



MARRIAGE AND DIVORCE LAWS IN NIGERIA, THE UNITED KINGDOM AND UNITED STATES: A CALL FOR LEGAL REFORM

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ABSTRACT

This paper examines no-fault divorce proceeding and focuses on three jurisdictions that include Nigeria, United Kingdom and United States of America. Divorce will not be discussed without insight into marriage as an institution from where divorce is derived hence, marriage in the three jurisdictions constitute the centre of concern in this paper. In Nigeria, Customary, Islamic and Statutory Marriages are examined and in the United Kingdom and United States of America, marriage is evaluated tracing its history and nature. Divorce being the focus of this research was in relation to ¹Nigeria in the context of the applicable procedures, requirements for sustainable and valid grant of divorce of marriages contract through any of the three types of marriages. In the United Kingdom and United States of America, State of New York as the case study, examining their historical nature of divorce to present day 21st century divorce proceedings. The paper adopted doctrinal divorce methodology that entails reference to both secondary and primary library sources. Comparative approach was applied with respect to dissolution of marriage was and findings as revealed by this method and approach resulted the scholarly recommendation in the nature of suggestions made towards making Nigeria align with the 21st century dissolution of Statutory Marriage.

KEYWORDS: *Marriage, Divorce, Fault-Based Divorce, No-Fault Divorce, Matrimonial Law*

1. INTRODUCTION

This paper focuses on fault-based and no-fault divorce. Divorce cannot be discussed without examining marriage as a concept in the context of the various types as applicable to Nigeria, United Kingdom, and United States of America (with interest on the State of New York). Basically, marriage is one of the oldest and most universal social institutions. Its ‘nature’ changes depending on the perspective it is viewed from and the viewpoints are legal. Social, religious or philosophical.

Legally, marriage as recognised by law and its nature depends on whether it is statutory marriage that has the key features of monogamous and contractual relationship. Its dissolution is only by court, which in Nigeria is the High Court and it must be formalised with licence issued in a registry or licenced place in the presence of witnesses. Where it is customary marriage, it must be according

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to native law and custom of the parties in compliance with its key features that include potentially polygamous in nature, not dependent on agreement of parties as it involves families, payment of bride price and performance of rituals. It is flexible in nature as it easier to contract and to dissolve by custom and its existence is evidenced by celebration according to custom and cohabitation thereto. It could be Islamic of key features of inherent polygamous, requirements of offer, acceptance, dower/mahr, witnesses, and wail for the bride and dissolution practice by talaq, khul or court under sharia court proceedings.

Importantly is that, under the Nigerian marriage law², Statutory marriage and Customary/Islamic marriages cannot co-exist for the same parties as one must be dissolve before contracting another, and each of it has its legal effects and consequences once it is contracted. Sociological nature of marriage has to do with the societal views of marriage from the perception of it being a social institution that recognises marriage as a union between two persons that establishes rights and obligations between them, their children and their in-laws. It regulates sex, procreation as well as family structure.

The sociological nature perspective of marriage views marriage as a status and not just a contract as it is a transformation process from 'single' to 'married' which the society attaches respect, duties and expectations to that status. The religious nature perspective of marriage treats marriage as sacred and not just legal. According to Christianity, it is 'a holy union, ordained by God', indissoluble except death, for the Islam, it is 'half of faith'. A contract with spiritual obligations and for the Traditional African Religion, marriage is a covenant between two families and ancestors that is sealed by bride price.

Finally, is the philosophical and essential nature perspective of marriage that identified four core elements that are present in almost all societies with respect to marriage and these elements are:

1. It involves voluntary consent – it is an act of free agreement of competent parties devoid of compulsion or force
2. In most instances, it is exclusively monogamous or polygamous in nature depending on the structure of intended parties of the marriage
3. It has public recognition as the society or community do or must acknowledge its existence as marriage is devoid of secrecy
4. It creates rights and duties on parties through cohabitation, consortium and support created by mutual understanding

On the strength of the above therefore, this paper explores into the existing legal framework on marriage and its dissolution proceedings and procedures in Nigeria comparatively with the United

² Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004)



Kingdom and United States of America hence, this paper commences with marriage as a concept and focuses on divorce laws, practices and procedures in the three jurisdictions.

2. CONCEPTUAL CLARIFICATIONS

2.1 Marriage

Tracing the history of marriage from the Bible, the guardian book of the Christian religious faith, describes marriage as a union of two opposite gender. In the book of Genesis, it states that:

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

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

Therefore, shall a man leave his father and his mother, and shall cleave unto his wife and they shall be one flesh³

This position as told, believed and held by the Christian religious faith is no different from the belief perspective of the Islamic religious faith. In the view of Atangana, the concept of ‘marriage is one of the most important fundamentals in Islam ...’, that marriage is a union of the opposite sex, he supported this with the Quran, the Holy Book of the Islamic faith where it stated that ‘Marry the unmarried among you and the righteous of your male and female servants’

This Atangana view is a justifiable comment to the fact that:

... There are many young men who embrace the religion of Islam and they are many of them who are looking to get married. However, the practice of Muslim woman will absolutely not give their daughter away due to the fact that he is not from their background⁴

By the above description of what marriage entails, it precisely indicates opposite gender-based relationship of a man and a woman being ‘husband and wife’. According to Black’s Law Dictionary, it defines marriage as ‘The legal union of a couple as spouses’⁵. This is termed matrimony and conjugal union. By Black’s Law definition of marriage, it presents both legal, religious, and ceremonial senses of the concept of marriage and meaning as follows:

³ Genesis Chapter 2 v 22-24, The Holy Bible (Authorised King James Version, USA World Bible Publishers, 1989) 2

⁴ H A Atangana, Islamic and Marriage in the 21st Century. Cited by Y Olomogbo, in his paper titled, Marriage in Nigeria Across Ages: Problems and Prospects, at School of Law and Security Studies, Babcock University. Found at <[http://www.zawaj.com/article/marriage.21st century.html](http://www.zawaj.com/article/marriage.21st%20century.html)> Accessed 03 June 2026.

⁵ B A Garner, *Black’s Law Dictionary* (12th edn, St Paul, MN: Thomson Reuters), 2024



1. Legal/Civil Sense. That marriage is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of duties legally incumbent on the relationship
2. Ceremonial Sense. This entails the act that is ceremonial or formal proceeding by which parties as in man and woman taking each other for husband and wife
3. Religious Sense. Black's Law does not give a separate 'religious marriage' meaning. It treats marriage as a civil status grounded in law, not religion. Religious traditions lay their own meaning to concepts like 'sacrament' 'covenant', and 'vows before God' whereas, Black's law focuses on the state-recognised union including rights and obligations associated with the contract relationship.

According to Cambridge Advanced Learner's Dictionary and Thesaurus, marriage is a legally accepted relationship between two people in which they live together, or the official ceremony that results in this⁶ Oxford Advanced Learner's Dictionary, in its definition states that marriage 'is the legal relationship between two people who are married to each other'⁷, the state of being married, and it is a ceremony in which two people marry each other. Important in the definition of Cambridge is that, it defined marriage applying 'gender-neutral', 'two people' wording, not 'man and woman' as used by Black's Law. A position that identified and introduced two distinct senses as:

1. Legal and Social Sense. That marriage is a relationship between people that they live as married people but their relationship is not legally accepted. Example of such is civil partnership that could involve opposite sex or same sex though, Oxford Dictionary emphasised a legal commitments of the relationship
2. Figurative Sense. This has to do with combination of two or more things or elements such as 'a marriage of art and commerce' resulted by 'intimacy and closeness'. It is a relationship of convenience and not of love.

Prior to colonization of Nigeria by Britain, the existing marriages were Customary and Islamic Marriages before the introduction of Statutory Marriage by the English Common Law System. The introduced marriage created confusion to the existing system which was a form of indigenous law derived from custom and values of the people discerned as customary law, and it varies from place to place and in distinct contradiction to the English law under the then Marriage Act. The same applies to Islamic marriage though, this paper does not centre on marriage per se but fundamentally on fault-based divorce and no-fault divorce hence mention is only made to existing types of

⁶ Cambridge Advanced Learners Dictionary, (5th edn CUP) 2023

⁷ Oxford Advanced Learner's Dictionary (10th edn, OUP) 2020



marriages in Nigeria without much in-depth examination of these major types of marriages as briefly discussed hereunder:

2.1.1 Customary Law Marriage

Under the customary law marriage practice in Nigeria, marriage is a union of one man and one woman or more than one woman, and between two families involved.⁸ There are varieties of customary marriages, as diverse as the numerous cultures in existence but discernible uniform features in this species of matrimonial union⁹ with features referred to as essential requirements of a customary marriage and they include the following:

1. Parent consent
2. Consent of the parties to the marriage
3. Bride price or gift or symbol requirement
4. Prohibited degree of consanguinity and affinity
5. Age
6. Capacity to marry under customary law

2.1.1.1 Dissolution of Marriage under Customary Law

Marriage under customary law can be dissolved on any or combination of the following grounds:

1. Refusal to consummate the marriage
2. Impotent of a husband or the sterility of a wife
3. Betrothal under marriageable age
4. Existence of harmful diseases of a permanent nature that may impair the fertility of wife
5. Conviction of either the wife or husband for a crime involving a sentence of imprisonment of five years or more
6. Disgraceful and scandalous conduct on the part of the wife
7. Engagement in witchcraft
8. Wife inability to cook
9. Lack of respect by the wife for the husband
10. The use of charm or juju
11. Lunacy of either the wife or husband
12. Leprosy and contracted by either the wife or husband
13. Desertion for a period of two years or more
14. Venereal disease contracted by either the wife or husband
15. Ill treatment, cruelty, neglect of either the wife or husband

⁸ Olomojobi, (n 3)

⁹ *ibid*



In most customary law setting, these grounds for dissolution of marriages are stated openly and established for reasonable ground by the traditional panel or committee to deliberate and consider before dissolution verdicts are passed. There are some situations where the integrity, respect and existing cordial relationship exists between the families, agreements are reached for a no-fault dissolution of the marriage considering that there are children between the families and parties to the marriage for their dirty laundry to be publicly washed in the open. This is the old traditional fault and no fault-based dissolution of marriage under the customary law marriages in Nigeria.

2.1.2 Islamic Law Marriage

This is a system of marriage conducted under Islamic law like customary marriage; Islamic marriage allows the man to take up to four wives if he so desires but must not be more than four at any given time of the existing marriage period. Islamic marriage has almost all the features of customary law marriage as discussed above with principal requirement for its validity that include:

1. Consent of the parties
2. Parental consent
3. Payment of the saduqat (also called dower that is the bride price)
4. Solemnization (That is performed by a Mallam in the presence of at least two upright Muslim witnesses.

With respect to divorce, in principle, Islamic marriage provides for husband and wives not to seek divorce without making serious efforts at reconciliation amongst themselves. They are expected to sit and discuss together. Attempts at reconciliation that most often involved arbitration, whether formal or informal because Muslim law prefers or chooses reconciliation to adjudication because it practically provides for open revelation of personal and private life and family secret in proof of individual case thereby compromise the integrity of the family reputation

There are five main forms of divorce in Muslim Personal Law¹⁰ in Nigeria and they include:

1. Talaq. This is where the husband repudiates the marriage. However, a woman who has detected or noticed certain terms with her potential husband before the formalisation of her marriage has the right to demand that the husband pronounces Talaq when he breaches any of the terms
2. Mubarah. This is where both husband and wife decide to put the marriage to an end
3. Khul'u. When the wife offers ransom to obtain her release
4. Tadriq or Faskh. It is where and when the wife seek her release on the ground of violation of the marriage terms by her husband ¹¹
5. Zihar, Ila and Lia'n

¹⁰ DIVORCE -The Dissolution of a Marriage in Muslim Personal Laws in Nigeria: BAOBAB FOR WOMEN'S HUMAN RIGHTS LEGAL LITERACY SERIES (Baobab Legal Literacy Leaflet No.2). Found on <<https://edojudiciary.gov.ng>> Accessed on 30 May 2026.

¹¹ *ibid.*



Each of the above methods of Islamic marriage dissolution has its own peculiarities and features but common to them are grounds, which could either be on its own, or combination of one or more of the common grounds for dissolution of marriage as it is under the customary law marriage. Under the Islamic marriage, common grounds for dissolution of marriage¹² include:

1. Refusal of the husband to enable the wife to undertake her religious obligation
2. Prolong absence
3. Failure to provide sexual satisfaction
4. Defect on the part of the husband or wife
5. Failure of the husband to provide the maintenance requirements for the wife
6. Injury or discord between the wife and husband

2.1.3 Statutory Marriage

In the celebrated case of *Hyde v Hyde*¹³, the English Court per Lord Penzance declared that statutory marriage is ‘The voluntary union for life of one man and one woman to the exclusion of all others. The implication of the decision is that, a statutory marriage is a monogamous marriage, and the phrase ‘union for life’ as used in the declaration does not translate the indissolubility of statutory marriage. It merely indicates the fact that the parties contracting this type of marriage must have the intention to ensure the union last for a lifetime that is, until death of either the husband or the wife¹⁴

Statutory marriage is also known as ‘marriage under the Acts’. In Nigeria, the Acts that govern celebration and incidents of monogamous marriage are found in principally the Marriage Act 1914 (now in the revised laws of Nigeria and the Matrimonial Causes Act 1970¹⁵, which used to be known as Matrimonial Decree 1970. Requirements of statutory marriage in Nigeria can be group into two namely: formal requirements; and essential requirements. The non-compliance with formal requirements does not affect the validity of the marriage as stated by Sagay that:

Failure to comply with most of the formal requirements does not in any way affect the validity of a marriage. For example, failure to reside in the marriage district for 15 days before the granting of a marriage certificate or to obtain the necessary consent does not affect the validity of a marriage¹⁶

Sagay further stated that, unlike the formal requirements, failure to comply with the essential

¹² *ibid.*

¹³ (1860) I.R.I PD.130, also Olomojobi (n 9).

¹⁴ Olomojobi, *ibid.*

¹⁵ E I Nwogugu, *Family Law in Nigeria* (Ibadan: Claverianum Press, 1996) IXXXi.

¹⁶ I Sagay, *Nigeria Family Law Principles, Cases, Statutes & Commentaries* (Ikeja Malthouse Press Limited, 1999) 50.



requirements or lack of capacity on the part of one of the parties will render a marriage void¹⁷.

These essential requirements include:

1. Consent
2. Prior marriage a party
3. Consanguinity and affinity
4. Any marriage entered into or contracted by person under the marriage age

Available reliefs to an injured party to a statutory marriage in Nigeria include:

1. Dissolution of the marriage
2. Jactitation of the marriage
3. Judicial separation of the marriage
4. Nullity of a void marriage
5. Nullity of a voidable marriage
6. Restitution of conjugal right

Relevant to this paper is dissolution of marriage, and under statutory marriage, dissolution of marriage can be initiated or brought about by either the husband or the wife. It is usually commenced by way of petition stating the grounds for dissolution of the marriage, which is provided under the Act.¹⁸ Must be on the sole ground that, 'the marriage has broken down irretrievably'¹⁹ as governed by the legal framework for the process that governed the application.

The Petitioner is expected to establish the following:

1. Wilfully and persistently refusal to consummate the marriage
2. Adultery and intolerability
3. Conduct not reasonably expected to bear²⁰
4. Desertion for a continuous period of one year²¹
5. Living apart for two years²²
6. Living apart for three years
7. Failure to comply with a decree for restoration of conjugal right

Reflecting on the above grounds for dissolution of Statutory marriage and that of Customary Law Marriage and Islamic Law Marriage, it will be arguably stated that, their dissolutions are granted on proving either of the grounds or jointly. It places dissolution of the marriage on any of the faults

¹⁷ I Sagay (n 16), 5.

¹⁸ (n 1).

¹⁹ *ibid*, s 152 (2).

²⁰ The conduct that would amount to intolerable behaviour is not at large. It is specifically provided in s. 16 (1) (a)-(g), *ibid*.

²¹ *ibid*, s 18.

²² *Nanna v Nanna*, 2 NWLR (Pt 966) (2006). The Petitioner relied on living apart for two years as a fact to prove 'irretrievable breakdown of their marriage' but this case collapsed because his threats and assaults was what led the wife to live apart for more than two years. His petition dismissed.



being committed by the Respondent in the petition. This is practically a fault-based divorce proceeding, and is unfriendly to the integrity and the long standing social image the family may have created and sustained prior to the time the marriage became 'irretrievable' and 'broken down' though, as mentioned early no-fault divorce proceeding avail or exist under both the Customary Law and Islamic Marriages which is yet to be addressed under the Statutory Marriage. Reforms must be made on the existing law for this to be addressed

3. MARRIAGE IN THE UNITED KINGDOM

Historically, in the United Kingdom and specifically in England and Wales before the law on marriage was adopted in 1753, which became the first legislative act in England and Wales that held anything to do with the institution of marriage. England was dominated by common law marriage. This position then implied that cohabitation, which was the practice, does not lead to any rights and responsibilities. It was after the adoption of the Act²³, which empowered commissioning of marriages by the Church of England, Quaker and Jewish Marriages became recognised in England. Believers and followers of the Roman Catholic Church, various other religious communities, and atheists were left out of former marriages in England and Wales.

Therefore, in 1836, the law on marriage in England that legalised civil marriage in England and Wales, was made accessible to all those who previously were unable to marry as registrar officials were granted right to register marriages with registry offices in 1837. The current marriage law²⁴ provides detailed regulation in the field of marriage without changing the earlier adopted methods of marriages

In the United Kingdom, marriage is more of a religious institution, as it exists today and equal in its legal status to civil law marriage. Whether marriage is a contract between spouses, in England, it was never legislatively fixed in England; however, several experts and specialists in the development of marriage standards in common law maintained that marriage can be considered a civil contract though, the debate continue as some common opinion argue that marriage cannot be said that the parties agree on the condition of marriage. The rules governing legal relations between spouses are proscribed by law and is mandatory.

Historically, the legal consequences of marriages were on the principle of unity²⁵ that mean that:

When married, the husband and wife become a single person from the viewpoint of the law. This means that the woman's legal existence is suspended for the duration of the marriage.

²³ Marriage Act of 1753.

²⁴ The 1949 Marriage Act.

²⁵ It is a doctrine of common law on the unity of husband-and-wife united spouses into one legal personality, and was essentially seen in judicial practice.



This legal fiction generated a number of usual consequences such as, inability of spouses to demand compensation for damage resulting from a tort committed by one of the spouses from each other in courts. Again, marriage then had significant restrictions on wife's right particularly with regard to family and domestic violence. This was before the legal reform of 1962²⁶

At the end of the 19th and during the 20th centuries, there was a change as the legal restrictions of wives and power of the husband occasioned by the principle of unity²⁷ that were abolished. There was a transformation in marriage from patriarchy under the law into an alliance of equal people. This was amplified with the development of family law that introduced the concept that spouses have obligation to support each other that then became a popular practice that is presently in operation. Obligation to support each other and live together. However, enforcement of this obligation remains unclear.

3.1 Divorce in the United Kingdom

In the United Kingdom, divorce has a long and complex history that its understanding the evolution makes better for a crucial comprehension of the present-day laws and practice with respect to divorce. As discussed earlier, marriage in the United Kingdom was purely a religious affair until the period of legislative interference and involvement. Similarly, during the medieval times, divorce in the United Kingdom was heavily influenced by religious consideration, and the authority of the church as marriage was seen as sacrament and securing a divorce was an arduous and complicated process. Divorce was rarely granted, and only on limited grounds in which only the wealthy and privileged could afford the costs and the associated complexities.

In the United Kingdom, Henry VIII introduced divorce in the 16th century. He took his divorce decision matter into his hand when he was unable to obtain an annulment of his marriage with Catherine of Aregon from the Catholic Church. He established the Church of England and was the Supreme Head of the Church. This gave him the unprecedented control over the religious matter that granted him the power to divorce and remarry. His action in the United Kingdom shaped the history and legal framework on marriage

The first recorded divorce in England took place in 1670²⁸ and was between Lady Anne Pierrepont with Sir John Packington. Lord Roes sued Packington for adultery and succeeding, resulting in the annulment of his marriage to Lady Anne. This divorce set the precedent that allowed wealthy individuals to obtain divorces became widely available in the 19th century as it marked a significant shift in divorce law in England. Monumental to this paper is that, the first recorded divorce aside

²⁶ Law Reform (Husband and Wife) Act 1962 Chapter 4810 11 Eliz 2 (An Act that amend the law with respect to civil proceeding between husband and wife).

²⁷ (n 24).

²⁸ It was enabled by an Act of Parliament in 1667.



the ecclesiastical courts that annulled the marriage between King Henry and Catherine was decided on fault-based evidence, Lord Roos having established adultery by Lady Anne with Packington

While the Matrimonial Causes Act of 1857 was a landmark legislation that allows individual to obtain a divorce through civil court rather than solely relying on the church, the Act²⁹ introduced new grounds for divorce that include; adultery, cruelty, desertion, and incurable insanity, thereby making it relatively easier for couples to obtain a divorce. This reform still did not remove the challenges faced by woman, as they still had to prove additional grounds such as cruelty and desertion, compared to men who only need to prove adultery. This makes it harder for women to divorce via fault-based divorce proceeding which is not the case with men

Over the years, several landmark cases and legislative change that have shaped the history of divorce in the United Kingdom and of these cases is the case of *Russell v Russell*³⁰ where the women's right to petition for divorce on grounds of their husband's cruelty was recognised. It was a significant milestone in women's right in divorce before subsequent development in the United Kingdom legal framework and amendment, that allowed for mental cruelty as a ground for divorce, thereby expanding the scope of matrimonial justice law. In 1969, the Divorce Reform Act introduced 'irretrievable breakdown of marriage' as the sole ground for divorce, a shift from fault-based to no-fault divorce allowing divorce to be more accessible and less contentious.

Conclusively therefore, the history of divorce in the United Kingdom is a complex and evolving narrative that has seen significantly changes over the years. From its early origin with limited grounds for divorce and the influence of religion, to the legal reforms in the 19th and 20th centuries, and the introduction of fault-based and no-fault divorce law proceedings in the United Kingdom that was so complex and spans across centuries, reflected the significant legal, social, and cultural changes, and remains an important aspect of the matrimonial legal proceedings in modern society. Not until the recent enactment that pave the way for no-fault divorce in the United Kingdom from April 2022 the divorce system was that of couples apportioning blame to start divorce proceedings, which this enactment has removed

3.1.1 No-Fault Divorce Proceeding in the United Kingdom

This is a recently introduced divorce proceeding in the United Kingdom. It marked a significant change in the way that couples can end their marriage. It allows couples to obtain a divorce without the need to prove fault or wrongdoing by either party as required before coming into force of the enactment in 2022³¹. By submitting the fact that the marriage has failed, instead of seeking to hold someone accountable and supply evidence in support of a spouse's wrongdoing. The changes

²⁹ Matrimonial Causes Act 1857.

³⁰ (1924) AC 687.

³¹ Divorce Dissolution and Separation Act 2020. Under Section 1 (3) of the Matrimonial Case Act 1973 (As Amended by the Divorce Dissolution and Separation Act 2020) that came into force in April 2022, a party seeking to divorce only need to assert that the marriage has broken down irretrievably.



alleviate stress and prevents further deterioration in the parties' relationship. This particularly important in cases where the spouses have children and will have the co-parent following the conclusion of the divorce proceeding³²

3.1.1.1 Why No-Fault Divorce?

Several reasons put forward in support of no-fault divorce include:

1. Simplicity of the Proceedings

When the proceeding does not require prove of bad behaviours of any party before a couples can obtain a divorce, it then make the process simpler and less contentious as parties do not have to engage in any legal battles to prove who is at fault. It reduces if not remove the trauma as no one party, no longer have the requirement to give any reason why the marriage has broken down.

Prior to no-fault divorce, the two years period for a divorce proceeding to be commenced requirement does not apply under the no-fault divorce law.

2. Provide and Sure Privacy of Couples during the Proceeding

No-fault divorce ensures and protect relationship even when is to be ended as parties are precluded from airing their dirty laundry in court to secure divorce. It is sometimes beneficial for couples that still need to keep facts of the divorce private as in most instances; sensitive or personal matters are involved.

3. Reduces Litigation Costs and Time of Couples and the Court

Because the divorce does not require prove of any facts by any parties, it makes the process less expensive as it minimises costs and time of the solicitor's correspondence as well as that of the court that is associated with the content of divorce proceeding application

Defences to divorce under the no-fault involved legal technicalities rather than contesting the grounds for divorce based on the contents of the application, making the divorce process less contentious and more efficient, potentially saving couples time and money in legal fees as well as the time of the court³³

4. Reduces Possible and Potential Conflict

This divorce proceeding helps parties avoid potential conflict because it does not require the need to provide evidence or a statement outlining the bad behaviour of the spouse making the process

³² L Orsi-Barzanti, The Pros and Cons of N-Fault Divorce, (July 2024). Found on <gnlaw.co.uk/no-fault-divorce-pros-cons/> accessed on the 30-05-2026

³³ L Orsi-Barzanti (n 32)



less contentious and more peaceful since parties do not need to engage in legal battle in effort to establish fault³⁴

5. Protects Victims of Domestic Abuse and Violence

No-fault divorce law proceeding targets at divorce process that is less hostile more efficient and speedier for victims of domestic abuses and violence. The elimination of prove of fault or spouse's unreasonable behaviour to commence and obtain divorce. This requirement most times create difficulty for victims of domestic abuses and violence as it could compel such individuals to confront their trauma and potentially face retaliation from their abusers and violators. The no-fault divorce proceeding excludes this and helps in protecting them as they secure divorce fast and less traumatic

6. Speedy and Faster in Securing Divorce

The no-fault divorce makes it speedy and faster for applicant to obtain divorce granted than the fault-based divorce proceeding. This can be beneficial for couples who want to divorce and move on with their lives as quickly as possible

4. MARRIAGE IN THE UNITED STATES OF AMERICA

In the United States of America, marriage is perceived as legal, social, and religious institution. The marriage age is relative as it is set by each State and territory, either by statute or by the common law application. One may marry without parental consent or other authorisation having attained the 18years of age in all the United States except Nebraska where the general Marriage age is 19years and Mississippi where the general marriage age is 21years. Puerto Rico adopts 21years as the general marriage age. In Alabama, however, the age of majority is 19years, while the general marriage age is 18years. There is also a provision by most States to set lower age at which underage person are able to marry with parental or judicial consent

Marriages in the United States of America vary in terms of religious, socioeconomic status, age, commitment, and so forth, reasons for marrying as empirical findings shows include a desire to have children, love, immigration or economic security³⁵

Marriage can be terminated by annulment, divorce or death of the spouse. Divorce being dissolution of marriage in some laws vary by State, and address issues such as how two spouses bifurcate their property, how children will be cared for, and support obligations of one spouse towards the other. All United States of America jurisdiction recognise common law marriages that were validly contracted in the originating jurisdiction, because they are valid marriages in the jurisdiction where

³⁴ ibid

³⁵ C Nedelson and N Malkah, To Marry or Not to Marry: A Choice, [1981] 13(10) *The American Journal of Psychiatry*, 1352-1356.



they were contracted because of the Faith and Credit Clause³⁶ The United States of America inherited the legal foundation of English common law particularly with respect to coverture,³⁷ which is to the effect that when a woman is married, her legal identity was ‘covered’ by her husband, making her ownership to any property prior to the marriage, that of her husband. This practice extends to wages or earnings. She could not buy, sell or own in her own name. She could not sign contracts, make a will, or sue and be sued without her husband’s consent. If she committed a crime, her husband was often liable to. If someone harmed her, the husband can sue

The operational practice position at the time denied the very being or legal existence of the woman as consolidated and incorporated her legal existence during the marriage into that of her husband. This was the status and position of marriage in the 1776 until the coming into force of the Married Women Property Act³⁸ in 1948 through 1900 that gave wives right to own property and wages though, the idea still stuck around until the coming into force of no-fault 1969. The experience from the coverture messed up women when it comes to divorce in many ways that include; property division, alimony never granted for the wives particularly if they were at fault as established during divorce proceedings, and no standing in court as women could not sue for divorce herself without husband acting as ‘next friend’. She could not hire a lawyer, sign court documents or control any money for legal fees.

The accepted practice before the 1969 law, divorce proceeding in the United States of America was rooted in the tradition of English ecclesiastical court. Marriage then was a sacred, lifelong covenant such that to secure a way out of marriage was to prove that your spouse had committed a grave offense against the marriage expectations, a ‘fault’ so severe to justify dissolving the union that was believed to be sacred and lifelong. It required a petition to approach the court and publicly accuse the spouse of a serious transgression like adultery or abuse, turning the deeply personal matter of a failed marriage into a public spectacle of blame and shame. This system created immense problems. It forced couples into adversarial battles, often encouraging them to exaggerate or even fabricated claims of misconduct to meet the strict legal standards. Unpleasant experiences with the entire process was the costly, slow and emotionally destructive of it, especially for any children involved. The situation began to change dramatically in 1969 when California, under then Governor Ronald Reagan, that signed the nation’s first purely non-fault divorce law. It was a revolutionary trend that permits couples to divorce based on ‘irretrievable differences’ without having to prove one party was the ‘guilty’ one, aimed at reducing the acrimony and allow individuals to move on with their lives more peacefully. By the 1980s, majority States had adopted some form of no-fault divorce, which that of the State of New York is considered and examined hereunder.

³⁶ United States Constitution, art 1, s 1, The Full Faith and Credit Clause, addresses the duty that States within the United States have to respect the ‘Public acts record, and judicial proceedings of every other State’.

³⁷ It is a Latin word that means ‘cover’.

³⁸ NY 1848.



4.1 No-Fault Divorce Law Proceeding in the United States of America (The State of New York)

New York was the last American State to put in place the no-fault law divorce proceeding. The law³⁹. The law as a departure from the old order, the fault-based divorce proceeding to the no-fault law divorce proceeding that create a sole ground for dissolution of marriage. This sole ground is that; ‘the relationship between husband and wife has broken down irretrievably’⁴⁰ for a period of at least six months, provided that one party has stated under oath. No factual proof by either party is required to established the ‘irretrievable break down

Worthy to note of the sole ground for the dissolution of the marriage are:

1. Irretrievable breakdown. No need to prove who caused the breakdown
2. At least six months. One party swearing on oath that breakdown lasted six months and above. A sufficient act as the court does not need test or proof to establish.
3. No factual Proof. There is no fault bit as the old order fault-based divorce proceeding requirement to prove fault of adultery, cruelty, and abandonment.

5. ANTICIPATED RATIONALE FOR NO-FAULT DIVORCE LAW PROCEEDING OVER FAULT-BASED LAW DIVORCE LAW PROCEEDING

Despite the earlier discussed benefits of no-fault divorce law proceeding, the following account for the rationale of no-fault divorce law proceeding over fault-based divorce law proceeding

1. It Provide for ‘End of Blame Game’

The is due to the Law Report Commission 1990 of the United Kingdom and the United States of America Parliamentary Reports and Oversight Finding respectively. The reports captured in their respective findings that fault-based divorce encourages and serves as source of prove of guilt of a spouse thereby increases bitterness and hurts on children of marriages and makes the need for post-divorce co-parenting harder for peaceful leaving and co-existing parties and family after divorce is secured or granted. This no-fault divorce law proceeding has helped to overcome.

2. Removal of Incentives to Lie

Couples adopted and used “unreasonable behaviour’ or fake separation dates to certify the statutory requirement under the fault-based proceeding to secure divorce quickly. Unhealthy practice that needed to be stopped even when the court knew were fictions

3. To Protect Victims of Domestic Abuses and Violence

Under the fault-based (old law), victims often had to plead their own ‘unreasonable behaviour’ to get divorce within 2 years or wait 5 years depending on the jurisdiction. No-fault divorce law

³⁹ 2010 Act: Act to Amend the Domestic Relation Law, Ch. 384 2010 NY Laws.

⁴⁰ *ibid*, s 170 (7).



proceeding lets them leave without re-litigating abuse

4. Reduction of Court Litigation Costs and Court's Time

Under the fault-based divorce law proceeding, cases were and are contested and it takes time to be decided and expensive. The revolutionary departure from fault-based to no-fault reduces hearing time of the court and litigation costs on the parties.

5. It Position and Situate Divorce Proceeding within the Modernised Family law

The 1857 fault-based model did not fit the 21st century and evolving views on marriage breakdown. Focus of the modern trend is not on 'who is at fault' but 'how to separate fairly' and this is what no-fault model has achieved.

6. CONCEPTUALISING NO-FAULT DIVORCE PROCEEDING IN THE UNITED KINGDOM, UNITED STATES OF AMERICA AND NIGERIA

While marriage is a relationship that is natural to human and supported customary tradition, religious practices and the law depending on the jurisdiction concern, divorce is a process that brings to an end marriage and the proceeding is guided by customary, traditional, religious and the law. An appraisal of the discussion of the United Kingdom and United States of America, a focus on the State of New York revealed that, marriages and divorce proceedings in these two jurisdictions is guided by statutes similar to that obtainable in Nigerian under statutory marriage. However, that of the United Kingdom and United States of America has witnessed evolved transformations particularly in their divorce proceedings from the old order of fault-based proceeding to the 21st century no-fault divorce proceedings. This is lacking under the dissolution of marriage in Nigeria particularly under the statutory marriage, inherited colonial legacy of the British colonial regime.

Comparatively, no-fault divorce proceeding as evolved overtime in the United States of America by the State of California in 1969 and now embraced by all the States and thereafter the United Kingdom in April 2022, a development that occasioned laudable benefits to parties in divorce proceedings visiting positive post-divorce impacts on spouses and families. This is yet to be addressed in the Nigerian divorce proceeding as her law on matrimonial causes is yet to witness any transformation in this context. A critical reflection of the customary religious marriages in Nigeria, it could be arguably stated that dissolution of Customary and Islamic Marriages in Nigeria provides for a no-fault divorce proceeding as both allows and advocates for express dissolution of marriage when and where reconciliation effort fails and couples insist on dissolution. Arbitration or Reconciliation Panels or Committees entrusted with the matters in most instances do not insist on couples stating their respective cases particularly where there are children in the marriage as doing that allows them to wash their dirty laundry in the public except where the parties so insist. A similar proceeding as provided under the no-fault proceeding. It is therefore the position of this paper that no fault divorce proceeding is an inherent part of the Customary and Islamic dissolution of marriage



procedure in Nigeria but lacking and yet to be affected under the Statutory Marriage Nigeria as provided under the Act⁴¹ that was left behind as part of the colonial legacy of the Britain.

7. WHAT OUGHT IN MEETING WITH THE 21ST CENTURY DISSOLUTION OF MARRIAGE PROCEDURE LAW IN NIGERIA

In view of the above, and for Nigeria state meeting up with the 21st century approach to dissolution of marriage. This paper suggest and recommend that; there should be a total reformation by means of amendment of the Nigerian domestic and matrimonial legal regime, with respect to the Matrimonial Causes Act to make dissolution of marriage (divorce) from the fault-based divorce proceeding to no-fault divorce which though, not prominently noticed, but embodied and inherent practice applied in dissolution of Customary and Islamic Marriages that were in place in Nigeria prior to the introduction and acceptance of the statutory marriage legal and common law procedure. To do this, the paper recommends Nigeria to review her domestic legal framework to align with the western nations particularly the United Kingdom and United States of America thereby meeting up with the 21st century approach with respect to dissolution of marriage expected of a modern society.

8. CONCLUSION

This paper explored into the origin of marriage as traced from the Holy Bible, the ‘Guardian Book’ of the Christian faith and the Islamic conception from the Islamic religious faith though, it spotlighted predominantly on ‘no-fault divorce proceeding’ in Nigeria, United Kingdom, and United States of America, a focus on the State of New York. In the Nigerian jurisdiction, the discussions were dealt with on the nature and requirements of Customary, Islamic, and Statutory Marriages. While the United Kingdom and United States of America were attended to, in the light of their existing marriages under their various statutory requirements having traced briefly the historical emergence of dissolution of marriages in these two jurisdictions. Divorce was discussed from the old order (the fault-based) and the statutory requirements for a successful granting and procurement or obtaining divorce under the old order proceedings. The departure from the old order proceeding to the new order (no-fault) proceeding under the evolved laws of the adopted nations, the United Kingdom and the United States of America and the associated benefits, rationale for this policy were vividly highlighted and extensively examined, and reviewed. Nigeria is yet to discard the inherent British colonial legacy as left with her under her Matrimonial Causes Law and Procedure with regard to Statutory Marriage and dissolution of marriage. The procedure appears different for Customary and Islamic Marriages as revealed in and by this paper.

9. RECOMMENDATIONS

1. Introduction of a More Balanced No-Fault Divorce Framework in Nigeria

Nigeria should consider reforming its divorce laws to incorporate a carefully structured no-fault divorce mechanism, while retaining fault-based grounds where appropriate. The existing emphasis

⁴¹ (n 21)



on matrimonial fault can make divorce proceedings unnecessarily adversarial and may prolong marital disputes. A no-fault option, modelled comparatively on developments in the United Kingdom and New York, would enable spouses to obtain dissolution where the marriage has irretrievably broken down, without necessarily requiring extensive allegations of misconduct. Such reform should, however, incorporate adequate safeguards for vulnerable spouses, children and financial interests.

2. Harmonisation and Modernisation of Nigeria's Marriage and Divorce Laws

There is a need to review and harmonise Nigeria's various laws governing statutory, customary and Islamic marriages and their dissolution. The coexistence of different legal regimes can create uncertainty regarding jurisdiction, applicable procedures, matrimonial rights and the consequences of dissolution.

3. Simplification and Expeditiousness of Divorce Proceedings

Nigeria should simplify divorce procedures and establish mechanisms capable of reducing unnecessary delays, excessive costs and prolonged litigation. Lessons may be drawn from procedural developments in the United Kingdom and New York, particularly the movement towards administrative efficiency and streamlined dissolution processes. Greater use of alternative dispute resolution, case management, electronic filing and time-bound procedural requirements could make matrimonial justice more accessible and efficient.

4. Strengthening Protection of Children and Economically Vulnerable Spouses

Any reform of Nigeria's divorce laws should place greater emphasis on the welfare of children and the protection of economically disadvantaged spouses. Divorce legislation should provide effective mechanisms for determining child custody, maintenance, education, property adjustment and spousal support. The comparative experience of the United Kingdom and New York demonstrates the importance of treating divorce not merely as the termination of marital status but as a legal process requiring equitable resolution of its social and economic consequences.

5. Adoption of a Comprehensive Matrimonial Reform Policy

Nigeria should undertake a comprehensive review of its matrimonial legislation with the objective of bringing the law into closer conformity with contemporary social realities and internationally recognised principles of fairness, equality and access to justice. Such reform should not amount to an uncritical transplantation of foreign laws.