Statutory Marriage Dissolution in Nigeria: An Analysis of the Legal Framework

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Abstract

The dissolution of statutory marriage in Nigeria is a complex and sensitive issue governed principally by the Matrimonial Causes Act (MCA) of 1970. Divorce being a complex process is the ending of marriage between a man and his wife and vice versa. This work examined the problems and prospects of statutory marriage dissolution in Nigeria, highlighting the need for the reform of the Matrimonial Causes Act, and the Marriage Act, which governs the celebration of statutory marriage. This paper adopted the doctrinal research methodology. By effectively addressing these issues of amendment of the extant MCA, Nigeria can create a more supportive and equitable environment for those seeking divorce, fostering stronger family ties and societal well- being.

Keywords: Statutory Marriage, Marriage Dissolution, Nigeria

1. Introduction

Statutory marriage in Nigeria is essentially monogamous and it is defined as the voluntary union for life of one man and one woman to the exclusion of others.[1] Marriage generally is a universal institution which is recognized and respected all over the world. In Nigeria the celebration, incidents and dissolution of statutory marriage are governed principally by the Marriage Act (MA) and the Matrimonial Causes Act (MCA). The dissolution of marriage contracted pursuant to Nigeria Marriage Act is guided by the Matrimonial Causes Act.[2]

The MCA provides that except where divorce proceedings are based on facts of willful and persistent refusal to consummate the marriage, adultery, or the commission of rape, sodomy or bestiality, no proceedings for divorce can be instituted within two years of a marriage without leave of the court. Thus, the courts in Nigeria are hesitant to end a marriage so soon after it was formed except if any of the above facts has been proved. Prior to 1970, the Nigerian law on divorce was based on matrimonial offence theory. By this theory, a marriage could only be dissolved when a spouse had committed a matrimonial offence such as adultery, cruelty, or desertion. But the MCA introduced the irretrievable breakdown principle, which provides that anyone of the parties can petition for divorce "upon the ground that the marriage has broken down irretrievably."[3] Thus, the section established a simple ground for divorce, that is, "irretrievable breakdown" in place of several grounds which existed prior to 1970. Section 15(2) of the MCA stipulate eight facts, one or more of which must be established and proven in the court in Nigeria before a court will conclude that a marriage has broken down irretrievably and a decree of dissolution granted.

The parties to divorce proceedings have the onus to establish the facts upon which their petition is based. A party who intends to end his or her marriage is faced with the problems associated with proving the facts that will lead to the dissolution of the marriage. Such problems include lengthy and expensive processes, gender bias and discrimination, narrow ground for divorce, child custody and

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[1] *Hyde v Hyde* (1886)LR1, P&D 130, 133.

[2] *Bibilari v Bibilari* (2011) 13 NWLR (Part 1264) 207 CA

[3] MCA, s. 15(1).

property rights tussle, enforcement of court orders, and challenges and conflicts with religious and cultural norms. The challenge with this procedure is that the Matrimonial Causes Act is not adequately equipped to handle these issues associated with the divorce process. This paper calls for a reform of the divorce law by increasing the grounds for divorce and for it to embrace increased access to legal aid and alternative dispute resolution (ADR), judicial training, sensitization for gender sensitivity and cultural awareness, harmonization of statutory law with religious and cultural norms, strengthening legal frameworks for property rights and child custody, public awareness and education on legal rights and procedures. The paper is divided into six parts. Immediately after the introduction comes the part two which deals with the explanation of key concepts. Part three examines the legal framework for dissolution of statutory marriage in Nigeria while part four explores into the problems of the dissolution of statutory marriage in Nigeria. Part five discusses the prospects for dissolution of statutory marriage in Nigeria and part six is the conclusion and recommendations.

2. Explanation of Key Concepts

2.1 Statutory Marriage

Statutory marriage refers to a marriage that is recognized and regulated by the Marriage Act (MA) and Matrimonial Causes Act (MCA). It is a marriage celebrated in accordance with and live subject to the provisions of the above relevant marriage statutes. The MA requires that marriage must be between two persons of the opposite sex who are at least 18years old.[4] The parties must give their free consent to the marriage.[5] The marriage must be celebrated in a public ceremony and that the marriage must be registered with relevant authorities.[6] In law, the registrar's certificate is a prerequisite to the celebration of a valid statutory marriage.[7] The issuance of registrar's certificate is of extreme importance.[8]

The Marriage Act recognizes these three forms for the celebration of marriage, namely, normal registry marriage,[9] marriage by special license,[10] and marriage in a licensed place of worship.[11] Statutory marriage provides legal rights and benefits, including legal recognition of the marriage,[12] right to inherit property,[13] right to custody, legal protection against domestic violence and abuse.[14] This type of marriage offers a secure legal framework for couples, granting them legal status, and rights and responsibilities. A statutory marriage is described as the voluntary union for life of one man and one wife to the exclusion of all others.[15] Statutory marriage is intended to be for life, between one man and one woman to the exclusion of all others during the pendency of the

[4] *Menakaya v Menakaya* (1996) 9 NWLR (pt.472)196.
[5] *Ibid.*
[6] MA, s 6(2),
[7] MA, s 33
[8] *Chukwuma v Chukwuma* (1996) 1 NWLR (pt 426) 543 CA
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Amobi v Nzegwu* (2014) 2 NWLR (pt. 1392) 510.
[13] *Motoh v Motoh* (2011)16 NWLR (pt.1274) 474
[14] *Nanna v Nanna* (2006) 3 NWLR (pt.966)1
[15] *Amobi v Nzegwu & Ors* (2013) LPELR-21863(SC)

marriage,[16] though section15(1)and(2) of the MCA connote the possibility of marriage dissolution or divorce.[17]

2.2 Dissolution of Marriage

Dissolution of marriage or divorce refers to the legal termination or ending of a marriage. Dissolution of marriage is the legal separation of a husband and wife, effected, for cause, by the judgment of a competent court.[18] It is also defined as the optional process of terminating a marriage or marital union.[19] When a marriage is dissolved a judicial decree is issued to that effect. Marriage dissolution leaves both spouses free to re-marry. From the provisions of section 15(2) of the Matrimonial Causes Act, the burden is on the petitioner to satisfy the trial court of the existence of the conditions precedent before the court could hold that the marriage has broken down irretrievably and consequently issue the dissolution decree.[20]

3 Legal Framework for Dissolution of Statutory Marriage in Nigeria

The dissolution of statutory marriage in Nigeria is governed by various laws. The primary legal frameworks are as follows.

3.1 1999 Constitution of the Federal Republic of Nigeria (As Amended)

The 1999 Constitution of the Federal Republic of Nigeria (CFRN)(as amended) is the fundamental law of the land. The legislative powers of the Federal Republic of Nigeria is vested in the National Assembly, which consists of the Senate and the House of Representatives.[21] The National Assembly is empowered to make laws for the peace, order and good governance with respect to any matter included in the exclusive legislative list set out in Part 1 of the Second Schedule to this Constitution. The National Assembly has the sole authority or power to legislate on matrimonial issues, hence the enactment of Matrimonial Causes Act and Marriage Act is an Act of parliament. Accordingly, they enjoy the competence to re-enact or amend the Matrimonial Causes Act and Marriage Act. Section 270 of the Constitution provides for the establishment of a High Court for each state of the federation. The High Court of each state of the federation is empowered to hear and determine matters for the dissolution of a statutory marriage.[22] Thus, for the dissolution of a marriage contracted under the Marriage Act, the appropriate court to institute the case is the High Court of any state of the federation as the court of first instance.[23]

The issue of jurisdiction of the state high court to hear divorce proceedings is essential. Any divorce proceeding instituted in a court other than the High Court of a State is incompetent as the court lacks the jurisdiction to entertain it.[24] In consequence, the action will be struck out.

3.2 Marriage Act[25]

This Act provides for the celebration of marriage under the Act. The Act is the primary legislation for the celebration of marriage in Nigeria. The only form of marriage recognized in Nigeria under

[16] *Hyde v Hyde* (1886) LR I P&D130,133
[17] O I Uchenna and A Nwamaka "Conduct of Statutory Marriage in Nigeria in accordance with the marriage Act*," Journal of Law, Innovation and Development (JLID)* 12, no.1(2020) 132-143.
[18] *The Law Dictionary*<https;//www.thelawdictionary.org>dissolution of marriage> accessed 5th July, 2024.
[19] *Bibilari v Bibilari* (2011)3 NWLR (pt 1264) 207.
[20] *Ekrebe v Ekrebe* (1999)3 NWLR (pt 596) 514 CA
[21] *1999 CFRN* s 4(1).
[22] *Adegoroye v Adegoroye* (1996) 2NWLR (pt.433) 712.
[23] MCA, s 2(1)(a)
[24] MCA, s 2
[25] MA, 2004.

the Act is monogamous marriage, that is, marriage between one man and one woman. The Act provides the legal basis for statutory marriage in Nigeria. It outlines the requirements for a valid celebration of marriage.

By section 7 of the Act, statutory marriage is initiated by the giving of a notice of marriage by either party to the registrar of marriage of the place where the marriage is intended to take place. The notice shall be in Form A and should be signed by the party giving the notice.[26] Upon paying the prescribed fees, the registrar shall publish a copy of the notice by pasting it on the outer door of his office and on the notice board of the registry after it has been entered in the "Marriage Notice Book".[27]After publication, but before the issuance of the registrar's certificate in Form C, which can be issued at any time after the expiration of 21 days period, any person who has just reasons why the parties should not get married can enter a caveat against the issuance of the registrar's certificate by writing the word "forbidden" opposite to the entry of the notice in the marriage notice book.[28]The person must include his or her name, address, and the grounds for the objection in compliance with the provision of section 14 of the MA. Persons who can enter caveat include any person whose consent to a marriage is required or who may know of any just cause why the marriage should not take place.[29] Where such a caveat is validly entered, the registrar shall not issue his certificate until the caveat is removed by the judge of a high court of the state to whom such a matter shall be referred to for determination.[30] The judge shall cause the parties and the caveator to appear before him to show cause why the registrar's certificate should not be issued and the matter shall be determined in a summary way with the right of appeal to the Court of Appeal.[31]

Where the judge decides that the certificate ought to be issued, he shall remove the caveat by cancelling the word "forbidden" and writing below it: "cancelled by order of the high court" and same will be signed in compliance with section 16 of the Act. The registrar shall then issue his certificate and the marriage will go on as if the caveat was never entered. Where a caveat is entered, the period of three (3) months for issuance of registrar's certificate shall cease to run until the issue of the caveat is determined.[32]

3.3 Matrimonial Causes Act (MCA) [33]

The MCA mainly governs the dissolution of marriage, custody, and the welfare of children in Nigeria. The MCA, especially in respect of divorce, was modeled after the English Divorce Reform Act, 1969. Section 11 of the MCA provides for an avenue for the court to reconcile the spouses amicably. In the case of *Eluwa v Eluwa*,[34] the court outlined the situation where amicable reconciliation should be pursued instead of litigation. The court observed that the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel could call for reconciliation.

[26] MA, s7
[27] *Ibid.* s10
[28] *Ibid.* s 14.
[29] *Ibid*. s.14(1).
[30] *Ibid*. s.16
[31] *Ibid*. s 15
[32] *Ibid.* s 16
[33] Cap. M7 LFN 2004.
[34](2013) LPELR-22120 (CA);

Section 15(1) of MCA[35] establishes only one ground for the dissolution of a marriage. This is the ground of the 'irretrievably breakdown of marriage." Section 15 (2) of the Act provides for the facts the petitioner for divorce must prove to show that the marriage has broken down irretrievably. Among these facts is the willful and persistent refusal of the respondent to consummate the marriage.[36] Willful and persistent refusal to consummate marriage is enough ground for dissolution of marriage.[37]

Furthermore, under the provision, either party to the statutory marriage can prove that the marriage has broken down irretrievably by establishing the other's adultery and intolerable behaviour. The irretrievable breakdown may be proved by the fact that since marriage the respondent has committed adultery[38] and that the petitioner finds it intolerable to live with the respondent. A petition based on adultery will only succeed if the petitioner testifies that he or she finds it intolerable to live with the respondent.[39]

Another proof of irretrievable break down of marriage is desertion by the respondent. The desertion must have lasted for a continuous period of at least one year immediately preceding the presentation of the petition. Desertion is the separation of one spouse from the other with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse.[40]

Again, to establish that the marriage has broken down irretrievably, the petitioner is expected to establish the fact that since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.[41] This behaviour must have occurred since the celebration of the marriage.[42] It is the duty of the petitioner alleging intolerable behaviour to prove it because it is a trite principle of law that he who asserts must prove.[43]

The court will hold that a marriage has broken down irretrievably if the parties to it have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition[44] and the respondent does not object to the decree being granted. Mere physical separation does not constitute living apart under the MCA.[45]

A petitioner may establish the irretrievable breakdown of the marriage by showing that the other party to the marriage has for a period of not less than one year failed to comply with the decree of the restitution of conjugal rights made under the Act.[46] Presumption of the death of a party is another proof that a marriage has broken down irretrievably. Once it is shown by the petitioner that one spouse is presumed dead after a long absence without any sign of life, this can be a ground for divorce.[47] This scenario is rare and requires specific legal procedures to establish presumption

[35]MCA, s 15(1)
[36] *Ibid*. s 15(2) (a)
[37]*Ibid.* 15(2)(a)
[38] *Ibid*. s 15(2)b
[39] *Ibid.* s 82
[40]*Rayden's Practice and law of Divorce'* 9th ed(Butterworth, London 1971) 165
[41]*Adetule v Adetule* (2022) 10 NWLR (pt.1838)201.
[42] *Alabi v Alabi* (2007) 9 NWLR (pt.1039) 297.
[43]*Nanna v Nanna*(2006) 3 NWLR(pt 966) 1 CA
[44] *Ibid*. s 15(2)(e)
[45]*Ibrahim v Ibrahim* (2007) 1 NWLR (pt.1015)383.
[46] MCA, s.15 (2)(g).
[47] *Ibid*. s. 15(2)(h)

of death. It must be pleaded in the petition that the respondent is nowhere to be seen or heard by the petitioner and/or the people who ought to hear from him or her could not hear from him or her for over a period of seven years, the court will presume that the respondent is dead.[48]

3.4 Child Rights Act 2003

This Act seeks to set out the rights and responsibilities of the child in Nigeria and provides for a system of child justice administration and the care and supervision of children, amongst other things. Against this background, the Child Rights Act (CRA) was passed in 2003. The structure of the Act was informed by the mandate to provide a legislation, which incorporates all the rights and responsibilities of children, and which consolidates all laws relating to children in a single legislation. Within the context of such a mandate, therefore, the Act is divided into twenty-four parts and eleven schedules.

The various parts address broadly rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, as well as other miscellaneous matters. Section 264 (1) of the CRA, provides for the establishment of a committee to be known as the State Child Right Implementation Committee (referred to as "State Committee" in the Act) The State Committee has the functions[49] to initiate actions that will ensure the observance and popularization of the rights and welfare of the child as provided for in the CRA, Child Right Convention (CRC), and the Africa Union (AU) Charter on the Rights and Welfare of the Child, and the Declaration of the World Summit for Children. In terms of contents, the Child Rights Act borrowed a leaf from the United Nations Child Rights Convention (CRC) and the Organization of Africa Union (OAU) Charter in respect of the guiding principles for the promotion and protection of the rights of children. Under sections 1-2(Part I), the CRA provides that the best interest of the child shall be of primary or paramount consideration in all actions to be undertaken whether by an individual, public or private body, institutions, service, court of law, and administrative or legislative authority.[50] Further, the CRA provides that necessary protection and care shall be given to the child for his/her well-being taking into account the rights and duties of the child's parents, legal guardians and other bodies legally responsible for the child. Part II (Sections 3-20) of the CRA provides for the rights and responsibilities of a child in Nigeria. Accordingly, it entrenches the following fundamental rights of the child, namely, the rights to survival and development, to a name, to freedom of association and peaceful assembly, to freedom of thought, conscience and religion, to private and family life, to freedom of movement, to freedom from discrimination to dignity of the child, to leisure, to recreation and to cultural activities. Furthermore, the rights are the right to health care services, to parental care, protection and maintenance, to free, compulsory and universal primary education, as well as encouragement of the child to attend and complete secondary education.[51]

The CRA also guarantees the right to special protection measures for a child in need of such protection as is appropriate to his/her physical, social, economic, emotional and recreational opportunities in a manner conducive to the child's overall development.[52] Furthermore, the Act provides for the contractual right of a child only for necessaries, and any contract entered into by a child below the age of legal majority, that is, 18 years, for repayment of money

[48] Evidence Act s 164(1).
[49]CRA s 265(1).
[50] CRA s (1) &(2).
[51] *Ibid.* s (3) &(20**).**
[52]MCA s15(2)b

lent or for payment of goods supplied, shall be void.[53] Child Rights Act is important to the society as it is the only Nigeria legislation that protects every aspect of children's life both born and unborn.

3.5 Matrimonial Causes Rules (MCR) 1983

The Matrimonial Causes Act mainly governs the dissolution of marriage and the welfare of children in Nigeria. In 1983, the Matrimonial Causes Rules were made pursuant to the Matrimonial Causes Act.[54]

These rules set out the procedure for instituting actions for the dissolution of marriage, custody and maintenance matters following the dissolution of a marriage. The rules, to a reasonable extent, make provisions for the welfare of children before and after the dissolution of marriage. These are the rules of court practice in matrimonial cases. The power to make these rules is confined in the Chief Justice of Nigeria as stipulated by section 112 of the MCA. Order III Rules 1-3 of the MCR deal with the institution of the proceedings and how the proceedings should be numbered. Order III of MCR generally deals with the proceedings of matrimonial causes of which dissolution of marriage is part of. Order IV provides for the application or leave to institute proceedings for dissolution of marriage. By the rules of this order, application may be made *ex parte* and affidavit has to be made in support of the application for dissolution of marriage. Under rules 11-17 of the MCR, the form of petition for dissolution of marriage, the ground for relief to be stated, the statement in the petition, where the petitioner committed adultery *et cetera* are stipulated. Order V (Part 2) generally makes provision for the petition for dissolution of marriage. Order VI of the MCR[55] provides for the service of the application, which is either by personal service, service by post or by substituted service of the petition *et cetera*.

A decree for dissolution of marriage shall be made in accordance with Form 35 of the MCR pursuant to Order XII of the MCR.

4 Problems of Dissolution of Marriage in Nigeria

4.1 Lengthy and Expensive Process

The lengthy and expensive process of dissolution of statutory marriage in Nigeria is a significant problem that affects many individuals who wish to end their marriages. The divorce process is one where the petitioner has to file the petition or cross petition on the part of the respondent for the dissolution of the marriage entered into between the petitioner and respondent under the Act.[56] Upon the filing of the petition by the petitioner, the petition is to be served on the respondent and having received the petition, the respondent is either to file a cross petition or reply the petitioner's petition. Upon the exchange of pleadings in the petition, the presiding Judge must fix a date for the determination of the petition. The determination of the case never ends in one sitting, thereby making adjournments inevitable. With adjournments, which are not few, parties to the divorce proceedings have the financial burden of paying appearance fees to the counsel representing them at the proceedings on each adjourned date in addition to other costs involved in the proceedings, such as the payment of professional fees, fees for filing processes, and payment of penalties for

[53]*Ibid*. s15(2) b.
[54]Supreme Court Act, s.20.
[55]*Alabi v Alabi* (2007) 9 NWLR (pt.1039) 297.
[56] MCR, s 3

late filing. This leads to prolonged emotional and financial strain on the parties involved.[57] The phenomenon of adjournments evidences the fact of delay in divorce process, thus, leaving couples stuck in unhappy marriages longer than necessary.

From this backdrop, reforms are necessary in the divorce process. Alternative dispute resolution mechanisms could help to streamline the process and reduce the burden on couples seeking to end his or her marriage.

4.2 Gender Bias and Discrimination

Gender bias and discrimination in the dissolution of statutory marriage in Nigeria is a significant problem that affects both men and women seeking to end their marriages. The Nigerian legal system has made efforts to provide equal treatment in divorce proceedings, but there are still challenges and areas for improvement in this regard. The Matrimonial Causes Act and the court strive to ensure a fair and just process for both parties, regardless of gender and socio- economic status. However, cultural and societal factors sometimes produce gender bias in the process.[58] While the law aims to be gender – neutral, it is contended that it did not adequately address the needs and rights of women in divorce cases. Regarding property rights, it is often the name of the husband that appears in the title document of the land conveying title and the court sees the husband as the rightful owner of the property thereby discriminating the wife the right to the property[59]. There is also a gender bias and discrimination with regard to granting custody of a female child to the husband as the court may view the husband as not capable of taking care of the female child. Some non-governmental organizations in Nigeria try to help in this regard. The International Federation of Women Lawyers(FIDA)[60] provides support and advocacy for women's rights in divorce cases and the Legal Aid Council of Nigeria (LACON) plays a crucial role in empowering Nigerians to navigate the complexities of marriage dissolution.[61]

4.2 Child Custody Issues

Child custody and property rights issues are often central to the dissolution of statutory marriage in Nigeria. They involve emotional, legal, and financial complexities that significantly impair the divorce process. Child custody determines where a child will live, who will make decisions about the child's upbringing, and what visitation rights the other parent has.[62] In Nigeria, these issues are quite complex due to the following reasons: the age and gender of the child, the emotional and physical wellbeing of the child, and the ability of each parent to meet the child's need.[63] Hence, the need for law to adequately state what to consider in awarding custody.[64] Custody disputes are a common source of contention during divorce proceedings. Parents may have differing views on custody arrangements leading to protracted legal battles. Disagreements over visitation rights, holiday schedules, schooling, and religious upbringing can complicate these disputes, often requiring court intervention. The best interest of a child in divorce proceedings is the paramount

[57] I Sagey "*Nigeria Family Law*", (Malthouse Law, 1999) 402
[58] M O Ashiru, "Gender Discrimination in Division of property on Divorce in Nigeria" *Journal of African Law* vol.51, No. 2 (2007)
[59] Ibid.
[60] O Oluyede, "Non-Government Organizations and Nonprofit Organizations", 47 ABS/SIL YIR 319(2013) <https://scholar.smu.edu/til/vol47/iss0/24>accessed 1st of April 2024.
[61] A A Ibrahim, "The Legal Aid Council in Nigeria: Challenges and possible solutions",
Available athttp://ssrn.com/abstract=3547025 accesed 1st of April 2024.
[62] *Damulak v Damulak* (2004) 8 NWLR (pt.874) 151.
[63] *Odusote v Odusote* (2012) 3 NWLR (PT.1288) 478.
[64] MCA, s. 71(1).

consideration[65] and, as such, the court must not overlook the child's right to maintain relationships with both parents. This leads to complex custody arrangements in some cases.[66] To solve this custody issue, this paper recommends conciliation in resolving custody disputes outside of court to be included in the Matrimonial Causes Act. This method is less adversarial and engenders cordial relationship even though parties are no longer husband and wife.

4.4 Property Rights Issues

Property rights in a Nigerian divorce involve dividing assets and liabilities between spouses. The court has been given the general power for property settlement.[67] Concerning property rights there is a distinction between property acquired during the subsistence of a marriage and personal property, that is, property acquired prior to a marriage. A wife can successfully claim a piece of property acquired during the subsistence of her marriage notwithstanding the use of her marital surname in the title documents of the property.[68] Determining which assets are properties acquired during the subsistence of the marriage can be complex, especially if one spouse owned a business, real estate, or other significant assets before marriage. Establishing ownership often requires finance and legal analysis. The court aims for equitable distribution of marital property, which may not always mean an equal split because it must consider each spouse's contribution, earning capacity, and future financial needs. Child custody and property rights issues are significant challenges in the dissolution of statutory marriage in Nigeria. To address these challenges, parties should seek experienced legal counsel and, where possible, consider alternative dispute resolution methods to reduce conflict and expedite the process.

4.5 Narrow Ground for Divorce

Narrow ground for divorce in Nigeria is a major challenge when it comes to the dissolution of statutory marriages in the country. The Matrimonial Causes Act is the primary legislation governing the grounds for divorce in Nigeria.[69] According to this Act, there is only one reason for seeking divorce,[70] that is, that the marriage in question has broken down irretrievably. To establish this ground, the petitioner must prove one or more of the following facts as provided for under section15(2) of the MCA: adultery and intolerable behaviour, willful and persistent refusal to consummate, desertion, *et cetera*.[71]

Proving adultery and intolerable behaviour, or desertion can be challenging. Often, it requires extensive evidence, witness testimony, and detailed accounts of events. This complexity leads to prolonged legal battles, increased costs, and emotional stress for the parties involved. There is the need for a review of the Matrimonial Causes Act to expand the grounds for divorce and make the process more equitable and accessible for couples in Nigeria.

4.6 Conflicts with cultural and religious norms

The dissolution of statutory marriage in Nigeria is tasking, largely because of the diverse religious and cultural backgrounds across the country. These backgrounds often conflict with the principles and processes of statutory marriage, leading to significant social and legal challenges. Religion plays a significant role in the Nigerian society with Islam, Christianity, and traditional religions

[65]CRA, s. 3.
[66]*Nanna v Nanna* (2006) 3NWLR (pt 966) 1 CA.
[67] MCA, s.73.
[68]*Idirisu v Obafemi* (2004) 11 NWLR (pt884) 396 CA.
[69] MCA, s,15(1) & (2)
[70] *Ibid*. s. 15(1).
[71] *Ibid*. s. 15 (2).

being the dominant religions in Nigeria. Each has distinct views on marriage and its dissolution. In Islam, marriage is considered a religious contract with the specific provisions for divorce known as "talaq" or "khul".[72] Divorce under Islamic law differs from divorce under statutory law in terms of grounds for divorce and the role of religious authorities. Islamic marriages are governed by Sharia law.[73] In Christianity marriage is taken to be for life and so indissoluble,[74] and from this perspective Christians are indisposed to it. Customarily, marriage does not create a bond only between the man and woman in it, but also between the families and kindreds of the man and woman. The bond extends to other social strata. For instance, if the man and woman come from different towns, local governments or states, the bond binds these different social-political entities and create harmony amongst them. Consequently, divorce under statutory law can break this social harmony. This cultural and religious belief of sanctity and union for life of spouses leads to significant resistance to statutory divorce which entails bringing a marriage to an end.

5. Reform Prospects for Dissolution of Marriage in Nigeria

Making divorce proceedings less cumbersome in the country demands attention in some areas in the process of divorce.

5.1 Addressing Gender Bias in Divorce Law

Gender bias in divorce laws can manifest in various ways. Examples include disparities in the division of assets, child custody, spousal support, and societal stigma. Women are often at a disadvantage in court proceedings and may not receive a fair share of properties acquired during the subsistence of the marriage or adequate support for themselves and their children as most of the family properties are bought with only the husband's name.[75] Therefore, the name that appears in the title documents are often times the husband's name who would be entitled to the properties leaving the wife with little or no property and support for herself.[76] Addressing these biases requires a comprehensive approach that involves legal reforms. Reform efforts hold promise for creating a more equitable and accessible divorce process in Nigeria. Addressing gender bias, expanding grounds for divorce, and fostering a more understanding societal view of divorce are all crucial steps towards a legal framework that better serves the needs of individuals seeking to dissolve their marriages.

5.2 Increased Access to Legal Aid and Alternative Dispute Resolution

Limited access to legal representation and a rigid court system can create significant barriers to dissolving marriages in Nigeria. However, increased access to legal aid and alternative dispute resolution (ADR) offers promising prospects for a smoother and more accessible approach. As societies evolve, the traditional methods of resolving marital disputes through lengthy court battles and expensive litigation are increasingly being replaced or complemented by a more accessible and less cumbersome methods, such as the ADR.

This shift is driven by the recognition that marriage dissolution could be emotionally and financially tasking, and that the focus should be on resolving issues in a way that minimizes conflict and promotes fairness. Legal aid is a cornerstone of access to justice, providing individuals

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[72] *Setto v Motsibbe & Anor* (2002)6 NWLR(P762) (Pp.133-134, paras. D-B)
[73] (1991)1 NWLR(p167) P 356 CA
[74] See *1983 Code of Canon Law*, can. 1056. Jude O. Ezeanokwasa, *The Legal Inequality of Muslim and Christian Marriages in Nigeria: Constitutionally Established Judicial Discrimination*, (New York: Edwin Mellen, 2011) 290.
[75] M O Ashiru, "Gender Discrimination in Division of Property on Divorce in Nigeria" in *Journal of Africa Law*, vol. 51, No. 2 (2007).
[76] Nwudego, "*Family and Succession Law in Nigeria*" Kluwer Law International B.V (2022) 203

who cannot afford legal representation with the means to navigate complex legal systems.[77] In the context of marriage dissolution, legal aid plays a crucial role in ensuring that both parties have a fair opportunity to present their cases and receive a just outcome. Legal aid ensures that financial constraints do not create an imbalance in legal representation. This is particularly important in divorce cases, where one party may have greater financial resources than the other. Legal aid offers more than a just representation; it provides guidance and advice to individuals facing the dissolution of marriage. This support can help parties understand their rights, navigate legal procedures, and make informed decisions.

On the other hand, alternative dispute resolution (ADR) encompasses various methods for resolving disputes outside of traditional court litigation. In the context of marriage dissolution, ADR offers a more collaborative and less adversarial approach, ADR offers numerous benefits that contribute to a more positive experience for those undergoing marriage dissolution. ADR fosters a less adversarial environment, reducing the stress and emotional trauma often associated with divorce proceedings. ADR processes are typically faster than court litigation, allowing couples to reach a resolution more quickly and move on with their lives. In *Salihu v. Ministry of Edu*[78], Georgewill, JCA, said this about ADR:

> yet it is truism that litigation in most cases is either prolonged and end in favour of one person against the other and tending to even widen the differences between the parties in the spirit of the "victor" and the "vanquished". This is where the concept of alternative but amicable resolution of disputes between the parties by themselves steps in to afford the parties the unique opportunity of being both winners' in the win- win result of peaceful out of court settlement of dispute by the parties. Both parties are made to and have become winners, none a loser, this augurs well for a complete or total reconciliation and thus engender future cordial relationship between the parties to such amicable settlement.

In conclusion, increased access to legal aid and ADR holds immense potential for transforming the landscape of marriage dissolution in Nigeria. By empowering individuals, promoting collaborative approaches, and ensuring a fairer legal system, these reforms can pave the way for a more efficient, dignified, and child-centered approach to ending marriages that have irretrievably broken down.

5.3 Judicial Training, Sensitization for Gender Sensitivity and Cultural Awareness

Sensitization for gender sensitivity and cultural awareness is particularly important in dissolution of marriage cases as judges and judicial officers need to be aware of the nuances and complexities that arise in divorce proceedings. Judges and judicial officers also need to be aware that divorce comes with emotional and psychological impacts on the parties.

Judicial training refers to the education and developmental programs provided for judges to enhance their skills, knowledge, and competences in adjudicating cases effectively and efficiently. Judicial training programmes can cover topics such as legal updates and reforms, and evidence-based decision making. Training ensures that judges have a thorough understanding of evolving legal frameworks on divorce. Judicial training and sensitization programmes are not a magic bullet, but they represent a vital step forward in achieving fairer and more equitable divorce proceedings

[77] A A Ibrahim, "The Legal Aid Council in Nigeria: Challenges and possible solution."
< http://ssrn.com/abstract=3547025>accessed 1st of April 2024
[78](2017) 3 NWLR (pt 1551) 127 CA at p137-138 para D-D

in Nigeria. By equipping judges with the knowledge and skills to navigate gender and cultural complexities, the legal system can be transformed into a place where individuals seeking divorce can expect a just and unbiased outcome.

Judicial training and sensitization for gender sensitivity and cultural awareness are critical components in promoting fairness and justice in the dissolution of marriage in Nigeria. By addressing gender biases and fostering cultural awareness, the judiciary can make more equitable decisions, protect vulnerable parties, and promote a more inclusive legal system. Implementing comprehensive judicial training programmes requires collaboration, ongoing commitment, and a focus on promoting gender equality and cultural sensitivity. These efforts ultimately contribute to a more just and equitable approach to the dissolution of marriage in Nigeria.

6 Conclusion and Recommendations

6.1 Conclusion

The MA is an Act that regulates the celebration of marriage in Nigeria. The MCA is principally the statute that mainly governs the dissolution of marriage in Nigeria. It provides under section 15(1) of the MCA the sole ground for divorce, which is irretrievable breakdown of marriage. The Act also make ample provision under section 15(2) MCA, the facts which the petitioner must establish to warrant the court to conclude that a marriage has broken down irretrievably. The proving of these facts is associated with problems such as lengthy and expensive proceedings, gender bias and discrimination, child custody issues and property rights issues, et cetera. To eliminate these problems reforms are need to make the divorce process less cumbersome and emotionally tasking.

The law makes room for reconciliation between parties, but the attention to reconciliation is called for only after a party has instituted action for divorce. At this point in the divorce process, it is wondered if any success could be recorded since the party that has instituted a divorce proceeding must have made up his/her mind in having the marriage dissolved. For this he/she could claim that a reconciliation attempt has been unsuccessfully made.[79]

6.2 Recommendations

Alternative dispute resolution (ADR) should be incorporated into the divorce process so as to resolve divorce issues more amicably. This will reduce acrimony and preserve children's well-being. It should be made a condition precedent for filing divorce proceedings. It has the potentials of boosting the prospects of reconciliation and so reduce the number of cases that go to court for hearing. It is submitted the that the period of three years prescribed by section 15(2)(f) before the petitioner can initiate divorce proceedings should be extended to five years. This longer period would ensure that the dissolution of marriage is not done in a hurry. It allows parties sufficient time to consider reconciliation. Reviewing existing laws like the Matrimonial Causes Act to ensure equal rights of the parties to the marriage regardless of whose name appears in the title documents during the subsistence of the marriage is good direction for a more equitable divorce law in the country.

[79] D A Ijalaye, 'English Matrimonial Cruelty Law in Nigeria: Dead or Alive?' <https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjXwJX57PrlAhXyuXEKHan3CGIQFjAAegQIAxAC&url=http%3A%2F%2Fdigitalcommons.law.uga.edu%2Fcgi%2 Fviewcontent.cgi%3Farticle%3D2190%26context%3Dgjicl&usg=AOvVaw03gaLf2cDo3MZKA- Ba5Yw> accessed 13 October, 2023.