



Modification of divorce laws and procedures in Nigeria: Lessons from India, UK and Australia

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Abstract

From the beginning, marriage was to be a solid union for a happy family life. On the wedding day, none of the couple envisage the marriage will hit the rock, but so many situations may add up to cause marriages to shrink. In most cases rather than marital disputes leading to lasting enmity between parties, one of the ways of parting in peace has been by way of dissolution of the marriage. Why do marriage envisaged as happily ever after terminated? What are permissible grounds for such termination? This paper shall analyze the dissolution of marriage under the statutory law in Nigeria. It shall further discuss the dissolution of marriage under the Nigerian customary law. A brief analysis shall be undertaken into the dissolution of marriage under the Islamic law in Nigeria. The paper shall highlight dissolution of marriage laws in India, UK, and Australia and the comparative analysis shall sum up the conclusion. The doctrinal method of research shall be followed and copious reference shall be made to case laws. It has been proven over the years that stringent method of proof for divorce as used in Nigeria has failed to promote the sanctity of marriage thus a paradigm shift to no fault based as in Australia is proposed and divorce by consent as practiced in India be permitted to parties who have become enemies to each other.

Keywords: dissolution of marriage, conugal rights, grounds for divorce, intolerability, proof of adultery, dowry, talak, no fault divorce

Introduction

Dissolution of marriage simply put means the termination of Marriage. It is the sum total of legal proceedings that brings an end to the holy matrimony. Parties to the marriages are given release from the union; to this end they go their separate ways. Unfortunate situations that build up over time have been root causes of the breakdown of marriages. Matrimonial problems are caused by such factors as cruelty, incompatibility, crime, suspicion, poverty, addiction to drugs alcohol, gambling, infidelity and many others. Sociologists agree that poverty and infidelity account for over 85% breakdown of most marriages in Nigeria^[1]. While poverty as a factor swings from left to right, infidelity automatically kills the affection and love already built in the marriage^[2].

According to Nwogugwu, a good divorce law should ensure divorce is not so easy as to dissuade the parties from making efforts to overcome their matrimonial difficulties^[3]. There is a bar against dissolution of marriage in the first two years in Nigeria, but the rule is not absolute, if exceptional hardship and intolerability is proved in the first two years of marriage, the court can still dissolve it. Furthermore a good divorce law must also assist couples whose marriage has broken down, to part ways peacefully with minimum ill feelings and rancor.

Scott is of the view that, divorce was historically restricted by the law and was unavailable except in extreme circumstances. She further posited that Divorce law was largely a nineteenth-century development, and that divorces were not prevalent until the twentieth-century^[4].

This paper shall unravel the divorce laws of Nigeria, India, UK, and Australia with a view to proposing reviews to improve the current state of our matrimonial laws. It is pertinent to discuss some alien concepts associated with matrimonial causes and discover the theoretical framework for divorce.

Brief Conceptual and Theoretical Analysis of Dissolution of Marriage

Dissolution of Marriage is an annulment of marriage by statutory law, custom or Islamic law. It put an end to a legal marriage^[5]. After marriage it is a requirement for parties to consummate. Consummation relates to the need for parties to the marriage to have mutual sexual intercourse. It is the duty to fulfill the marriage^[6]. Intolerability refers to when a condition is incapable of being put up with or incapable of being borne or endured^[7]. Talaq is a pronouncement of the husband's intention to disown his wife and is potent in Muslim divorce. According to Patel, it is the unilateral right of the man to divorce his wife. It can be done either verbally or in writing. The procedure for Talaq is performed by the husband who will pronounce the dissolution three times after which marriage is dissolved^[8]. There are theories of dissolution of marriage including irretrievable breakdown theory, fault based theory, Social exchange theory and mutual-consent theory^[9]. The irretrievably breakdown theory postulates that divorce should only be granted when marriage has broken down and cannot be reversed. Proponents of this theory are of the view that marriage should be dissolved with minimum bitterness.

Under the fault based theory as practiced in Nigeria, marriage can only be dissolved when the petitioner is able to prove to the satisfaction of the court that the respondent committed a matrimonial offence. There are so many criticisms against this theory, prominent of which is that it creates hostility and leave record of bad character of parties for generations yet unborn.

According to Jeng and Mckenry, the social exchange theory suggests that individuals determine whether to dissolve their current union by comparing the costs and rewards of the union. It deals with both micro and macro factors involved in the decision to divorce. The criteria used to measure the

rewards and costs of marriages and divorces not only differ among individuals, but also differ across cultures ^[10].

The mutual-consent theory as permitted in India, provides that since two persons marry by mutual consent, they can also by mutual consent bring the marriage to an end. This theory has been criticized for leading to easy breakdown of holy matrimony and for promoting immorality and lack of self-control. But are there valid grounds by which marriage can be dissolved? This paper will treat such grounds in Nigeria and India.

Grounds for Dissolution of a Statutory Marriage in Nigeria

The dissolution of a statutory marriage in Nigeria is regulated by the Matrimonial Causes Act. The Constitution of the Federal Republic of Nigeria places marriage in the exclusive legislative list. This implies that the National Assembly makes laws governing matrimonial causes. In 1983, they made Matrimonial causes decree pursuant to the matrimonial causes Act ^[11].

Parties who marry under the Act are under an obligation to dissolve their marriage in line with the provisions of the Act. Under the Act, there is only one ground for divorce. The only ground for divorce is that the marriage has broken down irretrievably. To prove that the marriage has broken down irretrievably, the Act further list those conducts that can lead the breakdown of the marriage. Section 15 of the Matrimonial Causes Act ⁴ provides the facts to be proven to support dissolution of marriage.

It should be noted that proof any one of this facts satisfactorily can ground dissolution.

1. A petition under this act by a party to a marriage for a decree of dissolution of marriage may be presented to the court by either party to the marriage upon the ground of the marriage has broken down irretrievably.
2. The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage have broken down irretrievably if, and only if, the petitioner satisfies the court of one or more of the following facts:
 - a. That the Respondent has willfully and persistently refused to consummate the marriage.
 - b. Since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
 - c. That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
 - d. That the respondent has deserted he petitioner for a continues period of at least one year immediately preceding the presentation of the petition;
 - e. That the parties to the marriage; have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted; That the parties to the marriage; have live apart for a continuous period of at least three years immediately preceding the presentation of the petition
 - f. That the other party to the marriage has for period of not less than one year failed to comply with a decree of restitution of conjugal rights made under this Act;
 - g. That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

Proof of Willful and Persistent Refusal to Consummate Marriage

To ground success under this head, the petitioner must show that there was a refusal by the respondent to consummate the marriage and that despite a number of requests, the Respondent continued to refuse to engage in sexual intercourse with the petitioner. A mere neglect is not the same as refusal. It must be shown that the refusal was a conscious and free act of the respondent. The case of *Ford V Ford* ^[12] is illustrative of this ground. The couples married while in prison and the husband refused to have sexual intercourse with the wife when she visited the prison because it was against prison rules. The wife sued for willful refusal but court held that refusal to have sex while on prison visit was not sufficient to constitute a willful refusal. A marriage is consummated where the parties have full intercourse, even though the husband is sterile. A marriage is also consummated where the husband uses the withdrawal method known as *coitus interruptus* or condom ^[13].

Proof of Adultery and Intolerability

According to Nwogugwu, before 1970, a mere proof of Adultery by a spouse was sufficient to ground a decree of divorce. But under the Act, this is no longer the case. Adultery is qualified by intolerability. The petitioner has to prove not merely the commission of adultery by a spouse but also that after the commission of the adultery the petitioner finds it intolerable to live with the respondent. Adultery involves voluntary sexual intercourse between a spouse and a third party of opposite sex. Freewill is a fundamental element to establish that the intercourse was between two consenting adults. Therefore having sex against the respondent's consent will negate adultery, so where one of the mates had sex with another under the condition of insanity or influence of alcohol or drugs, the law will imply there was no voluntariness.

To prove sexual intercourse, there must be penetration of the female sexual organ by the male sexual organ, thus it is doubtful whether caressing, kissing and oral sex would amount to adultery. Artificial insemination of a wife with sperm of co-respondent has been held to amounts to Adultery. This was the court's verdict in *Oxford v Oxford* ^[14]. It may not amount to adultery in other jurisdiction. According to Uzodike, he reasoned that if artificial insemination is regarded as adultery, it will not be easy to say precisely with whom the adultery is committed: is it with the donor of the semen or the transplant doctor who may be a female? ^[15] Proof of Adultery need not be only by direct evidence but it can be inferred from circumstances like when the respondent and co-respondent are living together in the same accommodation, and also if either of the spouse and a third party of the opposite sex spends a night together in a room or a hotel room, the commission of adultery may be inferred. In this circumstance, it must be proven satisfactorily that the act of adultery makes it intolerable for petitioner to dwell with respondent. The cases of *Cleary V Cleary* ^[16] *Eyo v Eyo* ^[17] *Fajembola v Fajembola* ^[18] cited by Nwogogwu in his family textbooks are very instructive on this point. Adultery is further proved if there is extraordinary familiarity coupled with inclination and opportunity to commit Adultery. See *Akinyemi v Akinyemi* ^[19]. In Akinyemi case, the husband at night visited his wife who was living apart from him. His wife's bedroom was in darkness and when he opened the room, he found the

wife with co-respondent on the same bed, the wife's wrapper was thrown around her body, and the co-respondent's shirt was not properly tucked into the trousers. The court held that the circumstances pointed conclusively to the commission of adultery. In *Williams V Williams* [20] it was held that the birth of a child by a wife during the marriage when the husband had no access of sexual intimacy with the wife due to the fact that the husband was serving a compulsory sentence in prison constituted evidence of commission of adultery.

Also in an unreported High court case of *Emmanuel Okon V Christiana Okon* [21]. The respondent deserted her matrimonial home because the petitioner lost his Job. She went to live with co-respondent. She delivered two sons for the co-respondent the court held that the case of adultery was proved with the birth of two children for the co-respondent and rightly dissolved the marriage. Where a spouse suffers from venereal disease which has not been contacted from the other spouse, a presumption of adultery is raised. Such presumption may however be rebutted by proof that the disease was for example contracted otherwise than by adultery as in *Bulter V Bulter* [22].

Conduct Which Petitioner Cannot Reasonably be Expected to Bear

The conduct of the respondent which petitioner cannot bear must have occurred since the celebration of the marriage. The conduct must be negative. It must consist of acts or omissions that mar the positive flow of affection. In Nigeria, Section 16 of MCA names some of such conduct to include:

1. Evidence of commission of rape, sodomy or bestiality.
2. Habitual drunkenness
3. Imprisonment
4. Attempt to murder and assaults
5. Habitual willful failure to support
6. Insanity and Epilepsy

Other examples of cruelty as pointed out by Uzo [23] includes:

1. Physical violence
2. Excessive drinking of intoxicating liquor inordinate sexual relation with women of questionable character, late night parties and starving petitioner of sex.
3. Insulting and Annoying words on petitioner and family.
4. Practicing black charm, juju and talisman in the matrimonial home.
5. Gambling and ungovernable temper among other things.

The conduct of a respondent that a petitioner will not be reasonably expected to put up with must be grave and weighty in nature and must in the mind of right thinking Persons make petitioner's future cohabitation with respondent virtually impossible. Before the court will come to the conclusion that the petitioner cannot reasonably be expected to live with the respondent, the entire history of the marriage has to be considered. In other words, the court must consider the totality of the matrimonial history of the parties to the petition and the cumulative conduct of the respondent: this was the judicial position in *Ibeawuchi V Ibeawuchi* [24] In this case the appellant failed to prove the alleged intolerable behavior of the respondent which he wanted the court to believe. None of the allegations raised against the respondent was grave and weighty enough to

amount to intolerable behavior as envisaged by section (15 (2) (c) of MCA and none of the enlisted facts was proved. The trial courts dismiss the petition sought.

The cases of *Damulak v Damulak* [25] and *Ibrahim v Ibrahim* [26] were also on the same point. It must be noted that two sets of fact calls for proof under S 15 2 © of the Act. They are (a) the sickening, unreasonable, detestable or condemnable conduct of the respondent against the petitioner. (b) The effect the respondent's behavior has on the petitioner in the light of the former's personality and disposition and of all the circumstances that occurred. A consideration of whether the conduct will make it intolerable for the petitioner to live with the respondent.

These two facts are not severable and dependent. Petitioner must prove the detestable act of the respondent, and then proceed to prove that he/she finds it intolerable to live with the respondent. This ground perhaps has been the most difficult hurdle to cross in Nigeria. The Act did not directly mention what this act will be but left same to be determined by the court. The petitioner and indeed the legal practitioners are compelled to look for and utilize more extreme instances of unreasonable conduct in order to cross the threshold. In so doing they increase the hatred and contempt between parties even stalling future reconciliation attempts.

On the other hand inability to prove this ground also make parties remain in a loveless marriage long after the shell has been broken. The case of *Mrs. Owen v Mr. Owen* is apt on difficulty of deciding unreasonable conduct in United Kingdom jurisdiction that still operate fault based ground like Nigeria [27]. It is proposed that future amendment should rectify this fault based ground of divorce.

Desertion for one Year

Desertion is the separation of one spouse from the other with an intention of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. To constitute desertion, 4 elements must be present at the same time. Defacto separation implies bringing cohabitation to an end and severing all marital obligations. In the case of *Palford v Palford* [28] the court held that desertion is not a withdrawal from a place but from a state of things. There may be desertion where the parties continue to live under the same roof. The test is whether there is one household or more. Animus Deserendi is the intention to withdraw from cohabitation permanently. There is no such intention where the spouse is temporarily absent from the other: during holidays or when on business trip. There will be no desertion if the spouse who has withdrawn from habitation has a good reason for doing so. Where one spouse is guilty of adultery or other matrimonial misconduct the other spouse will have a reasonable cause to live apart and make up mind. To constitute a ground of divorce, desertion must have lasted for a continuous period of one year immediately preceding the presentation of the petition. Desertion is ended if the respondent resumes cohabitation.

Separation and Respondent's consent to Dissolution and Living apart for Three Years.

Where the parties have separated for a continuous period of two years and there is no objection by the respondent against the petition being brought. This separation must be accompanied with loss of consortium. In practice where the respondent fails to file and answer to the petition it can be

inferred that respondent does not object to the petition. This is a non-fault ground. When the parties have lived apart for three years the court may reach the conclusion marriage has broken down. In *Ibrahim V Ibrahim* [29]. The appellant and respondent got married under the Marriage Act on 15th December 1979. They both cohabited at various places, the petitioner moved out of the matrimonial house in March 1992 for a period of three years and three and half months before filing of the petition. The court held that the provision of 15 (2) (f) of MCA was satisfied.

Constructive Desertion in matrimonial proceedings is provided for by virtue of section 18 of MCA. It provides to the effect that if a married person conduct constitutes just cause for the other party to the marriage to live separately or apart it shall be deemed that the party with the condemnable conduct was the cause of the willful desertion of the innocent party. In *Nanna v Nanna* [30]. The evidence adduced before the trial court showed clearly that it was the conduct of the appellant that compelled the respondent to abandon the parties' matrimonial home. In the circumstance, it was the appellant who deserted the respondent.

In *Tabansi v Tabansi* [30], the Supreme Court held that even though it was the petitioner that left the matrimonial house, it was the attitude of the respondent (attempting to strangle her to death) that led to the petitioner vacating the marriage.

Failure to Comply With A Decree Of Restitution Of Conjugal Rights

A marriage may be dissolved on the fact of irretrievable breakdown where the respondent has for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights. This provision will come into effect where the respondent in defiance of a court order has refused to resume cohabitation with the petitioner for the statutory period.

Presumption of Death

A marriage may be dissolved on the fact that the respondent has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that the respondent is dead. The decree made in respect to the petition under section 15 (2) (h) shall be styled decree of dissolution of marriage by reason of presumption of death.

Petition for Dissolution of Marriage in Nigeria

The petition for a decree of dissolution must comply with form 6 of the first schedule of the Matrimonial Causes Rules. Proceedings in respect of the petition for the dissolution of marriage must be heard in an open court [31]. The respondent must be served personally with the petition upon receipt he must acknowledge service and he/she is entitled to 28 days to file a reply to the petition or Cross Petition. The Petitioner must prove one of the grounds earlier listed which is based on fault to prove breakdown of the marriage [32]. Where the petition is not proven, the case will be dismissed as was done in the case of *Akinbuwa v Akinbuwa* [33].

Dissolution of Customary Law of Marriage in Nigeria

Customary Law rules relating to dissolution of marriage are not well developed and stringent as in the case of statutory marriage, a procedure effective in one system may not be appropriate in the other. A Customary Law Marriage may

be dissolved either by non-judicial divorce or by the order of an appropriate Customary Court.

Non-Judicial Divorce

Customary Law Marriage may be dissolved without recourse to the Law Court. Non-Judicial divorce may be effected by the mutual agreement or unilateral action of the spouses. Where the spouses fall out the families first attempt to reconcile them, if in fact the reconciliation fails the family may reach agreement on the repayment of the bride price paid in respect of the marriage. *Okpanum V Okpanum* [34] case is illustrative of non-judicial divorce.

Another method of bringing about non-judicial divorce is by the unilateral action of a spouse. A husband for instance on his own volition may drive his wife away intending thereby to bring the marriage to an end. He may also refuse bringing feeding money for the family and may also manifest a very rude behavior with the wife; he may even turn to a wife beater. On the other hand a wife who has been grossly ill-treated by her husband may run away from the matrimonial home and return to her parents with the intention of bringing the marriage to the end, she may also stop performing all wifely duties or also leave the house to another man's house. Her father or guardian may then proceed to refund the bride price paid in respect of her marriage. In some custom, the traditional calabash is broken in the presence of both families and marriage pronounced nullified subject to return of dowry with this, the parties are free to go their respective ways and to re-marry if they so wish [35].

Judicial Divorce

The judicial dissolution of Customary Law marriages falls within the exclusive jurisdiction of Customary Court. There is no standardized and strict ground for dissolution of marriage; the customs of each locality provides the accepted grounds on which marriage may be ended. However, there are a number of reasons and situations which are generally regarded as providing sufficient moral cause for dissolving marriages. They include inter alia adultery by the wife, loose character, impotency of the husband, laziness, ill treatment and cruelty, leprosy or other harmful diseases which may affect procreation of children, which craft, addiction to crime and desertion. This was the position of the law in *Nwangwa v Ubani* [36]. A party who intends to dissolve a customary marriage must come by way of a written petition. The petition is not expected to comply with the format provided in the matrimonial cause rules. The judgment of the court dissolves the Customary Law Marriage and put an end to it. Recently in *Okonkwo v Ezeaku and Administrator Gen* [37], the court held that without formal dissolution of the customary marriage to the first wife according to the native law and custom before contracting another still under native law and custom, the first wife is entitled to partake of the estate of the late husband.

Dissolution of Marriage under Islamic Law in Nigeria

There are three types of divorce recognized by the traditional Sharia Law.

- a. Talaq
- b. Divorce by mutual consent
- c. Divorce by judicial decree

Talaq is the unilateral repudiation of the wife by the husband. There are two forms of divorce based on mutual

consent. These are *Khul* and *Musawa*. *Musawa* is dissolution of marriage on the basis of return of outstanding financial commitments arising from the marriage relation. *Khul* or release is a mode of divorce under Sharia Law where there is aversion on the wife's part for her husband and the former leads her husband to consent to a dissolution in return of a compensation as in the case of *Husaina v Tsiriko* ^[38]. It is trite under Islamic Law that after either party to a marriage under that Law has obtained a judicial divorce, it becomes mandatory for the wife to observe a waiting period of three months known as the period of Iddah, before the final severance of the marital ties between the parties. The Holy Koran prohibits a woman observing her Iddah from remarrying during that period. The 3 months period serves as a post-divorce reconciliation measure. The husband is under a duty in Islamic Law to maintain his wife observing Iddah.

Dissolution of Statutory Marriage In India

The original enactment of Indian Divorce Act of 1969 was modeled after the British enactment of 1852. Thereafter the Indian divorce Act has been amended by two amendments.

1. The Marriage Law (Amendment) Act of 2001
2. The Indian Divorce (Amendment) Act 2001

Arnol, an Indian author states that the Indian Divorce Act is applicable to Christians only. He further reveals that there are many other Acts regulating marriages ^[39]. Another general Act also regulates marriage in India. It is called Special Marriage Act ^[40]. It is an Act of the parliament of India enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either party. Marriages solemnized under special marriage Act are not governed by personal Laws. The marriages under the Act are either valid or void.

Void Marriage

Conditions that will make a marriage void under the Act are clarified by section 4 ^[41] to include where the party at the time of the marriage have a living spouse or is incapable of giving valid consent because of having an unsound mind, where a party suffers from an ailment which will make it unfit for procreation of children, where the male is under 21 years and the female is under 18 years of marriage to someone of close blood relationship.

Voidable marriages are marriages that have not been consummated or where the respondent was at the time of marriage pregnant by some other person other than the petitioner or where consent of either party of the marriage was obtained by coercion or fraud ^[42].

Section 27 of the Act provides for Divorce: Subject to the provisions of this Act and to the rules made there under a petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent:

- a. Has after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse.
- b. Has deserted the petitioner for a continuous period of not less than 2 years.
 - © Is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian penal code.

- c. Has since the solemnization of the marriage treated the petitioner with cruelty.
- d. Has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the petitioner cannot reasonably be expected to live the respondent.
- e. Has been suffering from leprosy, the disease not have contracted from the petitioner.
- f. (h) Has not been heard of as being alive for a period of seven years or more ^[43].

There are additional grounds for a wife to present a petition for divorce, a provision absent in Nigeria Marriage Act. If the Husband is guilty of Rape Sodomy or bestiality or non-maintenance the wife, the latter is bound to bring a petition seeking for divorce etc. There is another interesting provision in the Indian Act to wit: Divorce by mutual consent. Section 28 of the special marriage Act provides that if after the expiration of the order of judicial separation for a period of one year and there is no reconciliation, any of the parties can reach an agreement to go their different ways instead of going to court to file for divorce. This is cost effective. In section 29 of the Act there is restriction on petitions during the first three years of marriage. Whereas in Nigeria we have two years bar rule. This three/two year's bar rule against divorce is to protect the sanctity of marriage. In section 30 SMA, there is a procedure for remarriage of divorced persons. It states that even when their spouses have obtained decree absolute, they can still remarry.

Section 33 of the Act, states that matrimonial proceedings shall be in camera, and shall not be published. The court vested with jurisdiction is the district court where parties reside or celebrated the marriage. The Act encourages spousal maintenance and seeks for the best interest of the child in custody and settlement ^[44].

Customary Divorce According To Hindu Law

According to traditionalists, divorce was unknown in Hindu Customary Law. But with social change the usual customary forms are:

1. Divorce by mutual consent
2. Unilateral Divorce
3. Divorce by deed known as (*Char-Chitt*) ^[45]

Pragati disclosed that divorce by mutual consent is prevalent among certain castes in Bombay Madras, Mysore and Kerala. In Unilateral divorce, the husband can dissolve the marriage without any reason or at his pleasure. In most Indian Community marriage is dissolved if the husband abandons or deserts the wife.

Under divorce by deed, customary divorces are through the intervention of the traditional *Panchayats* of caste tribunals. Once they are able to prove the custom the courts will not interfere. The courts have exercised a lot of judicial scrutiny and discretion in upholding or rejecting such customary divorce practices. It is the Hindu Act that contains laws relating to marriage and divorce among the Hindus. Sections 22 and 23 of the Act provides that if either party is withdrawn without reasonable excuse from the other, the innocent party can seek for restitution of conjugal rights or judicial separation ^[46].

The grounds for divorce under the Hindu Marriage Act

include: where after the solemnization of the marriage, any of the mate have voluntary sexual intercourse with any other person other than his or her spouse, where the respondent treated the petitioner with cruelty, desertion for two years, where one party ceased to be Hindu by conversion to another religion amongst other grounds^[47]. It is an offence for a man or woman who intend to married under the Act to have a living spouse^[48].

In New Delhi the Supreme Court^[49] held that marriage a second time on the basis of a customary divorce from the first wife will render the second marriage void as the law stipulates that a man and woman are permitted to tie the nuptial knot only if they do not have a living spouse. This decision came in the case of an inter-caste marriage solemnized in 2010. The marriage developed strains allegedly because of the husband's drunken habits and matrimonial torture inflicted on the wife. While leaving for her parental home with her belongings; she discovered a marriage dissolution deed of her husband from his first wife and later approach court of first instance seeking her marriage to be declared void.

The second wife alleged that the marriage was solemnized by fraud as the man declared himself a bachelor in the marriage registration document under the special marriage Act. She said there was no divorce decree from the first wife, a fact concealed from her. It is apposite to note that in India a customary divorce is recognized method of separation without involving the court if such a custom is recognized by marriage Laws. The court of first instance and Bombay High Court struck out her case. On appeal before the Supreme Court, set aside orders of the trial court and High Court and declared the second marriage null and void. The decision was thus a step in the right direction.

Dissolution of Marriage under Muslim Law in India

Marriage may be dissolved by Act of God as in the case of death of the husband or wife or by Act of parties: This is a divorce under Muslim Law. The divorce may take place by the act of parties themselves or through a decree of the court of Law. The Husband may divorce wife by one of the following means namely: *Talaq, Ila* and *Zihar*. *Talaq* is pronouncement of husband intention to disown the wife. *Ila* occurs when a Muslim husband takes an oath not to have sexual intercourse with his for 4 months, after 4 months the marriage is dissolved. *Zihar* is where the husband decides to forthwith treat his wife like her mother or sister. A wife cannot divorce her husband of her own accord. She can divorce the husband only where husband has delegated such right to her or under an agreement. By Dissolution of Muslim Marriages Act 1939 a Muslim wife may get her marriage dissolved by an order of the court. Section 2 of Muslim Marriage Act 1939 states grounds of divorce to include:

1. Whereabouts of the husband have not been known for a period of four years.
2. Failure of husband to provide maintenance for the wife for a period of 2 years.
3. That the husband has been sentenced to imprisonment for a period of seven years or upwards.
4. That the husband has failed to perform without reasonable cause his marital obligations for a period of three years.
5. Impotency
6. Cruelty

Divorce Laws in United Kingdom

In the United Kingdom, the substantive law on matrimonial causes is the Matrimonial Causes Act^[50] which has been affected by an attempt at divorce reform by the Family Law Act^[51]. According to George- Ibikiri, the MCA has been a subject of criticisms on it being fault-based divorce law^[52]. There were additions to the MCA in order to address matrimonial causes in a way to give parties to such proceedings a clean break and one of such attempted modification was the Family Law Act. Part I of the Act is operative while the Part II has for the time being shelved^[53]. Section 1(1) of the MCA provides that irretrievable breakdown of the marriage is the sole ground for divorce and listed five facts that must be proven, including adultery and intolerability, unreasonable behaviour of the respondent, desertion, and living apart for two or five years^[54]. On the other hand the FLA established that an application for divorce or separation order may be made to the court if the marriage has broken down^[55]. A marriage can only be considered broken down if one of the parties make a statement, or each of them believes that the marriage has broken down^[56]. The family Law Act dispenses with proof, in the alternative it design for divorce to be processed over a period of time wherein parties will be counseled at information meetings and provision of care made for the children of the marriage^[57]. The FLA had interest in supporting family life, it was fault free, it provided for legal aid amongst other innovations.

However the radical innovations in the family law Act were to come into force on 1st day of January 1999, but the implementation was suspended until 2000 when the government would have received the results of pilot projects to see how the information meetings would work in practice^[58]. The results of the pilot projects turned out to be disappointing as only 7percent of those attending the information meetings were diverted into mediation and very few couples attended the meeting together, hence the objective and effective implementation of the FLA was defeated^[59].

The Australia No- Fault Divorce Law

Unlike many divorce laws which set out several grounds upon which a divorce can be granted by the court which highlight guilt of the parties, the Family Law Act of Australia has a different provision on the issue of divorce^[60]. The Act introduced a new principle known as No-Fault Divorce^[61]. The FLA came into effect on 1st January 1976 repealing the matrimonial causes Act of 1959 and 1965 which had been largely based on fault. The Act established a specialist multidisciplinary court for the resolution of family issues before divorce,^[62] the court has in house counselling section, the court further have Family Consultants, and counselors who are expert psychologists versed in child care^[63]. There is provision for Children's Lawyers, the latter help the court in arriving at a verdict and making decisions about children's care arrangements^[64].

According Section 48 of FLA, an application for divorce shall be made on the ground that the marriage has broken down irretrievably, the said ground shall have been established and the divorce order shall be made, if and only if, the court is satisfied that the parties separated and thereafter lived apart for a continuous period of not less than 12 months immediately preceding the date of filing of the application for the divorce order. A divorce order shall not

be made if the court is satisfied that there is reasonable likelihood of cohabitation being resumed ^[65]. It is interesting to note that there is no concept of matrimonial fault and a party is not required to allege fault against the other party in order to obtain a divorce ^[66]. If the parties have been married for less than two years, they are required to attend counseling before divorce is granted to know the financial difficulties that separation and divorce could bring ^[67]. At the end, if the after the mediation and counselling parties have made up their mind to walk out of the marriage, the processes to be filed during the divorce include, application for divorce by a party or counsel, the original marriage certificate and a declaration by counsel that parties have been counseled.

Conclusion and Recommendations

This paper has painstakingly analyse the comparison between Nigeria Laws on dissolution of marriage and divorce laws in India, UK, and Australia. The paper has shown that in India there are three categories of legislation regulating marriages by those subject to particular religion, tribe or custom whereas in Nigeria we have one legislation that does not distinguish religion or tribe. The Indian Act specify the age of marriage to be at 21 years for male and 18 for female, there is no corresponding provision in Nigeria Marriage Act, this lapse appears to have been covered by the Child's Right Act ^[68]. Indian Act made provision for remarriage after divorce but Nigeria Act is Silent. It further examine the Family Law Act in UK and in Australia. It discovers that the Family Law Act dispenses with proof of bad conduct, behaviour or fault of the respondent which is always strictly proved in public documents and which create eternal enmity between parties. In Australia, all that is needed is for a petitioner to live apart from the respondent for 12 months. However, it is the author's humble view that there is an urgent need for the modification of Nigerian Divorce Laws to reflect current reality. To this end the following is recommended:

1. Future amendment of Nigerian divorce Laws should increase years of bars against divorce from two years rule to more years. This will greatly encourage reconciliation between the spouses as they will be given a long time span to sober reflect.
2. Customary divorce Laws in Nigeria should be unified, codified and frequently monitored by superior court of record as it is done in India.
3. Recourse should be made to the Indian Law that permit divorce by consent. The Nigeria divorce Law should borrow a leaf from this practice as same is cost effective. There are some couples in Nigeria whose mates have deserted them for so many years but because they do not have money to hire the services of a Lawyer, they are stuck in a sham marriage. If there is divorce by consent, then this situation can be remedied.
4. It is recommended that Divorce proceedings in Nigerian courts as in India should be sometimes be *in camera* most especially if facts to prove divorce is sensitive and reproachful.
5. Dispute resolution as employed in UK and Australia should be extended to the frontiers of family law, guidance and counseling department should be made part of the Ministry of Justice, Judiciary and Family court.
6. The Nigerian divorce law should move from fault base

to no fault base as the need to prove the ground used to create animosity between parties and children of the marriage. It is the author's view that if these few recommendations are implemented the divorce laws in Nigeria will be functional and will compete favourably with divorce laws of transnational countries.

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