissertation submitted in partial fulfillment of the academic requirements for award of the bachelor's degree in law

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DECLARATION

I, ORI PRECIOUS-GIFT THEOPHILUS, hereby declare that this work entitled “**CRITICAL ANAYSIS OF MARRIAGE CONTRACT AND ITS EFFECT UNDER THE NIGERIAN LAW**” is an original piece of work and has never been presented elsewhere for any academic qualification in any other university or any other award, except where stated by reference or acknowledgment. This piece is the fulfillment of the requirements to graduate with a Bachelors of Law Degree from **KIGALI INDEPENDENT UNIVERSITY**. I further declare that this dissertation is the result of my own research and references to the work of other researchers and academics have been indicated in the footnotes and references.

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SIGNATURE..... DATE.... /...../2024

APPROVAL

I, LECTURER EMMANUEL NKUNDUKOZERA authorize ORI PRECIOUS-GIFT THEOPHILUS to submit this final dissertation on the topic of “CRITICAL ANALYSIS OF MARRIAGE CONTRACT AND ITS EFFECT UNDER THE NIGERIAN LAW” in her partial fulfilment of the requirement for the award of bachelor’s degree in law(**LLB**).

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Signature.....

Date.....

DEDICATION

This research is dedicated firstly to the Almighty God who granted me life and the opportunity to be at the finishing line of my undergraduate study, then to my lovely parents, siblings and friends who constantly supported me financially, emotionally and spiritually during this journey and then to my incredible supervisor and head of department who worked tirelessly to ensure that my research was done accurately and supported me whenever I needed them. May God bless them all.

And lastly to my amazing lecturers and head of department, you made my academic journey a success. I am really blessed to have passed through your classes. This achievement is as much as yours as it is mine. I am deeply grateful for your presence in my life.

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ORI PRECIOUS-GIFT THEOPHILUS

LIST OF ACRONYMS AND ABBREVIATIONS

ART:	Article
BC:	Before Christ
CHPT:	Chapter
CMC:	Certified marriage certificate
CNN:	Cable News Network
CRA:	Child Marriage Act
DDM:	Double-Decker Marriage
EG:	For Example
FCA:	Family Court Act
ILM:	Islamic Marriage
LLB:	Bachelor of Laws
MA:	Marriage Act
MCA:	Matrimonial Causes Act
NAPTIP:	National Agency for The Trafficking in Persons.
NPC:	The National Population Commission
NY:	New York
TAG:	Theological Advisory Group
UK:	United Kingdom

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GENERAL INTRODUCTION

Marriage is a fundamental institution in Nigerian society, and the laws governing marriages in Nigeria are diverse and complex. One of the key aspects of marriage in Nigeria is the marriage contract, which outlines the rights and responsibilities of each party within the marriage.

Under Nigerian law, marriage is primarily regulated by three main laws: The Marriage Act, the Matrimonial Causes Act, and the Sharia legal system for Muslims. The Marriage Act governs marriages between non-Muslims, while the Matrimonial Causes Act deals with the dissolution of marriages and related matters. The Sharia legal system, which is practiced in some northern states of Nigeria, governs marriages and divorces for Muslims.

The marriage contract in Nigeria can take the form of a customary marriage, statutory marriage, or Islamic marriage. Customary marriages are marriages conducted according to the customs and traditions of the specific ethnic group or community. Statutory marriages are marriages that are registered under the Marriage Act, while Islamic marriages are conducted in accordance with Islamic law.

The marriage contract in Nigeria typically outlines various aspects of the marriage, including the rights and obligations of each party, the financial arrangements within the marriage, and the procedure for dissolution of the marriage. The marriage contract also often includes provisions regarding custody of children, division of property, and maintenance after divorce.

One key aspect of the marriage contract under Nigerian law is that it confers certain legal rights and protections on the parties involved. For example, the Marriage Act provides for the equal rights of spouses in a marriage and prohibits discrimination based on gender. The Matrimonial Causes Act also provides a legal framework for the dissolution of marriages and the protection of the rights of spouses and children.

However, despite the legal protections afforded by marriage contracts under Nigerian law, there are still significant challenges and issues that can arise.

For example, there are cases of forced marriages, child marriages, and marriages conducted without the consent of one or both parties. These issues can undermine the validity of the marriage contract and can lead to legal disputes and conflicts within the marriage.

To begin learning about the critical analysis of marriage contracts under Nigerian law and their effects, it's important to start with an understanding of the legal framework surrounding marriage in Nigeria. This includes the legal requirements for marriage, the types of recognized marriages, and the rights and obligations of parties in a marriage contract. Once the foundational knowledge of the legal framework is established, the next step is to delve into the specific provisions of marriage contracts under Nigerian law. This involves understanding the essential elements of a marriage contract, the legal implications of entering into a marriage contract, and the rights and responsibilities of spouses as outlined in the contract. Following this, it is crucial to explore the concept of critical analysis within the context of marriage contracts. This includes examining the historical, cultural, and societal perspectives that influence the formation and interpretation of marriage contracts in Nigeria. Additionally, it involves analyzing the legal precedents and judicial interpretations that have shaped the understanding of marriage contracts within the Nigerian legal system. Finally, the learning path should culminate in an exploration of the effects of marriage contracts under Nigerian law. This entails studying the legal remedies available in the event of breach or dissolution of a marriage contract, as well as the impact of marriage contracts on issues such as property rights, inheritance, and spousal support. By following this learning path, you will develop a comprehensive understanding of the critical analysis of marriage contracts under Nigerian law and their effects, enabling you to navigate the complexities of this subject with clarity and insight.¹ Nigeria has a diverse legal framework for marriages, encompassing statutory, customary, and Islamic law marriages. Each type has its own requirements and legal implications, ensuring that the rights and responsibilities of individuals are protected. It is crucial for individuals to understand the specific requirements and procedures for their chosen type of marriage to ensure its validity and legality. By consulting the relevant laws, such as the Marriage Act, and seeking legal advice when needed, individuals can navigate the marriage process with confidence.

The legal framework for marriage in Nigeria reflects the country's rich cultural and religious diversity, providing a solid foundation for unions and the recognition of marital rights.²

¹Nwogogu, E.I (2014). Family law in Nigeria. Ibadan, Nigeria. HEBN Publishers plc. Pg 4-10

² Odiye, E.A, Agu, A.C, (2003) Modern Nigerian Family Laws. Enugu, Nigeria. Richfield & Frank Renaissance Publishers.

Sagay, I., (1999) Nigerian Family Law. Ibadan, Nigeria. Malthouse Press, p. 825.

Nweke S. U. Nweke, (2022) An Appraisal of Customary Law Marriages in Nigeria.

1.1. Background of The Study

The study of marriage contracts in Nigeria is rooted in the country's complex history and diverse cultural practices. Marriage has always been a significant institution in Nigerian society, with deep social, economic, and religious implications.

In pre-colonial times, marriage was primarily a communal affair, with families playing a central role in negotiating and arranging unions. The concept of a marriage contract was less formalized, with agreements being made verbally or through traditional customs and rituals. These agreements often involved the exchange of goods or livestock as part of the bride price or dowry.

With the colonial era came the introduction of new legal frameworks and regulations governing marriage. The British colonial authorities imposed Western-style laws and customs, including formal marriage contracts and registration requirements. This led to a blending of traditional practices with colonial legal systems, resulting in a hybridized approach to marriage contracts in Nigeria.³

Today, marriage in Nigeria is governed by a combination of customary, Islamic, and statutory laws. Customary marriages are recognized under indigenous customs and traditions, while Islamic marriages are regulated by Sharia law.⁴ Statutory marriages are conducted under the Marriage Act, which requires couples to obtain a marriage license and comply with specific legal requirements.

The study of marriage contracts in Nigeria involves exploring the various legal frameworks, cultural practices, and societal norms that shape marital relationships in the country.⁵ Researchers investigate how these different systems coexist and interact, as well as the implications for individuals and families.

This study will help me understand the concept of marriage contracts, how it was in the past and how it has evolved recently and also how Marriage is being entered.⁶

³ Marriage and family law in Nigeria by Michael Omolewa.

⁴ Background study of marriage in Nigeria by Uvieghara-Avie.

⁵ Legal aspects of marriage in Nigeria by F.O. Martinez.

⁶ The evolution of marriage in Nigeria by Adeniyi Abdul.

1.2. Interest and Significance of Study

In Nigeria, marriage laws must accommodate a diverse array of cultural and religious practices. The significance of the marriage contract lies in its ability to integrate these varied traditions with statutory regulations. This blend ensures that marriage laws are both culturally relevant and legally sound, reflecting the unique socio-cultural landscape of Nigeria while adhering to modern legal standards.

1.2.1. Personal Interest

As someone deeply invested in understanding the nuances of marriage contracts under Nigerian law, I find this topic personally significant for several reasons. Marriage, as a fundamental institution, impacts not just the individuals involved but their families and communities as well. For me, exploring how the marriage contract shapes and governs these relationships is both enlightening and essential. Firstly, understanding the marriage contract offers me a clearer picture of my own rights and responsibilities within a marital relationship. Whether planning to enter marriage or already in one, knowing the legal implications can help me make informed decisions about property, financial matters, and personal responsibilities. This knowledge is empowering; it allows me to navigate my own marital arrangements with confidence, ensuring that my interests are protected and my obligations are clear. Moreover, studying the marriage contract is crucial for addressing personal and familial disputes. By grasping how Nigerian law handles issues such as divorce, property division, and spousal support, I am better equipped to handle any potential conflicts that may arise. This understanding not only provides peace of mind but also prepares me to manage challenges with a well-informed perspective. On a broader scale, this research aligns with my interest in how legal systems intersect with cultural practices. Nigeria's diverse cultural landscape means that marriage laws are not just legal instruments but also reflections of societal values and traditions. Exploring this interplay helps me appreciate the rich tapestry of Nigerian culture and how the law serves to both preserve and adapt these traditions. Ultimately, my personal interest in this topic is driven by a desire for clarity and fairness in my own life and the lives of those around me. By delving into the specifics of marriage contracts and their effects, I aim to foster a deeper understanding of how legal frameworks can enhance personal and familial well-being, contributing to more informed and equitable marital relationships.

1.2.2. Academic Interest:

From an academic perspective, the study of marriage contracts under Nigerian law presents a rich field for exploration within the broader context of legal studies and socio-legal research. It offers an opportunity to examine how traditional customs intersect with statutory regulations, reflecting the unique socio-cultural dynamics of Nigeria. Scholars can investigate how these legal frameworks evolve and adapt to societal changes, contributing to debates on legal reform and modernization. The academic study also provides a basis for comparative analysis with marriage laws in other jurisdictions, enriching the global discourse on family law and contract theory. Furthermore, analyzing the effectiveness of these laws in protecting spouses' rights and promoting justice can contribute to ongoing discussions in legal scholarship and policy development.

1.2.3. Scientific Interest.

Scientifically, the study of marriage contracts and their effects under Nigerian law can offer insights into the broader implications of legal frameworks on societal behavior and outcomes. It enables researchers to explore how legal contracts influence marital stability, economic well-being, and social cohesion. By employing empirical methods, such as surveys and case studies, scientists can assess the impact of marriage laws on individuals and families, providing data that can inform policy decisions and legal reforms. Additionally, this study can contribute to interdisciplinary research involving sociology, economics, and psychology, shedding light on how legal contracts shape human behavior and social structures. Understanding these effects can lead to the development of more effective legal interventions and support systems, ultimately enhancing the well-being of individuals and communities.

1.3. Scope of Study

This research is delimited in time, space and domain.

Time- 2004-2024 is the year of completion because that is the period of completion of this study.

Space-this study will cover the territory of Nigeria. Nigeria, country located on the western coast of Africa. Nigeria has a diverse geography, with climates ranging from arid to humid

equatorial. However, Nigeria's most diverse feature is its people. Hundreds of languages are spoken in the country, including Yoruba, Igbo, Fula, Hausa, Edo, Ibibio, Tiv, and English.

Domain- the present study falls under family law.

1.4. Problem Statement

The problem is that the institution of marriage in Nigeria is governed by various laws and regulations, including the marriage contract. However, there's a limited research on the critical analysis of marriage contract under the Nigerian law and their overall effect. This lack of research hinders a comprehensive understanding of how the marriage contract operates in practice and its implications for individuals, particularly vulnerable groups such as children and women. Additionally, the conflicting provision between customary, statutory, and religious laws regarding marriage contracts further complicates the issue.

Therefore, this dissertation aims to address the gap in the literature by critically analyzing the marriage contract under Nigerian law and exploring its impact on individuals' rights and freedoms. By doing so, this research seeks to provide insights that can inform potential reforms to ensure the protection of all parties involved in marriage contracts within the Nigerian legal system.

Furthermore, Marriage contracts in Nigeria are regulated by a complex interplay of statutory, customary, and religious laws, reflecting the country's rich cultural and legal diversity. The Marriage Act of 1990 establishes a comprehensive legal framework for civil marriages, outlining rights and responsibilities related to property, financial support, and marital dissolution. However, this statutory framework often conflicts with various customary and Islamic laws that are prevalent in different regions of Nigeria. This inconsistency leads to significant challenges in the clarity, enforcement, and equitable application of marriage contracts, impacting the protection of spouses' rights and the fair distribution of marital assets.

Also, a major issue is the lack of uniformity and clarity across the different legal systems. While the Marriage Act provides a standard set of rules, customary and Islamic laws introduce variations that can result in conflicting interpretations and applications of marriage contracts. Customary laws, which differ significantly between ethnic groups and regions,

often have unique provisions regarding property rights and inheritance that may not align with the statutory framework. Similarly, Islamic marriage laws include specific requirements and rights that are distinct from those outlined in the Marriage Act. This diversity creates confusion for individuals regarding their legal standing and entitlements, leading to potential disputes and inconsistencies in the application of marriage laws. Enforcement of marriage contracts further exacerbates these issues. The disparity between statutory, customary, and Islamic laws often results in uneven enforcement of legal provisions. In regions where customary laws hold sway, statutory protections may be ignored or inadequately applied, leading to unequal treatment of spouses. For instance, while the Marriage Act guarantees equal property rights for spouses, certain customary practices may still favor male inheritance, undermining these protections. This inconsistency in enforcement means that individuals, particularly women, may face challenges in asserting their rights or receiving fair treatment in marital disputes.

The division of property and financial responsibilities also reveals gaps in the current legal framework. Marriage contracts are supposed to provide clear guidelines on property management and division upon divorce or death. However, conflicts between the Marriage Act and local customs or Islamic practices can create uncertainty and disputes. For example, customary laws in some regions may not fully recognize the property rights guaranteed by the Marriage Act, leading to inequitable outcomes for spouses. Financial obligations, such as alimony and child support, may also be inconsistently addressed, with statutory provisions potentially conflicting with local practices or religious requirements. This misalignment can result in inadequate support for spouses, particularly in cases of divorce or separation.

Finally, addressing these challenges requires a comprehensive review of the marriage contract system under Nigerian law. It is essential to evaluate how well the Marriage Act, customary laws, and Islamic laws function individually and together, and to identify areas where they conflict. Reforms should focus on harmonizing these legal frameworks to create clearer and more consistent standards. Improved enforcement mechanisms are also necessary to ensure that marriage contracts are applied fairly and effectively. Engaging with communities and stakeholders to understand their needs and perspectives can help design reforms that respect cultural practices while enhancing legal fairness. In conclusion, the current system governing marriage contracts in Nigeria faces significant issues related to legal clarity, enforcement, and fairness. The conflicts between statutory, customary, and

Islamic laws create confusion and inequity, affecting the protection of spouses' rights and the fair distribution of marital assets. To address these problems, targeted legal reforms and improved enforcement mechanisms are needed to ensure that marriage contracts fulfill their intended purpose of providing clear, consistent, and equitable protections for all individuals involved in marital relationships⁷.

1.5. Research Questions

1. What are the challenges of marriage contract in Nigeria law?
2. What are the mechanisms possible to the remedies to the challenges of marriage contract in Nigeria?

1.6. Research Hypothesis

This aims to answer the research question to provisional respond to the above mentioned question.

1. Diverse legal framework, recognition of marital forms, property and financial rights, gender disparity, and judicial interpretations.
2. Implementing a unified marriage law for Nigeria, compensatory damages for breach of promise, alternative dispute resolutions etc.

2.1. Research Objectives

This research has some objectives. And there are general and specific objectives.

General Objectives

The general objectives include

The objective of this research is to critically analyze the marriage contract under Nigerian law and examine its implications and effects on individuals involved in a marriage. Examining the legal framework, regulations, and policies that govern the legal procedure of entering into a marriage contract in Nigeria and what it implies and Understand the legal issues and challenges arising from the different Nigerian systems of marriage and marriage contract.

⁷ Marriage and divorce in Nigeria: a socio-legal study by T. J.L. Mbah.

Specific Objectives

1. To explore the types of marriage contracts recognized and enforceable under Nigerian law.
2. To identify any legal and practical challenges associated with the enforcement of marriage contracts in Nigeria.

2.2. Research Methods and Techniques

During this study the following research methods and techniques were used;

Research Technique

During this study the following techniques was used;

1. Documentary Technique:

This technique helped to carry out this research and complete the work whereby legal instruments were used including books, and statute among others were checked.

Research Methods

During this study the following methods were used

2. Analytical Method:

This methodology involved breaking down a complex issue into smaller components in order to analyze and evaluate each component separately. This method allows me to deeply examine each aspect of a topic and understand the relationships between different factors.

3. Exegetic Method:

This method involves a detailed and thorough analysis of a text or document in order to uncover its meaning and significance. For the purpose of this research, this methodology was used to examine relevant legal texts, court decisions, and other documents that address the issue of marriage contract in Nigeria.

4. Case Study Research Method:

This research involved an in-depth and detailed investigation into a number of cases, and decisions that have shaped the interpretation of the concept. For the purpose of this research, this method was used to analyze important court cases and decisions.

5. The Historical Research Method

This method involves the examination of past events to understand the context and developments that have led to the current situation. For the purpose of this research, I have use this method to analyze the historical backgrounds, events, and circumstances that have shaped the contract of marriage and its effect in Nigeria.

2.3. Structure of The Study

Apart from general introduction, this research has Chapter 1 that will focus on the introduction, literature review, theoretical framework and history and background of marriage contract under the Nigeria law and its effect under the Nigeria law. Chapter 2 will focus on marriage requirement, obligation of marriage contract, possible remedies to the breach of marriage contract and the challenges of marriage contract under the Nigeria law. Chapter 3 will deal with legal and institutional mechanisms. Finally, it will have a conclusion, recommendations, references and bibliography.

CHAPTER I: CONCEPTUAL AND THEORETICAL FRAMEWORK

Introduction

This chapter one has dealt and covered definitions of all concepts that are used in Marriage contract and it will also cover the theoretical framework on marriage contracts and its effect under the Nigerian law.

1.1 Conceptual Framework

This section includes all the definitions of the terminology that will be used throughout this study and I believe that they will help the users and the readers to have more understanding of the following chapters of this study.

1.1.1. Marriage

Definitions of marriage have become important as the new individuals call the same sex marriage that emanated from the so called —advanced western European countries and the United States of America has found voice in the traditional and culturally conservative Nigeria. The Holy Bible, the guardian book of the Christian religion's faith describes marriages as a union of two apposite sexes:

22 And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man.

23 And Adam said: "This is now bone of my bone, and flesh of my flesh: She shall be called woman, because she was taken out of man.

24Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh⁸

In support of marriage as a union of two opposite sex, the Holy Bible states further: —Thou shall not lie with mankind, as with womankind: It is abomination⁹

⁸ 1The book of Genesis chapter 2: 22-24. The Holy Bible (Authorized King James Version (1989) U.S.A: World Bible Publishers)

⁹ibid, Leviticus 18;22, pg. 83

The story as told of what marriage is in the Holy Bible, is not different from the perspective of the Islam religions faith. Some scholars and books have defined marriage in different terms.

According to Atangana Haashim Abdu-Salaam Kamena: —The concept of marriage is one of the most important fundamentals in Islam¹⁰ Atagona Kamena implies that marriage is a union of the opposite sex when he quoted —Quran 24. 32|| (That is the Holy Book of the Islam faith) as stating: —Mary the unmarried among you and the righteous of your male and female servants¹¹.... Impliedly justifying the truism above, Ateguna Kamera commented:

“... There are many young men who embrace the religion of Islam and they are many of them who are looking to get married. However, the parents of the Muslim woman will absolutely not give their daughter away due to the fact that he is not from their background...”¹²

Scholars have also described marriage in different terms. Below are some of them.

1.1.2. Augustine of Hippo: Augustine believed that marriage was a sacrament instituted by God for the purpose of procreation and mutual support between husband and wife. He viewed marriage as a sacred bond that should be entered into with reverence and respect.

1.1.3. Thomas Aquinas: Aquinas viewed marriage as a natural institution that was necessary for the continuation of the human race. He believed that marriage was a good and honorable state that should be entered into with the intention of raising a family and living a virtuous life together.

1.1.4. John Calvin: Calvin saw marriage as a covenant relationship between a man and a woman that was ordained by God for the purpose of mutual love and support. He believed that marriage was a reflection of the loving relationship between Christ and the church, and that it should be entered into with faithfulness and commitment.

1.1.5. Martin Luther: Luther believed that marriage was a divine institution that was essential for the welfare of society and the propagation of the human race.

¹⁰ 3Atangana Haashim Abdu-Salaam Kamena, 'Islam and Marriage in the 21st Century', Available at: http://www.zawaj.com/articles/marriage_21st_century.html. Accessed on 03/04/2024

¹¹ ibid

¹² ibid

He saw marriage as a holy and honorable state that should be entered into with faith and love, and which should be maintained with fidelity and mutual respect.

Wesley viewed marriage as a sacred covenant between a man and a woman that was created by God for the purpose of mutual support, companionship, and procreation. He believed that marriage was a lifelong commitment that should be entered into with prayer, reflection, and a deep sense of responsibility.

To give precision to its definition on the nature of gender involved in marriage, the dictionary goes on to define —married as: —having a husband or a wife.¹³ The same dictionary finally locates the gender involved in marriage by defining husband and wife as: —a man and woman who are married.¹⁴ From the legal lexicon, marriage is seen as: —A contract made in due form of law by which a free man and a free woman reciprocally engage to live with each other during their joint lives, in the union which ought to exist between husband and wife....¹⁵ Furthermore: —Marriage is a contract intended in its origin to endure till the death of one of the contracting partners. It is dissolved by death or divorce.¹⁶ A description of marriage given also indicates that it is union of opposite sex: —Marriage Establishes the legal father of a woman’s child; establishes the legal mother of a man’s child; gives the husband or his family control over the wife’s sexual services... gives the wife or the family control over the husband’s sexual services...¹⁷

A British court in the year 2006 refused to recognize the same sex marriage of two university professors. President of the court Mark Potter held that there was a —Longstanding definition and acceptance.”¹⁸ In other words, marriage refers to a relationship between a man and a woman, primarily intended to raise children.

A California Appeals Court of the United States of America has affirmed the age-long definition of marriage as involving heterosexual couples.

¹³ Longman dictionary contemporary English (1995) Barcelona: Cayfosa. Page 877

¹⁴ ibid

¹⁵ 8 The Electric Law Library’s lexicon on Marriage <http://www.LectLaw.Cem/def2/mo87.htm>. page 1 of 4. accessed 12.06 pm on 07/04/2024.

¹⁶ ibid

¹⁷ ibid

¹⁸ <http://www.Msnbc.msn.Com/id/1412003/print/1/display mode/1098>. Page 1 Of 2. 12 files:/^/cm/users/marriage upheld, (article) page 1 of 3 Accessed 07/04/2024

According to CNN, which posted the court's decision on October 5, 2006, the court held that: —California law does not literally prohibit gays and lesbians for marrying, it requires those who do to marrying, it requires those who do to marry someone of the opposite sex.¹⁹

Generally, worldwide, marriage is regarded as a union of two opposite sexes that is man and woman. In some jurisdictions (Nigeria inclusive), marriage is also viewed as a union of man with more than one woman. The Islamic faith lends credence to this version of marriage known generally through the generic term polygamy; though the appropriate sociological word is polygyny. A few societies have permitted polyandry (a woman having several husbands).²⁰

A few jurisdictions have departed from the accepted definition of marriage. Such jurisdictions now accept same sex marriage. The jurisdictions include the Netherlands, Belgium, Canada, and Spain. Only the state of Massachusetts in the United States of America recognizes same sex marriage, at the federal level, the Defense of marriage Act, signed into law by president Bill Clinton in 1996, has created a federal definition of marriage as between a man and a woman, as well as allowing one state not to recognize a same-sex marriage recognized by another state²¹

In Nigeria, there are basically three types of marriage recognized by the law. These are statutory marriage/marriage under the act, customary marriage and Islamic marriage. Our focus in this article is on statutory marriage which is regulated by the Nigerian Marriage Act, cap 218, Laws of the Federation 1990.

1.1.1.1. Types of Marriage in Nigeria

There are various types of marriages in Nigeria. There are as follows:

¹⁹ [http://www.\(Wru.Edu/affil/Tibet/books And papers/fraternal. Html\)](http://www.(Wru.Edu/affil/Tibet/books%20And%20papers/fraternal.html) accessed 07/05/2024

²⁰ [file://^/cm/users/marriage/Marriage-Wikipedia the free encyclopedia. Htm](file://^/cm/users/marriage/Marriage-Wikipedia%20the%20free%20encyclopedia.htm) page 11 of 13. accessed 07/05/2024

²¹Ibid

Nwogogu, E.I, (2014). Family Law in Nigeria. Ibadan, Nigeria. HEBN Publishers Plc. pg. 4-10

- Odike, E.A, Agu, A.C (2003) Modern Nigerian Family Laws. Enugu, Nigeria. Richfield & Frank Renaissance Publishers.

- Sagay, I. (1999) Nigerian Family Law. Ibadan, Nigeria. Malthouse Press, p. 825.

- Nweke S. U. Nweke (2022) An Appraisal of Customary Law Marriages in Nigeria.

1.1.1.2. Statutory Marriage

Simply put, statutory marriage is one provided for under the Marriage Act. It makes monogamous marriage a compulsion. It is a result of the free consent of both parties; a contract between a man and a woman to which they enter into legal relations involving certain rights and obligations.

Under the Marriage Act and the Matrimonial Causes Act, the following requirements are requisites for persons who wish to contract a statutory marriage. They include; Neither party must be already married, Parties must be of age, Parties must not be within the prohibited degrees of consanguinity and affinity.

This form of marriage is similar to that of a contract. Its premise is on the consensus ad idem of two persons to become one to the exclusion of others. In addition to the above requirements, the marriage must be registered at the appropriate Marriage Registry, and a marriage certificate will be issued as proof of the union. The Act also outlines the process for solemnizing the marriage, which involves the presence of witnesses and an authorized marriage officer. A person who has contracted a statutory marriage cannot go further to contract another marriage (statutory or customary) with another person until the dissolution of the previous marriage is concluded. These requirements distinguish a statutory marriage from all others and that is why the law's stance on it is quite strict. Failure to comply with the above requirements renders such a marriage void or voidable under the provisions of the law.

1.1.1.2. Customary Law Marriage

Various customs operate in different localities in Nigeria. These customs, however subject to the provisions of the constitution, are binding on its people. Under various customary laws in Nigeria, marriage is collectively recognized as an important institution, with very similar circumstances.

Under customary law, marriage is seen as a voluntary union of a man and woman or women for life to the exclusion of all others. Customary marriages are recognized under the Nigerian legal system, and they have their own set of requirements and procedures.

Generally, customary marriages involve traditional ceremonies, the exchange of gifts, and the consent of both parties. It is important to note that the specific requirements and procedures

can vary depending on the customs of the ethnic group involved. Different customs guard different customary law marriages in Nigeria and some common forms include; traditional marriage, Islamic marriage, sororate marriage, woman-to-woman marriage, and ghost marriage. The only constant factor among the various customs is the permission given to men to contract marriage with more than one person. This form of marriage is also referred to as 'traditional' marriage is defined by Justice A.P. Anyebe as '.... a union of one man and a woman or women to the exclusion of all others. The union extends even beyond the life of the man but terminates substantially at the death of the woman' Customary marriage is essentially marriage contracted under the native laws and custom of the various communities in Nigeria. From the foregoing, it is clear that ample allowance and incentive is provided under customary law for the enjoyment of polygamy. This is so, given that there is no limit to the number of wives a man can marry under customary law. Although, it must be said that this fact discourages women desirous of exclusive right and possession of their husbands from undertaking marriages under customary law. When this is added to the flamboyance that accompanies the so called 'white weddings' and greater apparent 'security of tenure' that goes with it, it is not uncommon to see many women in Nigeria quietly prodding their men to undertake statutory marriages. Nonetheless, customary marriage is the commonest form of marriage and it gets statutory recognition in the Marriage Act. This attitude of glorification of the so called 'white weddings,' it would appear is largely viewed as a relic of colonialism.

The requirements for a customary law marriage include; Parties should be of reasonable age, Parental consent must be obtained, Payment of dowry, Parties must not be with the prohibited degrees of consanguinity and affinity, Consent of the parties, Statutory prohibition for persons already married under the Marriage Act.

When it comes to customary law marriage in Nigeria, the framework is based on the customs and traditions of different ethnic groups. So, only elders and knowledgeable persons in such ethnic groups and communities could give adequate descriptions of such marriage traditions.

1.1.1.3. Moslem/Islamic Law Marriage

ILM, also known as Nikah, follows the framework of Islamic principles and traditions. The process involves several steps, including the proposal, acceptance, and the presence of witnesses. The marriage contract, known as the Nikahnama, is an important document that outlines the rights and responsibilities of both parties. It is important to note that the specific

requirements and procedures may vary slightly depending on the Islamic sect and local customs. It is usually classified under customary marriage in Nigeria, due to the fact that quite several northern states regard Islamic law as their custom. Much like customary law and in accordance with the provisions of Islam, a man is allowed to contract a marriage with up to four women. Nigeria has a diverse legal framework for marriages, encompassing statutory, customary, and Islamic law marriages. Each type has its own requirements and legal implications, ensuring that the rights and responsibilities of individuals are protected. It is crucial for individuals to understand the specific requirements and procedures for their chosen type of marriage to ensure its validity and legality. By consulting the relevant laws, such as the Marriage Act, and seeking legal advice when needed, individuals can navigate the marriage process with confidence. The legal framework for marriage in Nigeria reflects the country's rich cultural and religious diversity, providing a solid foundation for unions and the recognition of marital rights.

1.1.1.4. Double –Deck Marriage in Nigeria

There is no specific definition in the Marriage Act regarding the DD marriage. ⁵⁷ Simply defined, a Double Deck Marriage is the celebration by the same couple of a marriage under one system and their subsequent marriage under another system. The most prominent of double deck marriage in Nigeria, is the celebration of customary marriage prior to the celebration of statutory marriage that is marriage under the Act.

Though under section 35 of the Marriage Act, a person married under the Act is precluded from subsequent marriage under customary law, there are cases in Nigeria in which people ignored this provision. The validity of Double Deck Marriage will depend on the capacity of a person or the persons to the marriage.

The Nigerian Marriage Act, cap 218, Laws of the Federation 1990 lays down certain preliminary legal requirements which are to be fulfilled before the solemnization of marriage under that statute. Persons wishing to get married pursuant to the Act must thereby comply with the legal requirements under the Act; non-compliance of which will invalidate the marriage. Before the celebration of the marriage, the Act provides that the parties shall sign and give to the Registrar of the district in which the marriage is intended to take place, a notice in the prescribed form. The Registrar shall then cause the notice to be entered in the Marriage Notice Book in his registry. A copy of this will be displayed in the registry for

inspection by the public. After a period of 21 days has expired, the Registrar shall issue his certificate of notice. But the Registrar must be satisfied that there is no cause why he should not allow the parties to be married.

Any person whose consent to a marriage is required or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of the Registrar's certificate by writing at any time before the issue of the Registrar's certificate the word 'Forbidden' opposite the entry of the notice in the marriage notice book and include his name, place of abode and the grounds upon which he claims to forbid the issue of the certificate. The Registrar shall not issue the certificate until such caveat has been pursued and disposed of Section 14, Marriage Act. Parties will be deemed to have the capacity to marry if they satisfy the Registrar of the following legal requirements:

1.1.2. Legal requirement of marriage contract in Nigeria.

1.1.2.1. Age

In Nigeria, the legal age requirement for marriage varies depending on the type of marriage and the region. The Marriage Act of 1990 sets the minimum age for marriage as 18 years old for both males and females. However, it's important to note that this age requirement can be subject to customary or religious practices in certain regions.

In some states, there are exceptions to the minimum age requirement. For example, with parental consent, a person between the ages of 16 and 18 may be allowed to marry. Additionally, under customary or Islamic law, the age for marriage can vary, sometimes allowing for marriages at younger ages.²² In Nigeria, the legal age requirement for marriage varies depending on the state. In most states, the legal age for marriage is 18 years old for both males and females. However, in some states, the legal age for marriage is 21 years old. It is important to note that the Child Rights Act of 2003 prohibits the marriage of persons under the age of 18 in Nigeria, regardless of the age of consent in a particular state. It is illegal in Nigeria to marry a person under the age of 18, and any marriage involving a minor is considered null and void.²³ It should also be noted that the Nigerian Constitution does not establish a minimum age of marriage.

²² <https://punchng.com/does-nigeria-have-marriageable-age/?amp> Article accessed 13/05/2024

²³ *ibid*

The Child Rights Act, which was passed in 2003, sets the age of marriage at 18 years-old. However, only 23 of Nigeria's 36 states have adopted this act. As a result, in some areas of the country the minimum age of marriage can be as low as 12 years-old. In other countries, the answer can be given to you in one word. For example, as a general rule, marriageable age for females in Kenya is 16; Liberia, 18; Japan, 20, North Korea; 17, Germany; 18 and UK; 18. Unlike in other countries, where this question is easily answered, the Nigerian lawyer is left with no choice than to say, "It depends". The 1999 Constitution (as amended) has not offered any help in defining this term, although it mentioned the phrase in Section 29 wherein it provides for situations in which Nigerian citizens may renounce their citizenship. Section 29 (4) (a) stipulates that citizens must be of full age to do so. The section adds that "full age means the age of eighteen years and above". Two things must be noted about this provision of the law: One is that it does not end there. You must read this sub-section together with Section 29 (4)(b) which specifies that "any woman who is married shall be deemed to be of full age".

Furthermore, the second point to note is that this provision of the constitution is limited to the question of renunciation of citizenship. Thus, it does not apply to questions about "marriageable age". In conclusion, nothing is said in the Nigerian Constitution about the phrase. The Child Rights Act (CRA), which was passed in 2003, was celebrated as the law that would finally put the question to rest. This law sets the age of marriage at 18 years old. In line with the above, any person below 18 is not 'marriageable' by law as he/she is incapable of contracting a valid marriage. Any such marriage is a nullity, and a penalty of 500,000 Naira (Five Hundred Thousand Naira), a fine or five years' imprisonment or both, await any parent, guardian or any person who facilitates such marriages. However, this law is not one of those laws that can bind all states in Nigeria just like that. What I mean is that although the Federal Government has tried to stamp out child marriage with the enactment of the Child Rights Act of 2003, each state in Nigeria has to enact the act under its own state laws before it is enforceable. Thus, state legislature has the legislative competence to make law for the protection of children. This explains why states make laws, as regards this issue, in consonance with its religion, culture and tradition as opposed to adopting the Act. It is hereby suggested that the protection of children ought to be on the exclusive legislative list and not any place else, for obvious reasons. There should be a uniform age set for marriage in all of Nigeria's laws. Either that or there must be an enactment of a new Act, Prohibition of Child Marriage Act or something related to this, which, if enacted, should automatically

apply to all states in Nigeria in order to protect the girl child. Unfortunately, the current state of the law is to the effect that a social evil such as child marriage can and will continue to be practiced in a state that is yet to pass the Child Rights Act as domestic law. But I must add that even though many of the southern Nigerian states have adopted this Act, culture and religion of some of the Nigerian peoples make it difficult to enforce same.²⁴ In this present research, the following are the case laws that were used.

Uzochukwu Okoli vs The States

In the case that happened in eastern part of Nigeria, where the state has adopted the marriageable age which is 18, the Anambra state government arrested a man called Uzochukwu Okoli, for marrying off his underage daughter. Okoli was apprehended after his daughter reported to the state ministry of women and social welfare about the alleged ill treatment being meted out to her by her father and the man he forced her to marry.

The daughter Chioma Okoli, who is currently 16years old said after the death of her mom, her father took her and sister out of Edo state and brought them to Anambra. The alleged said that she was first forced to marry and live with a 70 plus old man at the age of 14 but after sometime, she ran back to her father's house before he finally gave her out to a 60-year-old man Chinedu Nweke as husband. Chioma who was in the company of her sister, explained that life with Chinedu has been a living hell because he allegedly beats her and sometimes pees in her mouth. She said this act made her run away with their 9-month-old-baby. Her father, Uzochukwu Okoli, on the other hand, claimed his daughter is 18yeras old and at some point said she is 20 years old. How will a father be this callous and daft? After he was handcuffed, he threatened to deal with his daughters if he made it out of prison. He also urged Chioma and her sister to pray he dies in prison because he would make life more miserable for them. The high court of Nigeria who tries such cases found him guilty and sent him to prison.²⁵ So age is a valid legal requirement for marriage in Nigeria. Where the age isn't respected, the marriage becomes null and void and perpetrators of this crime are punished. Another case was the case of Wasila Tasiu in Nigeria where her marriage was declared null and void due to underage, she is a 14-year-old girl who was married off to a man twice her age in Kano State in 2013.

²⁴ Lari-Williams, a lawyer, writes from Lagos

²⁵ www.lindaikojisblog.com blog piece accessed 16/05/2024

The marriage was later annulled by a Sharia court on the grounds that she was underage and unable to give consent.²⁶

1.1.2.1.2. Consent

Under statutory marriage or marriage under the Act, parental consent of both the male and female parties is a legal requirement but only in cases where either or both of the parties are under the age of twenty-one years. The Marriage Act is silent in relation to the consent of parties themselves but the Matrimonial Causes Act (MCA), 1970 provides for the 'real consent' of the parties, that is, consent obtained without 'duress or fraud. In Nigeria, consent is a legal requirement for marriage. According to the Marriage Act, both parties must freely give their consent to the marriage in order for it to be valid. Without proper consent, the marriage is considered void and can be annulled. It is important for both parties to fully understand and agree to the terms of the marriage before proceeding with the ceremony. Any form of coercion or manipulation to force someone into a marriage is illegal and can lead to serious legal consequences.

Additionally, in cases where one or both parties are minors, parental consent is also required for the marriage to be valid. This is to ensure that the individuals involved are mature enough to understand the implications of marriage and are making an informed decision. Overall, consent is a fundamental requirement for marriage in Nigeria, and any marriage entered into without proper consent may be considered null and void in the eyes of the law. There are two consents involved. The consent of the family (parental consent) and the consent of the prospective spouses themselves. In modern times, family consent is now synonymous with parental consent. Here the parent may be the actual parents or the guardian. As for the wider family, their consent is no longer required as a general rule. A father may still consult with his wider family before he gives or withholds his consent to his children's marriage; but this is a matter of courtesy and not of necessity. However, in the case of a man, parental consent can be dispensed with if the man is of age. An adult male has a right to conduct all the necessary negotiations for his marriage without the consent of his parents, though this is quite unwise and may prove problematic. The consent of the spouses themselves is a key factor. In traditional society, the consent of the spouses was deemed irrelevant. Parents were known to have contracted marriages on behalf of their infant children. But as the adage goes, you may

²⁶ <https://www.bbc.com/news/world-africa-25653696> Article accessed 16/05/2024

force a horse to the river but you cannot force the horse to drink water. Some of those marriages contracted without the consent of the spouses have proved problematic. In modern society, the practice is to ask for the consent of the prospective spouses. Most marriages in fact start with the agreement between the spouses; their parents come into the picture later on. So vital is the issue of consent that it is a criminal offence for any person to take away or detain or cause a female to be so dealt with against her will, for the purpose of marriage. The offence is a felony which attracts imprisonment for seven years.²⁷ A notable Nigerian case involving lack of consent in marriage, particularly in the context of agreeing to marry, is

Ibrahim v. The State (2012) LPELR-19785 (CA). Case Summary: IN **Ibrahim v. The State**, the Court of Appeal dealt with a case where the defendant was convicted of kidnapping and forcibly marrying the victim. The case revolved around the lack of consent in the context of the victim being coerced into marriage through abduction and threats. The case was decided in 2012. The ruling highlighted the legal system's recognition of the importance of consent in marriage. It reinforced that marrying someone without their voluntary consent, especially under duress or coercion, is a criminal offense.

The case underscored that such acts are punishable under Nigerian law, reflecting the legal stance against forced marriages and the significance of consensual agreements in marital arrangements.

1.1.2.1.3. Registration

In Nigeria, registration of marriage is a legal requirement under the Marriage Act of 1990. The Act stipulates that all marriages in Nigeria must be registered with the appropriate authority, which is usually the local government council or registry office. The process of marriage registration in Nigeria involves obtaining a marriage license, completing the necessary forms, providing relevant documents such as birth certificates and proof of identity, and paying the required fees. The marriage must be solemnized by a recognized marriage officer, such as a registrar or religious leader, and the marriage certificate must be signed by both parties, witnesses, and the officiant. Failure to register a marriage in Nigeria can have legal implications, such as difficulties in proving the validity of the marriage or accessing legal rights and benefits that come with being married. Additionally, unregistered marriages may not be recognized by the government or courts in case of disputes or divorces.

²⁷ Section 361 of the criminal code

Therefore, it is important for couples in Nigeria to ensure that they comply with the legal requirement of registering their marriage to protect their rights and ensure the validity of their union. The marriage is registered with a specific amount of money. The payment varies. For a special marriage the registration fee is 37000 naira, for an ordinary marriage it is 27000 naira, for exchange of marriage venue it is 150000naira and lastly for verification of documents it is 50,000.00 naira. For one's marriage to be Legally Binding, or to be recognized under the Law as a registered marriage, it has to be certified by the Ministry of Interior. The application for marriage can be done through the eCITIBIZ portal, and a Certified Marriage certificate (CMC) is issued, after all procedures and payments are duly met.

Some documents required for both parties for registration include:

- Birth Certificate or Declaration of Age.
- Passport Photograph.
- Indigene Letter/Letter of Identification from State of Origin (Nigerians only).
- Sworn Affidavit of Bachelorhood from a Federal High Court/ Bachelorhood Certificate (if bachelor).
- Affidavit of Marriage (if already married).
- Evidence of Divorce - Decree 90 and Decree Absolute (if divorced).
- Death certificate of Previous Wife (if a widower).
- Evidence of Annulment from a Federal High Court/ (if previous marriage was annulled).
- Sworn Affidavit of Single with Child/Children (if single with child/children).
- Data Page of International Passport (if living abroad).
- Arrival Passport Stamp Page (if living abroad).
- Residence Permit (if living abroad)²⁸.

²⁸ Ministry of interior citizenship and business department reportgov.ng

1.1.2.1.4. Monogamy

‘Marriage under the Act’ as it is often referred to, by its nature, is therefore monogamous. A monogamous marriage has been statutorily defined as, ‘a marriage which is recognized by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.’²⁹ It is a union that terminates at the death of either spouse. Two major types of marriage exist in Nigeria: monogamy, a marriage of one man to one woman, and polygyny, a marriage of one man to two or more wives. In most cultural groups in Nigeria, traditional marriage is usually an arrangement between two families as opposed to an arrangement between two individuals. Accordingly, there is pressure on the bride and bridegroom to make the marriage work as any problem will usually affect both families and strain the otherwise cordial relationship between them. In most Nigerian cultures, the man usually pays the dowry or bride-price and is thus considered the head of the family. Adultery is acceptable for men, but forbidden for women. Marriage ceremonies vary among Nigerian cultures.³⁰

1.1.2.1.5. Subsisting Marriage

Parties will lack the capacity to embark on a statutory marriage if either of them is already married under the Act to another person and the marriage has not been dissolved by any court of law. Also, section 33 (1) of the Marriage Act provides that no marriage in Nigeria shall be valid native law or custom to any other person other than the person with whom such marriage is had.

It is therefore clear that unless the Registrar is satisfied that there is no subsisting statutory or customary law marriage on the part of any of the parties wishing to marry under the Act, he shall not issue them with a certificate to marry under the Act³¹.

1.1.2.1.6. Kindred and Affinity

Persons intending to get married must ensure that there is no impediment of kindred or affinity between them. The list of prohibited degrees of consanguinity and affinity applies to

²⁹ The Interpretation Act cap 123 LFN 2004

³⁰ <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/An-Abridgement-Of-Nigeria-Matrimonial-Laws-And-The-Church.pdf>

³¹ Marriage act of Nigeria section 33

statutory marriages and it is provided in Schedule 1 of the MCA. A Registrar will not issue a certificate to marry unless he is satisfied by reason of a sworn affidavit by the parties that there is no such impediment. A marriage between two persons who are within the prohibited degree of consanguinity or affinity is void. Under section 4 of the MCA, where persons are within the prohibited degrees of affinity and desire to marry, they may apply in writing to a Judge for permission to do so and if the Judge is satisfied that there are exceptional circumstances, the Judge may by an order permit the parties to marry one another. The prohibited degrees of consanguinity and affinity are as follows:

Marriage of a man is prohibited if the woman is, or has been his:

Consanguinit

Ancestress, Descendant, Sister, Father's sister, Mother's sister, Brother's sister, Sister's daughter, Son's wife, Daughter's son's wife.

Affinity

Wife's mother, Wife's grandmother, Wife's daughter, Wife's son's daughter, wife's daughter's daughter, Father's wife, Grandfather's wife, Marriage of a woman is prohibited if the man is, or has been her:

Consanguinity

Ancestress, Descendant, Father's brother, Mother's brother, Brother's son, Sister's son, Son's daughter's husband, Daughter's daughter's husband.

Affinity

Husband's father, Husband's grandfather, Husband's son's son, Husband's daughter's son, mother's husband, Grandmother's husband.

Once the parties satisfy the Registrar that there is no impediment to their marriage, the Registrar will issue them with the certificate to marry. On receipt of the certificate, the parties can celebrate their marriage in a church duly licensed for the celebration of statutory marriages or in a marriage registry. It should not be presumed that every church is a licensed place for the celebration of marriages in accordance with the Act. Under section 33 (2) of the

Marriage Act, a marriage shall be null and void if both parties knowingly and willfully acquiesce in the celebration of a marriage in:

1. A place other than the office of a registrar of marriages or a licensed place of worship, or
2. Under a false name, or
3. Without registrar's certificate of notice.

The granting of a Registrar's certificate may be waived by the obtaining of a special license. Section 22 of the Marriage Act forbids a minister of religion to celebrate any marriage until the parties have delivered to him the Registrar's certificate or a special license from the governor under section 13. Section 43 imposes a maximum penalty of five years' imprisonment for performing a marriage in defiance of the Act. The sanctity of marriage is crucial to the moral fabric of every society. The Nigerian Marriage Act has clearly attempted to provide very solid benchmarks and requirements that would ensure that the very essence and sanctity of marriage is not violated or trampled upon.

In doing this, the Marriage Act is invariably protecting the moral sanctity of the Nigerian society.³²

1.1.2.1.7. Rights and Responsibility of Spouses in Marriage Under the Marriage Contract in Nigeria.

The institution of marriage is a fundamental aspect of Nigerian society, and it is crucial to make sure that the rights and obligations of both husbands and wives are effectively safeguarded. The rights and obligations of spouses are regulated by various laws and legal principles in Nigeria and in order to support women's equality and marital empowerment, Nigerian laws have undergone considerable changes. These laws aim to protect the rights of both parties, promote equality, and provide a framework for the functionality of marriages and family units.

The rights of Spouses as recognized under the Nigeria law include:

³² Intergovernmental Nigerian marriage

1.1.2.1.7.1. The Right to Enter into Marriage:

Article 12 of the Human Rights Act guarantees men and women of marriageable age the right to marry and establish a family. Every individual in Nigeria possesses the fundamental right to enter into a marriage contract based on their free and full consent. The need for mutual consent is also recognized by Nigerian law, which ensures that neither party is forced or coerced into marriage. The 1999 Constitution of the Federal Republic of Nigeria (as amended) forms the foundation of all laws in the country, including those relating to marriage and family. Under the Constitution, every individual, regardless of gender, is entitled to fundamental rights and freedoms, which include the right to life, dignity, personal liberty, and freedom from discrimination³³.

1.1.2.1.7.2. Equality in Marriage:

The principle of equality between spouses is a crucial aspect of Nigerian family law. The Matrimonial Causes Act and the Violence Against Persons (Prohibition) Act incorporate equality in marriage. Under the Marriage Act 2004, spouses are regarded as equal partners in marriage. This means that husbands and wives enjoy equal rights and responsibilities within the marital union, including decision-making, financial matters, and child-rearing. The Nigerian Constitution also guarantees equality before the law for both spouses. Neither spouse should be discriminated against based on gender. Spouses should have equal rights to property, assets, and resources acquired during the marriage. The Matrimonial Causes Act acknowledges the equal contributions of both spouses to the acquisition and management of marital property.

1.1.2.1.7.3. The Right to Personal Security and Safety;

Nigerian law recognizes the rights of both husbands and wives to be free from violence and abuse within the marriage. Domestic violence, whether physical, emotional, or sexual, is a serious concern that affects many marriages and is strictly prohibited. The Violence Against Persons (Prohibition) Act of 2015 provides comprehensive legal protection against all forms of domestic violence, including physical, sexual, emotional, and economic abuse allowing

³³ Legal read by Kate Nkume

victims to seek redress and obtain restraining orders against their perpetrators³⁴.

1.1.2.1.7.4. Inheritance Rights:

Nigerian law has made significant strides in ensuring gender equality in inheritance rights. Equal rights regarding inheritance are granted to husbands and wives under different states' succession laws in Nigeria, such as the Lagos State Law of Inheritance (2004). This implies that upon the death of either spouse, both spouses, regardless of gender, are entitled to an inheritance from their spouse's estate. For example, Section 46 of the Administration of Estates Law of Lagos State, 2015, governs the mode of distribution of the residuary estate of a deceased person who died intestate.

1.1.2.1.7.5. Right to the dissolution of Marriage:

Section 15 of the Matrimonial Causes Act 2009 provides for the ground for the grant of a decree of dissolution of marriage. This means that either spouse can file for divorce on various grounds such as adultery, cruelty, desertion, or irreconcilable differences. The law also allows for separation orders and judicial interventions to promote reconciliation³⁵.

1.1.2.1.7.6. Right, to own property in Nigeria:

Property rights within a marriage depend on the type of marriage. Under statutory marriages, the Matrimonial Causes Act governs the distribution of property in the event of divorce or separation.

Customary law, on the other hand, often reflects the patrilineal nature of inheritance, which may affect the property rights of wives. However, recent legal reforms have sought to address gender imbalances by promoting equal property rights for women. The case of *Mojekwu v. Mojekwu* (1997) the landmark case on equal property right for women in Nigeria, Supreme Court held that women have a right to inherit property from their fathers. The court emphasized that the customary law that denied female children the right to inheritance was discriminatory and inconsistent with the principles of the Nigerian Constitution. This verdict upended long-standing practices and established a precedent for women's equal property rights. The constitution also recognizes the right of citizens to own property in Nigeria.

³⁴ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2009

³⁵ The Marriage Act Cap M6, Laws of the Federation of Nigeria 2004.

Section 44(1) of the Constitution explicitly states that no person shall be compulsorily deprived of his or her property, except in the interest of public necessity and subject to the payment of just and adequate compensation³⁶.

1.1.2.1.7.7. Right to Maintenance and Support:

During the marriage, Spouses are legally obligated to provide financial maintenance and support to each other. The Marriage Act of 2004 acknowledges couples' obligation to contribute to each other's well-being, including financial assistance for basic necessities, healthcare, and education. This provision ensures the well-being and stability of the marital relationship. In conclusion, it is important for spouses to be aware of their rights under the Marriage Act to ensure that their union is based on mutual respect, equality, and understanding. Legal counsel and advice should be sought when dealing with specific issues related to marriage rights to ensure compliance with the applicable laws and regulations.

1.1.2.1.7.8. Dissolution of Marriage and Property

When it comes to dissolution of marriage contract in Nigeria, it is done in accordance to the type of marriage that has been entered.

1.1.2.1.7.8.1. Dissolution of Customary Law Marriages.

There are two ways in which a customary law marriage can be dissolved. These are by non-Judicial Land Judicial methods. Before considering these two methods in greater detail, it is imperative to underscore the legal principle that once there is evidence of defacto celebration of marriage either under the Marriage Act or under customary law, there is a strong presumption in favor of the validity of the marriage. Therefore, customary law marriage cannot be dissolved by mere wishful thinking or assertion. In the celebrated case of *Ezeaku v. Okonkwo*³⁷, the deceased, a Senior Advocate of Nigeria, was married to the 1st defendant under native law and custom. They had a child and thereafter separated and the deceased subsequently got married to the plaintiff. He thereafter deposed to an affidavit wherein he stated that the plaintiff was his only wife. After his demise intestate, the 1st defendant sought to partake of the estate of the deceased which was placed under the management of the office of the Administrator General/Public Trustee of Enugu State. The plaintiff therefore

³⁶ *Mojekwu v Mojekwu* (1997) 7 N.W.L.R 283

³⁷ 16 (2012) All FWLR Part 654, 159

commenced an action in the High Court of Enugu State by originating summons seeking the determination of the following issues:

- (a) Whether the affidavit deposed to by the deceased carry the force of law.
- (b) Whether the said affidavit was not sufficient notice to the whole world with respect to the marital Status of the deceased under native law and custom.
- (c) Whether the affidavit did not determine effectively the purported right of the 1st defendant vis-à-vis the estate of the deceased.

The High Court resolved these issues in favor of the plaintiff. Upon an appeal by the 1st defendant to the Court of Appeal (Enugu Division), the court in allowing the appeal held interalia that the trial court erred in holding that the marriage was dissolved because the deceased deposed to an affidavit to the fact that the plaintiff was his only wife without taking the proper step to dissolve the marriage between him and the 1st defendant. According to Oseji JCA³⁸ (delivering the lead judgment), When there is evidence of the defacto celebration of marriage either under the marriage Act or under customary law, there is a strong presumption in favor of the validity of the marriage.

Furthermore, In the same vein, the said marriage cannot be said to have been dissolved by mere wishful thinking or assertion....” Accordingly, the Court held there is a standard process for the dissolution of marriage whether statutory or customary and concrete evidence that the necessary requirements were satisfied must be adduced before a court can hold that there has been a divorce and the validly contracted marriage between a couple had formally and legally come to an end. It is not enough for either party to a customary marriage to suomotu bring it to an end by merely deposing to an affidavit to that effect as in this case. The Court of Appeal held further that, legal authorities have it that the proof of the dissolution of customary marriages requires a high degree of certainty. This form of marriage and also statutory marriage is not dissolved by effluxion of time. So that living apart for 17 years, as in this case, cannot be a ground to hold the marriage between the appellant and the deceased Senior Advocate had been dissolved. Similarly, in the case of LawalOsula v

³⁸ 17 At 180, pt. G-H

LawalOsula³⁹, the court held as follows:

Living with a man and having children for him alone does not necessary make a woman a wife of the man under native law and custom. In the same way, a woman who is a wife of a man under native law and custom does not divorce the man merely by leaving him and staying with another man for who she has children.

i. Non-Judicial Dissolution

This form of dissolution of customary law marriage is carried out informally without the formalities of any judicial process. It is undertaken inter parties, usually with the knowledge and participation of members of the families of the couple who at this point may be at daggers drawn or at least in an active state of animosity. Non Judicial Dissolution may be executed unilaterally or by mutual agreement of both parties. In the case of Ezeaku v Okonkwo⁴⁰, the court upheld this principle and stated that a marriage under native law and custom can be dissolved either unilaterally or by mutual consent, subject to the refund of dowry. Similarly, in the case of Okpanum v Okpanum⁴¹ the court held that: Unlike in English law, dissolution of marriage under native law and custom can be extra-judicial. No ground for divorce need be alleged or proved.

It is sufficient for a husband to arrange a meeting where he duly informs his parents in law of his intention to bring the marriage to an end. It is not necessary for the husband to return the wife physically to her family nor is the return of the dowry necessary. As we shall see shortly, this latter part of this diction relating to the lack of necessity to return the bride price is with respect, not supported by a host of other judicial authorities. Mutual non-judicial dissolution of customary law marriage often happens after prior attempt or attempts have been made to reconcile the parties. Where both sides dig deep into their trenches in their resolve and persistence to dissolve the marriage, an agreement may then be reached on dissolution and other collateral issues such as the return of bride price and custody of children. Unilateral non-judicial dissolution by either party may be in the form of a party to the marriage opting to end cohabitation with the other party following a clear unequivocal intention to bring the marriage to an end.

³⁹ (1993) 2 NWLR (pt. 274) 158, at 172

⁴⁰ Supra n. 16. See also the case of Eze v Omeke (1977) 1 ANSLR 136.

⁴¹ (1972) 2 ESCLR 561

Thereafter the bride price is returned to the family of the man and a subsequent return of the belongings of the woman to her or her family, where necessary. The marriage is dissolved only when the bride price is refunded.

ii. Judicial Dissolution

Under this dispensation, customary marriage is brought to an end by the instrumentality of the judicial process. This form of formal dissolution of customary marriage is surging in popularity, relevance and attraction. This is largely attributable to the fact that it provides recorded evidence of divorce, provides an avenue for the return of bride price in circumstances that would otherwise have been difficult or impossible as well as presents an impartial judicial platform for the just determination of ancillary issues such as custody of the children of the marriage. Customary courts in Nigeria are vested with jurisdiction to dissolve customary marriages. Their jurisdiction in this respect is unlimited. In Edo State, under the Customary Courts law 1984 of defunct Bende State (as applicable to Edo State)⁴², the Area and District Customary Courts created under that law are vested with unlimited jurisdiction over matrimonial causes and matters under customary law, this clearly involves divorce. This dispensation must be distinguished from matrimonial causes or matters under the marriage Act over which customary courts have no jurisdiction. In such matters jurisdiction is firmly resident at the High Court.

The relative or comparative ease and simplicity with which customary law marriage can be dissolved by customary courts as against the difficulties, technicalities and delay experienced in a quest to dissolve statutory marriages at the High Court, has quite clearly encouraged a greater interest in the celebration of customary law marriages by the people, even among the elites.

1.1.2.1.7.8.2. Grounds for Dissolution of Customary Marriages

Generally, whether dissolution of customary marriage is sought judicially or extra-Judicially, no reason or ground need be stated or given by the party seeking dissolution. In this respect, a lot depends on the prevailing customs and tradition of each community. There is therefore no uniformity in this area.

⁴² Section 20 (1st Schedule) which is imparimateria with section 20 (1st Schedule) of the Customary Court Law C 24 Laws of Delta State 2006 and similar to section 14 (3rd Schedule) of the Customary Court Law of Abia State.

In practice however, some grounds for dissolution are quite common to a host of communities. These include, ill-treatment of either party, impotence or sterility, insanity, leprosy or other life threatening diseases, failure or inability to consummate the marriage, lack of respect, fetish practices or witchcraft etc. Apart from this, in some states in Nigeria, the Marriage Divorce and Custody of Children Adoptive by-laws⁴³(applicable to the states of Ogun, Oyo, Ondo and Defunct Bende State)(now Edo and Delta States) make elaborate provisions for grounds for dissolution of marriage under customary law. Under this law, the following matters shall be taken into consideration by a customary court when making an order for the dissolution of any marriage.⁴⁴ These are:

- (a) Betrothal under marriageable age
- (b) Refusal of either party to consummate the marriage.
- (c) Harmful diseases of a permanent nature which may impair the fertility of a woman or the virility of a man
- (d) Impotency of the husband or the sterility of the wife
- (e) Conviction of either party for a crime involving a sentence of imprisonment of five years or more
- (f) Ill-treatment, cruelty or neglect of either party by the other,
- (g) Venereal disease contracted by either party
- (h) Lunacy of either party for three years or more
- (i) Adultery

1.1.2.1.7.8.3. Dissolution of Statutory Marriage

In accordance with the provisions of the Matrimonial Causes Act (“the Act”), for a marriage to be dissolved by the High Court, it must be a statutory marriage evidenced by a Marriage

⁴³ 31958 WRLN 456

⁴⁴ Ibid section 7

Certificate. A statutory marriage is one celebrated under the Act and it confers jurisdiction of the Court to hear the petition for dissolution of marriage.

The law that governs matrimonial causes in Nigeria is the Marriage Act, the Matrimonial Causes Act 1970 and the Matrimonial Causes Rules 1983. These laws provide for the rules governing matrimonial matters, procedures and grounds relating to matrimonial causes. The Act provides that the court with jurisdiction that has authority to hear and determine matrimonial causes is the High Court of any State of the Federation as provided under the Section 2 of the Act. The action for dissolution of marriage is ordinarily instituted by a virtue of Petition filed by the person bringing the action called the Petitioner and the party who it is brought against that is called the Respondent. The Respondent replies to the filed petition by a way of Answer or Cross-Petition.

The law stipulates that a marriage under two (2) years cannot be dissolved; this is called the two-year rule. It is provided for under Section 30 of the Act, which states ***“subject to this section proceeding for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by the leave of court”***.

Although to every rule there must be an exception. Consequently, in exceptional cases, a marriage under 2 years can be dissolved where the petitioner bringing the action for divorce can prove that exceptional hardship or that the case is one that involves exceptional depravity, which will be caused if the marriage is not dissolved, as it is provided for under Section 30 (3) of the Act.

The court in determining the application for leave to institute proceedings of dissolution of the marriage under two years will consider the interest of any children of the marriage and question whether there would be any probability of a reconciliation between the parties before the expiration of the period of two years after the date of marriage.

It would be trite to state that before the court dissolves a marriage, the court has the duty to consider the possibility of parties reconciling as provided under the Section 11 of the Act. So before a court in Nigeria dissolves a marital union, it must be satisfied that there is no possibility of parties to reconcile. Sometimes the court may refer the parties to mediation for the sole purpose of possible reconciliation. But where after exploring the possibilities for

reconciliation and the parties failed, the court will have no choice but to dissolve the marriage.

1.1.2.1.7.8.3.1. Grounds for Dissolution of Statutory Marriage

The Act under Section 15 to 16 states the ground for dissolution of statutory marriage and the particulars of fact upon which the grounds for dissolution of marriage can arise. The sole ground for instituting an action for dissolution of marriage in Nigeria is that the marriage has broken down irretrievably. What this means is that the reason for the petition is so severe that the marriage cannot be repaired.

It is further stated that for the court to hear a petition for the dissolution of marriage, the petitioner must satisfy the court of at least one or more of the facts stated below:

1. That the respondent has willingly and persistently refused to consummate the marriage. For this fact to be pleaded, the petitioner must prove that the respondent has failed to have sexual intercourse with he/she, but where it is proved that sex occurred even once, the marriage will be deemed consummated and therefore the petitioner cannot rely on this ground for divorce.
2. That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. For this fact to hold water in court, the petitioner must prove that not only does the other party commit adultery but he/she finds it unbearable to live with such infidelity.
3. That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
4. That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. The desertion means that the respondent has abandoned the matrimonial home without justification.
5. That the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition does not object to the decree of dissolution being granted
6. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition

7. That the other party to the marriage has for a period not less than one year failed to comply with a decree of restitution of conjugal right made under the Marriage Causes Act.
8. That the other party to the marriage has been absent from the petitioner for such time and in such circumstances has to provide reasonable grounds for presuming that he/she is dead.

The action for dissolution of a statutory marriage can be brought under any one or more of the facts stated above before the court can make a decree for dissolution of marriage.

The decrees the High Court of the State can make are two orders called Decree Nisi and Decree Absolute. This means that the Decree Nisi is made first and this order gives the opportunity of the other party to appeal the decision of the court and the second order of Decree absolute is made 3 months after the first decree as provided under section 58 of the Act. The Decree Nisi is made absolute after 3 months where no appeal is made and there is no right to appeal the decision of the court after it has been made absolute.

The marriage is completely dissolved where the order of decree absolute is made. The effect of dissolving a statutory marriage is that a party to the marriage can marry again as if the marriage had been dissolved by death⁴⁵.

1.1.2.1.7.8.4. Dissolution of Islamic Marriage In Nigeria

As earlier indicated, divorce is allowed in Islam where there are sufficient grounds for it but the right is to be exercised only under exceptional circumstances. The Holy Prophet (SAW) has said: 'Of all things which have been permitted, divorce is the most hated by Allah.'⁴⁶In another Hadith, the Prophet (PBUH) was reported to have said 'marry and do not divorce, undoubtedly the throne of the beneficent Lord shakes due to divorce.'⁴⁷ These words as with many others will always act as a strong check on the hasty recourse to and the abuse of the permissibility of divorce. In principle, Husbands and Wives should not seek for divorce without making serious effort at reconciliation. They are expected to sit and discuss together. The Qur'an further declares that when there is a rift between husband and wife, an attempt

⁴⁵ <https://www.resolutionawng.com/dissolution-of-statutory-marriage-in-nigeria/> Article accessed 19/05/2024

⁴⁶ Abu Daud 13 v 3, SunanIbnMajahvol 318.

⁴⁷ Kashf al- Khafavol 2-302, Tafsir al- Qurtabivol 18, 149.

should be made to appoint a hakam (arbitrator) to effect reconciliation. “And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people, if they both desire an agreement, Allah will effect harmony between them”.⁴⁸ Although Islamic law encourages reconciliation between spouses rather than the severance of their marital relations, but where this is not feasible, parties will not be kept tied with a loathsome marital chain to a painful and agonizing relationship. Under Islamic law, divorce may take any of these two major forms: Extra judicial divorce and Judicial divorce. Extra judicial divorce creates a situation where marital relationship is severed without necessarily approaching the court or any formal institutions while for judicial divorce, marriage is brought to an end by a Qadi after duly taking evidence from parties. Marriage severance whether judicial or extra judicial may be manifested in any of the under listed modes;

i. Talaq

Talaq is an Arabic word derived from itlaq which means to send away or untie the knot of marriage i.e. to be released from a covenant.⁴⁹ It is used in shariah to denote the process whereby a marriage is brought to an end. Talaq which is the universal repudiation of a marriage by the husband is the most prevalent form of divorce in Nigeria especially among northern Muslims. It has been said its informal character has contributed to its popularity.⁵⁰

In effecting this type of marriage dissolution, the word talaq may not necessarily be used, but unambiguous words or phrases such as ‘I divorce you, ‘I separate from you’ ‘you are cut off’ ‘you are a free woman’ or other statements which reveals an unequivocal intention of terminating the marital contract are sufficient and constitute valid pronouncement of talaq.⁵¹ Where ambiguous words are however used, the intention of the parties must be proved for a valid talaq to be established. The mere pronouncement of talaq by a husband without the requisite intention of divorcing his wife is void.⁵² It is important to state that the communication of talaq may be oral, in writing, in sign language or communicated through a messenger (where both parties live in different locations). Irrespective of the mode adopted, it

⁴⁸ Qur’an 4 v 35

⁴⁹ A.A. Engineer, *Rights of Women in Islam* (3rd edn, Sterling Publishers Ltd 2008) 146

⁵⁰ 5A, Ahmad. ‘Resolution of Civil Disputes in Formal and Informal Forums in Jigawa State’ (2003) [http://www.africa.wes.org/printable version](http://www.africa.wes.org/printable%20version) (journal accessed 22/05/2024)

⁵¹ L. M. Bani, and H. A. Pate. ‘Dissolution of Marriage (Divorce) under Islamic Law’ (2015) (42) *Journal of Law, Policy and Globalization*, 139. 1

⁵² The intention may be put to test where the husband is coerced, pressurized, threatened or forced to make the pronouncement. According to the Maliki, Shafi and Hanbali Schools of thought, this type of talaq usually under duress is invalid.

is expected that a valid talaq takes place in the presence of witnesses.⁵³The effectiveness of the pronouncement of talaq may differ amongst the various schools of thought.

However, it is important to state that triple talaq at one and the same time,⁵⁴ pronouncement in anger, by an intoxicated person, in nifas (after child birth) are all not valid. After talaq is pronounced, the woman has to observe Iddah (waiting period)⁵⁵ in her husband's house. For women who still have their monthly flow, the waiting period is three menstrual periods, for women who have reached menopause, it is three months and for a pregnant woman it is until she gives birth. For all categories of women, it is expected that the iddah is observed while still in the husband's house. Although the purpose of the waiting period is to give the parties ample opportunity for reconciling their differences and reconsider their actions, sexual relations are not expected to take place. Where the couple engages in sex during the waiting period, the talaq is deemed revoked.

However, if a husband decides to take back his wife after the end of the waiting period then he would have to marry the wife again by conducting another Nikkah. Where the husband does not take back his wife during the waiting period, she becomes free to remarry if she so desires.

ii. Ila

This is a constructive way of dissolving a marriage available to the husband. In adopting this mode of marriage dissolution, the husband does not expressly say that he has divorced his wife but his actions are pointers to that fact. In doing this, he takes an oath not to have any sexual relations with his wife for a period of four months. According to the Maliki School of thought, for a declaration of Ila to be valid, the husband has to be a sane adult Muslim and the woman in respect of whom the oath is made should not be a nursing mother. If at the expiration of four months there is still no sexual relations between the couple, the woman can apply to the court to dissuade her husband from continuing to abstain from any sexual relation with her. Where the man fails to comply with the order to reconstitute conjugal rights,

⁵³ Holy Qur'an 65 v 2

⁵⁴ Holy Qur'an 2 v 229. In India for example, triple talaq is prohibited with up to three years' imprisonment. See Muslim Women (Protection of Rights on Marriage) Bill 2019

⁵⁵ O Iddah is a form of 'waiting period' before a divorce proceeding is finalized. For those who are still bearing children or menopausal women, iddah is three menstrual periods and three months respectively while for pregnant women, it is until she gives birth.

the marriage is dissolved irrevocably.⁵⁶ If within four months there is sexual relations between them, then the oath is conceived and the marriage would not be dissolved. It is important to state that where the couple resume sexual relations within the four months, then the oath previously taken by the husband is cancelled. Ila in reality was meant to trouble a woman by keeping her hanging in the air. However, there are dissenting views among the Islamic jurists.

iii. Zihar

This mode of dissolution is available only to a man. The word Zihar is derived from the word Zahr which means back. Zihar is pronounced whenever a man compares his wife with other women within his prohibited relationship by saying ‘you are to me as the back of my mother’ or similar words are pronounced. With Zihar, the wife is denied all conjugal rights due to her and still being made to live with the husband. The practice has been described as capable of degrading the position of the wife. As a matter of fact, the Holy Quran has clarified the practice of Zihar saying that using the word ‘mother’ to qualify a wife is not only iniquitous but also false.’⁵⁷

A man who had pronounced Zihar and thereafter chooses to denounce it can do so by making reparations (kaffarah)⁵⁸ Apart from kaffarah, the wife can sue for restitution of conjugal rights, a grant of judicial divorce, maintenance for herself and her children but her husband cannot claim his conjugal rights. If the pronouncement of Zihar by the husband was a hasty act which he repented from, he cannot claim his conjugal right until the performance of his penalty.

iv. Li’an

This is where a husband accuses his wife of adultery and cannot prove his allegation of adultery. As required under Islamic law, he would be required to swear four times stating that his accusation is true and then a fifth time invoking the wrath of God upon himself if he is lying. If the wife asserts that his accusation is false, she is required to also swear asserting her innocence and then the fifth oath should be inviting the wrath of God on herself if her

⁵⁶ The Concept of Divorce under Muslim Law www.legalserviceindia.com (accessed 31/05/2024).

⁵⁷ Qur’an 58 v 2.

⁵⁸ Kaffarah can be carried out by the man by doing any of the following: setting a slave free, fasting for two months or feeding sixty poor people. See Holy Qur’an 33 v 4

husband is telling the truth. When she swears to an oath of innocence, she can be divorced from him on this ground. In Li'an where the husband institutes the matter in court, he will have two alternatives. He may retract or withdraw the charge before the end of the trial which will immediately bring the case to an end. But if he persists in his attitude and takes the oath followed by the oath of innocence of the wife, the suit for li'an will be deemed complete. There will be no need of pronouncement of divorce by the Qadi i.e. judge according to Imam Ahmad bin Hanbal and Imam Malik. According to Imam Abu Hanifah, it will be essential for the Qadi to pronounce divorce and dissolve the marriage. However, Imam Shafi has a different view from other Imams. He is of the view that once the husband finish taking his oath of imprecation, declaring that his wife had committed adultery and invoking the urge of Allah upon himself if he were a liar, he has given a heavy blow to the love and confidence that he had in his wife. Then li'an is complete the moment the husband finish taking his five oaths.⁵⁹ Once marriage is dissolved by the Qadi after the due process of li'an as stipulated in the Qur'an, it will result into an irrevocable divorce according to all the school of Islamic jurisprudence with the exception of Imam Abu Hanifah who opines that if later the husband declares that he had lied while taking oaths of imprecation and that everything happened in the moment, that husband will be punished and thereafter he can re marry his wife and the child will be given to him.⁶⁰

V. Khul

Khul literally means to disown or to repudiate. It is a mode of termination of marriage where the woman can repudiate her marriage by paying back what she received from her husband at the time of their marriage. It has been said that Islam is probably the first religion in the world to have recognized this right of divorce.⁶¹ The right is absolute and no one can prevent the wife from exercising it especially where she 'cannot keep within the limits of Allah.'⁶² The wife can seek for divorce where she is habitually maltreated by the husband, where the husband is insane, incurably incompetent, leaves the family uncatered for or similar circumstances. In *Haliru Usman v. Hajara Usman*,⁶³ the court described Khul as the relinquishment of the ownership of marriage and the instance of and on payment of

⁵⁹ AbdurRahman I. Doi, *Shari'ah The Islamic Law*, Centre of Islamic Legal Studies Ahmadu Bello University Zaria, Nigeria, Rabi al- Awal (1404 A.H) p 170.

⁶⁰ *ibid*

⁶¹ A.A. Engineer, *opcit.* (3rd edn. Sterling Publishers Ltd 2008) 163.

⁶² Qur'an 4 v 229.

⁶³ (2003) 11 NWLR (Pt. 830) 109.

consideration by the wife to the husband. As a form of divorce, it is perfected on payment by the wife to the husband a certain amount that does not exceed what was given to her as dower (mahr). It is the dissolution of marriage obtained by the wife with the consent of the husband in return for payment of compensation to him for his material and moral loss.⁶⁴ The compensation represents the dower and some other payments which the husband made in respect of the marriage. The compensation to be returned is a matter of arrangement between the husband and the wife. The wife may return the whole or a portion of the dower, but not anything more than the dower or she may make any other agreement for the benefit of the husband, such as to nurse their child during its two years of sucking, or to keep and maintain the child for a fixed period at her own expense after weaning it. Khul must only be asked in extreme circumstances and not resorted to on flimsy grounds. It is predicted that the fragrance of paradise will be unlawful to any woman who ask for divorce from her husband without any specific reason.⁶⁵ In the case of *Salamatu Wapanda v Abubakar Wapanda*,³³ the petitioner filed a petition for divorce against her husband at the Upper Area Court on the grounds that she could no longer live with him within the bounds of Allah. The trial court dissolved the marriage between the parties. Dissatisfied with the judgment, the Respondent appealed to the Sharia Court of Appeal. The Kadis set aside the judgement of the trial court and reinstated the marriage of the parties with an order that the wife should return to the husband's house. The wife was dissatisfied with the decision of the court and then appealed to the Court of Appeal. The court set aside the decision and affirmed the decision of the trial court that the parties should get separated as husband and wife through the process of khul. It further held that, the matter be sent to another Upper Area Court to determine the marriage between the spouses through Khul as may be agreed upon by the spouses or as the court may use its judicial powers to fix the amount of Khul reasonably without causing undue harm to any of the parties. The question also arises as to whether a woman who has demanded for khul is entitled to maintenance during the iddah period. It is maintained that as long as khul is repudiation, the woman is not entitled to maintenance during the iddah except when she is pregnant. She is also not entitled to clothing during iddah but has a right to accommodation.

vi. Tafriq or Faskh

Tafriq or faskh means divorce by court: This mode of marriage termination is usually

⁶⁴ A.M. Gurin, 'Dissolution of Marriage and Women's Rights under Islamic Law.' (2007) (7) (1) University of Benin Law Journal, 21

⁶⁵ Al-Shaukani, *Fath al-Qadr*, p 214.

initiated by the wife (men also). Where cases are pending before the court, the court is duty bound to investigate the allegation(s) of the wife or petitioner (as the case may be) and must hear evidence of witnesses and that of the parties. Tafriq can be initiated on the following ground: failure of the husband to provide maintenance, defect on the part of the husband or wife (insanity or impotence- where the defense was known before hand, parties cannot turn around to complain), prolong absence, failure to provide sexual satisfaction, refusal of the husband to allow the wife perform her religious obligation like going on pilgrimage.⁶⁶ Petitioner can also lead evidence to the fact that the respondent behavior has been unreasonable which he or she can no longer cope with. After evaluation of the evidence before the court if the judge finds merit in the case, marriage will be annulled.

In that instance, the wife does not have to make any payment to the husband or reimbursement of her mahr⁶⁷. In Nigeria, there is no formal mechanism or laws regulating dissolution of marriages as a husband may divorce his wife by pronouncing talaq without giving any reason. However, in some other jurisdictions, dissolution of marriage under Islamic Law is codified to some extent. In the case of *K.C. Moyin v. Nafeesa*,⁶⁸ it was held that a Muslim woman cannot repudiate her marriage outside the provisions of the Dissolution of Muslim Marriage Act 1939 (which is imparimateria with the Dissolution of marriage Act 1999 Act). The Muslim Women Act makes provision for maintenance to be paid to the divorce Muslim woman for a given period.

1.1.2.1.7.9. Bride Price

Bride price comprises items or money paid by an intending husband to the family of the woman he intends to marry as part of the marriage process (Sambe, Avanger & Agba 2013:5). Expressed in another way, bride price is (Nambozo 2004): A form of exchange between the family of bride and a groom whereby gifts in cash or in kind are given to the bride's family in return for giving away the bride. Bride price is sometimes confused and used interchangeably with dowry (Theological Advisory Group [TAG] 1996:128), but although the two are closely related, there is a difference between them, namely (Scheidler 2010): A dowry is normally paid by the family of the woman to the family of the man while

⁶⁶ DIVORCE- The Dissolution of a Marriage in Muslim Personal Laws in Nigeria (Baobab Legal Literacy Leaflet No.2) 6. <http://edojudiciary.gov.ng/wp-content/uploads/2016/10/Divorce-The-Dissolution-Of-A-Marraige-In-Muslim-Personal-Laws-In-Nigeria.pdf> (Article accessed 11/06/2024)

⁶⁷ ibid

⁶⁸ AIR [1973] Ker. 176.

[bride price] is paid by the man or potential groom to the family of the woman. As Anderson (2007:153) puts it, marriage payments ‘from the family of the bride to that of the groom [are] broadly termed as dowry [while payments] from the groom’s side to the brides are broadly termed as bride price’. Hence, Becker (1991) stated that bride prices and dowries are ‘two sides of a coin. The two terms “bride price” and “dowry” are used interchangeably. They mean “a customary gift made by a husband to or in respect of a woman at or before marriage.”⁶⁹ The dowry can be paid by the husband or by his parents, guardian or by his lawful representatives.

The amount of bride price may be fixed by a particular custom or it may be subject to individual bargaining and a host of factors such as the status of the bride, or family etc. Though the bride price is an essential element in customary marriage, it is perfectly proper for the bride’s family to waive it or take a token sum. Essentially, the bride is not for sale. Generally, the bride price is payable to the parents of the bride. Part of the bride price is distributed to other members of the family such as uncles, aunties and the siblings of the bride.

1.1.3. Remedies available to individuals in case of breach of marriage contract includes:

1.1.3.1. Divorce

Divorce is a legal and emotional process that dissolves the marital union between two individuals. In Nigeria, as in many other countries, divorce is regulated by laws that outline the grounds for divorce and the procedures to follow. This project explores the divorce process and the grounds for divorce in Nigeria, shedding light on the legal framework and practical aspects of ending a marriage. A notable case of divorce in Nigeria is the case of **Afolabi v. Afolabi (2010) 15 NWLR (Pt. 1217) 385**.

Case Summary:

In **Afolabi v. Afolabi**, the Court of Appeal addressed issues surrounding divorce, including grounds for dissolution and the division of property. The case involved a dispute between the parties regarding the grounds for divorce and the equitable distribution of marital assets. The appellant, Mrs. Afolabi, sought a divorce from her husband, Mr. Afolabi, citing irreconcilable

⁶⁹ Section 2, Marriage, Divorce and Custody of Children Adoptive Bye-Laws Order, 1958

differences and unreasonable behavior. The case examined the validity of these grounds and the appropriate distribution of jointly acquired property. The court considered the evidence presented and the legal principles governing divorce and asset division under Nigerian law. **Year:** The case was decided in 2010. **Impact:** The decision in **Afolabi v. Afolabi** was significant for clarifying the application of divorce laws in Nigeria, particularly regarding the grounds for divorce and the principles guiding the equitable division of property. It emphasized the need for clear evidence and adherence to legal standards in divorce proceedings.

1.1.3.2. Grounds for Divorce in Nigeria

The Matrimonial Causes Act is the primary legislation governing divorce in Nigeria. According to this law, there is only one ground for the desolation of a marriage. This ground can be established in several ways, which are:

1. **Adultery:** Adultery is one of the most commonly cited grounds for divorce in Nigeria. If one spouse can prove that the other has engaged in sexual relations outside the marriage, it can be a compelling reason to seek a divorce.
2. **Unreasonable Behavior:** This ground includes physical or mental cruelty, addiction, or any behavior that makes it intolerable for the petitioner to live with their spouse. It's essential to provide evidence that the behavior has negatively affected the marriage.
3. **Desertion:** If a spouse has left the other for a continuous period of at least two years without their consent and without any intention of returning, this can be a valid ground for divorce.
4. **Separation:** A divorce can also be sought if the spouses have lived separately for a continuous period of at least two years, and both agree to the divorce.
5. **Absence:** If one spouse has been absent for at least seven years, and there is no information on whether they are alive or dead, the other spouse may petition for divorce.
6. **Non-Consummation:** If the marriage has not been consummated (i.e., no sexual intercourse has occurred), either spouse can seek an annulment rather than a divorce. An annulment declares the marriage null and void from the beginning⁷⁰.

The divorce process typically begins with one party, known as the petitioner, filing a petition for divorce at the appropriate High Court in the state where either spouse resides or where the

⁷⁰ Matrimonial Causes Act

marriage took place. The petition outlines the ground and reason(s) or fact(s) for the divorce. It also provides details about the marriage, including the names of the parties, date of marriage, and any children from the marriage. The petitioner must also attach relevant documents, such as the marriage certificate and any evidence supporting the facts relied upon to prove the ground for the divorce.

The divorce process in Nigeria typically follows these steps:

Consultation with a Legal Expert: Before initiating the divorce proceedings, it is advisable to consult with a legal expert, such as a lawyer, to understand the legal requirements, implications, and options available⁷¹.

Filing a Petition: State High Courts and High Court of Federal Capital Territory have jurisdiction to hear a matter concerning divorce therefore an individual (Petitioner) seeking to divorce his/her spouse must file a divorce petition in the appropriate court. The petition should include details about the grounds for divorce and any claims related to custody, property, and financial support.

Court Proceedings: Both parties may need to attend court hearings to present their cases and provide evidence to support their claims. The court will consider all evidence and arguments before making a judgment.

Decree Nisi: If the court is satisfied with the grounds presented and the divorce seems appropriate, it may issue a decree nisi. This is an interim order that allows the divorce to proceed.

Decree Absolute: After a waiting period of 3 months, the court may issue a decree absolute or within a period of 28 days where there are children of less than 16 years and it can be shown that proper arrangement has been made for their welfare, which finalizes the divorce. At this stage, the marriage is officially dissolved.

The divorce process in Nigeria is guided by the Matrimonial Causes Act, and it offers several grounds on which a spouse can seek a divorce. Understanding the legal framework and following the proper procedures is crucial when ending a marriage in Nigeria. Additionally,

⁷¹ LawPadi

consulting with legal experts and exploring alternative dispute-resolution methods can help make the process smoother and less adversarial for both parties involve⁷²

1.1.3.3. Annulment of Marriage

A petition for a decree of nullity of marriage is filed in accordance with Form 6 provided for in the Matrimonial Causes Rules, wherein details of the petitioner and respondent, their marriage, children, grounds for the petition are stated and any other evidence or witnesses that can be used to prove their existence. An annulment of marriage in Nigeria is a process by which a party to a statutory marriage seeks to completely nullify such a marriage based on the fact that the marriage is void or voidable in accordance with the provisions of the statutes, specifically the Marriage Act and the Matrimonial Causes Act.

In the case of a void marriage, the court decree is not important to bring the marriage to an end because the parties were never husband and wife in the face of the law in the first instance. Nevertheless, in order to remove any iota of doubt, a decree that simply declares the existing fact that there has never been a marriage may be obtained in respect of a void marriage.

The distinction between void and voidable Marriages was stated by Lord Green in the case of *De Reneville V. De Reneville (1949) Page 100,111 (C.A.)* thus:

"A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any Decree annulling it; A voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a Decree annulling it has been pronounced by a Court of competent jurisdiction."

The annulment of marriage in Nigeria may be asserted by any person but where the marriage is voidable only one of the spouses can do so because until it is annulled the marriage is valid.

The principal law governing the matrimonial matters in Nigeria is the Matrimonial Causes Act, 1978 (the Act).

⁷²J.A Robinson

The annulment of marriage is completely different from a divorce. Some of the distinctions between an annulment of marriage and dissolution of marriage will be briefly highlighted below:

Annulment Vs. Divorce

Annulment or nullity of marriage could be distinguished from the dissolution of marriage in that, in the case of nullity of marriage, the marriage is invalid *ab initio* or voidable at the instance of one party, while for the dissolution of marriage, the marriage is brought to an end because the marriage has broken down irretrievably.

A petition for an annulment of void marriage can be filed at any time and that of voidable marriage can be filed one year after the marriage based on some grounds, a petition for a divorce cannot be filed when the marriage is less than two years except with the leave (permission) of the court.

The petition for annulment of marriage can only be filed based on limited instances or reasons stipulated in the statutes, but the divorce petition can be filed under the extended fact of "intolerable behaviors" among other reasons.

Only parties to a marriage can file for a petition for dissolution of marriage, but the petition for nullity or annulment of marriage can be filed by any interested third party whose legal interest may be affected by such a marriage.

When a marriage has been annulled, the couple becomes single again as if they have never married before, but after a divorce, the couple will become divorcees⁷³.

Grounds for Annulment of Marriage in Nigeria

In Nigeria, the grounds for annulment of marriage are typically governed by statutory law, customary law, and case law. The Matrimonial Causes Act, which applies in certain parts of Nigeria, outlines specific grounds upon which a marriage can be annulled. Some common grounds for annulment of marriage in Nigeria include⁷⁴:

⁷³ <https://www.mondaq.com/nigeria/divorce/1009324/the-process-and-grounds-for-annulment-of-marriage-in-nigeria> Article accessed 07/07/2024

⁷⁴ *ibid*

1. Non-Consummation: If the marriage has not been consummated, meaning that the spouses have not engaged in sexual intercourse, it can be grounds for annulment.

2. Mental Incapacity: If one or both parties were mentally incapable of understanding the nature of the marriage contract at the time of the wedding, the marriage can be annulled.

3. Fraud or Misrepresentation: If one party entered into the marriage based on fraudulent misrepresentation by the other party, such as lying about identity, health status, or other essential matters, it could be grounds for annulment.

4. Underage Marriage: If one or both parties were below the legal age of marriage at the time of the wedding, the marriage can be annulled.

5. Consanguinity: If the spouses are closely related by blood, the marriage may be considered void ab initio (invalid from the beginning) and can be annulled.

6. Bigamy: If one spouse was already married to another person at the time of the wedding, the subsequent marriage can be annulled.

7. Incapacity to Consent: If one party was forced or coerced into the marriage without their free consent, it can be grounds for annulment⁷⁵.

8. Infidelity; when spouses are having different sexual partners other than their legally married partners

It's important to note that the specifics of annulment laws and procedures may vary depending on whether the marriage was conducted under statutory law, customary law, or religious law. Individuals seeking an annulment should consult with a legal expert familiar with Nigerian matrimonial law for guidance tailored to their situation.

1.1.3.4. Legal Separation

A legal separation is a formal court-recognized arrangement where a married couple lives apart while remaining legally married. It's often a step taken by couples who are experiencing marital difficulties but don't wish to divorce for various reasons such as religious beliefs, financial concerns, or the hope for reconciliation. A couple in a legal marriage, one

⁷⁵ ibid

recognized by the extant laws in Nigeria can seek for various matrimonial reliefs under the Matrimonial Causes Act 1978. Section 114 of the Act states that these include: the dissolution of marriage, nullity of marriage, legal/ judicial separation, restitution of conjugal rights, jactitation of marriage, maintenance of a party, custody, guardianship or maintenance of children in a marriage, etc. The relief to be sought depends on the peculiar circumstance of the issues between the couple and their preferences. Certain procedures need to be followed and grounds that need to be proved to warrant an order enforcing any of the reliefs sought.

This article will focus on legal/judicial separation in Nigeria, its implication and the grounds to be proved to establish it. Though the term "separation" here might connote an end of the marriage, in the legal parlance it simply refers to a situation where the couple ceases to cohabit. Section 41 and 42 of the Act and the case of *Emmanuel v. Funke (2017) LPELR-43251 (CA)* emphasize that a decree of judicial separation relieves the parties from the obligation to cohabit while it is in the operation, all other rights, responsibilities and obligations remain intact. The obligations that are not affected by legal separation include the followings.

1. Neither party can remarry while the decree subsists
2. The marriage is still intact
3. The welfare, maintenance and education of the children of the marriage must be catered for.
4. Either party may institute an action against the other in contract or tort.
5. Where either of the party dies intestate (without a will) property of the deceased shall devolve to the surviving party.
6. Where the husband is ordered by the decree to pay maintenance to the wife and defaults, he shall be held liable for necessaries supplied for the wife's use.

A decree for judicial separation is not simply granted, the parties must prove either of the acts stated in Sections 15(2) and 16(1) of the Act. A party must in the petition filed before the High Court of any State in Nigeria cite any one or more of the following as the ground for a decree of judicial separation:

1. That the respondent has wilfully and persistently refused to consummate the marriage

2. That since the marriage, the Respondent has committed adultery, which the Petitioner finds it intolerable to live with. Such acts include, rape, sodomy, bestiality, habitual drunkenness, drug addiction, is of unsound mind etc.
3. That the Respondent has deserted the Petitioner for a continuous period of 1 year immediately preceding the filing of the petition.
4. That the parties have lived apart for a continuous period of 2 years or 3 years immediately preceding the filing of the petition, however for that of 2 years, the Respondent does not object to the granting of the decree
5. That the other party has refused to comply with a decree for restitution of conjugal rights for at least a year.
6. That the other party has been absent from the marriage for such a time to raise reasonable presumptions of death.

A legal separation unlike a decree for dissolution of a marriage does not bring an end to the marriage, rather it among other things enables them to live apart while still being in lawful marriage. Unlike a divorce, if the parties subsequently decide to resume cohabitation they can simply apply for a discharge of the decree for judicial separation. The decree of judicial separation can also be used as a ground for instituting a decree for dissolution of marriage. Therefore, where freedom from cohabitation is not sufficient, proceedings for dissolution can be commenced, which makes the process easier as some of the grounds for dissolution would have been proved earlier during proceedings for legal separation⁷⁶.

1.1.3.5. Division of Properties

In divorce proceedings, the most focal bones of contention amongst the couples are the custody/maintenance of children and the issue of division and settlement of properties, especially jointly owned properties. Who gets what is always one of the major issues tabled before the court during divorces, especially among rich and celebrity couples.

In Nigeria, the general rule in the division and separation of properties amongst couples during divorce is that every property acquired by each of the couples is to be added together and they are to be split amongst them equally. It does not matter if one of the spouses was the sole breadwinner in the marriage whilst the other spouse is a sit-at-home mom or dad.

⁷⁶<https://www.mondaq.com/home/redirect/author/1779620?articleId=1019100&location=articleauthorbyline/> Article accessed 07/07/2024

Whatever property purchased whilst the marriage subsists is presumed to be jointly purchased and jointly owned by the couples hence why the properties are to be collated and shared amongst them equally⁷⁷.

Every property acquired during the marriage — including real estate, money at hand or in the bank accounts or stocks/bonds or chattels like clothes, shoes, jewellerys, house decorations, bags, (even up to) toothbrushes — are presumed to be marital properties, jointly owned and are to be collected/collated together and shared equally amongst the couples in the event of divorce.

It is important to note that in some jurisdictions, marital properties are those acquired from the day the marriage was entered up till the day the divorce pronouncement was made by the court; i.e., properties acquired even while you are already separated from the spouse but yet to be officially divorced are still presumed to be marital properties and jointly owned but in some other jurisdictions, marital properties ends when you have separated although haven't divorced yet. The trick of putting an asset or a bank account where you deposit your earnings during the marriage in your name alone will not disqualify such asset from being considered marital property but there are some instances where a spouse or the court can let one spouse keep a property even though the property was obtained during the marriage; this may include a property that is of sentimental value to one spouse⁷⁸.

The legal strategy where a couple, in the event of divorce, can keep some of the properties or assets acquired during marriage separate and personal is through a prenuptial or post-nuptial contract. This kind of agreement to keep some properties separate is to be entered in writing for it to be valid and enforceable in law.

Other forms of properties that may be kept separate include;

1. Gifts or inheritances that one spouse received, either before or during the marriage
2. The portion of certain personal injury awards meant to compensate for the injured spouse's pain and suffering.

⁷⁷ <https://www.thecable.ng/division-of-property-among-couples-during-divorce-in-nigeria/> Article accessed 07/07/2024

⁷⁸ Stanley Alieke in division of property among couples during divorce in Nigeria.

All property that a spouse pre-owned before entering into the marriage is presumed to be personal and separate, belonging to just that one spouse unless the couples agreed that every personal property acquired before the marriage is to become a joint property once they have entered into the marriage. Another way a separate property can turn into a joint spousal property is if it gets mixed up or comingled into the joint property; for instance, if the money in a spouse's separate joint account is transferred into the couple's joint account, every money in the joint account is then presumed to be jointly owned⁷⁹.

Therefore, ownership of the spouses' personal/separate property after the divorce will depend on whether the assets are considered one spouse's separate property or the couple's marital property.

In the division of marital or joint properties during divorce, there are basically two different methods applied by the family courts and they are;

1. Equitable distribution
2. Community property distribution.

In equitable distribution, the judge will divide all of the couple's marital property (and allocate their marital debts) based on the judge's decision as to what is fair, equitable and just to both spouses. The division of the marital properties is based solely on the judge's discretion as to what is equitable and fair and not on what the couples want.

In forming this discretion, the judge considers who shoulders higher responsibilities like keeping custody and maintenance of the children. A parent that keeps the custody and maintenance of the children is definitely going to be given the lion's share of the marital property; that according to the judge will be equitable, fair and just to both couples. Whereas, in the community distribution method as has been adopted by some jurisdictions, marital properties are to be divided equally amongst the couples equally i.e. on a 50-50 basis. An equal division of a couple's community property (and debts) when they divorced. Marriage is a contract and should therefore be treated as such especially in Nigeria so as to avoid some unforeseen bickering and ripping off. The legal way to protect your separate properties before marriage or even other properties acquired during the marriage is through a legal

⁷⁹ ibid

contract known as a prenuptial agreement but if you skipped getting a prenuptial agreement, a postnuptial agreement may come to your legal.

1.1.3.6. Maintenance of Spouse After Divorce

Maintenance is the financial support given by one person to another, usually paid as a result of a legal separation or divorce, especially Alimony. Maintenance may end after a specified time upon the death, cohabitation or re-marriage of the receiving party⁸⁰. Historically, ecclesiastical courts provided financial protection to wives through alimony orders, both temporarily during legal proceedings and permanently after divorce. This authority shifted to the divorce court after 1857, later extending to the High Court and Divorce County Courts. The Divorce Court, established in 1857, could order husbands to provide maintenance for their wife's post-divorce, even if the husband lacked capital. In 1866, the court gained the power to order unsecured maintenance, but limited it to the duration of the spouses' joint lives. By 1907, these powers expanded to nullity cases, and in 1937, courts gained authority to order lump-sum payments for maintenance or alimony. Concerns in 1969 led to the Matrimonial Causes Act 1970, later repealed by the 1973 Act, which simplified terminology, using "maintenance" instead of "alimony" or "periodical payments." Section 72 of the Matrimonial Causes Act addresses property settlement upon divorce, while Section 70 grants the court broad discretion to order maintenance, considering various factors. Essentially, the law replaced confusing terms with "maintenance" and empowered courts to make appropriate orders based on circumstances. Both husbands and wives are now equally responsible for maintenance, as stated in the law where "a party" can refer to either gender. While men typically don't request maintenance from their wives due to traditional roles, the law allows for this possibility. Courts can order various types of payments, including unsecured periodic payments for steady income, secured periodic payments tied to assets, and lump-sum provisions for immediate financial support. These options offer flexibility and can mitigate bitterness associated with ongoing payments⁸¹.

⁸⁰ Bryan Garner, Op cit, p.973.

⁸¹ ibid

The Need for Maintenance of Spouses after Divorce in Nigeria

Before outlining the need for maintenance after divorce, it would be proper to analyze the guiding principles which would assist the courts in awarding maintenance in a divorce petition. The Nigerian principles laid down by the court in awarding maintenance in Menakaya's case followed the English Women Property Act of 1882, therefore, the courts in England hold the same views.

The Court of Appeal in the case of Menakaya v Menakaya laid down these principles They are: (a) The income, earning capacity/ property and other financial resources, which each of the parties has or is likely to have in the foreseeable future.

(b) The financial needs obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future.

(c) The Standard of living enjoyed by the family before the breakdown of the marriage.

(d) The age of each party to the marriage.

(e) Any physical or mental disability of either of the parties to the marriage.

(f) The contribution made by each of the parties to the welfare of the family including any contribution made, by looking after the house or care for the family.

By these principles laid down by the Court of Appeal, the need for maintenance after divorce include amongst others:

1. To meet liabilities incurred in maintaining the other spouse or a child of the family.
2. The financial needs, obligations and responsibilities which the other party to the marriage is likely to have in the foreseeable future. This covers such matters as additional expenses arising from the further education or training of a spouse, those incidental to earning a living or providing accommodation
3. To maintain the standard of living enjoyed by the family before the breakdown of the marriage. *Kershaw v Kershaw*⁷ (1964) 3 ALL ER 635

4. A divorced woman who is old and has slim chances of remarrying needs to be paid maintenance.

5. A party who is physically or mentally disabled in a marriage cannot be left alone to suffer and therefore such a party needs to be paid maintenance.

6. A woman who had stayed at home as a house wife to care for the family, had no job and savings should be paid maintenance and given an Interest in the matrimonial property, see the case of *West v West*⁸². In *Okala v OkaIa*⁸³ on dissolution of a marriage, a wife was awarded a lump sum payment In recognition of her contribution to the marriage.

7. Maintenance is also necessary by considering benefits like pension which by reason of the dissolution a party will lose the chance of acquiring.

8. A party in custody of the child or children of the marriage needs to be paid maintenance. The manner in which a child was being and in which the parties to the marriage expected him to be educated or trained has to be considered. The child has to be placed in the financial position he would have been if the marriage had not broken down.

9. Furthermore, the social and Economic life of the child or children of the divorced marriage does not diminish on the account of the divorce of the parties. The children should not suffer further pain as that would amount to punishing them twice, see *Menakaya v Menakaya*⁸⁴

10 The standard of living which the husband previously maintained before he parted with the wife should be continued because it is a relevant consideration in award of maintenance in matrimonial proceeding, see *Akinbuwa v Akinbuwa*.⁸⁵

11 The present cost of living after the divorce makes it important for maintenance to be paid, see, *Anyaso v Anyaso*⁸⁶.

⁸² (1977) 2 ALL ER 705

⁸³ 1973) 3 ECCLR 67

⁸⁴ Op cit

⁸⁵ (1998) 2 NWLR (PT 559) 661

⁸⁶ <https://www.mondaq.com/nigeria/divorce/1410054/maintenance-orders-in-nigeria-statutory-and-judicial-consideration> Article accessed 07/07/2024.

1.1.3.7. Custody and Visitation

The child custody after divorce in Nigeria primarily rested on the best interest of a child. Black's Law Dictionary defines 'custody of children' as "the care, control and maintenance of a child which may be awarded by a court to one of the parents as in a divorce or separation proceeding". Section 7(1) Matrimonial Causes Act provides:

In the proceeding with respect to the custody, guardianship, welfare, advancement or education of children of the marriage, the court shall regard the interest of those children as the paramount consideration and subject thereto the court may make such order in respect to those Matters as it thinks proper. Who gets the custody of a child after divorce depends on a number of factors.

There is no stated rule of what constitutes interest of a child. It will depend on the circumstances of each case. Karibi-Whyte JSC in the case of Williams v. Williams (1963) UKHL 6 observed as follows:

The determination of the welfare of a child is a composite of many factors. Consideration such as the emotional attachment to a particular parent, mother or father; the inadequacy of the facilities, such as educational, religious, or opportunities for proper upbringing are matters which may affect determination of who should have custody. In the determination of the interest of the child in making a custody order, factors the court may consider in granting the custody of a child include the following:

- a. Age and sex of the child
- b. The Wishes of the child
- c. Education and religion
- d. Conduct of the parties
- e. Adequacy of arrangement for the child
- f. Medical and psychological factors

g. Nationality of parent

h. Equality of parents

However, Section 71(1) of the Matrimonial Causes Act empowers the court with the discretion to "make such order in respect of custody, guardianship, welfare, maintenance, advancement or education of the child as it thinks fit". However, the discretion must be exercised judiciously.

In dealing with matters of custody, guardianship, welfare, advancement or education of the children of the marriage, the court may adjourn the proceedings until a report has been obtained from a Welfare Officer. Any such report may thereafter be received in evidence as provided in Section 71 (2) of the MCA, 2004⁸⁷.

A Welfare Officer is defined in Section 114(1) of the MCA, 1979 as: "a person authorised by the Attorney General of the Federation by instrument in writing to perform duties as a welfare officer for the purposes of this Act, being (a) a person who is permanently or temporarily employed in the public service of the Federation, or (b) a person who is permanently or temporarily employed in the public service of a state and whose services have been made available for the purposes of this Act in pursuance of the arrangement between the Federation and the State, or (c) a person nominated by an organization undertaking child welfare activities." on such matters that are relevant to the proceedings.

The report of the welfare officer is expected to cover all aspects of the life and welfare of the child in question. The relationship of the child with the parents and other arrangements for the welfare and education of the child should also be included in the report. This will assist the court in making its order⁸⁸.

1.1.3.8. Mediation

Mediation is a form of alternative dispute resolution. The conflicts are resolved through a third party who is known as a mediator. The focus of mediation proceedings is that it is neutral, flexible, cost effective, and fast. Mediation in divorce is an efficient process.

⁸⁷ chaman law firm team

⁸⁸ <https://www.chamanlawfirm.com/the-custody-of-a-child-under-nigerian-law-or-the-position-of-law-on-child-custody-in-nigeria/> Article accessed 07/07/2024

As there are more than thousands of cases in courts which are not yet settled, by taking up mediation it reduces the burden on courts. Hence, it is very efficient process. Mediation is an informal judicial process; they do not pass judgements but they provide the couples with solution for repairing their marriage.

After the mediation process is over the couples have an option either to give their marriage another chance or file a petition for divorce in the court. According to Section 9 of Family Courts Act(FCA), 1984, the parties are required to go through a mediation proceeding before they approach the court.⁸⁹

1.1.2. Contract

A contract is an agreement between parties, creating mutual obligations that are enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality. In some states, elements of consideration can be satisfied by a valid substitute. Possible remedies for breach of contract include general damages, consequential damages, reliance damages, and specific performance.

Contracts are promises that the law will enforce. Contract law is generally governed by state common law, and while general overall contract law is common throughout the country, some specific court interpretations of a particular element of the contract may vary between the states.

If a promise is breached, the law provides remedies to the harmed party, often in the form of monetary damages, or in limited circumstances, in the form of specific performance of the promise made.

For a contract to be considered a contract, it has our elements. This are consent, capacity, legality etc.

⁸⁹ <https://viamediationcentre.org/readnews/Mjlx/PROCEDURE-FOR-MEDIATION-IN-MATRIMONIAL-DISPUTES/>
Article accessed 07/07/2024

Remedies for Breach of Contract -- Damages

If the agreement does not meet the legal requirements to be considered a valid contract, the “contractual agreement” will not be enforced by the law, and the breaching party will not need to indemnify the non-breaching party. That is, the plaintiff (non-breaching party) in a contractual dispute suing the breaching party may only win expectation damages when they are able to show that the alleged contractual agreement actually existed and was a valid and enforceable contract.

In such a case, expectation damages will be rewarded, which attempts to make the non-breaching party whole, by awarding the amount of money that the party would have made had there not been a breach in the agreement plus any reasonably foreseeable consequential damages suffered as a result of the breach. However, it is important to note that there are no punitive damages for contractual remedies, and the non-breaching party may not be awarded more than the expectancy (monetary value of the contract, had it been fully performed).

However, in certain circumstances, certain promises that are not considered contracts may be enforced to a limited extent. If one party has made reasonable reliance to his detriment on the assurances/promises of the other party, the court may apply an equitable doctrine of Promissory Estoppel to award the non-breaching party a reliance damages to compensate the party for the amount suffered as a result of the party’s reasonable reliance on the agreement.

In another circumstance, the court may award unjust enrichment to a party, if the party who confers a benefit on another party, if it would be unjust for the party receiving the benefit to keep it without paying for it.

Finally, one modern concern that has risen in contract law is the increasing use of a special type of contract known as "contracts of adhesion" or form-contracts. This type of contract may be beneficial for some parties, because of the convenience and the ability by the strong party in a case to force the terms of the contract to a weaker party. Examples include mortgage agreements, lease agreements, online purchase or sign-up agreements, etc. In some cases, courts look at these adhesion contracts with a special scrutiny due to the possibility of unequal bargaining power and unfairness,⁹⁰

1.1.3. Effects

An effect is something that inevitably follows an antecedent (such as a cause or agent)⁹¹

1.2 Theoretical Framework

The theoretical framework focuses on key concepts found in the present of the study. Some people firmly believe that marriage was ordained by their God and should never under any circumstances be dissolved. Like most social institutions the truth is much more prosaic. In this project, I'm going to give you a brief history of marriage in Nigeria. Marriage as we know it today is an import from western aka European culture. The first recorded evidence of a marriage ceremony uniting a woman and a man dates back to 2350 B.C. Mesopotamia. Since then marriage ceremonies have been recorded from all over the world. We don't know exactly why or how marriage emerged but we do know that from the very beginning marriage had little to do with love or with religion like it does today.

According to some marriage emerged when early humans transitioned from hunter gatherer to ownership and contemporary modes of production. One theory is that marriage emerged in response to lands rights and the desire to hold them within a tribal or lineage group making it desirable to establish clear lines of succession. The commodification of human beings e.g. through slavery, also created ownership rights in offspring similar to rights in chattel. Some writers link the evolution of the institution of marriage with private property rights and capitalist mode of production. As social stratification increased it also became a means of protecting bloodlines.⁹²

⁹⁰ LII/legal information institute
<https://www.law.cornell.edu/wex/contract> (article) accessed 07/05/2024

⁹¹ Merriam-Webster
<https://www.merriam-webster.com/dictionary/effect> (article) accessed 07/05/2024

⁹² wordpress.com
<https://mzagams.wordpress.com/2022/08/24/brief-history-of-marriage-in-nigeria/> article accessed 07/05/2024

1.2.1. Some theories have been made and said about marriage, below are some of the theories.

1.2.1.1. According to Stephanie Coontz, the author of “Marriage, a History:

How Love Conquered Marriage,” (Penguin Books, 2006) “It was a way of getting in-laws, of making alliances and expanding the family labor force.” Love was not a criterion for marriage till more recently. But as family plots of land gave way to market economies and Kings ceded power to democracies, the notion of marriage transformed.

“What marriage had in common was that it really was not about the relationship between the man and the woman,” Coontz wrote. Marriage’s primary purpose was to procreate and ensure a clear inheritance and social position. The Anglo-Saxons saw marriage as a strategic tool to establish diplomatic and trade ties. According to Coontz, people “established peaceful relationships, trading relationships, mutual obligations with others by marrying them.” Christin Mann said as much about the Lagos elite in her essay Marriage Choices among the Educated African Elite in Lagos Colony, 1880-1915. According to her Lagos merchants often married as a means to secure their credit to inland distributors. Her findings are in sharp contrast to John S. Mbiti more idealistic and aspirational description of marriage in west Africa.

“The institution of marriage was probably the most important means of cementing social relations between clans, preserving tradition and culture, and codifying social customs.” George B. N. Ayittey, *Indigenous African Institutions* (Ardsley-On-Hudson, N.Y.: Transnational, 1991).

While in the west, bloodlines were important, in Igbo Nigeria sometimes a man or a family sought an infusion of new genetic material into the family bloodline because it was recognized that talents, behaviour etc. were genetic. Among the Igbo of south east Nigeria, whether a child was the biological offspring of a man was less important than who had the right to claim the child by reason of having paid the bride wealth for the mother. Bride wealth was distributed among the woman’s paternal and maternal relatives as compensation for the loss of her productive and reproductive service. Bride wealth entitled a man to a woman’s productive and reproductive labor and gave him property rights to her children, which could

be pledged for a debt, sold into slavery or even given in bonded labor for a limited time.⁹³

According to

“The institution of marriage was probably the most important means of cementing social relations between clans, preserving tradition and culture, and codifying social customs.

“George B. N. Ayittey, *Indigenous African Institutions* (Ardsley-on-Hudson, N.Y.: Transnational, 1995).⁹⁴

1.2.1.2. According to George homanas,

He talked about the exchange theory: this theory by George homanas about marriage suggest that marriage is a social exchange where individuals enter into a relationship based on the benefits they receive from each other. The theory suggests that spouses may receive favorable economic rewards or damaging costs from each other and the marital relationship tends to be more stable if marriage can provide higher rewards compared to the associated costs⁹⁵

1.2.1.3. According to Michael j,

He talked about Functionalist Theory: This approach argues that marriage serves a variety of functions in society, including socialization, the formation of families, and the regulation of sexual relations.⁹⁶

1.2.1.4. According to Jessie Bernard,

she talked about the Conflict Theory: This theory argues that marriage is a mechanism of social inequality, with men typically having more power and resources than women, and that marriage reinforces patriarchal values and norms.⁹⁷

Marriage according to James c, he talked about the Interactionist Theory: This theory focuses on the symbolic and interpersonal aspects of marriage, arguing that the meaning of marriage

⁹³ ibid

⁹⁴ ibid

⁹⁵ <https://testbook.com/ugc-net-commerce/homans-theory#:~:text=Homans%20Theory%2DExplanation&text=According%20to%20Homans%2C%20when%20we,e xchange%20is%20called%20a%20reward>. Article accessed 07/05/2024

⁹⁶ "The Family: From Institution to Companionship," Michael J. Anderson

⁹⁷ The Politics of Housework: A Study of the Household Division of Labor," Jessie Bernard

is constructed through social interaction and communication.⁹⁸

1.2.1.5. According to Karl Marx,

He had a different view entirely on marriage. His theory on marriage is called the conflict theory. In this theory, Karl Marx believed that marriage was a social institution that served to perpetuate existing power structures and economic relationships. He viewed marriage as a form of property ownership, with women being considered the property of their husbands. Marx argued that marriage reinforced class divisions and inequalities, as well as the oppressive nature of the capitalist system. He believed that true freedom and equality could only be achieved through the abolition of marriage and the creation of a society based on communal ownership and cooperation. According to Karl Marx, marriage in bourgeois society is a farce. It is supposed to be hallowed and revered, but it is instead just another way for one class of people to exploit another.

the bourgeois sees his wife a mere instrument of production.” (Marx, Chpt 1) They see their wives as mere tools, not as human beings to be valued for themselves. In addition, Marx accuses bourgeois men of treating their wives as sexual objects who can be used by anyone to satisfy their urges. He also charges that the bourgeois men of believing that they can take any woman they desire. He states, “Our bourgeois, not content with having wives and daughters of their proletarians at their disposal, not to speak of common prostitutes, take the greatest pleasure in seducing each other 's wives.” (Marx, Chapter 1) Marx clearly sees bourgeois marriage as hypocritical. The bourgeoisie claim to love their families and believe in fidelity but instead they control their wives as just another means of production and treat all women as their sexual tools.⁹⁹

1.2.1.6. According to Sabatelli & Shehan (2009)

Their theory of a marriage was that of comparison. They compared marriage to other commercial relationships by using a partnership. They contend that the association between a wife and a husband closely resembles that of a contract of all family associations. However, they acknowledge that this relationship fails to capture the reality of marriage. The reason

⁹⁸ communication in Marriage: A Theory-based James C. McCroskey and Virginia P. Richmond

⁹⁹ <https://www.ipl.org/essay/Marriage-In-Karl-Marx-And-Pozdnyshv-Decry-PKKCACS36JE86#:~:text=According%20to%20Karl%20Marx%2C%20marriage,of%20people%20to%20exploit%20another>. Article accessed 07/05/2024.

they present is that it is chosen by the parties, and in doing the choosing, individuals anticipate to be better off. What is more, marriage vows are publicly and expressly exchanged the same way promises are exchanged during contracts.

1.2.1.7. (Stevenson & Wolfers, 2007).

Additionally, at the most trivial level, a marriage involves sharing of a household by couples, with exclusive sexual rights in the picture. However, the authors note that the key facets of marriage are commitment as well as self-submission to your partner. It is these aspects that explain the seemingly irregular facts about modern marriage when viewed against contracts (Stevenson & Wolfers, 2007)¹⁰⁰ For instance, individuals often do not marry on the basis of negotiable contracts, despite the fact that other types of negotiations take place over the customary terms of marriage.

¹⁰⁰ <https://academic-master.com/theories-of-marriage>. Article accessed 12/05/2024

CHAPTER II: CHALLENGES OF MARRIAGE CONTRACT IN NIGERIA

This chapter talks about challenges of marriage contract in Nigeria.

Marriage contracts in Nigeria face several challenges that can lead to disputes and legal complications. These challenges often arise from ambiguities in the legal framework, cultural differences, and the complex nature of marriage itself.

In Nigeria, the legal framework for marriage is complex, encompassing statutory, customary, and Islamic laws. The Marriage Act of 1990, along with the Matrimonial Causes Act, governs statutory marriages, which are monogamous and require registration. Customary marriages, prevalent among various ethnic groups, can be polygamous and are not always formally registered, leading to challenges in legal recognition and enforcement of rights¹⁰¹. A significant issue arises from the coexistence of these systems, often resulting in "double-decker marriages," where individuals contract both statutory and customary marriages. This practice has created legal ambiguities, particularly regarding rights and obligations, as the Marriage Act prohibits a person married under its provisions from contracting another marriage under customary law. This challenges includes.

ii.1. Diverse Legal Frameworks:

Nigeria's legal system incorporates various frameworks, including customary law, Islamic law, and statutory law. Each has different rules governing marriage, which can lead to inconsistencies and conflicts. And this can be seen in the case of in Nigeria, the legal framework for marriage is diverse and complex, reflecting the country's multicultural and multi-religious society. The main legal systems governing marriage in Nigeria include customary law, Islamic law, and statutory law (the Marriage Act of 1970). Each of these systems has different requirements and implications for marriage contracts. This can be seen in the case between: *Afolabi v. Ilesanmi* (2018)

Case Law: *Afolabi v. Ilesanmi* (2018) One notable case that highlights challenges in the marriage contract framework in Nigeria is *Afolabi v. Ilesanmi*. This case underscores the

¹⁰¹ Human Identity: Child Rights and the Legal Framework for Marriage in ...
<https://www.tandfonline.com/doi/full/10.1080/01494929.2014.938286>

complexities that arise due to the intersection of customary law and statutory law regarding marriage.

Background of the case

In this case, a woman, Mrs. Ilesanmi, sought to assert her rights as the wife of Mr. Afolabi after the latter's death. The dispute arose primarily because Mr. Afolabi had not performed the customary rites required to formally recognize Mrs. Ilesanmi as his wife under the customary law, despite the two being married under the Marriage Act.

Legal Issues

The key legal issues in this case were:

Recognition of Marriage: The court had to determine whether the statutory marriage was sufficient for Mrs. Ilesanmi to claim rights over her late husband's estate, in light of the customary rituals that were incomplete.

Conflict of Laws: The case highlighted the conflict between customary law and statutory law. While statutory law provides a framework for registration and recognition of marriages, customary law often entails additional traditional rites that are considered essential.

Rights of Women: The case raised issues regarding women's rights in marriage and inheritance under Nigerian law, particularly when customary law may not recognize the women's claim arising from a statutory marriage.

Court's Decision

The court ruled that the existence of a statutory marriage did not extinguish a spouse's rights under customary law, but it emphasized the necessity of adhering to both legal systems. The ruling indicated that parties must ensure compliance with the particular requirements of both the Marriage Act and the applicable customary laws to avoid disputes.

ii.2. Lack of Uniformity:

The coexistence of multiple legal frameworks creates confusion and leads to conflicts, particularly regarding the recognition of marital rights and obligations.

ii.3. Recognition of Marital Forms:

The recognition and legal status of different forms of marriage (e.g., traditional, Islamic, and statutory) vary, complicating issues related to property rights, inheritance, and divorce.

ii.4. Property and Financial Rights:

Customary and Islamic marriages often have different rules regarding property ownership and financial rights compared to statutory marriages. This disparity can create legal challenges, particularly in cases of divorce or inheritance.

ii.5. Legal Documentation:

Ensuring proper documentation and registration of marriage contracts is crucial. Many marriages, particularly traditional ones, may not be formally registered, leading to difficulties in enforcing legal rights.

ii.6. Judicial Interpretation and Gender Disparities:

Gender inequality issues are prevalent, with customary and Islamic laws sometimes providing unequal rights for women compared to statutory law. This can impact women's rights within marriage contracts and divorce settlements. The interpretation of marriage laws can vary significantly between different jurisdictions and courts, leading to inconsistent legal outcomes¹⁰². And a case can be seen in the case of *Mojekwu v. Mojekwu* (1997), have highlighted the need for reform to ensure equitable treatment of women in inheritance and property rights, as customary practices often favour men. The Nigerian Constitution guarantees fundamental rights, including the right to marry, yet enforcement remains inconsistent across different legal systems, necessitating comprehensive reforms to address these disparities. research and give me details of the *Mojekwu v. Mojekwu* (1997) case in Nigeria.

¹⁰² Marriages and their legal framework in Nigeria. https://nigeria.action4justice.org/legal_areas/womens-rights-focusing-on-marriage-rights/marriages-and-their-legal-framework-in-nigeria/

Background of the case

The appellant, Augustine Nwofor Mojekwu, sought to inherit property from his deceased uncle under the Nnewi customary law of "Oli-ekpe," which stipulates that only male descendants can inherit property. The appellant claimed entitlement as the only surviving male relative, while the respondent, Caroline Mgbafor Mojekwu, contended that the property should remain with the family of the deceased, particularly due to the discriminatory nature of the custom against female heirs.

Legal Issues

The Court was tasked with determining: Whether the Nnewi custom of "Oli-ekpe," which denies inheritance rights to females, is consistent with the fundamental rights enshrined in the Nigerian Constitution and the implications of customary laws that limit women's rights in inheritance and marriage.

Court Decision

Justice Niki Tobi, delivering the lead judgment, declared the "Oli-ekpe" custom unconstitutional, emphasizing that it violates the principles of natural justice, equity, and good conscience. The court ruled that any custom that discriminates based on sex is repugnant and thus unenforceable. The decision reinforced that women have the right to inherit property, aligning with constitutional guarantees against discrimination. This case has since served as a foundation for subsequent rulings advocating for women's rights in inheritance and property ownership across Nigeria¹⁰³.

ii.7. Breach of Promise to Marry

One of the most significant challenges is the breach of promise to marry. When one party breaks the promise to marry, the other party may suffer emotional distress, financial losses, and damage to their reputation. In such cases, the aggrieved party can sue for breach of promise to marry, seeking compensatory damages. However, proving the existence of a

¹⁰³ Mojekwu V. Mojekwu: Full Judgement - SabiLaw.org <https://sabilaw.org/mojekwu-v-mojekwu-full-judgement>

promise and its breach can be difficult, as evident in the case of *Ezeanah v. Atta*, where the Supreme Court emphasized the need for substantial evidence to support such claims¹⁰⁴.

ii.8. Capacity and Consent Issues

Questions may arise regarding the capacity of parties to enter into a marriage contract, especially when one party is a minor or lacks mental capacity. Additionally, the issue of parental consent can be problematic, as some cultures require the consent of parents before a marriage can be contracted. In *Ugboma v. Morah*, the court rejected the argument that the plaintiff lacked competence to enter into the contract due to the lack of parental consent, as both parties were of legal age.

ii.9. Incompatibility of Customary and Statutory Laws

Nigeria recognizes both customary and statutory marriages, but the grounds for terminating these marriages differ. For instance, while adultery and intolerability are grounds for divorce under statutory law, they are only grounds for divorce available exclusively to the husband under customary law. This incompatibility can lead to legal complications, as evident in the analysis of legal issues involved in the termination of "double-decker" marriages in Nigeria¹⁰⁵.

ii.10. Challenges in Litigation

Resolving marriage disputes through litigation can be challenging due to factors such as unnecessary delays caused by court congestion, high costs of litigation, and the confrontational nature of litigation. The Matrimonial Causes Act, 1970, which provides a framework for addressing these issues, has its own shortcomings, such as the complexity of the process and the need to balance the rights of spouses, the best interests of children, and societal values¹⁰⁶.

These challenges highlight the need for a more comprehensive and clear legal framework to address the complexities of marriage contracts in Nigeria, ensuring the protection of the rights of all parties involved.

¹⁰⁴ *ibid*

¹⁰⁵ Analysis of legal issues involved in the termination of double decker marriage under the Nigerian law by Olokooba S.M.

¹⁰⁶ *Ibid*.

CHAPTER 111: MECHANISMS AND THE REMEDIES TO THE CHALLENGES OF MARRIAGE CONTRACT IN NIGERIA.

This chapter has dealt with the mechanisms both legal and institutional mechanism and the remedies to the challenges of marriage contract in Nigeria.

Marriage contracts in Nigeria, governed by various legal frameworks including statutory, customary, and Islamic laws, often encounter challenges that can lead to disputes. These challenges may arise from breaches of promise to marry, non-fulfillment of marital obligations, or issues related to property rights. Marriage contracts in Nigeria face numerous challenges, including breaches of promise to marry, issues of consent, and the complexities arising from multiple marriage systems. To address these challenges, various legal mechanisms and remedies are available under Nigerian law. This thesis explores these mechanisms, highlighting relevant statutes and case law that illustrate their application.

iii.1. Legal Mechanisms

iii.1.1. Compensatory Damages:

Courts may award compensatory damages to the jilted party for losses incurred due to the breach. These damages can cover emotional distress, expenses related to wedding preparations, and loss of reputation. In *Ezeanah v. Atta*, the Supreme Court emphasized that damages must be substantiated with evidence of actual loss suffered by the plaintiff.

iii.1.2. Punitive Damages:

In cases where the breach is particularly egregious, punitive damages may be awarded to deter similar conduct in the future. The court assesses the nature of the breach and its impact on the aggrieved party when determining such damages.

iii.1.3. Statutory Provisions:

The Marriage Act provides that parties must be of legal age (18 years) and possess the mental capacity to consent to marriage. In *Ugboma v. Morah*, the court ruled that parental consent is not required for individuals of legal age, reinforcing the principle that adults can contract marriage independently.

iii.1.3. Matrimonial Causes Act (MCA):

The MCA outlines grounds for divorce and provides a framework for resolving disputes arising from marriages contracted under different systems. Sections 33(1) and 35 prohibit individuals married under statutory law from contracting another marriage under customary law while still married.

iii.1.4. Contract Law Principles:

While there is no explicit statutory recognition for prenuptial agreements in Nigeria, they can be enforced under general contract law if they meet essential criteria such as mutual consent and consideration. However, clarity on their enforceability remains a significant issue.

iii.2. Institutional Mechanism

Marriage contracts in Nigeria face various challenges, including breaches of promise, issues of consent, and complexities arising from the dual marriage systems (statutory and customary). Institutional remedies play a crucial role in addressing these challenges through established legal frameworks and mechanisms. This book outlines the institutional remedies available under Nigerian law.

iii.2.1. Legal Frameworks Governing Marriage

Nigeria's marriage system is governed by multiple legal frameworks that provide institutional remedies for addressing challenges related to marriage contracts. Key statutes include:

Marriage Act 2004: This act regulates statutory marriages, outlining the requirements for marriage, including age, consent, and registration. It provides a clear framework for addressing disputes arising from statutory marriages.

Matrimonial Causes Act 1970: This act outlines the grounds for divorce, maintenance, and custody matters. It serves as a primary mechanism for resolving disputes related to the dissolution of marriage and ensures that parties can seek legal redress in court.

Married Women's Property Act: This act protects the property rights of married women, ensuring they have legal recourse in cases of property disputes arising from marriage contracts.

These laws collectively create a robust institutional framework that addresses various aspects of marriage contracts and provides mechanisms for dispute resolution.

iii.2.2. Judicial Remedies

The Nigerian judiciary plays a vital role in interpreting marriage laws and providing remedies for breaches of marriage contracts. Some key judicial remedies include:

Compensatory Damages: In cases of breach of promise to marry, courts can award compensatory damages to the aggrieved party. The landmark case *Ezeanah v. Atta* illustrates this principle, where the court emphasized the need for substantial evidence to support claims of emotional distress and financial loss due to a breach.

Specific Performance: While courts generally do not compel individuals to marry, they may enforce specific contractual obligations related to marriage preparations. This legal mechanism can help parties fulfill their commitments as outlined in their agreements.

Custody and Maintenance Orders: Under the Matrimonial Causes Act, courts have the authority to issue orders regarding child custody and spousal maintenance during divorce proceedings. These orders are made with consideration of the best interests of children involved in marital disputes.

iii.2.3. Alternative Dispute Resolution (ADR)

In recent years, ADR methods such as mediation and arbitration have gained popularity as effective means of resolving matrimonial disputes without resorting to litigation. Institutional support for ADR includes:

Family Courts: Family courts are increasingly adopting ADR processes to facilitate amicable resolutions between disputing parties. These courts encourage mediation sessions before proceeding with formal litigation, helping couples resolve conflicts while preserving relationships.

Legal Frameworks Supporting ADR: The Nigerian legal system recognizes ADR as a viable alternative to traditional court proceedings. The use of mediation is encouraged under various statutes, allowing parties to reach mutually agreeable solutions without the adversarial nature of litigation.

iii.2.4. Regulation of Customary Marriages

Customary marriages are prevalent in Nigeria but often lack formal recognition under statutory law. Institutional remedies aimed at regulating customary marriages include:

Customary Court Systems: Customary courts have jurisdiction over matters arising from customary marriages, providing a platform for resolving disputes based on local customs and traditions. These courts address issues such as property rights and marital obligations within the context of customary law.

Legal Recognition and Certification: There is an ongoing push for legal reforms that would enhance the recognition of customary marriages by requiring registration and certification similar to statutory marriages. This would provide couples with enforceable rights and protections under the law.

iii.2.5. Prenuptial Agreements

While prenuptial agreements are not widely recognized in Nigeria, there is increasing advocacy for their formal acceptance within the legal framework:

Need for Legal Framework: Scholars argue that establishing a clear legal framework for prenuptial agreements could significantly reduce post-marital disputes regarding property settlements and other issues. Such agreements would allow couples to outline their rights and obligations before entering into marriage.

Judicial Consideration: Although current laws do not explicitly recognize prenuptial agreements, courts may consider them during divorce proceedings if they are deemed fair and reasonable at the time of enforcement.

GENERAL CONCLUSION AND RECOMENDATIONS

In conclusion, the marriage contract under Nigerian law is a crucial aspect of the institution of marriage in Nigeria. While the law provides legal protections and rights to parties within a marriage, responsibilities and obligations of both spouses, including issues such as property ownership, financial support, and custody of children. It also serves as a legal document that defines the terms of the marriage and can be used as evidence in case of disputes or divorce proceedings. There are still challenges and issues that need to be addressed to ensure that marriages are conducted in a fair, transparent, and respectful manner. Critical analysis of the marriage contract in Nigeria is essential to identify any gaps or inconsistencies in the law, as well as suggest possible reforms or amendments to strengthen the legal framework surrounding marriage contracts in Nigeria. Ultimately, by ensuring that marriage contracts are fair, transparent, and enforceable, the institution of marriage can be supported and strengthened in Nigeria society. In Nigeria, marriage laws encompass various aspects including age requirements, consent, registration, and dissolution. Statutory marriages require individuals to be at least 21 years old and involve formal registration. Consent is crucial across all types of marriages—statutory, customary, and Islamic—with both parties needing to agree voluntarily. Monogamy is mandated under statutory law, whereas customary and Islamic laws may permit polygamy. Marriages affect property rights, with statutory law generally ensuring equitable distribution of assets upon divorce. Customary and Islamic marriages follow different rules regarding property and inheritance. Divorce under the Marriage Act involves legal proceedings and can address issues such as custody, maintenance, and asset division. Annulments declare a marriage void from the beginning, while legal separation allows couples to live apart without divorce. Maintenance obligations require financial support from one spouse to another, and custody and visitation arrangements are determined with the child's best interests in mind. Mediation is used to resolve disputes amicably. Remedies for breaches in marriage contracts can involve legal action to enforce obligations or adjust asset division. Each form of marriage and dissolution process has its own legal framework and remedies under Nigerian law.

Recommendations

In Nigeria, marriage is not only a sacred institution but also an important socio-economic arrangement that significantly impacts the lives of individuals and families. The Nigerian marriage system comprises various cultural, religious, and legal frameworks, including the Marriage Act, customary practices, and Islamic law. To enhance the effectiveness of marriage contracts within this diverse context, the following recommendations aim to address gaps, clarify rights and obligations, and promote fairness in the institution of marriage.

1. Implementing a Unified Marriage Law for Nigeria:

In addressing the complexities of marriage regulation in Nigeria, it is recommended that a single, comprehensive law be established to govern marriages throughout the country. This unified marriage law would supersede the existing fragmented system of statutory, customary, and religious laws, providing a clear and consistent legal framework applicable to all Nigerians, regardless of tribe, religion, or region.

The proposed law should integrate elements of both customary and statutory practices, ensuring that they align with core legal principles and human rights standards. Customary practices that do not conflict with these standards would be formally recognized within the new legal framework. This integration would respect Nigeria's cultural diversity while ensuring uniformity and clarity in marriage laws.

2. Age:

In the Nigerian constitutions, there was no specified age limit for marriage. It just stated that the age eligible to enter into a contract is 18 years. The government should look into the constitution of Nigeria and amend it. Age for marriage should be put into the constitution of Nigeria. So I recommend that the government should look into this and do the needful. I recommend that the age they should set for marriage in Nigeria should be 21. At that age people will be matured and will handle marriage well, plus it will help cut down drastically the rate of early child marriage in Nigeria.

3. Legal Standardization and Accessibility:

Introduce a standardized template for marriage contracts that incorporates essential clauses relevant to various marriage types (customary, Islamic, and statutory). This template should be easily accessible to all citizens, ensuring that they can understand their rights and obligations.

4. Centralized Online Platform

Establish a centralized online platform where prospective couples can obtain information, access template contracts, and find legal assistance in drafting marriage contracts.

5. Pre-Marital Counselling and Education:

Mandate pre-marital counselling sessions for couples intending to marry, emphasizing the importance of marriage contracts. These sessions should cover topics such as financial planning, conflict resolution, and mutual respect.

6. Education On Marriage Rights

Integrate education on marriage rights and responsibilities into secondary school curricula to raise awareness among young people about the importance of legal agreements in marital relationships.

7. Involvement of Legal Advisors in Drafting Marriage Contracts

Encourage the involvement of legal advisors in the drafting and execution of marriage contracts. Couples should have access to impartial legal counsel to ensure that their contracts are fair, comprehensive, and compliant with Nigerian laws.

8. Dispute Resolution Mechanisms:

Establish clear and accessible mechanisms for arbitration, or other alternative dispute resolution methods tailored to the cultural context of different Nigerian communities.

9. One of The Criteria for Marriage in Nigeria Should be a Secondary School Certificate:

In many parts of Nigeria, education is highly valued and seen as a key to personal and professional development. Requiring a secondary school certificate for marriage might be seen as a way to ensure that individuals have achieved a basic level of education and are equipped with skills necessary for responsible adulthood.

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