

TITLE PAGE

**A CRITICAL EXAMINATION OF THE GROUNDS FOR THE DISSOLUTION OF
STATUTORY AND CUSTOMARY MARRIAGES IN NIGERIA.**

BY

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GOU/U21/LAW/399

**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE
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UNIVERSITY**

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DECLARATION

I, **Eboh Tochi Joy** with registration number **GOU/U21/LAW/399**, hereby declare that this research work titled, “A Critical Examination of The Grounds for the Dissolution of Statutory and Customary Marriages in Nigeria” is my original work conducted under the direct and diligent supervision of Mrs Nwakaego Ogbaji. In partial fulfilment of the requirement for the award of Bachelor of Laws (LL. B). This essay has not been submitted in part or in full for the award of a degree or diploma in any other institution of learning.

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CERTIFICATION

This is to certify that this study titled “A Critical Examination of The Grounds for the Dissolution of Statutory and Customary Marriages in Nigeria”, was carried out by Eboh Tochi Joy under our supervision and that the essay has not been submitted for the award of any degree in this or any other university.

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DEDICATION

This project is dedicated to Almighty God, for being with me through it all, I could not have done it on my own strength. This work is also dedicate it to my entire family, for holding my hands at my lowest and encouraging me, providing me with all the support I ever needed.

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TABLE OF CONTENTS

CERTIFICATION.....	ii
DECLARATION.....	iii
CERTIFICATION.....	iv
DEDICATION	v
ACKNOWLEDGMENT.....	vi
LIST OF CASES.....	ix
LIST OF STATUTES.....	x
LIST OF ABBREVIATIONS.....	xi
ABSTRACT.....	xii

CHAPTER ONE: INTRODUCTION

1.1. Background of the study	1
1.2.Statement of the Problem.....	6
1.3.Research Questions.....	8
1.4.Aim and Objectives of the Study.....	8
1.5.Scope and Limitations of the Study.....	8
1.6.Significance of the Study.....	9
1.7.Research Methodology.....	10
1.8. Literature Review	11

CHAPTER TWO: CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1 Conceptual Clarification.	16
2.1.1. Definition of marriage under the Nigeria Law.	16
2.1.2. Types of marriage in Nigeria.	17
2.1.2.1. Statutory Marriage.	17

2.1.2.2. Customary Marriage in Nigeria.	18
2.1.2.3. Same-sex marriage.	20
2.1.3. Annulment of Marriage.	22
2.1.4 Dissolution of Marriage	23
2.1.4.1. Dissolution under the Act.....	23
2.1.4.2. Dissolution under Customary Marriage.	32
2.2 Theoretical framework.	39
2.2.1. Theories of Marriage.	39
2.2.1.1. Functionalism Theory of Marriage and Divorce.	39
2.2.1.2. “Double-Decker” marriage.	40
2.2.1.3. Conflict Theory.	41
2.2.1.4. Symbolic Interaction Theory.	41
2.2.1.5. Realism Theory	42
2.2.2. Theories of Divorce	42
2.2.2.1. Matrimonial Offence Theory or Fault Theory.....	42
2.2.2.2. Mutual Consent Theory.	43
2.2.2.3. Irretrievable Breakdown Theory.	44

CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE DISSOLUTION OF STATUTORY AND CUSTOMARY LAW MARRIAGES IN NIGERIA

3.1 Legal Framework Governing the Dissolution of Marriage in Nigeria.....	46
3.1.1 Statutory Framework Governing the Dissolution of Marriage in Nigeria.	46
3.1.1.1 The Marriage Act.....	47
3.1.1.2. The Matrimonial Causes Act.....	48
3.1.1.3. Violence Against Persons Act (prohibition) Act.	49

3.1.1.4 The Criminal Code Act	50
3.1.1.5 Penal Code	50
3.1.2. Customary law.....	51
3.1.3. Islamic law.....	52
3.1.4. The Constitution of the Federal Republic of Nigeria 1999 (as amended)	53
3.2. Institutional Framework for the Dissolution of Marriage in Nigeria.....	54
3.2.1. High Courts.....	55
3.2.2. Customary courts.....	57
3.2.3. Sharia courts	58
3.2.4. Non-judicial Dissolution	58

CHAPTER FOUR: CHALLENGES AND PROSPECTS OF THE GROUNDS OF DISSOLUTION OF MARRIAGES IN NIGERIA.

4.1. Challenges of the grounds for dissolution under statutory law.....	60
4.1.1. Grounds not covered under section 15 (2) of the Matrimonial Causes Act	60
4.1.1.2. The vagueness of Section 15(2)(c)	62
4.1.1.3. Domestic Violence beyond assault.....	64
4.1.1.3. Infertility and issues relating to reproductive choices.....	67
4.1.1.4. Homosexuality or bi-sexuality.....	70
4.1.1.5. Financial incompatibility.....	71
4.1.1.6. Religious and cultural inadaptability.....	71
4.1.2. the absence of “no-fault” as a ground.....	72
4.2. Challenges of the grounds for dissolution under customary law.....	75
4.2.1. Lack of codification	75
4.2.2. Supremacy of patriarchy	76
4.2.3. Interference of elders and family members.....	76
4.2.4. Inequality in Grounds for Dissolution under Customary Marriage.	77

4.3. Conflict Between Statutory and Customary Marriage Dissolution Laws in Nigeria...	78
4.3.1 Dual Legal System and Jurisdictional Overlap	78
4.3.2 Evidential and Procedural Conflicts between the Two Systems.....	79
4.3.3 Legal Uncertainty and Forum Confusion.....	79
 CHAPTER FIVE: SUMMARY, RECOMMENDATIONS AND CONCLUSION	
5.1. Summary of findings	81
5.2. Recommendation	82
5.3. Conclusion.....	84
BIBLIOGRAPHY.....	85

LIST OF CASES

Adesubokan v Yinusa (1971) NWLR 77

Adetule v Adetule (2021) LPELR-61667(SC)

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Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004

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Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2004

Same Sex Marriage (Prohibition) Act 2013

Violence Against Persons (Prohibition) Act 2015

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CA	Court of Appeal
Cap	Chapter
CRA	Child's Rights Act
CJN	Chief Justice of Nigeria
FWLR	Federation Weekly Law Reports
LFN	Laws of the Federation of Nigeria
MCA	Matrimonial Causes Act
NWLR	Nigerian Weekly Law Reports
NLR	Nigerian Law Reports
NMLR	Nigerian Monthly Law Reports
NJI	National Judicial Institute
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgments
SCC	Supreme Court Cases
SSMPA	Same Sex Marriage (Prohibition) Act
Vol.	Volume
WRNLR	Western Region Nigeria Law Reports

ABSTRACT

Marriage is a fundamental legal and social institution in the society, forming the bedrock of the family. Marriage is a union between a man and a woman or women which is expected to last for a life time but can be cut short by unforeseen circumstances, thus, dissolution of the marriage. This study critically examines the grounds for dissolution of marriage under the statutory and customary law in Nigeria. It makes an inquiry into the grounds for the dissolution of marriage and identify the loopholes surrounding these grounds. It examines the legal framework governing dissolution of marriage under section 15 of the Matrimonial Causes Act which is the irretrievable breakdown of marriage and facts to prove the breakdown. The study also considers the various grounds on which dissolution may be granted under customary law, such as adultery, cruelty, desertion, impotency, sterility, and other grounds peculiar to different localities. This study utilizes the doctrinal research method using primary and secondary sources of law. This research highlights the significant differences and inconsistencies between the statutory and customary system. It also highlights the conflicts that arises from the coexistence of the plural system. This study asserts that there is a need for legal reform and harmonization of the grounds for dissolution of marriage in Nigeria to promote fairness, legal certainty, and the effective protection of the rights of spouses. Thereby suggesting the adoption of a no fault system in both statutory and customary law marriage, codification of customary laws, widening the scope of section 15(2) of the Matrimonial Causes Act and public enlightenment.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Marriage is a social institution that is universally acknowledged, which is embedded into Nigerian law as an important aspect of family life and social order. The Nigerian law acknowledges several types of marriage as a result of the plural legal system: statutory marriage under the formal statutes and customary marriage under the rules and practices of the indigenous people.¹ According to Elias², “it will be found that the introduction of the English Law has produced this dualism...between marriage according to English Law and marriage under some form of indigenous law...”. Both systems can form legally binding marriages but the reasons and procedures of dissolving the marriages are different.

As a legal institution, statutory marriage is provided for, regulated and dissolved by the law. There are legal and institutional frameworks governing marriage. Prior to the promulgation of these frameworks, after the cession of Lagos to the British Crown in 1861, the first statutory provisions on marriage for the Settlement of Lagos came into existence in 1863 and it provided for “the granting of licenses for marriages”³.

In 1872 and 1873 respectively, there was Divorce Ordinance applicable also to the Settlement of Lagos. However, after series of amendments and repeals and after the merger of the Northern and Southern Nigeria in 1914. The marriage laws were streamlined

¹ E I Nwogugu, *Family Law in Nigeria* (3rd edn, Heinemann Educational Books Nigeria 1999) 215.

² Elias T O, *British Colonial Law*, 1962, p. 207, cited in E I Nwogugu, n1.

³ Marriage Ordinance No. 10 of 1863.

and this was achieved through the marriage ordinance of 1914. The ordinance made celebration of marriage purely civil. Today, the celebration of monogamous marriage is registered by marriage Act and it is usually referred to as statutory marriage. The Marriage Act is the primary legislation that provides for the celebration of marriage in Nigeria. The only form of marriage recognized in Nigeria under the Act is monogamous marriage (marriage between one man and one woman)⁴. The Act harbored a fundamental lacuna, major vacuum being that it did not provide for mandatory age for marriage⁵.

In 1970, the Matrimonial Causes Act came into force. The Act mainly governs dissolution of marriage, custody and the welfare of children in Nigeria. A validly celebrated marriage can be brought to an end by the order of the law. The act of bringing to an end a validly celebrated marriage is called dissolution of marriage. Dissolution of marriage is formal legal ending of a marriage or marital union by court of law.

It is trite that only statutory marriage that can go through divorce procedures in a high court. The Matrimonial Causes Act 1970 governs dissolution of marriage in Nigeria. The Act sets out the ground upon which dissolution of marriage can be granted by the court. The dissolution of marriage, whether statutory or customary, is a sensitive subject because it touches on the stability of the family unit, which is regarded as the bedrock of society. While marriage is often expected to last for life, circumstances sometimes arise that make its continuation intolerable or impossible. In such situations, the law provides avenues through which a marriage may be dissolved. The Marriage Act and the Matrimonial Causes Act 1970 (as amended).⁶ These acts are

⁴ B Benedette, 'Nigeria: Overview of Statutory Marriage In Nigeria' *Resolution Law Firm* (2020) <<https://www.resolutionlawng.com/an-overview-of-marriage-laws-in-nigeria/>> accessed 10 May 2026

⁵ D C oktipa, 'Enforceability of age limit for marriage in Nigeria'(2019) <https://streetlawyernaija.com/enforceability-of-age-limit-for-marriage/#google_vignette> accessed 10 May 2026.

⁶ Matrimonial Causes Act 1970 (Cap M7), Laws of the Federation of Nigeria 2004; Marriage Act (Cap M6), LFN 2004.

the result of the English family law, which was brought to provide a standardized legal system governing the formation, regulation, and dissolution of statutory contract based marriages. The Matrimonial Causes Act specifies that the only substantive reason upon which a statutory marital relationship may be dissolved is on the ground that such a relationship has broken down irretrievably.⁷ To prove this general ground, a petitioner must prove that one or more of the specified facts are factual set out in the Matrimonial Causes Act such as adultery, unreasonable behaviour, desertion, living apart or presumed death that collectively are evidence that the marital relationship has irretrievably broken down.⁸

Irretrievable breakdown doctrine is however a reflection of a change in policy to a much more modernised form of evidence based divorce.⁹ In a statutory regime the court have the ability to determine whether in fact it is reasonable to expect spouses to further cohabit.

Conversely, customary marriages are recognised under the Nigerian law which they are contracted legitimately as stipulated by the native law and custom of the communities wherein the parties contracted.¹⁰ In contrast to the statutory marriages, the customary marriage dissolution has no formal registration rather the statutory law contains textual foundations and mandates of the procedure¹¹. Customary law traditionally does not stipulate any specific set of reasons to be satisfied before a court will grant an order of dissolution, but instead a myriad of reasons may be invoked and admitted under customary procedures. Negotiations usually occur between family

⁷ Matrimonial Causes Act 1970 (Cap M7) s 15(1).

⁸ Section 15(2)(a)–(h), *Matrimonial Causes Act* 1970.

⁹ C U Ilegbune, 'A Critique of the Nigerian Law of Divorce under the Matrimonial Causes Decree 1970', *Journal of African Law* 178 (1970). <<https://doi.org/10.17/S002185530000485X>> accessed 20th November 2025.

¹⁰ E I Nwogugu, (n 1).

¹¹ B E Oniha, 'Grounds for Dissolution of Customary Marriages in Nigeria', *Edo State Judiciary* (2021).

representatives, which when the negotiations fail the return of bride price follows which brings the marriage to an end.¹²

There are significant complexities in the co-existence of the statutory and customary dissolution regimes. First, the grounds of dissolution are distinct: statutory dissolution involves a unitary basis that is stipulated by the Matrimonial Causes Act, whereas customary dissolution involves the invoking of the law of the said community which binds both parties. The statutory dissolution occurs in the high court while customary dissolution may or may not take place within court, when instituted takes place either in customary or area courts.¹³

The result of such a variation is most eminent where a couple contracts under both statutory and customary marriage between each other, a typical activity in most of the Nigerian societies where couples ought to sign a customary union followed by a statutory union or the other. In this case of dual marriages, the issue that may come up is the status of the marriage when it is dissolved in one regime but not in the other. As an illustration, it is a question of legal ambiguity and legal disputes whether a dissolution of a statutory marriage invariably leads to the dissolution of a similar customary marriage. The first perspective claims that the two marriages and the incidences of their laws still coexist and should be treated separately, whereas the second school of thought maintains that the breaking down of the statutory marriage has the effectualisation of the marital union as a whole¹⁴. However, This is not the situation practice. Dissolution of statutory marriage in a court does not automatically determine the

¹² B E Oniha, 'Dissolution of Marriage and Custody of Children under Customary Law in Nigeria', Edo State Judiciary (2017).

¹³ B E Oniha, '*Grounds for Dissolution of Customary Marriages in Nigeria*', Edo State Judiciary (2021).

¹⁴ Iniye L I Ikimi, 'Legal Implication of Dissolution of Statutory Marriage in a Dual Marriage', (2022) *UCC Law Journal* 195 (discussing effects of dissolution in dual marriages).

customary dissolution of the marriage. There still has to be the return of the bride price before the customary marriage is effectively determined.

The lack of codified grounds can also create inconsistency and uncertainty with regards to customary law, especially when it is the vulnerable groups like women, who might not have formal legislative backing or access to the justice system, since in these terms dissolution is more of a process than an outcome.¹⁵ Though such outcomes are not consistent or subject to statutory regulation.¹⁶

The procedural protection offered by statutory divorce law under the Matrimonial Causes Act is also comparatively more formal and structured, such as the need to prove irretrievable breakdown by the use of recognised evidential facts, judicial scrutiny, and the adjudication of ancillary malfeasances including maintenance, custody and property disbursement.¹⁷ This raises the question of access to justice and equality by parties whose primary marital relationship is customary. A decree of dissolution of a statutory marriage can only be awarded by the High Court and customary marriage dissolution normally by customary and area courts.¹⁸ This is particular to the judicial dissolution of customary marriage, when the parties intend to use the extra-judicial means, this does not apply.

These issues gain increased academic and practical importance in the light of the demands to reform the family law system in Nigeria. The statutory scheme of divorce as captured under the

¹⁵ Edo State Judiciary (n 12).

¹⁶ National Judicial Institute, *Divorce, Maintenance and Child Custody Under Customary Law* (National Judicial Institute 2024).

¹⁷ LegalClarity.org, *Divorce in Nigeria: Laws, Grounds, and Procedures* (2025) <<https://legalclarity.org/divorce-in-nigeria-laws-grounds-and-procedures/>> accessed 16 May 2026.

¹⁸ Resolution Law Nigeria, *Jurisdiction of divorce in Nigeria: An Overview* (2025). <<https://resolutionlawng.com/jurisdiction-of-divorce-in-nigeria/>> accessed 3 May 2026.

Matrimonial Causes Act is outmoded, and fails to cover adequately the pluralist nature of Nigerian divorce law, particularly in settings with customary law systems with little statutory discipline. The Matrimonial Causes Act has also failed to cover contemporary issues that could lead to grounds for the dissolution of marriages. Suggestions have been put forward to harmonize statutory and customary faults in such a way that family rights are ensured and the accessibility of divorce remedies across legal systems facilitated.

The coexistence of statutory and customary systems often creates legal and social complexities. While statutory law provides uniformity and codification, customary law is more flexible but highly localized. It is pertinent to know that the existing grounds for which the marriage can be dissolved are neither exhaustive nor flawless. Notwithstanding these scholarly controversies and doctrinal critiques, Nigeria has not put in place substantive statutory reform to harmonize and modernize the bases and practice of divorce of marriages in its plural legal systems. Thus, an examination of the grounds for dissolution under both systems is not only timely but also necessary to ensure justice, fairness, and legal clarity in Nigeria.

1.2 Statement of the Problem

The dual system of marriage in Nigeria, statutory and customary, introduces a lot of legal complexity, especially as far as the reasons and procedure of dissolution are concerned. Although Matrimonial Causes Act dissolves statutory marriages on the basis of an irretrievable breakdown, customary marriages are dissolved based on various, unofficial local practices not subject to consistent statutory interpretation. It is noteworthy that the customary law grounds might lead to unpredictability for the party seeking to dissolve the marriage, although the customs are familiar the discretion of the court cannot be determined until pronouncement. This creates a room for legal

uncertainties and even after dissolution leaves a vacuum for maintenance, child support and damage.

The statutory ground for dissolution of marriage is that the marriage has broken down irretrievably¹⁹, this being the sole ground for dissolution under the act does not call for proof of fault, all that is pertinent is that both parties are desirous to dissolve the marriage at will²⁰. However, the act goes further in section 15(2)²¹ to state the facts that will proven to help the court determine if the marriage has broken down irretrievably, this section has introduced a fault based theory which contravenes the intention of the lawmakers. Leaving the question, whether or not the dissolution of marriage under the act is fault based or no fault based?

The stated facts in section 15(2) and 16²² cannot be deemed encompassing as it has left behind the contemporary issues leading to dissolution of marriage, which leaves a room for a reform.

The absence of harmonization will subject parties, in particular the women and economically disadvantageous spouses to legal and social disadvantage since customary dissolution can take place outside judicial scrutiny²³.

Therefore, the central problem this study seeks to address is the shortcomings of Matrimonial Causes Act and the deficiencies of the grounds for dissolution under customary marriage. It will also investigate how these challenges affect the individuals involved, the lack of coherence between the two systems and propose a better dissolution systems.

¹⁹ Matrimonial Causes Act 1970, (n 8).

²⁰ C O Amucheazi & F.A. Nwodo, *A Critical Appraisal of the Principle of divorce in Nigeria under the Matrimonial Causes Act 1970*, (seah publication 2022). <www.seahipaj.org> .

²¹ Matrimonial Causes Act 1970, (n 8).

²² Ibid.

²³ National Judicial Institute, *Divorce, Maintenance and Child Custody Under Customary Law* (National Judicial Institute 2024).

1.3 Research Questions

This study seeks to address key issues associated with the dissolution of statutory and customary law marriages in Nigeria by answering the following research questions:

1. What are the legal grounds for the dissolution of statutory and customary law marriages in Nigeria?
2. What loopholes and challenges arise from the operation and coexistence of statutory and customary marriage dissolution laws in Nigeria?

1.4 Aim and Objectives of the Study

The main aim of the study is to critically examine the grounds for dissolution of statutory and customary law marriages in Nigeria. The specific objectives are to;

1. Analyse the legal grounds for the dissolution of statutory and customary law marriages in Nigeria.
2. Examine the loopholes and challenges arising from the operation and coexistence of statutory and customary marriage dissolution laws in Nigeria.
3. Propose reforms and recommendations that will harmonize both systems in a way that protects the rights of all parties.

1.5 Scope and Limitation of the Study

This research is limited to the analysis of the dissolution of marriages under the statutory and customary law in Nigeria. The topic concerns the legal systems, established grounds for

dissolution, and judicial interpretation the statutory and customary law. Regarding the content, the focus is on statutory provisions within the Matrimonial Causes Act, judicial decisions, and principles of the customary law as far as the marital dissolution is concerned.

Geographically, the study is covering practices in Nigeria, with examples involving some parts of Nigeria, used to bring out differences in customary law. The research does not go further to comparative discussion with foreign jurisdiction unless such allusion offers explanatory pointers.

The research has been constrained by the limitation of time and availing of vast empirical evidence regarding custom practices on dissolution of marriage. Being a doctrinal legal study, it is based mostly on secondary legal materials, such as statutes, judicial decisions, textbooks, law reports, journal articles, and institutional reports. These limitations can only limit the exploration of the local variations in customary practices, and do not weaken the validity of the legal analysis.

1.6 Significance of the Study

The current study holds importance because it points to legal and practical difficulties that arise due to the plural marriage system present in Nigeria, specifically regarding marital dissolution. It reveals the presence of a legal uncertainty, inconsistent judicial cases, and even the violation of marital rights especially among women and vulnerable spouses due to the divergent ground and processes between statutory and customary law.

The study can help to formulate legal and policy changes to bring about change in the marriage dissolution structures through the identification of gaps in both statutory and customary law. The results will inform policy makers, law practitioners, courts, and researchers to promote legal certainty, safeguard [individual] rights and access to the justice system. Moreover, the research

provides value to the scholarly research on family law and presents an option to future studies regarding dissolution of marriages in Nigeria.

This Research stands as a beacon of legal enlightenment and societal relevance. It seeks to promote justice, law reform, and advanced decision-making within the institution of marriage and its dissolution, while leaving a lasting impact on legal scholarship, practice, and public awareness within the Nigerian family law landscape.

1.7 Research Methodology

This study will follow the doctrinal legal research approach whereby the systematic examination of the law rules, principles, and concepts in statutes, judicial cases, and authoritative sources of law are examined. This methodology will suit the research since it is focusing more on the interpretation, implementation, and viability of the available legal provisions regarding marital dissolution.

This work is mostly library and internet-based, with an expository examination of the subject matter in the primary and secondary sources of Nigerian law reviewed in this research. The research is based on existing knowledge and doctrinal research. Textbooks written by notable researchers, professors of Law and authors from both the local and international communities. Articles from respectable publications, as well as other scholarly and non-scholarly literature on the issue, were also consulted.

Primary Sources will include Statutes (e.g., Matrimonial Causes Act, 1970), reported Nigerian case law, and customary practices documented in legal texts.

Secondary Sources will include Textbooks on family law, journal articles, conference papers, theses, online legal resources, and commentaries by legal scholars.

The decision of the doctrinal approach is well-founded considering that the research will not entail data gathering and fieldwork. Rather, it addresses legal critique, law interpretation and judicial reasoning analysis. This will guarantee there is an equal, meticulous scrutiny of reasons of dissolution of both statutory and customary law marriages in Nigeria.

1.8 Literature Review

The topic of dissolution of marriage has attracted both academic and scholarly attention within Nigerian family law discourse, particularly following the enactment of the Matrimonial Causes Decree 1970 (now the Matrimonial Causes Act). The duality has created tremendous scholarly debate about the nature of marriage, the rights and duty of the spouses, and the situations under which the marriages can be lawfully broken.²⁴ Scholars have examined the statutory and customary grounds for dissolution, interrogating their scope, effectiveness, and responsiveness to Nigeria's social realities. A central issue in this literature is whether the existing grounds for dissolution of marriage can be regarded as sufficiently encompassing.

One of the most authoritative writers in this field is **E. I. Nwogugu**, whose work on Family Law in Nigeria remains a foundational text on Nigerian family law²⁵. Nwogugu provides a detailed exposition of the statutory framework governing dissolution of marriage, emphasizing that under the Matrimonial Causes Act, the sole legal ground for divorce is that the marriage has broken down irretrievably. He explains that this breakdown must be established through specified factual situations such as adultery coupled with intolerability, willful and persistent refusal to consummate the marriage, unreasonable behaviour, desertion, or separation for a prescribed

²⁴ B O Nwabueze, *Nigerian Legal System* (Spectrum Books, 2003) 112.

²⁵ E I Nwogugu, (n 1).

period. In addition to statutory marriages, Nwogugu also examines customary law marriages, identifying customary grounds such as impotency, cruelty, adultery, sterility, disease, and the return of bride price, while stressing that these grounds vary significantly from one community to another²⁶.

Although Nwogugu acknowledges that the statutory formulation appears broad in theory, he draws attention to the disjunction between statutory and customary systems, noting that the plural nature of Nigerian marriage law complicates the uniform application of dissolution principles. He opined that the MCA is not sharply predicated on the fault principle but rather could be said to be an admixture of offence doctrine and no fault principle. He highlighted the disunity in the dissolution principles or grounds. His opinion can be deduced to invoke a need for a legal reform of this plural system.

This admixture of offence doctrine and no fault principle with no doubt defeats the intention of the no fault principle. He gives no opinion on this admixture and this work will adequately do so.

Another important contribution was made by **C. U. Ilegbune**, who wrote a critical commentary shortly after the introduction of the Matrimonial Causes Decree 1970²⁷. Ilegbune's work focuses on evaluating whether the Decree successfully reformed divorce law in Nigeria by introducing the concept of irretrievable breakdown as the primary test²⁸. He critically assesses the procedural and jurisdictional challenges that emerged from this reform, particularly the difficulty of reconciling a supposedly non-fault system with the continued reliance on fault-based evidence. From his perspective, the grounds for dissolution under the Decree introduced a no fault system

²⁶ Ibid.

²⁷ C U Ilegbune, (n 9).

²⁸ Ibid.

with fault based evidence, this ambiguity undermined the effectiveness of the reform. His work has highlighted a major problem pertaining to the legal system governing dissolution however, does not give what kind of reform would be best suitable.

Another contribution was made by **Maurice O. Izunwa** emphasizing the pluralistic nature of Nigerian family law. The writer highlights that customary law grounds for dissolution are numerous, community-specific, and often informal in operation. Izunwa, critiques the lack of harmonization between customary practices and statutory provisions, especially in relation to procedural safeguards and post-dissolution reliefs such as maintenance, custody, and property distribution. He argues that while customary law provides multiple grounds for dissolution, it often fails to adequately protect vulnerable parties, particularly women and children²⁹.

Consequently, customary law scholars generally conclude that the combined statutory and customary grounds for dissolution cannot be regarded as fully encompassing due to inconsistencies, lack of uniform remedies, and insufficient legal protection. Dr. Maurice has critically analyzed the customary dissolution of marriage and he holds the view that the return of bride pice imports the sense of commercialization which is dehumanizing. He also opined that

“the whole structure of customary divorce is organised in a manner prejudicial against the “wife parties”. If for instance the husband sends out his wife and refuses to take back the bride-price, he binds the woman who cannot lawfully marry under the circumstance of fettered bride-price. The man on the other hand can marry because the law permits polygamy but not polyandry. Considered from another perspective, if the

²⁹ M O Izunna, ‘A critique of certain aspects of the grounds, procedure and reliefs attaching to customary divorce law in southern Nigeria’, (2015) journal of law and conflict resolution.<<http://www.academicjournals.org/JLCR>> accessed 6th December 2025.

man (husband), wanting to take back the bride-price, demands same but the family of the woman refuses, again, the woman is bound while the man can go further to contract a new and second marriage, at best, he becomes a polygamist which is even a positive and recommended practice under the customs. Either way, the woman is left at the crossroads”³⁰.

His opinion holds the view that the bride price holds so much value, even more than the woman as it determines how her life goes and is a tool used by men to control them. This school of thought can be said to be avoided in my opinion as the petitioner can institute a judicial action and the refund can be made to the court, upon this payment to the court the marriage is deemed ended. However, this opinion does not negative the fact that the bride price import a sense of commercialization and being requested for or being returned means the goods(wife) is no longer needed.

He also highlighted how the Matrimonial Causes Act introduced the breakdown principle while at the same time retaining the element of offence principle.³¹

Dr. Maurice also opined that,

“It has been argued however that section 16(1) MCA is not exhaustive of the various behaviors or conduct that is likely to qualify under section 15(2)(c). Indeed, such behaviors as offensive as snoring while sleeping, offensive dirtiness, other sexual depravities as masturbation leading to lack of interest in sexual intercourse, persistent use of condoms during coitus, constant and noticeable alienation to identify with the

³⁰ Ibid.

³¹ Ibid.

petitioner in the public, total failure of domestic manageriality, etc. to the extent these can affect the relationship in the marriage, to the extent the petitioner cannot be reasonably expected to put up with any or a combination of these factors can qualify under S.15(2)(c) ”³².

He expresses the broad nature of section 15(2)MCA, according to him the various unreasonable behaviors could fit into this section. He looked at this section and tried to interpret it as the court would, however, this does not dispute or alter the fact that this creates a room for uncertainty as the law is in itself ambiguous. This section leaves a room for discretionary powers and judicial uncertainty. This research will provide the reasons why this section should be nonexistent.

Overall, the literature reveals a general consensus among scholars that although Nigerian law provides multiple grounds for the dissolution of marriage under the statutory and customary law, these grounds are not unified creating a huge vacuum especially at the customary dissolution.

While the statutory concept of irretrievable breakdown is theoretically broad, its application is constrained by procedural requirements and fault-based elements. Similarly, customary law grounds, though diverse, suffer from lack of uniformity and inadequate legal safeguards.

Scholars opined that the two legal systems lack uniformity and creating walls apart between the statutory and customary dissolution of marriage. The prevailing scholarly view is therefore that the current legal framework requires clarification, reform, and harmonization in order to adequately reflect contemporary social realities and ensure justice for parties seeking dissolution of marriage.

³² M O Izunna, ‘Divorce in Nigerian statutory and customary marriages: a comparative critique of grounds, procedures and reliefs attaching thereto’ (2015) *peak journal of Social Sciences and Humanities* 77-83.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Classification

2.1.1 Definition of Marriage under Nigerian law

Marriage denotes an agreement to marry and the act of being married. It is the ceremony that brings two individuals together as well as the state of being married.³³ The concept of marriage in Nigeria is multi-faceted, this is because of the plural legal system in the country. It can be contracted in different forms: statutory marriage, customary or Islamic marriage.

A statutory marriage is monogamous and it is governed by the Marriage Act and the Matrimonial Causes Act. It involves a voluntary union for life of one man and one woman to the exclusion of all others.³⁴ A customary marriage is one conducted according to the customs of an ethnic community which does not exclude all others, thus, polygamous. An Islamic marriage similarly follows Islamic law (Sharia) principles and it is potentially polygamous (up to four wives) with religious rites.³⁵

According to Wimalasena,³⁶ marriage is a socially and legally recognised union between a man and a woman which creates rights and duties between the spouses and, traditionally, in relation to children born of the union. The article also presents marriage as a physical, moral, social, legal

³³ Black Law Dictionary (8th ed, 2004, West publishing Co) 992.

³⁴ *Hyde v hyde* (1866) LR 1 P & D 130.

³⁵ E.I. Nwogugu (n 1)

³⁶ N A Wimalasena, 'An Analytical Study of Definitions of the Term "Marriage"' *International Journal of Humanities and Social Science* [2016] (6)(1) 166–174.

and sometimes religious institution that forms the basis of the family and regulates conjugal, parental and kinship relationships.

2.1.2 Types of Marriage in Nigeria.

Following the multifaceted nature of marriage in Nigeria, there are different types of marriages such as the Statutory marriage, customary marriage and the same sex marriage.

2.1.2.1. Statutory marriage

Statutory marriage which is otherwise referred to as monogamous marriage is defined as the voluntary and lasting union of one man and one woman, explicitly prohibiting any additional partners³⁷. This definition encompasses three significant elements that merit further examination.

Firstly, the marriage must arise from a ‘voluntary’ agreement. This stipulates that both individuals must provide authentic and un-coerced consent to enter into the union. Any presence of coercion, undue influence, or deceit would invalidate the agreement, rendering it ineffective.

Secondly, the notion of a lifelong commitment is crucial. This does not imply that the marriage is incapable of dissolution; rather, it indicates that at the time of entering the marriage, both parties intend for it to be a lifelong bond unless legally terminated.

Thirdly, the marriage must consist exclusively of one man and one woman. This requirement reinforces the principle of monogamy, indicating that neither partner may engage in additional marital relationships while the marriage remains valid.

³⁷ *Hyde v hyde* (1866) LR 1 P & D 130.

The Interpretation Act 1964³⁸, defines a monogamous marriage as "a marriage that is recognized by the jurisdiction where it is contracted as a voluntary union of a women and a man to the exclusion of all others throughout the duration of the marriage."

The Marriage Act³⁹ is the primary legislation that provides for the celebration of marriage in Nigeria. For a marriage to be valid under this act, certain factors will be considered. These factors include; the age of the parties as the act requires a written consent of either the parents or guardian where such person is under the age 21, consent of the parties, prohibited degree of affinity and consanguinity, and the sanity of both parties.⁴⁰

2.1.2.2. Customary Marriage

Customary Marriage can also be referred to as Traditional Marriage. It is the marriage according to the Custom or Native Law of a particular society which could be the custom of the bride's community or ethnic group where the customary Marriage is observed. The Supreme Court in *Olowu v Olowu*⁴¹ acknowledges the validity of customary marriage where the necessary requirements of the native law and customs are met.⁴² Customary marriage is polygamous in nature thus making it a polygamous marriage. Customary marriage usually involves a man forming a lifelong bond with multiple wives voluntarily. The key characteristic of this arrangement is the husband's unlimited capacity to marry additional wives, constrained only by his resources rather than by legal regulations. Even if he has only one wife at present, the fundamental nature of the marriage remains the same as long as he has the potential to take more wives into his union. In this

³⁸ No.1 of 1964 section 18.

³⁹ Marriage Act Cap M6 LFN 2004.

⁴⁰ Ibid, s 18 & 33 and Matrimonial Causes Act, s 3(1).

⁴¹ (1985) 3 NWLR (pt 13) 372.

⁴² Ibid.

traditional structure, there is generally no limit on the number of wives a husband may have, with restrictions typically influenced by his financial means and prosperity. This situation inherently relies on his wealth⁴³.

In Nigeria, customary marriage is firmly entrenched within the framework of customary law, acting as an institution that influences personal relationships. It is crucial to recognize that Nigeria is not governed by a single, consistent customary law; instead, the term "customary law" refers to a diverse array of legal systems that can vary significantly from one community to another. This body of law has three distinct characteristics: it is mostly unwritten, it must represent the commonly accepted practices and traditions of the specific community it serves 'mirror of accepted usage'⁴⁴, and it is inherently flexible, evolving to adapt to the changing norms and values of society over time⁴⁵.

In Nigeria, the term customary marriage generally includes the Islamic marriage. An Islamic marriage or nikah is a sacred covenant (mithaq ghalith) between a man and a woman. It is believed that marriage is highly recommended by Allah as it is provided for in (Quaran 24:32).⁴⁶ The marriage needs to be solemnized by mallam in the presence of at least two upright muslim witnesses. There must also be a recital of the marriage for it to be valid, this recital is made by the bride or her guardian.

⁴³ Under Islamic Law, which is also customary law, a man may take not more than four wives.

⁴⁴ *Owonyin v Omotosho* (1961) ALL NLR 304, 307.

⁴⁵ Osborne, CJ, in *Lewis v Bankole* [1909]1 NLR.81, 101.

⁴⁶ Shabina Khalifa, '*the Law of Marriage in Islam*'

<https://www.researchgate.net/publication/386893585_The_Law_of_Marriage_in_Islam>accessed 6 June, 2026.

The condition for a valid marriage is that it cannot be against Islamic principles, the bride and groom must be of sound mind and must have attained puberty, there shall also be a proposal and acceptance and an agreement on payment of dower.⁴⁷

The 'mehr' or dowry is very Important to this marriage. According to the Holy Quran, the mehr is given as a free gift from the groom to the wife at the time of contracting the marriage.

2.1.2.3. Same-sex marriage

In Nigeria, there has been a rising interest in same-sex relationships. This group of people identify under the umbrella of LGBTQ. Same-sex marriage is defined as the ceremonial union of two people of the same sex, a marriage or marriage-like relationship between two men or two women. Marriage between two men or two women who are of the same sex is known as same-sex marriage.⁴⁸ Homosexuality develops when sexual attraction is focused on people of similar sex. Those who support same-sex marriage argue that the freedom of association that is provided constitutionally and by other international human rights agreements also includes the right to relate, cohabit, and be married.⁴⁹ They contend that because homosexuality is genetically built in some people's DNA, they should not face prejudice.⁵⁰ In Islam, (A religion practiced by some Nigerians), the concept of marriage (nikah) between male and female is consistent throughout the Quran. Other forms of sexual relationships, including adultery, pre-marital, and same-sex partnerships, are forbidden by Allah's kindness and the Divine wisdom in creation.⁵¹ African

⁴⁷ Ibid.

⁴⁸ Bryan A. Garner, Black's Law Dictionary, (9th Edition USA Thomas Reuters 2004).

⁴⁹ B I Adigwe and P I Gasiokwu, 'An overview of the Laws on same-sex marriage' international journal of law, justice and jurisprudence 2024 (4(1))180-184

<<https://www.lawjournal.info/article/106/4-1-34-396.pdf>> accessed 12 April 2026.

⁵⁰ Ibid.

⁵¹ The Nature of Marriage:

<[https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction_to_Sociology/Sociology_\(boundless\)>](https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction_to_Sociology/Sociology_(boundless)>).

Traditional religion has no place for homosexuality. The idea of homosexuality nags at Africans' consciences. It is regarded as a fundamentally crucial benefit for the community to raise children and contribute to a lineage. In this approach, heterosexual sex becomes a moral obligation for biological reproduction.

Homosexuality was already unlawful and criminalized under the criminal code in Nigeria. Sections 214, 215, and 217 of the Criminal Code already prohibit same-sex sexual relations.⁵² Section 214 of the Criminal Code Act states that anyone who (1) engages in sexual relations with someone else in an unnatural order, (2) engages in carnal contact with an animal, or (3) enables a male to engage in carnal contact with him or her in contravention of nature's order commit a felony and faces a fourteen-year jail sentence. Section 215 of the Criminal Code Act [29] States that anyone who attempts to commit any one of the crimes listed in the last section before this one commits a felony and faces a seven-year jail sentence. Without a warrant, the offender cannot be arrested.

According to Section 217 of the Criminal Code Act, any male who engages in any grossly indecent act with another man, publicly or privately, or encourages another male to engage in such an act with him, or attempts to entice another male to engage in such an act with himself or with another male, whether in public or private, commits a felony and liable to a three-year prison sentence. Without a warrant, the perpetrator cannot be arrested. This sections proves without doubt, from time immemorial that homosexuality has been criminalized in Nigeria.

In January 2014, the Same-Sex Prohibition Act of Nigeria 2013 was assented by the then president, Dr. Goodluck Jonathan. The Act prohibits a marriage or Civil Union between persons of the same sex. Also, a Same-Sex Marriage or Civil Union entered outside Nigeria is void in

⁵² Criminal Code Act, Cap C38 Law of Federation of Nigeria:c2004.

Nigeria and unenforceable.⁵³ The Act prohibits the performance of a same-sex marriage in a church, mosque or any place of worship in Nigeria.⁵⁴

Under the Act, a legitimate marriage in Nigeria must be one contracted between a man and a woman.⁵⁵

A 14-year prison term awaits anyone who enters a same-sex marriage contract or civil union under the law.⁵⁶

As was stated above, African Native law and custom abhor homosexuality. But there is a custom prevalent in some parts of Nigeria where a woman who cannot bear children can “marry” a prolific woman to bear kids for her. Under this arrangement, a man comes to sleep with the prolific woman with the understanding that the children that result from this arrangement belong to the woman who married the prolific woman. *In Odigie v. Aika*,⁵⁷ Hon. Justice Ohiwerei held that the Ishan custom, whereby a childless woman can marry another woman to bear issues for her is regarded as being repugnant to natural justice, equity, and good conscience and therefore unenforceable.

2.1.3. Annulment of marriage

In Nigeria, a marriage can be deemed legally void through the court procedure known as annulment. A marriage that is legally invalid could be compared to a structure with a seriously flawed foundation. The marriage was either void from the beginning or voidable and successfully contested, according to the court's decree of nullity.

⁵³ Section 1(2) Same-sex Prohibition Act 2013.

⁵⁴ Section 2(1) *ibid*.

⁵⁵ Section 3, *ibid*.

⁵⁶ Section 5(1) *ibid*.

⁵⁷ (suit no 4/24A/79, High Court of Bendel State, Ubiaja Judicial Division, 1985) (unreported).

“A petition under this Act for nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the petitioner.”⁵⁸

A marriage is void under Nigerian law where it is invalid from the outset. The defect goes to the root of the marriage and renders it incapable of producing a lawful union. A marriage is voidable where it is presumed valid unless and until it is annulled by a court. Unlike a void marriage, a voidable marriage remains legally effective until successfully challenged.

2.1.4. Dissolution of Marriage

Dissolution is conceived as the legal act of separating the legal rights and liabilities of a valid and subsisting marital union. It is a formal, legal ending of a marriage. It signifies the formal severance of the legal rights and obligations arising from marriage, including cohabitation, consortium, inheritance rights, and spousal duties.⁵⁹ In Nigerian law, the concept of dissolution works differently across statutory and customary marriage unions due to the plural character of the legal system. Dissolving a marriage does not mean nullifying it, as is done in annulments; instead, it signifies the end of the marital relationship between the parties involved. In societies that practice monogamy, this dissolution permits both former partners to remarry. In regions where polygamy is allowed, it allows the former wife to enter into another marriage.

2.1.3.1. Dissolution under the act

The dissolution of marriage contracted pursuant to Nigeria Marriage Act is guided by the Matrimonial Causes Act.⁶⁰ The formal, legal ending of a marriage or marital partnership by a

⁵⁸ Matrimonial Causes Act Cap M7 LFN 2004 s 34.

⁵⁹ I O Agbede, *Themes on Nigerian Family Law* (Shaneson 1992) 102.

⁶⁰ *Bibilari v Bibilari* (2011) 13 NWLR (Part 1264) 207 CA.

court of law is known as a dissolution of marriage. It is also known as divorce. Also, it is seen as the total dissolution of the marriage connection, which is accomplished by a court order or decree separating a husband and wife. Under the Matrimonial Causes Act, there is only 1 ground for the dissolution of marriage contracted under the Act. It is embedded in Section 15(1), the sole ground is that “*the marriage has broken down irretrievably.*”⁶¹ However, the Act also provides facts which would convince the court that the marriage has broken down irretrievably.⁶²

The concept of irretrievable broken down of marriage

The principle of irretrievable breakdown enables the court to look at the general failure of the marital relationship and not merely the misconducts of an individual party.⁶³ But despite the legal basis of divorce on irretrievable breakdown, the Act demands that the petitioner prove one or more specific facts that should show that the marriage has broken down beyond repair. These are the facts that are established in section 15(2) of the Matrimonial Causes Act.⁶⁴ The presence of any one of these facts will be considered as evidence that the marital relationship is no more sustainable.

The petitioner who desires that the marriage be dissolved has the onus of proving that any of the statutory facts has been proven. The court needs to be convinced using the evidence provided that the marriage has actually broken down and that there is no justifiable chance of the parties reconciling. Among the statutory facts that can prove irreparable breakdown of marriage are wilful

⁶¹ Matrimonial Causes Act Cap M7 LFN 2004 s 15(1)

⁶² Ibid, s 15(2)

⁶³ A B Kasunmu and J W Salacuse, *Nigerian Family Law* (Butterworths 1966) 118.

⁶⁴ Ibid, s 15(2).

and persistent refusal to consummate the marriage, adultery, desertion, intolerable behaviour, living apart, failure to obey a decree of restitution of conjugal rights and presumption of death.

(a) Wilful and Persistent Refusal to Consummate Marriage

A marriage will break down irretrievably if there is prove that the marriage has not been consummated, meaning that a party to the marriage has wilfully and persistently refused to consummate the marriage.⁶⁵ The wilful and persistent qualifies the refusal, the party has deliberately refused to have sexual intercourse with the spouse despite several request and attempts. The court must be satisfied by the Petitioner that the consummation of the marriage has not taken place before the commencement of the petition. Lord Jowitt explained the phrase as a settled and definite decision reached without just excuse and in determining whether there has been such a refusal, the judge should have regard to the history of the marriage.⁶⁶ It is pertinent to note that there must be a request, in *Owobiyi v Owobiyi*⁶⁷ the court held that there had not been a request, implied or direct.

(b) Respondent's adultery and Petitioner finding it Intolerable

Adultery is one of the most widely used facts to base on the petitions of dissolution of the statutory marriages in Nigeria. The Matrimonial Causes Act of 1970, section 15(2)(b) states that a marriage can be ended in a case where the respondent has engaged in adultery, and the petitioner cannot bear to cohabit with him or her.⁶⁸ In matrimonial law adultery is defined as a willful sex between

⁶⁵ Matrimonial Causes Act, section 15(2)(a).

⁶⁶ *Horton V Horton* (1947) 2All ER 736. 744

⁶⁷ (1965) 2 All NLR 200

⁶⁸ Matrimonial Causes Act 2004, s 15(2)(a).

a married individual and another individual who is not his or her spouse. The law identifies adultery to be one of the grave sins which is a breach of marital fidelity and trust between spouses. Therefore, in a case where adultery is proved and the petitioner cannot be reasonably supposed to live with the respondent anymore, the court will be in a position to issue a decree of divorce.

In *Nanna v Nanna*, it was stressed that substantial evidence has to be brought on that the behavior of the respondent was adulterous, failure to which, a decree of dissolution will not be granted.⁶⁹ Although adultery is known to be a ground of divorce, it does not necessarily end a marriage. The petitioner still has to prove to the court that it is inconceivable to reconcile the marriages and that the existence of the marriage will be unreasonable in the situation.⁷⁰

(c) Spouse's intolerable behaviour

A court may hold that the marriage has broken down irretrievably, if that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. Section 15(2)(c) of the Matrimonial Causes Act that a marriage can be dissolved in case the respondent has acted in a manner such that the petitioner cannot safely or reasonably be expected to cohabit with him or her.⁷¹ This can be proven relying on the provisions of section 16⁷² although not exhaustive. This is an acknowledgement that the behaviour of one partner in a marriage can make it unbearable to live with him or her. The contemporary legal practices have acknowledged that the psychological abuse, continual humiliation and other means of emotional anguish could also represent intolerable behaviour when they render it tedious to live

⁶⁹ *Nanna v Nanna* (2006) 3 NWLR (Pt 966) 1.

⁷⁰ C O Amucheazi and F A Nwodo, 'A Critical Appraisal of the Principle of Divorce in Nigeria under the Matrimonial Causes Act 1970' *International Journal of Innovative Legal and Political Studies*, (2022) 9(3).

⁷¹ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(c).

⁷² *Ibid*.

together.⁷³ The issue of intolerable behaviour is highly determined by the facts and the circumstances of individual cases.

(d) Desertion for atleast 1 year

Another statutory fact that can create the irretrievable breakdown of a marriage is desertion. In section 15(2)(d) of the Matrimonial Causes Act, a marriage can be dissolved where the petitioner has been deserted by the respondent throughout a period that is at least one year before presentation of the petition.⁷⁴ Desertion happens when either spouse leaves the other without reasons and with no plans of coming back to the matrimonial home. It entails the physical separation of the parties as well as the desire of the deserting spouse to end permanently cohabitation.⁷⁵

In order to have desertion as a valid ground to divorce, there are several elements that have to be put in place. To begin with, the respondent must cease cohabiting. Second, the withdrawal should be done against the wishes of the petitioner. Third, the abandoning spouse should not have any reasonable cause to abandon the matrimonial home.⁷⁶

Along with these factors, the desertion has to be persistent to the statutory period of at least one year prior to filing a petition to have the divorce. This is needed so that cases of temporary disagreement or temporary separation of marriages of the spouses do not automatically result in the dissolution of the marriage.⁷⁷ The intention to desert has been pointed out as a key in the determination of whether desertion has been established or not, according to the courts. In circumstances where a spouse leaves the matrimonial home due to valid reasons like domestic

⁷³ Akinola Aguda, *Principles of Nigerian Family Law* (Heinemann Educational Books 1986) 198.

⁷⁴ Matrimonial Causes Act 2004, s 15(2)(d).

⁷⁵ N Beri, 'Analyzing 'Irretrievable Breakdown of Marriage' as a Separate Ground for Divorce under Hindu Law' (2020) *International Journal of Legal Developments and Applied Issues*, 6(6) 40.

⁷⁶ E. I. Nwogugu, (n 1)

⁷⁷ S N Obi, *The Manual Customary Laws obtained in Anambra and Imo States* (Enugu, Government Printer, 1977), p. 299

violence or gross misconduct on the part of the other spouse, such absence may not be desertion legally.⁷⁸ The courts in Nigeria have dealt with the issue of desertion on a number of cases. In the *Williams v Williams* case, the court said that desertion entails the unfair termination of matrimonial duty with the view that one wants to terminate the cohabitation permanently.⁷⁹ The fact that desertion has been listed as a ground of divorce indicates the value that marriage involves the constant presence and companionship of the two partners. When one of the partners abandons the other without adequate reasons over an extended time, the law acknowledges the fact that the marital union has failed.⁸⁰

(e) Living Apart for Two Years with Consent

The other fact that could prove a final unending loss of marriage would be the cases in which the parties have been apart for two consecutive years and the respondent agrees to the marriage being ended. This is stated in section 15(2) (e) in Matrimonial Causes Act. This reason is in divorce acknowledging the fact that long separation between the husband and wife may indicate that the matrimonial relationship has actually ceased .

To be successful in this ground, there are two important elements that have to be put in place. To begin with, the parties should have been living separately during the last two years before the petition is presented. Second, the respondent should agree to the issue of granting the decree of dissolution.⁸¹ The consent requirement separates this ground of separation by others provided under the Act.

⁷⁸ P A Talbot, *Life in Southern Nigeria* (London, Butterworth & Co., 1964/0, p. 211

⁷⁹ *Williams v Williams* (1987) 2 NWLR (Pt 54) 66.

⁸⁰ *Adesubukan v Yinusa* (1971) NWLR 77

⁸¹ *Ibid.*

The Nigerian courts have realised that marital cohabitations are not the only ways in which spouses can be regarded as living apart when they are in the same residence as long as they have stopped having marital relationships and no longer share households. The mutuality in the separation is shown by the necessity of consent. In the event that the two involved parties are in agreement that the marriage is over, the law enables them to formalise the divorce without necessarily having to establish matrimonial misconduct. This is thus the introduction of an element of consensual divorce into the Nigerian matrimonial system.⁸²

According to legal scholars, this divorce reason has been more pragmatic in reflecting the view of matrimonial breakdown since not every failed marriage entails misconduct on the part of either of the spouses. In such a case, the enactment of the marriage where the parties agreed to their dissolution would create fairness and less hostility in a divorce process.⁸³

(f) Living Apart for Three Years without Consent

Under section 15(2) (f) of the Matrimonial Causes Act, a marriage can also be dissolved when the parties have been living apart at a mutual time of not less than 3 years just before the petition is presented.⁸⁴ In this case, the respondent does not need consent as was the case before.

This reason of divorce acknowledges that the long separation between the husband and the wife can be the sufficient evidence that the marriage is failed irreparably. In instances where the spouses have been living separately over an extended time, it might not be realistic to suppose that the marital relationship can be resumed. The legal definition of living apart is more associated with the disintegration of marital cohabitation and not the distance. The courts review the question of

⁸² *ibid.*

⁸³ A O Ojukwu, 'Reforming Divorce Law in Nigeria' (2018) 7 *Nigerian Juridical Review* 88.

⁸⁴ Matrimonial Causes Act 2004, s 15(2)(f).

whether the spouses no longer act as a married couple and whether they have some real possibility of reuniting.⁸⁵ In deciding the duration that the parties have been separated, the court takes into account the continuity of the separation and the events that led to the separation. There can be interruption of the separation phase with temporary reconciliation in case the parties really go back to living as a family.⁸⁶ This is a prerequisite provision in the Matrimonial Causes Act since it was appreciated that one cannot maintain a marriage by force of the law in circumstances where the emotional and practical relationship between the two spouses is totally destroyed. By allowing divorce after prolonged separation, the law acknowledges the reality that some marriages may end without any single identifiable act of misconduct.

(g) Non-Compliance with a Decree of Restitution of Conjugal Rights

Failure by either partner to honor a decree of restitution of conjugal rights may also show that a marriage is permanently broken. This is given under section 15(2) (g) of the Matrimonial Causes Act.⁸⁷ A decree of restitution of conjugal rights is a court order that instructs a spouse who has left marital home without any good reason to reunite with the other spouse. But in the event that one of the parties takes it upon himself to continue acting in defiance of such a decree within a span of no less than 1 year, the law assumes that the marriage has already failed. In this case, the hurting spouse can use the non-conformity as an element of irretrievable breakdown of the marriage.⁸⁸ The petitioner should prove that the court had previously granted restitution of conjugal rights and the respondent had disobeyed the order knowingly.

⁸⁵ Andreas Rahmatian, 'Termination of Marriage in Nigerian Family Law: The Need for Reform and the Relevance of the Tanzanian Experience' (1996) 10 *International Journal of Law and Policy and Family* 281,290

⁸⁶ Ibid.

⁸⁷ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(g).

⁸⁸ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Plc 2014) 257.

In *Okonkwo v Okonkwo*, the court decided that repeated refusal to comply with a decree of restitution of conjugal rights gave sufficient evidence that the marriage was beyond repair.⁸⁹ Likewise, in *Ibeabuchi v Ibeabuchi*, the court found that the refusal by one spouse to resume matrimonial cohabitation after a court order is a sufficient indication that the marriage had failed.⁹⁰ The rationale behind this provision is the fact that marriage cannot be maintained where one of the parties continues to deny engaging in the marriage relationship despite judicial intervention.⁹¹

(h) Presumption of Death

The last fact identified under Matrimonial Causes Act as irretrievable breakdown of marriage is the presumption of death of a spouse. Section 15(2) (h) states that a marriage can be dissolved when either of the parties to the marriage has been absent to such an extent that the party can reasonably be judged to be dead.⁹² According to the Nigerian law, an individual is deemed dead when it has not been heard in a succession of at least seven years by individuals who should have ordinarily heard the person in case of his or her death.

The logic behind this is to avoid a scenario where one of the parties in a marriage is held hostage as the other party goes missing and may not be coming back any time soon. In such a case, the law gives the other spouse power to petition a decree of divorce so that he or she can continue with his/her life.

In *Nwosu v Nwosu*, the court determined that the long absence of a spouse, without any form of communication to the other spouse over a period of seven years, constituted a legal presumption

⁸⁹ *Okonkwo v Okonkwo* (1998) 10 NWLR (Pt 571) 554.

⁹⁰ *Ibeabuchi v Ibeabuchi* (2001) 17 NWLR (Pt 743) 435.

⁹¹ Akinola Aguda, *Principles of Nigerian Family Law* (Heinemann Educational Books 1986) 212.

⁹² Matrimonial Causes Act 2004, s 15(2)(h).

of death enough to allow the court to grant a decree of dissolution.⁹³ Similarly, in *Ogbole v Ogbole*, the court held that where there was credible evidence that the spouse is no longer heard after a duration of seven years the court may grant a decree of dissolution on the basis of an implied death.⁹⁴

The court though demands compelling proof that there has been sincere efforts to find the lost spouse. This kind of evidence can be a witness whose testified that the missing individual has not been seen or heard in the past few months or years, etc.⁹⁵ The court may order a decree of dissolution of marriage where it is contented that the conditions warrant the presumption of death. This is to make sure that the law is not too practical and receptive to circumstances where the stability of the marriage is no longer possible because of the inexplicable disappearance of one partner.⁹⁶

When a petitioner has proven any of the above, the court will be urged to issue a decree of dissolution of marriage.

2.1.3.2. Dissolution under Customary law

A marriage contracted under customary law can be dissolved either through judicial or non-judicial means. The judicial dissolution is done simply by going to court of competent jurisdiction which is the customary court or area court. The non-judicial or extra-judicial entails a dissolution outside the confines of the court.

⁹³ *Nwosu v Nwosu* (2003) 4 NWLR (Pt 809) 347.

⁹⁴ *Ogbole v Ogbole* (2006) 6 NWLR (Pt 977) 545.

⁹⁵ B E Oniha "Dissolution of Marriage and Custody of Children under Customary Law in Nigeria" *Edo State Judiciary Publication* 2017

⁹⁶ A O Ojukwu, 'Reforming Divorce Law in Nigeria' (2018) 7 *Nigerian Juridical Review* 90.

In the Nigerian customary marriage, marriage is more of a union between two families than two individuals.⁹⁷ The breaking up of such marriages hence does not only affect the spouses but also their own families.

There are technically no grounds for dissolution under customary law, it emphasizes on the fact that the marriage has broken down irretrievably. However, a party's fault may be relevant in determining when the bride price is repayable.⁹⁸

The flexibility of the customary law is a representation of the collectivism of the pre-colonial marriage institutions in Africa where reconciliation and family mediation can be sought before dissolution is made.⁹⁹

Under the Nigerian customary law some facts can be seen to be common within communities. Some common grounds for termination of customary marriages in most societies in Nigeria include the following:

(a) Irreconcilable differences

Various acts which amount to a misconduct on the part of either of the spouses may give rise to differences that are grievous enough that all attempts to resolve it proved abortive. Any or all of the other grounds enumerated herein-under may, either acting alone or in combination with other grievances, be sufficient to generate such differences that make it impossible for the couples to live together as husband and wife. For instance, adultery can on its own generate differences between couples that become irreconcilable enough to lead to the demise of customary marriage.

⁹⁷ Chinwuba Obi, S, N, 'Modern Family Law in Southern Nigeria' London, weat & Maxwell, 1966, 155.

⁹⁸ E I Nwogugu, (n 1).

⁹⁹ T O Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 178.

(b) Abandonment or Desertion

Any form of desertion of the marriage by either party to a customary marriage entitles the other party to seek the termination of the marriage. According to Nwogugu,¹⁰⁰ desertion under customary law does not require separation for any specific period. Desertion by a husband is very rare, and almost unknown to customary law, as a man cannot leave his family simply because of the behavior of the wife. This view no longer holds true in modern societies in view of the fact that nowadays, men have been known to desert their wives in pursuit of the pleasure of another woman or women or some are simply fleeing from the aggression, violence, intolerance, threats etc of their wives. Once it is established therefore, that a man or woman in a customary marriage has unreasonably abandoned the matrimonial home without an intention of returning, this will form a veritable ground for terminating the marriage. The court has no power to compel a deserting party to return to the marriage because, “An attempt to do so will be an infringement of the Constitutional rights of the deserting party. This was the decision of the court in *Egri v Uperi*¹⁰¹

(c) Adultery

A very common highly contentious ground for dissolution of customary law marriage is the ground of adultery. Under customary law, when adultery is committed by a man, this is generally not a viable ground to premise an application or request for termination of marriage.

This is so because, under customary law, a man is entitled to more than one wife, given the

¹⁰⁰ E I Nwogugu, (n 1).

¹⁰¹ (1974) E.C.S.L.R.632

polygamous complexion of the marriage. Therefore, even if a man is caught in the act of adultery, it is common for such a man to either claim to want to marry the woman, actively laying the foundation to do so or marry her outright. A man is therefore entitled under customary law to be unfaithful to the wife or wives. But conversely, under customary law, where a woman is caught in the act of adultery, her husband is entitled to promptly seek the termination of the marriage. In most communities, the belief is that any condonation of adultery by a man of his wife's adultery will result in either his death or that of the children of the marriage. In *Loye v Loye*,¹⁰² the marriage between the couples was dissolved on grounds of adultery.

Margaret C. Onokah,¹⁰³ argued that the above position under customary marriage law calls for statutory reforms in consonance with the position in an Act Marriage; that is to say that any extra-marital relations should be grounds for divorce so that a customary law wife could divorce her husband for his adultery or, that adultery by either party should not constitute a fact or ground for divorce, especially so in the case of a wife whose adultery did not result in pregnancy. This view does not take cognizance of the peculiar fact that customary law derives its source from the customs and usages of the people and is indeed reflective as a, "mirror of accepted usages." Therefore, polygamy being an integral part of customary marriages in most African Societies, adultery on the part of a man, as have been stated above, does not draw the same revulsion as that of a woman.

(d) Lack of maintenance, Cruelty or ill-treatment of either party

¹⁰² (1981) O.Y.S.H.C.L.R.140.

¹⁰³ M.C. Onokah, 'Family Law' (Spectrum Books Ltd, Ibadan, 2012) 172.

Under customary law, a man is under a legal obligation to provide his wife and children with the necessities of life such as food, shelter, clothing, medicare etc. The customary law wife could seek to terminate her marriage if the husband is unable or unwilling to perform any of his forgoing duties of maintenance towards her or their children. The same can also be said where either party is guilty of cruel or ill treatment. In *Adeyemi v Adeyemi*,¹⁰⁴ a husband obtained divorce after proof of cruelty of the wife which the court described as, “stranger than fiction.”

(e) Impotence or Sterility

Impotence on the part of a man or sterility (inability to procreate) of either spouse is a very potent ground for dissolution of customary marriage. This is because most African societies place high premium on procreation of children as the main reason or at least one of the main reasons for contracting a marriage.

(f) Other General Grounds

Other general grounds for dissolution of customary marriage include, Insanity, leprosy or other life threatening diseases, failure or inability to consummate the marriage, lack of respect; fetish practices or witchcraft etc. It is impressive that there has been statutory intervention in the area of a customary marriage, divorce and custody of children. For instance, the Marriage, Divorce and Custody of Children Adoptive by-laws Order¹⁰⁵ applicable to the States of Ogun, Oyo, Ondo, Osun and Defunct Bendel State (now Edo and Delta States) contains elaborate provisions on these areas. Under the By- Laws Order, local government authorities are authorized to adopt these rules as they

¹⁰⁴ Unreported, (suit No: MD/361A/1980).

¹⁰⁵ (1958) W.R.N.L.456.

wish, with modifications in certain cases. The vast majority of local government authorities in the old Western region took advantage of this provision and adopted the By-laws with little or no modification.¹⁰⁶ In relation to grounds for dissolution of marriage under customary law, which have been considered here, the law provides that, the following matters shall be taken into consideration by a customary court when making an order for the dissolution of any marriage.¹⁰⁷

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) Veneral disease contracted by either party.

¹⁰⁶ Sagay, I, 'Nigerian Family Law, Principles, Cases, Statutes and Commentaries,' Malthouse Press Ltd, Ikeja, (1999) 799.

¹⁰⁷ Marriage, Divorce and Custody of Children Adoptive by-laws, s 7.

(h) Lunacy of either party for three years or more.

(i) Adultery.

(j) Leprosy contracted by either party.

(k) Desertion for a period of two years or more.

The section also contains a proviso that no order for divorce shall be made in respect of an application made by a wife who is nursing a child under three years of age or who has three children or more by the husband unless the court is satisfied that there are special ground for making the order, where upon the reasons shall be recorded in the record of proceedings.

Similarly, section 14 of the Local Government (Declaration of Tiv Customary Marriage Law) Order 1985¹⁰⁸ stipulates the following grounds for dissolution of customary marriage: ill-treatment or cruelty, impotence of the husband, insanity, incompatibility, contagious leprosy disease, adultery, such that the petitioner has neither condoned nor forgiven, separation of parties, or desertion by one of them, for a period of not less than one year, and for any reason other than the above, and such that the parties can no longer be expected to live together as husband and wife.

Return of bride price is one of the most critical conditions that signify official end of marital relationship between the partners.¹⁰⁹ The return of bride price in customary divorce has been stressed by the judicial authorities on numerous occasions. In *Okere v Akaluka*, the court had decided that the refund of bride price is a necessary part of the breakup of a customary

¹⁰⁸ BSLGN 1 of 1985, 12.

¹⁰⁹ A N Allott, *Essays in African Law* (Butterworths 1960) 142.

marriage in most of the Nigerian societies.¹¹⁰ In *Edet v Essien*, the court had noted that the absence of the refunding of bride price may still mean that a customary marriage exists.¹¹¹

Under the Dissolution of Islamic Marriage in Nigeria, there are three types of divorce recognized by the traditional Sharia Law.

a. Talaq

b. Divorce by mutual consent

c. Divorce by judicial decree

Talaq is the unilateral repudiation of the wife by the husband. There are two forms of divorce based on mutual consent. These are Khul and Musawa. Musawa is dissolution of marriage on the basis of return of outstanding financial commitments arising from the marriage relation. Khul or release is a mode of divorce under Sharia Law where there is aversion on the wife's part for her husband and the former leads her husband to consent to a dissolution in return of a compensation as in the case of *Husaina v Tsiriko*.¹¹² It is trite under Islamic Law that after either party to a marriage under that Law has obtained a judicial divorce, it becomes mandatory for the wife to observe a waiting period of three months known as the period of Iddah¹¹³, before the final severance of the marital ties between the parties. The Holy Koran prohibits a woman observing her Iddah from remarrying during that period. The 3 months period serves as a post-divorce reconciliation measure. The husband is under a duty in Islamic Law to maintain his wife observing Iddah.

¹¹⁰ *Okere v Akaluka* (1998) 2 NWLR (Pt 537) 328.

¹¹¹ *Edet v Essien* (1932) 11 NLR 47.

¹¹² (1997) 10 NWLR pt. 526 P 559.

¹¹³ *Mayaki v Ndagi* (1993) 3 NWLR (pt. 281) 313.

2.2 Theoretical Framework

2.2.1. Theories of Marriage

2.2.1.1 Functionalism Theory of Marriage and Divorce.

According to functionalism theory, representing the views of sociologists like Talcott Parsons, marriage is a type of social institution that maintains social order and stability. These functions are emotional support, economic cooperation, procreation, and socialisation of children. When the marriage stops maintaining the functions effectively, to restore the equilibrium in society, a process of divorce can be applied.¹¹⁴

Regarding the Nigerian legislation, the functionalist perspective is echoed in the statutory definition of irretrievable breakdown of marriage. Specifically, it is not necessary to demonstrate misconduct but only to show that the marital relationship has failed to serve its fundamental purposes. The enumerated facts noted in the section 15(2) of the MCA¹¹⁵ are merely indicators of the functional failure.

Customary law reflects functionalist principles in its own way. Grounds for dissolution such as infertility, persistent adultery, and failure to perform marital obligations are based on the inability of the marriage to achieve its expected social purposes. In many communities, the inability to bear children is considered a fundamental failure of the marital union, thereby justifying its termination. The statutory and customary systems hope to amend the functional nature of marriage before the dissolution option is adopted.

¹¹⁴ E Onyema, 'Family Mediation and Court-Connected ADR in Nigeria' (2015) 32 *Journal of International Arbitration* 411.

¹¹⁵ Matrimonial Causes Act, 2004.

2.2.1.2. “Double-Decker” Marriage

The theory of ‘double-decker’ marriage is founded on the phenomenon that couples who intend to contract a statutory marriage first marry under customary law. The term ‘double-decker’ is defined by Merriam-Webster Dictionary as something that is double-decked. Double-decker marriage involves celebration by the same couple of a marriage under one system and their subsequent marriage under another system.¹¹⁶ The double-decker marriage admits duality of mixed features. Contrary to the assumption that the features of customary marriage are wholly overtaken by the latter statutory marriage resulting in the customary marriage being spent by its effluxion and, thereby, becoming subsumed into the statutory marriage. The contraction of subsequent statutory marriage still leaves spouses with practices associated with the earlier customary marriage except the preclusion from importing the second wife into the home. Its monogamist’s features are sometimes an expression of hypocritical fallacy. Invariably, double-decker marriages could not conform to the practice of monogamy absolutely.¹¹⁷

This theory is seen from two sides, the conversion theory and the co-existence theory. The “conversion” theorists posit that, once couple who earlier contracted customary marriage undergoes a subsequent statutory marriage, the earlier customary marriage automatically converts its legality to a latter statutory marriage.¹¹⁸ In apparent opposition to the “conversion” theorists, the “coexistence” theorists posit that there are two marriages forming the double-decker marriage that both marriages, the customary marriage being the first and the latter statutory marriage, coexist and are each legal and valid. Termination of a double-decker marriage would demand that a

¹¹⁶ M C Onokah, ‘Family Law’ (Spectrum Books Ltd, Ibadan, 2012) 172.

¹¹⁷ Ojobo, s. ‘Judicial and Scholarship Dilemma in statutory and Customary Law Divorce in Nigeria’. Nigerian Law and Practice journal, 10 (2011).

¹¹⁸ *Odivo v Nweke Obor & Ors* (1973) ECSNLR 733

petition be brought to the High Court for dissolution of the statutory marriage while the customary court marriage would need be dissolved through the instrumentality of the customary court.¹¹⁹

2.2.13. Conflict Theory

Karl Marx is generally considered the foundational figure of social conflict theory, which views society including marriage and the family as a struggle for power, resources, and inequality.¹²⁰

Conflict theorists, examine domestic violence (spousal and child), sexual assault, marital rape, and incest and theorize how these disproportionate, violent acts against women and girls provide a home for sexism and violence that we see in society.

In general, conflict theorists tend to study areas of marriage and life that involve inequalities or discrepancies in power and authority, as they are reflective of the larger social structure. This theory goes further to show how conflicts of arise in dissolution of marriage, and inequality having a higher hand by subduing the weaker party.

2.2.1.4. Symbolic Interactionism Theory

Herbert Blumer is considered the primary propounder and coiner of the term “Symbolic Interactionism”. This theory considers the meaning of other elements of family: “parent” is a symbol of a biological and emotional connection to a child. However, with more parent-child relationships developing through adoption, remarriage, or a change in guardianship, the word

¹¹⁹ *Afonne v Afonne*, (1975) FSCSN 159.

¹²⁰ LibreText, ‘Theoretical perspectives on Marriage and family’<<https://socialsci.libretexts.org>>.

“parent” today is less likely to be associated with a biological connection than with whoever is socially recognized as having the responsibility for a child’s upbringing.¹²¹

Interactionists also recognize how the family status roles of each member are socially constructed, playing an important part in how people perceive and interpret social behavior. Interactionists view the family as a group of role players or “actors” that come together to act out their parts in an effort to construct a family. This symbolic interactionism shows that upon dissolution the marriage the shared meanings, roles, and communication with a relationship has broken down.

2.2.1.5 Realism theory

The realist school opined that law was nothing but the prophecies of what the court will do and nothing more pretentious.¹²²

Sir John Salmond expressed realism to be,

"Like positivism, theories of legal realism look on law as the expression of the will of the state, but see this as made through the medium of the courts. Like Austin, the realist looks on law as the command of the sovereign, but his sovereign is not Parliament but the judges; for the realist the sovereign is the court".

This theory of marriage dissolution creates a room for the Judge to determine what the law is. Therefore, a marriage can only be dissolved when the judge is convinced that it has followed the law (what he perceives the law to be). This theory of law encourages discretion of Judges which makes dissolution of marriage on certain grounds rigid.

¹²¹ Lumen Learning , ‘Theoretical Perspectives on Marriage and Family’<<https://courses.lumenlearning.com/wm-introductiontosociology/chapter/theoretical-perspectives-on-marriage-and-family/#:~:text=symbols%20and%20the,and%20ever%2Dchanging>> accessed 12th April 2026.

¹²² C C Wigwe, *jurisprudence and legal theory*, (Princeton & associates Publishing co. Ltd, 2nd edn, 2024)357.

2.2.2. Theories of Divorce

2.2.2.1. Matrimonial Offence theory or Fault theory

Michael Balint introduced the Basic Fault Theory, which emphasises how unresolved dependency issues from childhood can impede a person's ability to form strong, healthy relationships. These issues often arise from interactions with significant figures in their lives, particularly when care has been inadequate or harmful.¹²³ According to the 'fault theory,' a marriage can only be dissolved if one spouse has committed a matrimonial offence, and only the spouse who is not at fault can initiate the divorce. Before 1970, Nigeria's divorce laws followed this Matrimonial Offence Theory, allowing a marriage to be ended only if one partner was found guilty of actions like infidelity, mistreatment, or abandonment¹²⁴. This legal framework was shaped by English divorce laws that were adopted in Nigeria. The concept of matrimonial offenses in England has its roots in the old church courts, which originally had exclusive authority to annul marriages. When secular divorce laws were introduced in 1857, this principle persisted. A shift began in New Zealand¹²⁵ and spread to other Commonwealth nations, including Australia and England, moving away from the fault-based system.

2.2.2.2. Mutual Consent Theory

¹²³ D Corinne, 'International Dictionary of Psychoanalysis: Basic Fault', (2019), *Enyclopedia.com*.

¹²⁴ E I Nwogugu, (n 1).

¹²⁵ Divorce and Matrimonial Causes Act, 1920 and Matrimonial Proceedings Act, 1963

The mutual consent theory of marriage is most closely associated with the political philosopher John Locke.

Locke's conception of marriage was as a voluntary contract between a man and a woman, based on mutual consent, rather than an arrangement imposed by religion, family or the state. He saw it much like a contract. Both sides agree to enter into it and can in principle regulate the contract. This theory is propounded on the fact that the legally wedded husband and wife mutually agree to dissolve their marriage. This theory is seen to be made manifest in the Hindu Marriage Act section 13(b). This theory replaces the fault based theory as mutual consent eliminates fault. This theory can apply under the customary marriage but cannot under statutory marriage.

2.2.2.3. Irretrievable Breakdown theory

The law guarantee that people can properly end their legal marriage when it has become completely broken. When a marriage is clearly finished, the law's goal should be to help bring it to a respectful conclusion. This theory focuses on the breakdown of the relationship of the spouse rather than fault of parties. This theory applies where there is failure in the matrimonial relationship and no reasonable probability remains for the spouse to live as husband and wife¹²⁶

The concept originated in New Zealand, in 1921 through the historical decision in *Lodder v Lodder*.¹²⁷ In England, this theory gained traction with the Archbishop of Canterbury in 1964 appointing a group known as 'putting asunder' with the specific function to review the law of England on divorce, which was later reviewed by the English Law Commission. The commission rejected the proposal of breakdown theory by the 'putting asunder' group¹²⁸.

¹²⁶ Irretrievable Breakdown of Marriage <<https://www.drishti judiciary.com/current-affairs/irretrievable-breakdown-of-marriage>> accessed on 20th March, 2024.

¹²⁷ [1921] N.Z.L.R. 876 at 877.

¹²⁸ S C Ifemeje Contemporary issues in Nigeria Family Law (2008, Nolix publication) 45.

The Commission's findings suggested a compromise: a divorce system that primarily focuses on the idea of a broken marriage while still retaining some elements of the fault-based approach. In the Commission's opinion, a good divorce law should seek to achieve the following objectives:

1. To buttress, rather than to undermine, the stability of marriage; and
2. When, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.

This laid a foundation for the enactment of the English Reform Act of 1969, in the Act all grounds were abolished and a single ground 'that the marriage has broken down irretrievably' was adopted. The Nigerian legislation adopted this English Reform Act.

The Matrimonial Causes Act¹²⁹ allows either spouse to file for divorce, claiming that the marriage has irretrievably broken down. The Matrimonial Causes Act affirms to this theory, Section 15 (1) of the Matrimonial Causes Act of 1970 is widely seen as a key aim of this law, which identifies irretrievable breakdown as the sole reason for divorce in Nigeria¹³⁰. However, when this Act was first introduced, there was some confusion about whether it specified one single reason for divorce or multiple reasons. According to the breakdown theory, the person seeking the divorce only needs to provide any reason that the law considers valid for ending the marriage. The most common reason given is "irreconcilable differences" or the idea of an "irretrievable breakdown of the marriage," which means that the couple can no longer maintain a good relationship and that the chances of getting back together are extremely low.

¹²⁹Section 15(1) of MCA.

¹³⁰ M C Onokah, *Family Law*, (Spectrum Books Ltd, Ibadan, 2003) p.88.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE DISSOLUTION OF STATUTORY AND CUSTOMARY LAW MARRIAGES IN NIGERIA

3.1 Legal Framework Governing the Dissolution of Marriage in Nigeria

Nigeria operates a plural legal system and as such its dissolution is regulated by a complex legal framework. Marriage in Nigeria could be contracted either under the Statutory, Customary or Islamic Law. Consequently, the law governing Dissolution of marriage is dependent on the nature of marriage contracted.¹³¹ The statutory marriage is regulated by Legislations of the National Assembly while there are also customary and Islamic laws that govern marriage and its dissolution among people who enter the matrimonial agreements within the system. Customary law will apply to marriages that are done on the basis of the traditions and customs of the indigenous communities of Nigeria whereas Islamic law applies to marriages between Muslims in agreeing with the provisions of the Sharia.¹³²

3.1.1 Statutory Framework Governing the Dissolution of Marriage in Nigeria

¹³¹ E I Nwogugu, (n 1).

¹³² S Ifemeje, *Contemporary issues in Nigerian Family Law* (Nolix Educational Publications, 2008, Enugu) p.1

The legal basis of the dissolution of a marriage in Nigeria is mainly based on both laws passed by legislature in Nigeria and the constitutional provisions governing the court's jurisdiction. Such laws define the legal ground within which marriages can be dissolved and institutions that can adjudicate matrimonial disputes.¹³³ Pertaining to statutory marriages, its formation and dissolution is governed by the Marriage Act and Matrimonial Causes Act respectively. The Marriage Act regulates the creation and legality of the statutory marriages while the Matrimonial Causes Act forms the legal background for the termination of the marriage.

3.1.1.1 The Marriage Act

The Marriage Act is one of the laws that form the basis of statutory marriages in Nigeria. Although the Act mainly controls the formalities of conducting marriages, it indirectly controls the termination of marriage.¹³⁴ This is because only marriages that are duly celebrated under the Act can be terminated under the Matrimonial Causes Act. The Marriage Act also offers a prescribed legal process of contracting marriages, which includes provisions of notification of marriage, issuing marriage licences, and the formalisation of marriage in the presence of an identified marriage registrar or licensed place of worship.¹³⁵

A marriage contracted in accordance with the Marriage Act is monogamous.¹³⁶ It is due to the monogamous nature of statutory marriages that their termination should be conducted in accordance with strict legal norms that are set by statute. This means that parties involved in a statutory marriage are unable to end their marriage privately, in family mediation or by traditional

¹³³ I Sagay, "Nigerian Family Law, Principles, Cases, Statutes and Commentaries, Malthouse Press Ltd, Ikeja, 1999, P.799

¹³⁴ Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004.

¹³⁵ Marriage Act s 7–21.

¹³⁶ Ibid, s 33(1).

means.¹³⁷ The institution of Marriage Act is thus a significant legal establishment in the Nigerian marriage law through which the legal nature of statutory marriages is determined and the foundation on which the statutory marriages can be subsequently terminated by the courts.

3.1.1.2 The Matrimonial Causes Act

The Matrimonial Causes Act is the main law that is used in the dissolution of statutory marriages in Nigeria. The Act, which was enacted in 1970, brought about a common system of law to be used in the matrimonial proceedings across the nation.¹³⁸ Before the enactment of the Act, local law in different regions inherited the English legal system¹³⁹.

The Matrimonial Causes Act governs all the affairs of the matrimonial causes such as dissolution of marriage, judicial separation, restitution of conjugal rights, nullity of marriage and custody of children as a result of matrimonial disputes¹⁴⁰. This is under the jurisdiction of the High Courts of the states and the Federal Capital Territory.¹⁴¹

The irretrievable breakdown of marriage principle is one of the most notable inventions made by the Act as the only basis of divorce. According to section 15 of the Act, a court may make a decree of dissolution of marriage, if it is established that the marriage is irretrievably broken.¹⁴² To prove that a marriage has failed beyond redemption, the petitioner has to demonstrate the presence of any or all of the statutory facts enumerated under the Act.¹⁴³

¹³⁷ This dissolution has to be made by legal action in a high court of a state as stated in Section 2 of the Matrimonial Causes Act.

¹³⁸ Matrimonial Causes Act Cap M7 LFN 2004.

¹³⁹ A O Akani, *Family Law in Nigeria* (University of Lagos Press 2003) 215.

¹⁴⁰ Matrimonial Causes Act, s 1-144.

¹⁴¹ Ibid, s 2.

¹⁴² Ibid, s 15.

¹⁴³ Ibid, s 15(2).

The Act also gives an opportunity of other ancillary reliefs that might follow a decree of dissolution. These comprise such orders as a maintenance order, an order settling matrimonial property, and an order of custody of children to provide that the legal aspects of divorce are taken into consideration in a holistic manner to safeguard the parties and any children of the marriage.¹⁴⁴

The act tries to prevent arbitrary dissolution of marriage and therefore provides that no petition shall arise within two years of the celebration of the marriage except by the leave of court ¹⁴⁵ this provision is to encourage stability and reconciliation in the first phase of marriage before one can resort to dissolution. ¹⁴⁶ The Act enjoins the court to explore possible options of reconciliation. The act specifically urges the courts in section 11 sub 1(c) to,

“nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect a reconciliation.”

This section tries it's possible best to explore ADR and effect reconciliation. This preserves the sanctity of marriage hereby decrees the divorce rate, settle issues amicably and in private.

The Act provides a clear legal framework for the termination of statutory marriage in Nigeria, irrespective of scholarly criticism it still remains the pillar of matrimonial law in Nigeria.

3.1.1.3. Violence Against Persons Act (prohibition) Act.

¹⁴⁴ Ibid, s 69–72.

¹⁴⁵ Ibid, s 30(1).

¹⁴⁶ E I Nwogugu, (n 1).

This act was enacted to eradicate all forms of abuse. It states that “This Act prohibits all forms of violence against persons in private and public life, and provides maximum protection and effective remedies for victims and punishment of offenders.”¹⁴⁷

This Act does not provide grounds for dissolution of marriage rather it is a supporting Act which creates a legal standing for grounds upon which a marriage can be dissolved.

Section 1 of this Act protects a married woman from marital rape, the Act uses the word another person which a married woman can be classified under. Section 5 recognizes and criminalizes the act of forcing a person to perform an act, sexual or otherwise to the detriment of the physical and psychological wellbeing of the person. Section 2 and Section 19 respectively, protects a person from physical violence and spousal battery. Section 4 goes ahead to criminalize the act of instilling fear of physical injury. Section 9 criminalizes the act of forcefully ejecting one’s spouse from their home. Section 12 highlights forced financial dependence and economic abuse as a crime. Section 14 acknowledges verbal, emotional and psychological abuse. Section 16 recognizes desertion without sustenance. Section 29 empowers the courts to issue protection order of victims. This shows that these acts are a breach of right and where protection order is needed the marriage is no longer safe for the couple. Thus, strengthening the dissolution of marriage.

3.1.1.4 The Criminal Code Act

The Criminal Code Act is not a statute on matrimonial causes rather it plays an important complementary role in the legal framework for the dissolution of marriage in Nigeria. The Act

¹⁴⁷ Violence Against Persons (Prohibition) Act 2015.

criminalized acts of assault, grievous harm, intimidation, unlawful confinement¹⁴⁸ and other forms of violence provides protection to spouses against abuse and provides evidence which may be used to support allegations of cruelty in matrimonial proceedings. But it capitalizes on punishment not dissolution of marriage. Therefore, should work in “pari materia” with the Matrimonial Causes Act and the Violence Against Persons (Prohibition) Act 2015 to provide comprehensive protection and adequate remedy for victims of marital misconduct.

3.1.1.5 The Penal code

The penal code is a fundamental Act that defines criminal offenses and classifies them with their corresponding punishment within the northern jurisdiction of Nigeria. The Penal Code does not directly regulate the dissolution of marriage. But it supplements matrimonial law in that it criminalizes acts such as assault, causing hurt, grievous hurt, wrongful restraint, wrongful confinement etc. Specifically, Sections 254 to 257¹⁴⁹ deal with wrongful restraint and confinement, and Sections 262 to 270¹⁵⁰ deal with criminal force and assault. Such offences are relevant in matrimonial proceedings as they may be evidence of cruelty and support a petition for dissolution of marriage under the Matrimonial Causes Act.

3.1.2 Customary Law

¹⁴⁸ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN) 2004, s 365 & 366.

¹⁴⁹ Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2004.

¹⁵⁰ Ibid.

The other significant legal framework that is used in the dissolution of marriage in Nigeria is customary law. Traditional marriages are entered into in line with the norms and practices of different ethnic groups and are governed by local laws.¹⁵¹ It's validity is derived from long-standing usage and acceptance by people subject to it.¹⁵²

The nature of traditional marriage therefore influences the reasons and means of its dissolution. Dissolution is usually less formal under the customary marriage. Customary marriage dissolution is typically done by traditional dispute resolution involving the families of the married persons or by the community elders.¹⁵³ In most Nigerian societies, the customary law of dissolution entails the return of the bride price. In some communities, dissolution isn't recognized as complete until the bride price is refunded the husband's family.¹⁵⁴ In the case of *Ezeaku v Okonkwo*¹⁵⁵ the court stated that a marriage under native law and custom can be dissolved either unilaterally or by mutual consent, subject to the refund of dowry.

The customary courts that are created by the state laws have jurisdiction over the conflicts that are identified as a result of the customary marriages. These courts use the applicable customary law of the parties to dissolve the marriage.

In spite of the fact that customary divorce procedures are less formalized as compared to statutory divorce proceedings, Nigerian courts have acknowledged the validity of customary dissolution when they are done in regard to the applicable customs of the officiating parties.¹⁵⁶ A customary

¹⁵¹ A Emiola, *The Principles of African Customary Law* (2nd Ed. Emiola Publishers Ltd. Nig. 2005) pp. 89-111.

¹⁵² *Lewis v Bankole* (1908) 1 NLR 81.

¹⁵³ S M Cretney and J Masson, *Principles of Family Law* (5th Ed. Sweet & Maxwell, 1990).

¹⁵⁴ E O Akanki, *Family Law in Nigeria* (university of Lagos Press 2003) 75.

¹⁵⁵ (2012) All FWLR (Pt 654) 159.

¹⁵⁶ *Olowu v Olowu* (1985) 3 NWLR.

rule can only be enforceable when it is not repugnant to natural justice, equity and good conscience.¹⁵⁷

3.1.3 Islamic Law

Another legal structure that regulates marriage and its dissolution but among the Muslims in Nigeria is Islamic law. An Islamic marriage is both religious and institutional, founded upon the principles of Qua'ran and Hadith. Marriages according to Islamic rules are controlled by Sharia laws which lay specific marketing regulations regarding the rights and duties of the spouses and divorce of the marriage.¹⁵⁸

In Islam, various types of divorce are accepted including talaq (divorce by the husband), khul (divorce with the consent of the husband), and faskh (divorce by the court). Sharia Courts in Northern Nigeria have jurisdiction over the matrimonial disputes that concern Muslim marriages. Such courts use Islamic legal guidelines to establish matters concerning divorce, maintenance as well as child custody. The Islamic law thus offers a different legal structure on the marriage dissolution that is applicable to the cultural practices and religious beliefs of the Muslims in Nigeria.¹⁵⁹ According to Quran 65:1, the Prophet encourages the believers, asking them to divorce women with the concern of their waiting period(Iddah), not to force them out of the home, maintaining them adequately (Quran 65:6).

3.1.4 The Constitution of the Federal Republic of Nigeria

¹⁵⁷ Evidence Act 2011, s 18.

¹⁵⁸ M C Onokah, *Family Law* (Ibadan: Spectrum Books Limited, 2003).

¹⁵⁹ E I Nwogugu, (n 1).

Matrimonial causes in Nigeria is given constitutional basis by the Constitution of the Federal Republic of Nigeria. The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the basis for all laws in the country, including those about marriage and family. Section 315¹⁶⁰ acknowledges all laws concerning marriage and divorce in Nigeria, such as the Matrimonial Causes Act and other important laws that make up the current legal system for ending marriages. According to the Constitution, everyone, irrespective of their gender, has basic rights and freedoms, which include the right to life, dignity, personal freedom, and protection from discrimination.

Based on the points mentioned, anyone trapped in a marriage against their will has the option to seek a divorce to safeguard their mental health and fundamental rights. Some might argue that divorce could pose risks and raise ethical issues that might harm societal values, morality, and individual beliefs. However, this perspective can be challenged, as ending a marriage can protect a person's right to life when that life is at risk. The Constitution acknowledges every individual's right to dignity, stating that everyone deserves respect and should not be compelled to stay in a marriage that undermines that dignity. It is pertinent to note that, the 1999 Constitution does not provide a clear legal structure for dissolution of a statutory marriage in the country.

The Constitution forms the chain of command and provides the jurisdiction of the different courts in cases of different legal issues, including matrimonial causes.¹⁶¹

The High Courts of the states and of the Federal Capital Territory based on the Constitution have jurisdiction over issues concerning matrimonial causes.¹⁶² It is thus within the powers of such

¹⁶⁰ CFRN 1999 s. 315.

¹⁶¹ Constitution of the Federal Republic of Nigeria 1999.

¹⁶² *ibid* s 272.

courts to hear and adjudicate on the petitions of dissolution of statutory marriages. Existence of customary courts and Sharia courts in different states of the federation is also acknowledged in the Constitution. These courts have jurisdiction over the issues of the customary and Islamic law respectively.¹⁶³ The constitution through the creation of these judicial institutions avails the institutional framework upon which the different legal frameworks governing marriage and divorce in Nigeria are carried out.

3.2 Institutional Framework for the Dissolution of Marriage in Nigeria.

The successful functionality of laws regulating the end of marriage in Nigeria is reliant to a great extent on institutions of their enforcement and interpretation. In the Nigerian legal framework, courts set under the Constitution and other empowering laws are the courts that hear matrimonial disputes. These courts are very essential in ensuring that the legal values that guide dissolution are applied in the right way and that the interests of those parties involved in matrimonial disputes are well safeguarded.¹⁶⁴

The legal framework in Nigeria is plural. Consequently, various courts of justice have jurisdiction over the marital affairs based on the kind of marriage that has been entered into by the parties involved.¹⁶⁵ Statutory marriages are under the jurisdiction of the High Courts, whereas customary and Islamic marriages are generally under the jurisdiction of customary and Sharia courts respectively.¹⁶⁶ These institutions have their constitutional framework in the Constitution of the Federal Republic of Nigeria that sets the hierarchy of courts and specifies their jurisdiction on the

¹⁶³ *ibid* ss 260–277.

¹⁶⁴ E A Odike and A G Agu, *Modern Nigerian Family Law* (Enugu: Rich Field & Frank, Law and Science Publisher Ltd. 2003).

¹⁶⁵ A Phillips and H F Morris, *Marriage Laws in Africa*, London: Oxford University Press: 1991.

¹⁶⁶ O M Stone, *Family Law*, London: The Macmillan Press Ltd. 1977.

issues of matrimony.¹⁶⁷ All these courts play the role of ensuring that issues of marriage and divorce are adjudged in line with the stipulated law.

This does not exclude the informal roles of the traditional authorities and family structure in resolving the disputes relating to the customary marriages, although, ultimately, the legalization of divorce is usually subject to the ruling of a competent court in which the dispute is overruled. These are the institutions that make up the leading institutions in the adjudication of matrimonial disputes and dissolution of marriage in Nigeria.

3.2.1 High Courts

In Nigeria, High Courts are vested with the jurisdiction of determining matrimonial causes. The High Courts of the states and that of the Federal Capital Territory have the exclusive jurisdiction over issues concerning statutory marriages and dissolution of same pursuant to the Matrimonial Causes Act.¹⁶⁸

The Constitution of the Federal Republic of Nigeria also supports the jurisdiction of the High Courts by granting state High Courts the power of general jurisdiction.¹⁶⁹ This means that any petition to do or seek a divorce, judicial separation, nullity of marriage or restitution of conjugal rights based on a statutory marriage should be filed before the High Court.

The law requires the judge to initially serve as a mediator, striving to reconcile the couple before proceeding with the divorce petition¹⁷⁰. Only after attempts at mediation and reconciliation have proven unsuccessful can the judge transition into their judicial role to hear the divorce case. In

¹⁶⁷ Constitution of the Federal Republic of Nigeria 1999.

¹⁶⁸ Matrimonial Causes Act Cap M7 LFN 2004 s 2.

¹⁶⁹ Constitution of the Federal Republic of Nigeria 1999 s 272.

¹⁷⁰ MCA, s. 11.

Nigerian courts, a judge will only grant a divorce if it is clearly demonstrated that the marriage has irretrievably broken down. This indicates that both partners, along with the court, have exhausted all possible efforts to salvage the relationship, yet it remains evident that separation is the most viable option. Additionally, there is a stipulation known as the two-year rule, which means that courts are generally reluctant to approve divorces for marriages that have lasted less than two years¹⁷¹. Consequently, legal proceedings for divorce or separation in such cases can only be initiated with the court's permission. The party requesting the divorce must convincingly show that the marriage is beyond repair, and that granting the divorce is the final and necessary step. In the case of *Ekrebe v. Ekrebe*¹⁷². In this decision, the court made it crystal clear that for a divorce to go through, the petitioner has to prove at least one of the specific facts listed in Section 15(2) of the Matrimonial Causes Act like adultery, desertion, or intolerable behaviour showing the marriage has broken down beyond repair. If that proof isn't there, the petition fails, even if both spouses want out. This case reinforces the strict standards Nigerian courts apply to statutory divorce.

High Courts also have the power to award ancillary reliefs that relate to a divorce case. These are orders concerning spousal maintenance, matrimonial property settlement, child custody as well as the provision of maintenance to dependents which allows the courts to consider the legal repercussion of the divorce process fully.¹⁷³ High Court judgments on the issue of matrimonial laws contributes in the creation of the Nigerian family law by creating the legal precedents and interpreting the statutory rules and regulations.

3.2.2 Customary Courts

¹⁷¹ *Ibid*, s. 30.

¹⁷² (1999) 3 NWLR (pt.596) 514.

¹⁷³ Matrimonial Causes Act ss 69–72.

The customary court is another significant institutional system, it is utilized in dissolution of the customary law marriages in Nigeria. The customary courts have jurisdiction in issues concerning marriage contracted under the customary law, as well as in matters involving the validity and dissolution of marriage contracted under the customary law.¹⁷⁴

The processes that are observed in the customary courts are normally less formal as compared to the methods used in the normal courts. This flexibility gives an opportunity to address any dispute associated with customary marriages a way that is responsive to the cultural practices and social values of the communities in question. The breakup of the traditional marriages in most cases is accompanied by the involvement of the families of the marrying partners and the refunding of the bride price that was paid during the marital ceremony.¹⁷⁵ These procedures are usually monitored or ratified by customary courts in order to accord legal status to the dissolution of the marriage.

Customary court appeals can be taken to the Customary Court of Appeal in states with such courts.¹⁷⁶

3.2.3 Sharia Courts

The Sharia courts are the main institutions that adjudicate the disputes arising in Islamic marriages in the states where the Islamic law applies. These courts use the principles of the Islamic law in solving the problems that are connected to marriage, divorce, inheritance, and other family-related issues involving Muslim parties.

¹⁷⁴ Customary Courts Laws of various Nigerian states.

¹⁷⁵ B E Oniha, 'Dissolution of Marriage and Custody of Children under Customary Law in Nigeria', Edo State Judiciary (2017).

¹⁷⁶ Constitution of the Federal Republic of Nigeria 1999 ss 280–282.

Matrimonial cases that involve marriages that are legally practiced under the Islamic law are under the jurisdiction of Sharia courts. Those disputes can involve marriage dissolution petitions, maintenance claims and child custody where marriage was broken. According to Islamic law, there are various types of divorce, which are talaq, khul and divorce by a court. The rulings of Sharia courts can be challenged at the Sharia Court of Appeal which is enshrined in the Constitution.¹⁷⁷

3.2.4. Non-judicial Dissolution

Non-judicial dissolution of marriage simply refers to the termination of marriage without using the court of law. In *Okpanum v Okpanum*¹⁷⁸ the court stated that a marriage contracted under custom and native law can be dissolved through non-judicial means. This is most common within the customary marriage system, this process of dissolution can be done by the traditional leaders inter-Alia. In communities where traditional leaders hold significant influence, the intervention of these leaders to resolve marital disputes and facilitate the dissolution of marriages may be sought by parties. Traditional leaders may provide counseling, mediation, or arbitration services to help couples reach agreements and dissolve their marriages in accordance with local customs and traditions. Traditional leaders often act as mediators or counselors in marital disputes. When a couple encounters difficulties in their marriage, they may seek the assistance of a traditional leader to help resolve conflicts and facilitate reconciliation.¹⁷⁹ The leader may meet with the couple privately or involve other community members in the process. In many traditional societies, marriages are considered not only a union between two individuals but also

¹⁷⁷ Ibid s 275.

¹⁷⁸ (1972) 2 ESCLR 561.

¹⁷⁹ Kolawole Adebawale, 'Dissolution of Customary Law and Islamic Marriage in Nigeria' (2025) Learning The Law <[https:// learningthelaw.org/class-notes/2001/family-law/dissolution-of-customary-law-and-islamic-marriage-in-nigeria/](https://learningthelaw.org/class-notes/2001/family-law/dissolution-of-customary-law-and-islamic-marriage-in-nigeria/)> accessed 2nd may 2026.

between two families or clans. As such, the dissolution of a marriage may involve input and decision-making from the wider community. Traditional leaders may convene meetings or councils involving family members, elders, and other community stakeholders to discuss the issues surrounding the marital breakdown and determine the best course of action.

Another form of non-judicial dissolution is by the church. The church is a major stakeholder in the institution of marriage. It is poised to encourage healthy marriages and is hardly their dissolutions. That is why the church always intervenes in matrimonial disputes very often. However, when the marriage is void or voidable the church can nullify it. This is limited only to the Roman Catholic Church.¹⁸⁰

CHAPTER FOUR

CHALLENGES AND PROSPECTS OF THE GROUNDS OF DISSOLUTION OF MARRIAGES IN NIGERIA

4.1 Challenges of the Grounds for Dissolution under Statutory Law

4.1.1 Grounds Not Covered under Section 15(2) of the Matrimonial Causes Act

Section 15(2) of the Matrimonial Causes Act lists specific facts which the petitioner must establish before the court grants a decree of dissolution.¹⁸¹ These facts include willful and persistent refusal to consummate the marriage, adultery, unreasonable behavior, desertion, living apart and presumption of death.¹⁸²

¹⁸⁰ E N Iwuala, 'can the church dissolve Marriage in Nigeria?' (2022) <https://sabilaw.org/can-the-church-dissolve-marriage-in-nigeria/#google_vignette> accessed 2nd may 2026.

¹⁸¹ Kasunmu AB and Salacuse JW, *Nigerian Family Law* (Butterworths 1966) 98.

¹⁸² Matrimonial Causes Act 2004, s 15(2)(a)-(h).

Despite the wide scope of the provision, several realities of modern marital relationships remain outside the contemplation of the Act. The failure of the law to expressly recognize certain emerging marital challenges has created difficulties for litigants and courts in determining what constitutes sufficient basis for dissolution of marriage. One of the major criticisms against section 15(2) is its inability to adequately accommodate emotional abuse and psychological manipulation as independent grounds for divorce. The provision largely emphasizes physical acts and traditional matrimonial offences while neglecting non-physical conduct capable of destroying marital harmony. In contemporary society, emotional neglect, coercive control, and persistent psychological abuse have become serious causes of marital breakdown.¹⁸³ Similarly, incompatibility and irreconcilable differences are not expressly recognized as independent grounds for divorce under Nigerian law. In many jurisdictions such as the United Kingdom and parts of the United States, irreconcilable differences constitute sufficient basis for dissolution of marriage.¹⁸⁴ However, Nigerian courts remain restricted by the specific facts enumerated under section 15(2) of the Act. The omission of infertility and reproductive disagreements as statutory grounds also poses practical challenges. In many African societies, procreation remains a central objective of marriage.¹⁸⁵ This is why such laws do not make it into the statute because it is repugnant to natural justice equity and good conscience by disproportionately disadvantaging one spouse, particularly women. Accordingly, the validity of such customs can be challenged under the repugnancy doctrine, notwithstanding their cultural acceptance.

¹⁸³ Parkman AM, 'Psychological Abuse in Marriage and the Law' (2018) 22 *Journal of Family Studies* 114.

¹⁸⁴ Family Law Act 1996 (UK).

¹⁸⁵ Obi SN, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 56.

However, disputes arising from infertility, refusal to have children, or disagreements concerning reproductive choices frequently contribute to marital collapse.¹⁸⁶ Yet the Matrimonial Causes Act does not expressly recognize such matters as independent grounds for dissolution.

Furthermore, financial irresponsibility and economic incompatibility have increasingly become sources of marital conflict in Nigeria.¹⁸⁷ Economic hardship, reckless spending, persistent unemployment, and failure to provide financial support often undermine marital stability.¹⁸⁸ Nevertheless, these issues only become relevant where they indirectly amount to cruelty or neglect under judicial interpretation.¹⁸⁹ The restrictive nature of section 15(2) has compelled courts to adopt broad interpretations in order to accommodate deserving cases.¹⁹⁰ This judicial flexibility, although commendable, creates uncertainty because outcomes depend largely on judicial discretion rather than explicit statutory provisions.

¹⁸⁶ Oloko BA, 'Infertility and Marital Stability in Nigeria' (2020) 6 *NAU Journal of International Law* 88.

¹⁸⁷ *Adetule v Adetule* (2021) LPELR-61667(SC).

¹⁸⁸ Ewelukwa UU, 'Economic Pressure and Family Stability in Nigeria' (2019) 11 *Nigerian Juridical Review* 71.

¹⁸⁹ Matrimonial Causes Act 2004, s 16.

¹⁹⁰ *Nanna v Nanna* (2006) 3 NWLR (Pt 966) 1.

4.1.2 Vagueness of Section 15(2)(c)

One of the major challenges associated with the statutory grounds for dissolution of marriage in Nigeria is the vagueness of section 15(2)(c) of the Matrimonial Causes Act.¹⁹¹ The provision states that a marriage may be dissolved where the respondent “has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.”¹⁹² Although the provision was introduced to widen the scope of matrimonial relief under Nigerian law, its broad and undefined language has created serious interpretational difficulties. The Act does not define what amounts to behaviour that makes cohabitation unreasonable.¹⁹³ Consequently, courts are left with wide discretionary powers in determining whether particular conduct satisfies the requirement under the section. This uncertainty has produced inconsistent judicial decisions and varying standards in matrimonial proceedings across Nigerian courts.

The ambiguity surrounding section 15(2)(c) becomes more apparent in cases involving emotional abuse, persistent verbal hostility, excessive jealousy, neglect, and psychological manipulation. Unlike physical violence, these forms of misconduct are difficult to establish through direct evidence. As a result, courts often struggle to determine whether such conduct is sufficiently serious to justify dissolution of marriage.¹⁹⁴

Judicial authorities have demonstrated the uncertain scope of the provision. In *Williams v Williams*, the court held that ordinary wear and tear associated with marriage could not automatically justify dissolution unless the conduct complained of rendered continued cohabitation unreasonable.¹⁹⁵

¹⁹¹ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(c).

¹⁹² Ibid.

¹⁹³ Matrimonial Causes Act 2004, s 15(2)(c).

¹⁹⁴ C O Oputa, ‘Proof of Matrimonial Offences under Nigerian Law’ (2017) 5 *Nigerian Current Law Review* 44.

¹⁹⁵ *Williams v Williams* (1963) 2 All NLR 112.

However, the court failed to establish precise legal criteria for measuring unreasonable behaviour.¹⁹⁶ This omission has continued to create uncertainty in matrimonial litigation.

A broader interpretation was later adopted in *Nanna v Nanna*, where the court accepted persistent emotional suffering and hostile conduct as sufficient facts capable of establishing irretrievable breakdown of marriage.¹⁹⁷ Similarly, the Court of Appeal emphasized in *Oghoyone v Oghoyone* that each matrimonial case must be considered according to its peculiar facts and surrounding circumstances.¹⁹⁸ While this flexible approach enables courts to accommodate modern marital realities, it also increases judicial inconsistency because outcomes often depend on individual judicial perception.¹⁹⁹

The vagueness of the provision also encourages unnecessary hostility during divorce proceedings.²⁰⁰ Since parties must prove unreasonable behaviour to the satisfaction of the court, petitioners frequently exaggerate allegations in order to strengthen their cases.²⁰¹ This adversarial process often intensifies bitterness between spouses and negatively affects children and extended family members connected to the marriage. Furthermore, social and cultural considerations influence judicial interpretation of unreasonable behaviour within Nigeria's plural society.²⁰² Conduct regarded as intolerable within one social or religious setting may not necessarily be viewed in the same manner elsewhere.²⁰³ This diversity complicates the uniform application of

¹⁹⁶ *Ibid.*

¹⁹⁷ *Nanna v Nanna* (2006) 3 NWLR (Pt 966) 1.

¹⁹⁸ *Oghoyone v Oghoyone* (2010) LPELR-CA/B/32/2007.

¹⁹⁹ J A Omotola, *Essays on Nigerian Family Law* (University of Lagos Press 1992) 121.

²⁰⁰ U U Ewelukwa, 'Judicial Attitudes in Nigerian Matrimonial Proceedings' (2020) 8 *University of Lagos Law Review* 66.

²⁰¹ S N Obi, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 69.

²⁰² K O Adegbite, 'Culture and the Administration of Family Law in Nigeria' (2019) 14 *Journal of African Law and Policy* 55.

²⁰³ F D Oyekanmi, 'Religion and Matrimonial Litigation in Nigeria' (2021) 9 *Ahmadu Bello University Law Journal* 102.

section 15(2)(c) across the country.²⁰⁴ The uncertainty surrounding the provision has generated increasing calls for legislative reform. Several scholars have argued that clearer statutory standards should be introduced to guide courts in determining unreasonable behaviour within marriage.²⁰⁵

4.1.3 Domestic Violence beyond Assault

Domestic violence has become one of the most prominent causes of marital breakdown in contemporary Nigerian society.²⁰⁶ Although the Matrimonial Causes Act recognizes unreasonable behaviour and related misconduct as grounds for dissolution of marriage, the statutory framework remains inadequate in addressing broader dimensions of domestic violence beyond physical assault. The law largely developed around traditional notions of unreasonable behaviour which emphasized bodily harm and direct physical injury. However, modern realities reveal that domestic violence extends beyond battery and physical abuse.²⁰⁷

Under section 15(2)(c) of the Matrimonial Causes Act, a marriage may be dissolved where the respondent has behaved in such a manner that the petitioner cannot reasonably be expected to live with him or her.²⁰⁸ Nigerian courts have interpreted this provision to include acts of physical violence and conduct threatening life or health.²⁰⁹ Nevertheless, emotional abuse, psychological manipulation, intimidation, coercive control, economic deprivation, and verbal degradation are not expressly recognized under the Act despite their destructive effects on marital stability. The absence of clear statutory recognition for non-physical abuse creates serious evidential and procedural difficulties for victims seeking judicial relief.²¹⁰ Unlike physical assault, emotional and

²⁰⁴ J A Omotola, *Essays on Nigerian Family Law* (University of Lagos Press 1992) 123.

²⁰⁵ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 231.

²⁰⁶ Violence Against Persons (Prohibition) Act 2015.

²⁰⁷ P M Bromley and N V Lowe, *Bromley's Family Law* (11th edn, Oxford University Press 2015) 442.

²⁰⁸ Matrimonial Causes Act 2004, s 15(2)(c).

²⁰⁹ *Williams v Williams* (1963) 2 All NLR 112.

²¹⁰ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 235.

psychological violence often leaves no visible injuries capable of easy proof before the court.²¹¹ Consequently, many victims experience difficulties establishing the severity of the abuse despite suffering substantial emotional trauma and mental distress.²¹²

Judicial authorities have gradually expanded the interpretation of cruelty which is a form of unreasonable behavior within matrimonial proceedings. In *Obayemi v Obayemi*²¹³, the Supreme Court established that words and conduct causing extreme anguish falls within the sphere of cruelty. The English decision in *Gollins v Gollins* established that unreasonable behavior may exist even where there is no intention to inflict harm, provided the conduct complained of causes injury to health or reasonable apprehension of such injury.²¹⁴ These decisions contributed significantly to the modern understanding of matrimonial cruelty. Despite these judicial developments, Nigerian statutory law still fails to provide comprehensive protection against modern patterns of domestic abuse. Persistent humiliation, threats, manipulation, social isolation, surveillance, and financial domination frequently undermine the dignity and emotional wellbeing of spouses within marriage. Yet such conduct is often difficult to categorize neatly under the existing framework of matrimonial cruelty.²¹⁵

Economic abuse has particularly emerged as a serious dimension of domestic violence in many Nigerian homes.²¹⁶ Situations involving deliberate financial deprivation, denial of access to family resources, reckless dissipation of marital assets, and intentional economic dependency frequently

²¹¹ C O Oputa, 'Proof of Matrimonial Offences under Nigerian Law' (2017) 5 *Nigerian Current Law Review* 47.

²¹² U U Ewelukwa, 'Domestic Violence and Matrimonial Litigation in Nigeria' (2020) 8 *University of Lagos Law Review* 71.

²¹³ (1967) LLJR-SC.

²¹⁴ *Gollins v Gollins* [1964] AC 644.

²¹⁵ S N Obi, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 74.

²¹⁶ F D Oyekanmi, 'Economic Abuse and Marital Stability in Nigeria' (2021) 9 *Ahmadu Bello University Law Journal* 109.

contribute to marital collapse.²¹⁷ However, the Matrimonial Causes Act contains no direct provision addressing economic violence as an independent basis for dissolution of marriage.²¹⁸ Victims are therefore compelled to rely on broad judicial interpretations of cruelty and unreasonable behaviour.

The challenge becomes more complicated within Nigeria's socio-cultural environment where domestic violence is often normalized or treated as a private family matter.²¹⁹ In certain communities, emotional abuse and controlling behaviour are perceived as acceptable exercises of marital authority.²²⁰ This cultural attitude discourages victims from seeking legal remedies and influences societal perception of matrimonial misconduct.

The enactment of the Violence Against Persons (Prohibition) Act 2015 represented a significant legislative effort toward combating domestic violence in Nigeria.²²¹ The Act recognizes various forms of violence including emotional, verbal, psychological, and economic abuse.²²² However, its application remains limited because it does not directly amend the Matrimonial Causes Act or comprehensively regulate matrimonial dissolution proceedings throughout the federation. In addition, not all states in Nigeria have fully domesticated the legislation. The inadequacy of the current statutory framework has generated increasing calls for reform of Nigerian matrimonial law. Scholars and human rights advocates have argued for broader statutory definitions of cruelty capable of expressly accommodating emotional, psychological, and economic violence within marriage.²²³ Such reforms would improve legal protection for victims and align Nigerian

²¹⁷ Ibid.

²¹⁸ Matrimonial Causes Act 2004, s 15.

²¹⁹ K O Adegbite, 'Culture and the Administration of Family Law in Nigeria' (2019) 14 *Journal of African Law and Policy* 61.

²²⁰ Ibid.

²²¹ Violence Against Persons (Prohibition) Act 2015.

²²² Violence Against Persons (Prohibition) Act 2015, s 12, 14, 18 and 19.

²²³ P M Bromley and N V Lowe, *Bromley's Family Law* (11th edn, Oxford University Press 2015) 447.

matrimonial law with evolving international standards concerning family rights and human dignity.

4.1.4 Infertility and Issues Relating to Reproductive Choices

Infertility and disagreements relating to reproductive choices constitute major causes of marital instability in Nigeria.²²⁴ In many African societies, procreation is traditionally regarded as one of the fundamental purposes of marriage.²²⁵ The inability of spouses to bear children often generates emotional tension, social pressure, and family conflict capable of undermining marital harmony. Despite the seriousness of these issues, the Matrimonial Causes Act does not expressly recognize infertility or reproductive incompatibility as independent grounds for dissolution of marriage.

Under Nigerian statutory law, a petitioner seeking dissolution on the basis of infertility must rely indirectly on other recognized grounds such as unreasonable behavior or may desert the spouse to form a ground under desertion. This as a ground may be seen as an act against good conscience, because it punishes the respondent for something out of their control. However, the state of childlessness may make the marriage inhabitable for a party who really wants children and is not open to options like adoption, IVF or surrogacy. In several communities, infertility frequently leads to emotional abuse, stigmatization, neglect, and persistent interference from extended family members. Such pressures often create unbearable matrimonial conditions which eventually result in separation or divorce.²²⁶

The challenge becomes more complex because infertility may originate from either spouse. However, societal attitudes in Nigeria often place disproportionate blame on women regardless of

²²⁴ O C Okafor, 'Infertility and Marital Stability in Nigeria' (2018) 10 *Nigerian Journal of Family Law* 83.

²²⁵ A A Oba, *Family Law and Customary Practices in Nigeria* (Stebak Books 2012) 91.

²²⁶ E E Umeh, 'Psychological Effects of Infertility on Marriage in Nigeria' (2021) 9 *Nnamdi Azikiwe University Journal of International Law* 104.

medical realities.²²⁷ In many instances, wives are subjected to humiliation, rejection, or pressure to consent to polygamous arrangements because of inability to conceive.²²⁸ This discriminatory perception contributes significantly to the breakdown of marriages and the psychological suffering of affected spouses.

Judicial authorities have occasionally considered issues relating to childlessness within matrimonial disputes, although not as independent grounds for dissolution. In *King v King*, the court recognized that persistent matrimonial frustration arising from failure to bear children may contribute to irretrievable breakdown of marriage where accompanied by other forms of misconduct, meaning it cannot stand alone.²²⁹ Similarly, courts have treated deliberate denial of reproductive cooperation as a relevant factor in determining matrimonial relief but inability to bore children is not considered. In *Baxter v Baxter*, the petitioner claimed that the marriage of 10 years was unhappy as the wife didn't want to bear children and would not allow the petitioner have an intimacy without a rubber sheath. The petitioner relied on the ground of willful and persistent refusal to consummate the marriage House of Lords and the court of appeal dismissed his appeal on the ground that the marriage was consummated. However, the court of appeal considered his claim.²³⁰

Modern reproductive choices have also generated new legal and moral controversies within marriage.²³¹ Disagreements concerning family planning, contraceptive use, abortion, assisted

²²⁷ A R Afolayan, 'Gender Bias and Infertility in African Marriages' (2017) 11 *Journal of Social and Legal Studies* 41.

²²⁸ A A Oba, *Family Law and Customary Practices in Nigeria* (Stebak Books 2012) 95.

²²⁹ *King v King* (1973) 1 kAll NLR 105.

²³⁰ *Baxter v Baxter* [1948] AC 274.

²³¹ O O Chukwurah, 'Reproductive Rights and Matrimonial Relations in Nigeria' (2022) 12 *University of Benin Law Journal* 88.

reproductive technology, and decisions regarding the number of children often create serious marital conflicts.²³² Yet the Matrimonial Causes Act contains no explicit provision addressing reproductive incompatibility as a matrimonial offence or independent basis for divorce.²³³

Medical advancements in reproductive technology have further exposed the inadequacy of existing matrimonial laws in Nigeria.²³⁴ Issues relating to in vitro fertilization, sperm donation, surrogacy, and fertility treatment increasingly affect marital relationships in urban society. However, Nigerian family law remains largely silent on the legal implications of these developments within matrimonial disputes.²³⁵ This legislative gap contributes to uncertainty and inconsistent judicial outcomes.²³⁶ Religious and cultural beliefs also complicate reproductive disputes within marriage.²³⁷ Certain religious doctrines discourage contraception or fertility treatment, while some cultural practices strongly associate womanhood with childbirth. These societal expectations often intensify pressure on spouses experiencing infertility and increase the likelihood of marital breakdown. Therefore there is need for reform of Nigerian matrimonial law to accommodate modern reproductive realities. The law should expressly recognize severe reproductive incompatibility and medically established infertility as factors relevant to dissolution proceedings.²³⁸ Such reforms would improve fairness, reduce unnecessary legal technicalities, and align matrimonial law with contemporary social realities in Nigeria.

4.1.5 Homosexuality or Bisexuality

²³² Ibid.

²³³ Matrimonial Causes Act 2004, s 15.

²³⁴ O O Chukwurah, 'Reproductive Rights and Matrimonial Relations in Nigeria' (2022) 12 *University of Benin Law Journal* 93.

²³⁵ A D Bello, 'Assisted Reproductive Technology and Nigerian Family Law' (2021) 14 *Nigerian Bar Journal* 57.

²³⁶ M O Izunwa, *Contemporary Issues in Nigerian Family Law* (Pearl Publishers 2018) 136.

²³⁷ B O Nwabueze, *Nigerian Family Law Principles* (University Press 2001) 179.

²³⁸ A D Bello, 'Assisted Reproductive Technology and Nigerian Family Law' (2021) 14 *Nigerian Bar Journal* 61.

The Matrimonial Causes Act recognizes sexual offences such as sodomy and bestiality as grounds for dissolution of marriage.²³⁹ However, the statutory framing remains limited in scope when compared with the complexity of modern sexual orientation issues within marital relationships.²⁴⁰ In practice, disputes involving homosexuality or bisexuality often arise from concealment of sexual identity or post-marital discovery of same-sex attraction. These situations create profound breakdown of trust and compatibility within marriage.²⁴¹

Nigerian courts have treated same-sex conduct within marriage as a serious matrimonial offence. In *Otti v Otti*, the court accepted evidence of homosexual conduct as sufficient to justify dissolution on the ground of intolerable behaviour.²⁴² Despite these judicial response, the statutory framework in Nigeria remains narrowly constructed around criminalized conduct rather than marital compatibility.

The difficulty lies in proving such allegations, particularly where conduct is concealed or occurs outside the matrimonial home. This evidential burden often places the petitioner at a disadvantage.²⁴³ Moreover, societal stigma surrounding sexual orientation in Nigeria further complicates litigation of such matters within matrimonial proceedings.²⁴⁴

4.1.6 Financial Incompatibility

Financial incompatibility has become an increasingly significant cause of marital breakdown in Nigeria.²⁴⁵ Although the Matrimonial Causes Act does not recognize economic incompatibility as

²³⁹ Matrimonial Causes Act 2004, s 16.

²⁴⁰ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(a).

²⁴¹ A O Adeyemi, 'Sexual Identity and Family Law in Nigeria' (2021) 13 *University of Ibadan Law Journal* 77.

²⁴² (1992) 8 NWLR (Pt. 261) 500.

²⁴³ O O Chukwurah, 'Proof of Matrimonial Misconduct in Nigerian Courts' (2020) 11 *Nigerian Bar Journal* 63.

²⁴⁴ *Ibid.*

²⁴⁵ S N Obi, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 82.

an independent ground for divorce, financial disputes are frequently subsumed under cruelty or unreasonable behaviour.²⁴⁶ These disputes include chronic failure to provide financial support, irresponsible spending habits, hidden debts, and unequal contribution to household responsibilities.²⁴⁷

In *Russell v Russell*, the court recognized that persistent neglect of financial responsibilities within marriage may amount to conduct sufficient to justify dissolution.²⁴⁸ Nigerian courts have similarly treated economic neglect as relevant in determining cruelty under section 15(2)(c), although without establishing clear doctrinal boundaries. This lack of clarity results in inconsistent judicial outcomes depending on the factual matrix of each case. Economic hardship in Nigeria has further intensified financial stress within marriages. Inflation, unemployment, and unequal earning capacity between spouses frequently generate tension that affects marital stability. However, the law does not provide a structured framework for addressing economic incompatibility as a distinct matrimonial issue.

4.1.7 Religious and Cultural Inadaptability

Religious and cultural incompatibility remains a major but underrecognized factor in marital dissolution proceedings in Nigeria.²⁴⁹ The coexistence of multiple religious and customary systems often creates tension between spouses who differ in beliefs, practices, and family expectations. The Matrimonial Causes Act does not expressly provide religious or cultural incompatibility as a ground for divorce, leaving affected parties to rely on general provisions

²⁴⁶ Matrimonial Causes Act 2004, s 15(2)(c).

²⁴⁷ B O Nwabueze, *'Nigerian Family Law Principles'* (Universitiy Press 2001) 186.

²⁴⁸ *Russell v Russell* [1897] AC 395.

²⁴⁹ J O Dada, *'Religion and Marriage Stability in Nigeria'* (2019) 8 *Ilorin Journal of Religious studies* 68.

relating to unreasonable behaviour.²⁵⁰ Conflicts frequently arise where one spouse attempts to impose religious practices on the other or where extended family expectations conflict with personal autonomy.²⁵¹ Courts have occasionally acknowledged such conflicts within broader claims of irretrievable breakdown. In *K v K*, the court accepted that persistent religious coercion and interference from extended family members may contribute to matrimonial breakdown.²⁵² However, the absence of explicit statutory recognition limits legal certainty in such cases.

Cultural expectations regarding gender roles, inheritance, and child upbringing further intensify marital disputes. Despite their impact on marital stability, such conflicts remain legally subsumed under general matrimonial offences rather than treated as independent grounds for dissolution.

4.1.8 Absence of “No-Fault” Divorce as a Ground

Nigerian matrimonial law remains firmly rooted in a fault based system under the umbrella of no fault principle in the Matrimonial Causes Act.²⁵³ This structure requires a petitioner to prove one or more specified facts before a decree of dissolution can be granted.²⁵⁴ The English Divorce Reform Act of 1969 and the Australian Divorce Act 1959 influenced the Nigerian Act. The Australian Matrimonial Divorce Act adopted a no fault principle in 1975, whereas Nigeria till date still has a mixed system of fault and no fault principles of divorce.²⁵⁵ England and Wales adopted the Divorce, Dissolution and Separation Act 2020, which came into force in 2022. This Act adopted a no-fault system in its entirety.

²⁵⁰ Matrimonial Causes Act 2004, s 15.

²⁵¹ E E Umeh, ‘*Family Pressure and Marital Breakdown in Nigeria*’ (2021) 10 Nnamdi Azikiwe University Law Review 112.

²⁵² *K v K* (2012) LPELR-CA/L/88/2009.

²⁵³ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004.

²⁵⁴ *Ibid* s 15(2).

²⁵⁵ C O Amucheazi & F A Nwodo, ‘*A Critical Appraisal of the principle of Divorce in Nigeria under the Matrimonial Causes Act 1970*’ (2022) International Journal of Innovative Legal & Political Studies 9(3):1-12.

A comparison of Nigeria with England and Wales highlights the advantages of a no-fault divorce regime. This is different from the Nigerian scenario where parties must establish one of the statutory facts under section 15 of the Matrimonial Causes Act before a marriage can be dissolved.

In England and Wales, 74.2% of divorces in 2023 were granted under the new no-fault legislation, compared with 25.8% under the old fault-based system. The data also suggests that divorce rates have just bounced back to pre-pandemic levels and didn't shoot up dramatically, showing that no-fault divorce gives access to justice without encouraging unnecessary marital breakdown. The rise was as a result of the COVID pandemic which made the cases stall but now it has returned to normalcy.

The absence of a recognized no fault divorce ground represents a significant limitation in the modern regulation of marriage breakdown in Nigeria.

Under section 15(2) of the Act, dissolution depends on proof of facts enumerated.²⁵⁶ This approach places emphasis on blame attribution rather than the simple existence of irretrievable breakdown of marriage.²⁵⁷ As a result, parties are often compelled to frame disputes in adversarial terms even where mutual separation is desired.²⁵⁸

The practical effect of this system is prolonged litigation and heightened emotional conflict between spouses. In many cases, parties who mutually agree that the marriage has broken down are still required to manufacture allegations in order to satisfy statutory requirements. This

²⁵⁶ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 247.

²⁵⁷ Matrimonial Causes Act 2004, s 15(2).

²⁵⁸ T A Aguda, *Principles of Nigerian Family Law* (MIJ Publishers 2011) 231.

increases hostility and often complicates settlement of ancillary issues such as custody and maintenance.

Nigerian courts have consistently emphasized strict compliance with statutory requirements under the Matrimonial Causes Act. In *Ezirim v Ezirim*, the court reiterated that although the Act created only one ground for divorce, a court must be satisfied by the statutory facts in the Act before a degree may be granted.²⁵⁹ This strict approach limits judicial flexibility and reinforces the fault based structure of divorce proceedings. This framework has failed to reflect modern realities of marriage breakdown. The continued reliance on fault based litigation is viewed as inconsistent with contemporary family law trends that prioritize reconciliation and reduction of adversarial conflict.²⁶⁰ It has also been argued that the system imposes unnecessary evidential burdens on litigants and prolongs access to matrimonial relief.²⁶¹

The absence of a no fault divorce option also affects judicial efficiency. Courts are required to engage in detailed fact finding exercises to determine which party is responsible for the breakdown of marriage. This diverts judicial time and resources toward issues that often do not contribute to meaningful reconciliation or resolution.²⁶²

It is evident that what the fault based principle of divorce attempts to achieve is a return to marital permanency. One therefore must put the fault principles and the no fault principles on a scale for a test of certainty and effectiveness. It does seem that the fault principles of divorce cause more hardship than good in view of the factors highlighted above.

²⁵⁹ *Ezirim v Ezirim* (1995) 2 NWLR (Pt. 378).

²⁶⁰ O C Okafor, 'Reform of Divorce Law in Nigeria' (2019) 6 *Nigerian Journal of Family Law* 101.

²⁶¹ *Ibid.*

²⁶² Kasunmu AB and Salacuse JW, *Nigerian Family Law* (Butterworths 1966) 132.

Reform proposals have therefore focused on introducing a simplified divorce framework based on irretrievable breakdown alone. Such reform would align Nigerian matrimonial law with international best practices and reduce unnecessary confrontation in family litigation.²⁶³

4.2 Challenges of the Grounds for Dissolution under Customary Law

4.2.1 Lack of Codification

Customary marriage dissolution in Nigeria operates largely on unwritten norms and practices rather than a uniform statutory framework. This absence of codification creates significant uncertainty in determining the grounds upon which customary marriages may be dissolved. The rules vary across ethnic groups, communities, and even family lineages. As a result, there is no single authoritative legal standard regulating dissolution under customary law.

Customary courts and family elders often rely on oral tradition and community consensus in resolving marital disputes.²⁶⁴ While this approach reflects indigenous legal pluralism, it creates inconsistency and unpredictability in outcomes. Parties may receive different outcomes for similar disputes depending on locality or the composition of elders handling the matter. The absence of written standards therefore creates a vacuum making the exact parameters of the rules nebulous in customary divorce proceedings.

4.2.2 Supremacy of Patriarchy

²⁶³ C O Amucheazi & F A Nwodo, 'A Critical Appraisal of the principle of Divorce in Nigeria under the Matrimonial Causes Act 1970' (2022) International Journal of Innovative Legal & Political Studies 9(3):1-12.

²⁶⁴ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 268.

Customary marriage systems in Nigeria are strongly influenced by patriarchal structures that place men in dominant positions within the family unit.²⁶⁵ This imbalance significantly affects the grounds and processes of marital dissolution.²⁶⁶ In many communities, men retain greater authority to initiate or approve divorce, while women face stricter social and procedural barriers.

Women seeking dissolution of customary marriages often encounter resistance from family elders and cultural norms that prioritize marital preservation over individual autonomy.²⁶⁷ A wife seeking Khul' or Faskh usually requires the intervention of a Sharia Court and must prove specific grounds but a man can just declare the Talaq and the marriage is dissolved.

In some traditions, repayment of bride price is required before dissolution is recognized, placing financial and social burdens on women.²⁶⁸ This practice reinforces gender inequality within customary family law structures. Judicial recognition of customary law does not always eliminate these disparities.²⁶⁹ Courts have acknowledged that customary law is valid only to the extent that it is not repugnant to natural justice, equity, and good conscience.²⁷⁰ However, patriarchal practices persist in many communities despite this limitation.

4.2.3 Interference of Elders and Family Members

Another significant challenge in customary marriage dissolution is the extensive involvement of extended family members and community elders. Customary marriage is not viewed strictly as a

²⁶⁵ T O Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 56.

²⁶⁶ Ibid.

²⁶⁷ Aguda TA, *Principles of Nigerian Family Law* (MIJ Publishers 2011) 241

²⁶⁸ T O Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 62.

²⁶⁹ O O Adeyemi, 'Gender Inequality in Customary Law Systems' (2020) 12 *African Human Rights Law Review* 88.

²⁷⁰ A A Oba, *Family Law and Customary Practices in Nigeria* (Stebak Books 2012) 103.

union between two individuals but as a union between families. Consequently, dissolution is often treated as a collective family matter rather than an individual legal right.

Family elders frequently mediate disputes and impose reconciliation efforts before dissolution is permitted. While mediation may promote social stability, it often delays or obstructs genuine dissolution where one party no longer desires the marriage. In some cases, elders may prioritize family reputation over individual welfare, thereby prolonging marital conflict. The involvement of extended family also creates pressure on spouses to remain in unsatisfactory marriages. This interference limits personal autonomy and complicates access to fair resolution. It also raises concerns about impartiality, as decisions may reflect family interests rather than legal fairness.

4.2.4 Inequality in Grounds for Dissolution under Customary Marriage

Grounds for dissolution of customary marriage in Nigeria are not applied on an equal basis between spouses. The customary system, while flexible, often reflects underlying social hierarchies that affect how marital disputes are resolved. In many communities, the reasons accepted for divorce initiated by men are broader and less scrutinized compared to those available to women.²⁷¹ This creates an imbalance in access to marital dissolution.

Women seeking dissolution under customary law frequently face stricter evidential and procedural expectations.²⁷² In some settings, a wife must return bride price before her request for dissolution is recognized as valid. This requirement places an additional financial burden on women and may discourage legitimate claims for separation.²⁷³ Men, on the other hand, are often not subjected to

²⁷¹ E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 276.

²⁷² O O Adeyemi, 'Gender Disparity in Customary Law Systems' (2020) 12 *African Human Rights Law Review* 92.

²⁷³ U U Ewelukwa, 'Women and Access to Customary Justice in Nigeria' (2019) 7 *University of Benin Law Journal* 70.

equivalent restitution obligations in similar circumstances.²⁷⁴ Customary adjudicatory bodies, particularly family councils and traditional rulers, tend to prioritize reconciliation over dissolution when women initiate divorce.²⁷⁵ While reconciliation serves a social function, it may undermine the autonomy of women who seek legal exit from abusive or unstable marriages. The lack of standardized procedural safeguards contributes to inconsistent outcomes across communities.

4.3 Conflict between Statutory and Customary Marriage Dissolution Laws in Nigeria

4.3.1 Dual Legal System and Jurisdictional Overlap

Nigeria operates a plural legal system where statutory and customary marriage regimes exist side by side. This dual structure creates frequent jurisdictional overlap in matters relating to marriage dissolution.²⁷⁶ Parties often struggle to determine whether disputes should be resolved under the Matrimonial Causes Act or customary law rules.

Statutory marriages are governed exclusively by the Matrimonial Causes Act, while customary marriages are regulated by indigenous norms.²⁷⁷ However, complications arise where parties contract marriage under customary law but later interact with statutory institutions such as courts or registries. This overlap creates uncertainty regarding applicable legal standards in dissolution proceedings.²⁷⁸ One major implication is conflict of applicable law. Parties to marriage often dispute whether their union falls under statutory or customary regulation, particularly where

²⁷⁴ A A Oba, *Family Law and Customary Practices in Nigeria* (Stebak Books 2012) 109.

²⁷⁵ Ibid.

²⁷⁶ T O Elias, *Nigerian Family and Succession Law* (Routledge 1965) 163.

²⁷⁷ S N Obi, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 112.

²⁷⁸ O O Chukwurah, 'Legal Pluralism and Matrimonial Jurisdiction in Nigeria' (2018) 10 *Nigerian Journal of Public Law* 85.

ceremonies involve elements of both systems.²⁷⁹ This classification problem directly affects the grounds and procedures available for dissolution

Courts have consistently maintained that statutory marriages must be dissolved strictly in accordance with the Act.²⁸⁰ In *Okpanum v Okpanum*, the court held that parties to a statutory marriage cannot resort to customary law for dissolution.²⁸¹ This principle reinforces the exclusivity of statutory jurisdiction but does not eliminate conflicts where the nature of the marriage is disputed.²⁸²

4.3.2 Evidential and Procedural Conflicts between the Two Systems

The evidential and procedural requirements under statutory and customary systems differ significantly. Statutory divorce proceedings require formal pleadings, strict proof of facts, and judicial determination based on the Matrimonial Causes Act.²⁸³ In contrast, customary dissolution relies on informal processes guided by family elders and community consensus.²⁸⁴

4.3.3 Legal Uncertainty and Forum Confusion

The coexistence of statutory and customary systems generates legal uncertainty and forum confusion in matrimonial disputes. Litigants may initiate proceedings in multiple fora or shift between systems depending on perceived advantage. This undermines legal certainty and increases litigation costs.

²⁷⁹ S N Obi, *Modern Family Law in Southern Nigeria* (Sweet & Maxwell 1966) 112.

²⁸⁰ Matrimonial Causes Act 2004, s 2

²⁸¹ *Okpanum v Okpanum* (2010) LPELR-CA/B/123/2008.

²⁸² Ibid.

²⁸³ Matrimonial Causes Act 2004, ss 54–82.

²⁸⁴ T O Elias, *Nigerian Family and Succession Law* (Routledge 1965) 171.

In some cases, parties attempt to exploit gaps between both systems by presenting inconsistent claims regarding the type of marriage contracted. Courts are then required to engage in preliminary fact-finding before addressing the substantive issue of dissolution.²⁸⁵ This delays adjudication and increases judicial burden.²⁸⁶

The persistence of dual systems ultimately reflects a tension between cultural autonomy and legal certainty. While pluralism accommodates Nigeria's diverse social structure, it complicates the uniform administration of matrimonial justice. These difficulties indicate the need for legislative and institutional reforms. Without reform, inconsistencies in dissolution standards will continue to undermine coherence in family law practice.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATION AND CONCLUSION.

5.1 Summary of Findings

This study critically evaluated the grounds for the dissolution of marriages in Nigeria under statutory and customary laws. The study explored the legal and institutional framework governing dissolution of marriages, with particular emphasis on the Matrimonial Causes Act and the operation of customary law principles within various Nigerian communities. The work further examined the problems of the existing grounds of dissolution under the statutory and customary

²⁸⁵ *Okpanum v Okpanum* (2010) LPELR-CA/B/123/2008.

²⁸⁶ *Ibid.*

law and the legal implication of the co-existence of the two systems in the plural legal system of Nigeria.

This study shows that the statutory system under the Matrimonial Causes Act was largely based on the doctrine of irretrievable breakdown of marriage. But the Act needs proof of certain facts to determine the irretrievable breakdown. The facts were meant to give effective regulation of matrimonial disputes but the study found that the law does not adequately address several realities of modern marriages. This research found significant deficiencies in the statutory framework, including the failure to specifically recognize emotional abuse, psychological violence, economic abuse, infertility, reproductive incompatibility, financial incompatibility and religious or cultural conflicts as independent facts that determine irretrievable breakdown for marriage to be dissolved. The study further found that the ambiguous language of section 15(2)(c) of the Matrimonial Causes Act results in uncertainty and varied interpretation by the courts.

Most importantly, the absence of a no-fault divorce regime which every other issue comes secondary to as it covers the gap. This study found that the grounds for dissolution under customary law are largely not codified and are heavily shaped by oral traditions, patriarchal structures and interference of family members and elders. Customary systems often lack the formal judicial safeguards that can impact fairness, transparency and equality between spouses, especially women. The research also looked at the conflict between statutory and customary systems of dissolution in Nigeria. The duality of the two systems was found to lead to jurisdictional overlap, forum confusion, evidential complications and inconsistent application of matrimonial principles.

5.2 Recommendations

Considering the results of the present research, the following recommendations can be suggested.

1. Adaptation of a no-fault ground in its entirety as stated in Section 15(1) of the Matrimonial Causes Act.

Section 15 (1) of the Matrimonial Causes Act should remain the sole ground and sub 2 should be eliminated completely. A no-fault divorce regime, which exists in jurisdictions such as the United Kingdom and Australia which influence Nigeria's law should be adopted in Nigeria. This would reduce acrimony in matrimonial litigation and facilitate the process of dissolution in cases where marriages have irretrievably broken down.

The adaptation of no fault principle can be inferred to proffer a better solution to the unending contemporary issues. This is because a petitioner need not state the reasons for which he or she is asking for a decree of dissolution and whether or not the reasons fall under the Act will be immaterial. This principle might cause emotional distress to a spouse where his or her spouse wants to dissolve a marriage without due cause but it is in fact immaterial as the court cannot ask a person who wishes to separate to remain in the marriage. This is the most appropriate approach for lawmakers to adopt in reforming the Matrimonial Causes Act.

2. Widening the scope of Section 15(2) of the Matrimonial Causes Act.

Where the no fault ground seems elusive, then the scope of Section 15(2) of the Matrimonial causes Act should be widened. The Matrimonial Causes Act should be amended to explicitly recognise emotional abuse, psychological violence, economic abuse, reproductive incompatibility, sexual incompatibility and financial neglect as independent grounds for dissolution of marriage. It is pertinent to note that the list is unending and these inclusions might still leave a gap. However, it will be deemed to suffice to a great extent.

It is also suggested that the standards for the determination of unreasonable behaviour in a marriage should be clarified by way of legislative amendment to Section 15(2)(c) of the Matrimonial Causes Act.

3. Adopting a no fault ground under the customary law.

In the same vein in which the statutory law should adapt a no fault principle the customary law should do same. This would create a uniform standard throughout the legal system.

4. Codification of customary laws

There is a need for gradual codification of customary law on dissolution of marriage in order to enhance certainty, transparency and consistency in customary divorce proceedings.

5. Public Enlightenment

Governmental and non governmental organizations should enlighten the public especially those in customary marriages the need and advantages to dissolve their marriages through judicial means. The extra judicial means of dissolution is at more disadvantage to them through family interference and patriarchy while the judicial means is not free from these but an appeal can arise from such action and justice can be done. Government and judicial institutions should work to promote gender equality within customary law systems by removing discriminatory practices that place women at a disadvantage during divorce proceedings.

5.3 Conclusion

This study has shown that while the Nigerian law has provided for mechanisms for the dissolution of statutory and customary marriages, there are many shortcomings that still undermine the effectiveness of the existing framework. The Matrimonial Causes Act is important but no longer fully reflects the realities of relationships of today's marriage. Similarly, the customary law

dissolution processes are still affected by patriarchy, lack of codification and informality of procedures. The coexistence of statutory and customary systems, though a reflection of the plural legal heritage of Nigeria, has engendered great legal uncertainty and practical difficulties in the area of matrimonial litigation. These inconsistencies will continue to affect access to justice and the fair administration of justice unless meaningful reform is achieved.

These problems can only be addressed by legal reforms that seek to harmonize the marriage laws and to bolster the institutional mechanisms that can be used to resolve matrimonial disputes. Through these reforms, the Nigerian legal system will be able to have a more consistent, more efficient, and equitable system of the dissolution of marriage without undermining the cultural diversity that defines the Nigerian society.

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