



DIVORCE AND SEPARATION UNDER NIGERIAN LAW: A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK

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ABSTRACT

Marriage is a fundamental social and legal institution that occupies a central position in Nigeria. It is recognized as one of the most important and basis societal institution and plays a central role to the stability of the Nigerian society. Within the Nigerian context, marriage occupies a complex and pluralistic legal framework encompassing statutory, customary and religious forms each with distinct legal requirements, formalities and implications. It is protected both as a social institution and as a legal relationship. Nevertheless, not all marriages survive the stress of family life. The breakdown of marriage is an unavoidable social reality, requiring a legal framework capable of balancing marital stability with individual autonomy, dignity, equality and the welfare of children. Nigerian law therefore provides mechanisms for the divorce and judicial separation. This paper critically examines divorce and separation under Nigerian law from the perspective of legal doctrine, gender justice and human rights. Using the doctrinal research methodology, the paper evaluates the extent to which law promotes equality between spouses taking into consideration the differential consequences of marital breakdown for women, including economic dependency, unpaid domestic labour, unequal access to matrimonial property and the consequences of gender-based violence. The paper argues that while Nigerian matrimonial law contains significant safeguarding its statutory and institutional framework is no longer sufficiently responsive to contemporary realities. The paper concludes that Nigerian matrimonial ... creates significant challenges for gender justice. Noting that a modern law of divorce should not merely provide a legal exist from marriage but ensure that the process of marital dissolution is fair, accessible and consistent with constitutional and human rights value. It recommends a comprehensive reform of matrimonial legislation; stronger protection against marital violence, explicit recognition of domestic and caregiving contributions, improved financial remedies and greater harmonisation of matrimonial law with Nigeria's constitutional and international human rights obligations.

KEYWORDS: *Divorce, Judicial separation, Gender justice and Human Rights*

1. INTRODUCTION

Marriage is one of the most important enduring institutions recognized globally by law and the society. It is recognized as a fundamental social and legal institution that creates personal, propriety, familial relations and creates obligations between spouses which also extends to children and some instances to other family members. It serves as the foundation for family life and provides the legal framework through which rights, duties and obligation exist between spouses and children.¹ Despite

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¹ E I Nwogugu, *Family Law in Nigeria* (3rd Ed. HEBN Publishers Plc, 2014) 1.



the permanence traditionally associated with marriage, marital relationships may deteriorate due to cruelty, adultery, violence, desertion, economic hardship, incompatibility, neglect or other circumstances which make continued cohabitation impossible or intolerable and incapable of meaningful continuation. A proactive legal system must be a framework for preserving marriage where reconciliation is realistically possible and effective mechanisms for the dissolution of marriage or for judicial separation where the marriage has failed. The matrimonial law in Nigeria is more complicated due to Nigeria's plural legal regime where statutory, customary and Islamic marriages are subject to different rules of formation and dissolution.

A marriage may be contracted under the Marriage Act, under customary law or under Islamic law. The applicable rules concerning validity, dissolution, custody, maintenance and property may depend upon the nature of the marriage. For statutory marriages in Nigeria, the principal legislation is the matrimonial causes Act² which provides that a petition for dissolution may be presented on the ground that the marriage has broken down irretrievably. However, the court may only find irretrievable breakdown where one or more of the facts prescribed in section 15(2) has been established. These include refusal to consummate the marriage, adultery, unreasonable behaviour, desertion, specified periods of separation, failure to comply with a decree of restitution of conjugal rights and circumstances giving rise to a presumption of death. The apparent adoption of irretrievable breakdown therefore does not amount to a completely no-fault divorce system. A petitioner must generally establish a statutory fact before the court can dissolve the marriage.

Divorce implicates constitutional and human rights consideration particularly the rights to dignity, equality and freedom of association. Despite the legal framework provided by the matrimonial causes Act and other relevant laws, divorce proceedings in Nigeria often fail to adequately address the far reaching consequences of mental breakdown.³ The issue of divorce in Nigeria transcends the narrow confines of legal doctrine, encompassing a complex interplay of social, economic, cultural and psychological factors. Nigeria's diverse society and religious affiliation have contributed to the complexity of its marriage and divorce laws.⁴ Divorce is not only the legal platform through which the consequences of marital breakdown are regulated, it also balances the sanctity of marriage with the necessity of exit where marital relationships become oppression and violent. It triggers a range of emotional responses and legal consequences depending on the manner it was conceptualized. Nigeria's current legal regime is insufficiently responsive to present day matrimonial realities. The issue becomes more significant when divorce is examined through the lens of gender justice. The consequences of marital breakdown are not necessarily experienced equally by men and women. It becomes evident that the issue of divorce in Nigeria transcends the narrow confines of legal

² Matrimonial Causes Act, 1970 (Cap M 7. Laws of the Federation, 2004, s. 15.

³ H B Ojibara, "Identifying the viability of Alternative Dispute Resolution Methods in the Resolution of Marital Disputes Under Nigerian Family Law [2023] (10) (5), *Journal of Law and Social Policy*, 36

⁴ C Ogbuehi, 'The Legal Framework for Protecting Children's Rights in Divorce Cases in Nigeria [2020] (8)(3) *Nigeria Family Law Journal*, 125



doctrine, encompassing a complex interplay of social, economic, cultural and psychological factors. The existing legal framework, requires reforms to address emerging challenges and align with evolving societal values.

The distinction between divorce and judicial separation is fundamental. Whilst Divorce terminates the legal marriages, subject to the completion of the prescribed judicial process, judicial separation on the other hand permits the parties to live apart while retaining the legal status of married persons. This distinction has practical consequences for remarriage, succession, property, maintenance and other legal relationships. The implications of divorce and separation extend beyond the immediate parties involved. Children are often caught in the web of marital disputes, which can adversely affect their academics, social relationship and mental health. The welfare of the child under the Nigerian legal provisions undermines the best interest of the child with decisions for custody and maintenance sometimes influenced by gender biases and cultural stereotypes.⁵

In Nigeria, due to the weak alimony and spousal maintenance provisions women who may have interrupted their careers because of child bearing and caregiving responsibilities or contributed substantially through unpaid domestic labour may have limited control over family property despite making significant contributions to its acquisition or preservation. This unlike other jurisdiction leaves many women economically vulnerable post-divorce.⁶ Consequently, a formal conception of equality may fail to produce substantive equality in divorce.

This paper moves beyond a mere doctrinal analysis of divorce. It interrogates whether Nigerian matrimonial law sufficiently protects the dignity, equality, economic security and autonomy of spouses especially while preserving the paramount interest of children. The paper examines the lived consequences of marital breakdown for women and children and contends that the effectiveness of matrimonial law should be measured not only by the ease with which a decree can be obtained but also by whether the legal process protects dignity, safety economic security of all the parties as well as the best interest of children.

2. CONCEPTUAL CLARIFICATION

2.1 MARRIAGE

Marriage is conceptualized as a partnership characterized by both rights and obligations. It is universally recognized as the cornerstone of family law although its legal construct differs across jurisdictions. *Lord Penzance* defined marriage in *Hyde v Hyde*⁷ as the voluntary union for life between one man and one woman to the exclusion of all others. Black's Law Dictionary defines

⁵ S Olatunji "Child Custody and Maintenance in Nigerian Family Law: A Critical Analysis [2021] (10) (2) *African Journal of Legal Studies*, 60.

⁶ P Olumide, 'Economic Impacts of Divorce in women in Nigeria [2020] (25) (2) *Nigerian Economic Review*, 60

⁷ (1860) L.R.I. PD, 130



marriage as “the legal union between one man and one woman”.⁸ Sagay adopted the judicial interpretation in *Hyde v Hyde* which defined marriage as the voluntary union for life of one man and one woman to the exclusion of all others.⁹ On the other hand, Nwogugu¹⁰ defined marriage as a universal institution which is recognized and respected all over the world. He further stated that it is a social institution found on and governed by social and religious norms of society.

Marriage is a culturally recognized union between people called spouses that establish rights and obligations between them, as well as between them and their children and between them and their in-laws.¹¹ Marriage may be statutory, Islamic or customary. The Court in *Iniya v Obele*,¹² held that marriage under the act is monogamous in Nature, being a union of one man and one woman to the exclusion of others. Whilst in *Nsirim v Nsirim*,¹³ customary marriage was defined as “marriage between two persons who have capacity in which a bride price is paid by the men and a celebration as well as handing over of the woman to the man is done”. Under customary law marriage the man has the capacity to marry more than one wife at a given time.¹⁴ This is also protected under Islamic law marriages. They are guided by Islamic principles, which prescribe contractual stipulations, consent and specified forms of marital obligations.¹⁵

Marriage is a partnership characterized by rights and obligations. The breach or nonfulfillment of these obligations can create marital tension and possible dissolution. It provides the normative benchmark against which marital breakdown is assessed and informs the post-divorce outcomes. It functions as both the foundation and the point of departure for analysing divorce and its consequences. It constitutes the legal, social and contractual foundation from which divorce and the consequences of marital breakdown emerge. Thereby influencing the allocation of property maintenance, custody and other ancillary reliefs.¹⁶

2.2 DIVORCE

Divorce is the judicial dissolution of a valid marriage. In the context of a marriage in Nigeria, it brings to an end the rights, duties and obligations that subsist between spouses.¹⁷ The legal effect is to bring the matrimonial relationship to an end, subject to consequential orders made by the court. It serves as a legal remedy available to parties whose marital relationship has broken down irretrievably. It is the legal ending of a valid marriage. It is a process rather than an event. It

⁸ B A Garner, *Black's Law Dictionary* (12th Edn. Thompson West, 2024).

⁹ I Sagay, *Nigerian Family Law: Principles, Statutes and Commentaries* (Malthouse Law Books, 1999) 7

¹⁰ E I Nwogugu, (n 1) 4

¹¹ W A Prins and others, *Cultural Anthropology: The Human Challenge* (13th edn., Havilland: Cengage Learning, 2011) 126

¹² (1973) 11 NWLR 155

¹³ (1995) 9 NWLR (Pt 148) 144

¹⁴ Nwogugu (n 1).

¹⁵ J Fagan, *Rational Choice and Developmental Influences on Recidivism* (Columbia Law School, 2006) 1

¹⁶ B C Nwankwo, ‘The Societal Ramifications of Mental Breakdown in Nigeria [2016] (18) (1) *African Journal of Social Sciences*, 78

¹⁷ S E Ojogbo and O K Edu “Company maintenance and property Rights in marriage under customary Law and Statutory Law in Africa [2022] (22) (2) *Oxford University Commonwealth Law Journal*, 229.



encompasses preliminary separation, initiation of proceedings, judicial inquiry, decree nisi, decree absolute and post dissolution arrangements concerning custody, maintenance and property entitlement. Each stage carries legal significance and directly affects the rights and liabilities of the parties.

Nigerian statutory divorce reflects English common law heritage whilst customary divorce is rooted in socio-cultural beliefs where marriage is regarded as a union between families rather than individuals. Under customary law, divorce may be affected by return of bride price, through mutual agreement or community arbitration often without any court intervention.¹⁸

Islamic divorce recognized modes such as talaqi, Khul and judicial dissolution. The manner in which divorce is conceptualized determines the consequences it implicates constitutional and human rights consideration particularly the right to dignity, equality and freedom of association.¹⁹ Divorce balance the sanctity of marriage with the necessity of exist where mental relations become oppressive, violent or unsustainable by providing lawful means of dissolution.²⁰ It prevents extra judicial separation, abandonment and social instability. However, in Nigeria discriminatory divorce practices under certain customary or religious laws raise concerns about gender justice and access to legal remedies. The conceptual frame work of divorce must be examined against institutional norms and international human rights instruments. Any legal appraisal of divorce that ignored these dimensions would be incomplete and normatively deficient.

2.3 JUDICIAL SEPARATION

Judicial separation is a formal decree permitting spouses to live separately particularly where cohabiting becomes intolerable but without terminating the marriage. It legally relieves the spouses from the obligation of cohabitation²¹ while leaving the marital status intact. Judicial separation may therefore be regarded as an intermediate remedy between continued cohabitation and complete dissolution.²² It does not permit either spouse to remarry because in the eyes of the law, the marriage is not dissolved, the marriage bond is still preserved as the marriage still exists.²³ Where the spouses voluntarily chose to live apart without obtaining a decree of judicial separation, it still does not terminate a statutory marriage although it may be relevant evidentially in a later divorce petition.

Black Law Dictionary defines it as a court-sanctioned arrangement in which a married couple lives apart while remaining legally married, often involving agreements on spousal support, child custody and division of assets.²⁴ This legal distinction underscores that while separated, couples may live

¹⁸ S N Anyanwu "The Socio-Legal Implications of Divorce in Modern Nigeria [2022] (7) (4) *International Journal of Cooperative Law* 112.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 34, 40 and 42.

²⁰ T A Adeosun, 'Socio-Economic Effects of Divorce on Families' [2022] (3) (2) *Nigerian Journal of Sociology of Law*, 30.

²¹ Nwogugu (n 1) 93

²² *Aja v Aja* (1972) 1 ECSR 140

²³ *Jabre v Jabre* (1999) 3 NWLR (Pt 596) 606

²⁴ B A Garner, *Black's Law Dictionary* (12th edn, Thomson Reuters, 2024) 785



independently, they are still bound by the legal obligations of marriage. Judicial separation is significant in a society where religious and cultural considerations may make divorce undesirable.

2.4 GENDER JUSTICE

In Law, gender justice is the legal principle and practice of ensuring fair and equal treatments, rights and opportunities for all genders, moving beyond formal equality to achieve substantive fairness. It requires legal systems and institutions to recognize structural inequalities and ensure that women and men enjoy meaningful equality in rights, opportunities and outcomes. This term is used to denote mechanisms to promote women's rights in the society and access to social parameters. It encompasses various concepts of justice ranging from simple equality to concepts of differentiated equality with fairness been the fundamental principle of justice.²⁵

Although Nigerian matrimonial law is substantially gender-neutral in its formal formation, the social, economic customary and institutional realities surrounding divorce may produce unequal consequences for men and women. Consequently, gender justice requires more than equal treatment on paper, it requires a legal framework that recognizes structural inequality, unpaid care work, economic depending, protection against domestic violence and the welfare of children.

2.5 HUMAN RIGHT

Human Rights are the basis rights and freedoms that all persons are entitled to by virtue of being human, they are therefore inalienable. They play a vital role in protecting individuals from discrimination, oppression and abuse. They are often expressed in law through international treaties and protected by national and international laws. The term human rights have suffered great definitional problems making it difficult to adopt one precise functional and comprehensive definition.

Human rights are defined as the freedom selection immunity and benefits that according to modern values, all human beings should be able to lay claim as a matter of right in a society. The Supreme Court in *Ransome Kuti v Attorney General of the Federation*²⁶ made a pronouncement, that human rights are superior and takes procedure over all the laws of the land and that human rights are antecedent to political society and so immutable. Human rights can therefore be defined as those rights which are inherent in human nature and without which it is difficult to function as human beings. Human rights in the context of divorce and separation include dignity, equality, freedom from discrimination, protection from violence, fair hearing, privacy and the protection of children.

²⁵ M O Izzi & C T Emejuru, 'The Challenges of Gender Injustice in Nigeria [2019] 5(1) *Donnish Journal of Law & Conflict Resolution*, 2

²⁶ (1985) 2 NWLR (Pt 5) 211



3. LEGAL FRAMEWORK GOVERNING DIVORCE AND SEPARATION

3.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, 1999 as amended is the grundnorm from which all other laws derive their validity and enforceability.²⁷ It forms the foundation of all laws in Nigeria including those relating to marriage and family. Its supremacy is expressly affirmed, rendering void any law inconsistent with its provisions to the extent of such inconsistency.²⁸ The constitution regardless of gender provides for the fundamental rights and freedom of every individual.²⁹ The constitution hinges the constitutionality of a marriage in Nigeria on item 61 of the Exclusive legislative list and reserves the competence for making laws and statutory marriage on the National Assembly.³⁰ This provides the Constitutional Foundation for the matrimonial causes Act and ensures uniformity, legal certainty and coherence in divorce regulation across Nigeria. The National Assembly cannot make any law relating to the formation, annulment and dissolution of Islamic and customary law marriages.

The constitution by virtue of its provisions on fundamental human rights³¹ prohibits any form of discrimination or inhuman and degrading treatment, thereby protecting the rights of all individuals including those in marital relationships. These provisions anchor the constitutional relevance of divorce. It legitimizes divorce as a lawful remedy where continuation of marriage would offend human dignity. Supporting access to divorce where marital relations become oppressive and coercive.³² The prohibition of discrimination in section 42(1) also reflects a commitment to social justice and child welfare.³³ By virtue of its robust provisions on rights protection, equality, social welfare and judicial independence, the constitution shapes the legal environment within which marriage, divorce and the consequences of marital breakdown are governed.

3.2 Marriage Act, Cap M 6, LFN 2004

The Nigerian Marriage Act, 2004³⁴ deals with the formalities of marriage such as licensing, registration and the officiating of marriages. It establishes the legal framework for monogamous marriages recognized by the state and distinguishes such marriages from customary and Islamic marriages.³⁵ The Act ensures that marriage is treated as a legal entity carrying enforceable rights and obligations and operates as a legal gateway into Nigeria's statutory divorce regime. The Act prohibits contracting any subsequent marriage during the existence of a statutory marriage.³⁶ It

²⁷ K C Ezeugwu, The Grundnorm and the Constitution: Is there a Nigerian Concept of the Grundnorm? [2023] (4) (1) *ESUT Public Law Journal*, 10

²⁸ The Constitution of the Federal Republic of Nigeria 1999 (as amended) s 51(1) and 1(3)

²⁹ *ibid* s 33-42

³⁰ *ibid* Item 61, Exclusive Legislative List.

³¹ Chapter II and Chapter IV, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

³² CFRN 1999 (as amended) s 37

³³ *ibid* s 17 (3) (F)

³⁴ Marriage Act, Cap M 6, LFN 2004

³⁵ *ibid*, s 1, 3 – 6 and 33

³⁶ Marriage Act, Cap M 6, LFN 2004 s. 33, 47 and 48.



shapes the legal and social consequences of divorce by structuring marital disputes into the formal judicial system. The Act operates in close synergy with the Matrimonial Causes Act.

3.3 Matrimonial Causes Act, Cap M 7 LFN 2004

The Matrimonial Causes Act, Cap M 7 LFN 2004 is the principal legislation governing statutory marriages in Nigeria. Its provisions cover jurisdiction, reconciliation, dissolution, judicial separation, restitution of conjugal rights, custody, maintenance, settlements and related reliefs.³⁷ It requires matrimonial causes to be instituted under the Act³⁸ and confers jurisdiction on the High Court in appropriate circumstances.³⁹ It introduced the doctrine of irretrievable breakdown of marriage as one of the grounds for the dissolution of marriage.⁴⁰ This implies that the marriage has collapsed beyond repair and there is no reasonable likelihood of reconciliation between both parties.⁴¹ This provision is a departure from the traditional fault based divorce system which required proof of matrimonial offences such as adultery, cruelty or diversion before divorce is granted. This provision was affirmed by the Supreme court in *Nanna v Nanna*⁴² where it stated that the irretrievable breakdown of marriage remains the basis for granting of a divorce of dissolution of marriage under Nigerian Law. By framing divorce as a regulated legal process, the Act reinforces the seriousness of marital dissolution and its enforceable consequences for spouses and children.

3.4 Child Right Act, 2003

In Nigeria, the Child Right Act (CRA) of 2003 is a comprehensive legal document aimed at protecting the rights of children. The Act emphasises that in any decision concerning a child, including those arising from marriage dissolution the best interest of the child should be the primary consideration.⁴³ The Act also protects children from any form of physical, mental or emotional abuse, neglect or exploitation.⁴⁴ Its relevance to divorce and marital breakdown is substantial, as it directly addresses the legal and social consequences of family dissolution on children.⁴⁵ The act guarantees a wide-range of rights including the rights to parental care, education, health, dignity and protection from abuse. These rights ensure that marital breakdown does not undermine a child's access to care and development. The Act also empowers courts to intervene where children are exposed to neglect or domestic abuse. By introducing a rights-based approach, the Act move Nigerian divorce law beyond parental authority toward child-centered justice. By virtue of the provisions of the Act, parents remain legally bound to provide for their children's education, healthcare and general welfare after divorce, thereby complementing maintenance provisions under

³⁷ Matrimonial Causes Act, s 15 (2) (a-h)

³⁸ *ibid*, s 1

³⁹ *ibid* s 25

⁴⁰ *ibid* s 15

⁴¹ P M Bromley and N V Lowe, *Bromley's Family Law* (11th ed., Oxford Press, 2015) 356

⁴² (2006) 3 NWLR (Pt 966) 1

⁴³ Child Rights Act, 2003, s. 11.

⁴⁴ *ibid* s 1 – 5, 17, 18 and 21.

⁴⁵ M K Pruett and Others, 'Family and Legal Indicators of Child Adjustment to Divorce among Families with young children [2003] (1) (2) *Journal of Family Psychology* 169.



the Matrimonial Causes Act, 1970.⁴⁶ It also aligns Nigerian family law with international and global best practices.

3.5 African Charter on Human and Peoples Rights, 1981

At the regional level, Charter also known as the Banjul Charter establishes a comprehensive regional framework for the protection of human rights in Africa, including Nigeria. It obliges states to respect, protect and promote individual rights⁴⁷ while recognizing the collective welfare of communities. Although the charter does not provide for dissolution of marriage, its provisions⁴⁸ reinforce normative safeguards for spouses, children and other vulnerable parties affected by marital breakdown. The Charter's emphasis on social, economic and cultural rights complements national law by addressing the broader impact of marital breakdown on family welfare.⁴⁹ This charter guides Nigeria's approach to marital dissolution, strengthening domestic legal frameworks, promoting fairness and ensuring that the social, economic and human consequences of divorce are addressed.

3.6 African Charter on the Rights and Welfare of the Child 1990

This Charter establishes a regional framework to safeguard the rights and welfare of children in Africa including Nigeria.⁵⁰ By outlining the responsibilities of the state, families and communities, the Charter ensures the protection of children's rights particularly in the event of separation or divorce.⁵¹ It enjoins states to provide welfare services and legal remedies for children affected by parental separation or divorce. It ensures that the rights and welfare of children are safeguarded taking into consideration the best interest of the child.

4. INTERNATIONAL LEGAL FRAMEWORK

4.1 Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights (UDHR) is a non-binding parent international instrument that protects the rights of all human beings globally. It sets out the common standards for the protection of human rights, dignity and self-worth of all human persons and equal rights of men and women.⁵² Although it does not provide procedures for the dissolution of marriage, it includes key principles related to marriage and family life relevant to marriage dissolution⁵³. This

⁴⁶ M Bekink, 'Child Divorce: A Break from Parental Responsibilities and Rights Due to the Traditional Socio-Cultural Practices and Behets of the Parents [2012] (15) (1) *Potchefstroom Electronic Law Journal*, 1

⁴⁷ African Charter on Human and Peoples' Right, 1981 art 21

⁴⁸ ACHRR art 18

⁴⁹ E O Ekhatior, 'The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case study of Nigeria [2015] (41) (2) *Commonwealth Law Bulletin* 253.

⁵⁰ African Charter on the Rights and Welfare of the Child 1990, arts 3,4, 5, 18, 19 and 31

⁵¹ *ibid*, arts 18, 19, 20 and 31

⁵² Universal Declaration of Human Rights, arts 1 – 28

⁵³ UDHR art 16 (1)



implies that both spouses should be treated fairly and equally during divorce and in matters of divorce.

4.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1977

This convention is the most comprehensive instrument embracing the special concerns of women. It has been described as the international bill of rights for women. The convention obligates state parties to adopt legislative, administrative and policy measures to guarantee equality between men and women particularly in marriage, family relations and access to justice.⁵⁴ This includes equal access to property, custody, maintenance and protection from discrimination, establishing a legal foundation for reforming domestic family laws that are often to the disadvantages of women.⁵⁵ Its principles resonates with Nigerian law reforms, guiding the interpretation of spousal rights, child custody, alimony and promoting gender-sensitive adjudication in family courts.⁵⁶ CEDAW imparts positively in the understanding and reforming of divorce law, ensuring equitable treatment of spouses and international safeguard in addressing the social and legal consequences of divorce.

4.3 Convention on the Rights of the Child 1989

The Convention on the Rights of the Child (CRC) 1989 is a comprehensive international treaty that protects the rights and welfare of children. It obliges state parties to ensure the full development protection and well-being of children, encompassing civil, political, economic, social and cultural rights.⁵⁷ It establishes the best interests of the child as the primary consideration in all actions concerning children including those arising from family and legal proceedings.⁵⁸

The convention provides a benchmark for child protection in cases of marital breakdown, influencing legal reforms and judicial interpretation to ensure that divorce does not compromise children's well-being and establishes international standards for custody, visitation and support. This directly promotes safeguards to ensure that children's rights and welfare are central to the resolution of marital conflicts.

5. GENDER AND HUMAN-RIGHTS DIMENSIONS

Divorce law has a direct gender dimension because marital breakdown does not affect spouses equally. Women may experience greater economic disadvantage where they have reduced employment opportunities because of childcare or domestic responsibilities. They may also face social stigma, loss of accommodation and unequal bargaining power in settlement negotiation.

⁵⁴ Convention on the Elimination of all Forms of Discrimination against women (CEDAW) Arts 2 and 16.

⁵⁵ R J Cook, 'Reservations to the Convention on the Elimination of All Forms of Discrimination against women. [1989] (30) (2) *Virginia Journal of International Law*, 643

⁵⁶ L A Relief, Guide to the Travaux Preparatoires of the United Nations Convention on the elimination of all Forms of Discrimination against women (heiden: Brill 2021) 84

⁵⁷ Convention on the Rights of the Child 1989 Arts 3,9, 18 and 27

⁵⁸ *ibid*, Arts 3



A gender-sensitive matrimonial law should not mean automatic preference for women. Rather, it should recognize structural inequalities and ensure that legal rules operate substantively fairly. Maintenance, property adjustment, custody and protection from violence are therefore central to gender justice in family law.

The constitution guarantees of dignity, equality and freedom from discrimination provided an important normative foundation. Regional and international instruments, including the African Charter on Human and People's Rights and the Convention on the Elimination of All Forms of Discrimination against Women, also provide standards relevant to marriage, family relations and gender equality, subject to Nigeria's constitutional and treaty framework.

Domestic violence presents the clearest point of intersection between matrimonial law and human rights. A spouse should not be required to remain in an abusive marriage because the law prefers reconciliation. Nor should economic dependence prevent access to an effective legal remedy. The law must ensure that the exit from marriage is safe and well as lawful.

6. EVALUATION OF THE NIGERIAN FRAMEWORK

The Nigerian Matrimonial Framework possesses several strengths and provides a comprehensive legal structure for statutory marriage, recognizes irretrievable breakdown, gives courts significant discretion concerning maintenance, custody and property, expressly recognizes the welfare of children and judicial interpretation which have gradually introduced principles of fairness and welfare. Nevertheless, substantial weaknesses remain.

Divorce has adverse consequences on all the parties involved. It affects the legal, social, emotional and psychological stability of both spouses and the children.⁵⁹ Although the best interest of the child is considered paramount, there are instances where a perceived matrimonial misconduct by either parent could lit the balance in favour of the other party.⁶⁰ In the course of divorce children become weapons used by parents to get at each other, which may affect the child later in life. Despite the provisions of section 71 of the Matrimonial Causes Act in making the best interest of the child paramount custody and guardianship orders, sometimes other factors play out. In *Williams v Williams* orders, the court emphasize that there is no automatic superior claim of the father over the mother. This decision is important for gender justice; custody should not be determined by stereotypes concerning parental

Challenges in enforcing spouses' maintenance after divorce has been viewed as alien to the socio-cultural values of Nigeria. The concept of alimony is weak in Nigeria, thereby leaving the women

⁵⁹ Matrimonial Causes Act, s 5 71(1)

⁶⁰ *Alabi v Alabi* (2007) 9 NWLR (Pt 103 9) 297



in precarious, economic disadvantage. It is heavily dependent on judicial discretion due to the absence of sufficient detailed statutory guidelines.⁶¹

The courts must also take into consideration the caregiving patterns. Where a parent has under taken the majority of child care, that contribution should be relevant to custody arrangements. Nigeria's pluralistic legal system, creates confusion and complexity in the dissolution process particularly when it involves interfaith or intercultural marriages. The existence of Islamic and statutory marriage raises questions concerning classification of marriage, jurisdiction, evidence and the effect of dissolution. Identifying how a marriage was contracted becomes important to determine the applicable rules and the legal consequence of marital breakdown.

Marriage cannot legitimately extinguish an individual's right to human dignity as provided in section 34 of the constitution. Accordingly, matrimonial law must protect individuals against degrading treatment and violence within marriage. The economic consequences of divorce may be significantly greater for women who have devoted substantial periods of childcare and domestic responsibilities. Flowing from this reality, a gender-sensitive take cognisance of the duration of the marriage, age of the parties, earning capacities, career sacrifices, childcare responsibilities, standard of living during the marriage, contribution to family assets, unpaid domestic labour and future economic needs.

Although 572 of the MCA empowers the court to order settlement of property for the benefit of the parties or children, the difficult lies in determining what constitutes a fair matrimonial contribution review. In *Essien v Susan-Ohio Investments Ltd*⁶² the supreme court held that a wife cannot claim ownership of her husband's property without proving her financial contribution.

This title-based approach disproportionately disadvantage woman because a wife may have contributed to the acquisition or preservation of a family home through children, domestic work, support for her husband's career and management of the household without being named on the title. A contemporary matrimonial – property regime should be enacted to recognize economic contributions expressly. Equality at divorce requires more the equal procedural rights. It requires substantive consideration of the economic and social realities of marriage to avoid the injustice in *Sodiyo v Shodiopo*⁶³ where the court valued the family property at 10million but granted the wife only 200 thousand because she failed to show direct financial contribution despite been the primary home marketer for over 40 years.

⁶¹ (1998) 7 NWLR (Pt 559) 661

⁶² (2025) LPELR – 80690 (Sc)

⁶³ (1990) 5 WRN 98



7. CONCLUSION

Divorce and separation present difficult intersections between law, family, culture, religion, economics and human rights. Nigerian law has developed important mechanisms for dealing with marital breakdown, particularly through the Matrimonial Causes Act. The Act recognizes irretrievable breakdown, provides for judicial separation and empowers courts to make orders concerning maintenance, custody and property. Nevertheless, the passage of more than five decades has exposed significant limitations. The continued dependence upon specified statutory facts, uncertainty concerning matrimonial property, inadequate recognition of non-economic contributions, weaknesses in maintenance enforcement and insufficiently explicit protection against marital violence demonstrate the need for comprehensive reform.

Gender justice requires the law to look beyond formal equality. A woman who has sacrificed professional opportunities for childcare and domestic responsibilities should not emerge from divorce economically disadvantaged merely because her contribution did not take the form of a salary. Similarly, a victim of domestic violence should not be encouraged to reconcile at the expense of personal safety and dignity. The future of Nigerian matrimonial law should therefore be founded upon dignity, equality, autonomy, economic fairness and the best interest of children. The ultimate objective should not be to make divorce easier for its own sake. Rather, it should be to ensure that when a marriage has irretrievably broken down, the legal process provides a fair, dignified and humane pathway to its resolution. Such a framework would better reflect the constitutional values of equality and human dignity and bring Nigerian matrimonial law closer to the country's regional and international commitments to gender justice and human rights.

8. RECOMMENDATIONS

1. Comprehensively review and modernise the Matrimonial Cause Act to reflect a rights-based approach to divorce and separation and a genuine no fault divorce option.
2. Develop clearer principles for matrimonial property and expressly recognize non-financial contributions including unpaid domestic and caregiving work.
3. Children should be protected from unnecessary exposure to hostile matrimonial litigation. Their views should be considered where appropriate to their age and maturity.
4. Improve enforcement of spousal and child-maintenance orders through accessible and effective mechanisms.
5. Nigeria should strengthen domestic implementation of its international and regional obligations concerning women's rights and equality.
6. Harmonization and rights sensitive development of minimum standards of dignity, equality, protection from violence and child welfare applicable across statutory, customary and Islamic matrimonial regimes, while respecting legitimate religious and customary diversity.