

AVAILABLE SETTLEMENT MEASURES FOR MARRIAGE DISPUTES UNDER NIGERIA STATUTES

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Abstract: Marriage is a universal institution, though the legal processes and requirements for entering into marriage vary across jurisdictions. Despite these differences, marriages frequently encounter disputes such as divorce, judicial separation, child custody, and maintenance of children or spouses. This article focuses on marriages conducted under statutory law, particularly within the Nigerian context. Traditionally, matrimonial disputes have been resolved through litigation. However, this adversarial approach has numerous drawbacks, including delays due to court congestion, high litigation costs, and the confrontational nature of court proceedings. Using the Matrimonial Causes Act (MCA) of 1970 as a framework, this article critiques the litigation process in Nigeria, highlighting its complexity and the need to balance spouses' rights, children's best interests, and societal values. The MCA provides a structured approach for resolving matrimonial disputes, detailing grounds for divorce, legal procedures, and court guidelines for determining outcomes. While litigation has advantages, such as confidentiality and potential cost and time savings, it also faces significant challenges like inadequate skills and enforcement issues. This research not only examines these challenges but also explores alternative dispute resolution methods, including arbitration, conciliation, mediation, and negotiation. These alternatives offer promising solutions to the shortcomings of traditional litigation in matrimonial disputes. In the latter part of this research, recommendations for overcoming the challenges associated with both litigation and alternative dispute resolution methods are discussed. These suggestions aim to enhance the effectiveness of resolving matrimonial and family disputes, ultimately promoting a more efficient and less adversarial approach to addressing issues within marriages. This comprehensive analysis underscores the importance of evolving legal frameworks to better serve the needs of all parties involved in matrimonial disputes.

Keyword: Litigation; Marriage; Disputes; Matrimonial; Nigeria.

INTRODUCTION

Marriage is considered as a religious institution. It is regarded, by most human societies as a sacrament that is a sacred transaction establishing a relationship of a higher value for men and women. It is, therefore a religious institution. 'Institution' is a term used for any social structure instituted for the welfare of others. It is governed by certain values, rules, regulations, laws, customs, and traditions.³ It is well organized by its structure and functioning, thus institution is formed with a welfare motive, is governed by rules and regulations and is a permanent and continued relationship with nature. In the Bible, the Old Testament states that "bond of Adam and Eve started life on earth." As the humanity developed and moved from nomadic life to settled life, its psychological needs also changed. In order to satisfy these needs, our ancestors must have developed rules and

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³ Amerteshwar Ratra, *Marriage and Family: In Diverse and Changing Scenario*, Deep and Deep Publications Pvt. Ltd, Delhi, 2006 p.1.

regulations to systematise relations and to stabilise which later became customs and traditions.

In almost all cultures, marriages are performed with religious ceremonies. Religion imposes certain controls through rules and traditions. The sociological relationship celebrates it in the presence of many people, following social customs and traditions⁴. All these aspects contribute towards the stable and happy marriage. It is a binding contract between a man and a woman for the establishment of a family. It is an institution which can be maintained only at great personal sacrifice of husband and wife. The institution of the family is based on marriage and the desire to procreate, but the law also recognises relationships arising. For example, adoption, cohabitation and interdependence, particularly economic interdependence are the characteristics of family relationships.

Broken family life results in misery and emotional outbreak.⁵ Marriage, whether considered as a contract or a sacrament, confers a status of husband and wife on the parties to the Marriage, of legitimacy on the children of the marriage and gives rise to certain spousal mutual rights and obligations of spouses. Thus the family law accordingly recognises topics such as marriage, divorce, legitimacy of children, adoption, maintenance and other rights and duties between husband and wife and between parent and child.⁶ In Nigeria family law is rooted in religion and custom. Legal rules differ for persons belonging to different religions.

To litigate means to settle a dispute or seek relief in a court of law⁷. Litigation of marriage disputes means filing a legal action to settle a matrimonial dispute or seek relief which may be divorce, judicial separation and so on in a court of law. Litigation of matrimonial disputes is not a new practice in jurisdictions of the world. Under Nigeria jurisdiction, the law that makes provisions for matrimonial disputes or causes is the Matrimonial Causes Act⁸ (herein referred to as the act). The provisions of the act, especially in respect of divorce, were modeled according to the English Divorce Reform Act, 1969. Matrimonial disputes or causes, as stated in S.114(1) (a)-(e) of the act, means proceedings for a decree of dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights, jactitation of marriage, proceedings with respect to maintenance of parties to the proceedings, custody or guardianship of children of the marriage and their maintenance.

Matrimonial disputes could be in the nature of divorce, separation or annulment of marriage. However, divorce and separation are more often experienced particularly in contemporary Nigerian society. Under the Nigerian law, instituting proceedings in court has been the only means through which persons in 'troubled statutory marriages' put an end to same. However, putting an end to a statutory marriage through litigation has both emotional and psychological challenges not only on the primary parties but also on the children of the marriage as well as their families and the society.

The act divides these matrimonial disputes into two: major disputes and ancillary disputes.

⁴ *K.D. Sehgal, Chairman Public Interest Litigation Cell V. Union of India*, 1 (2003) DMC 440 P &H.

⁵ *Roopa Reddy V. Prabhakar Reddy*, AIR 1994 Kant 12.

⁶ Dale Horberg, *Student Britanica India: Select Eassys*, EncyclopediaBritanica(India Ltd.), 2000, p.413.

⁷ B A Garner, *Black's Law Dictionary* 983(9th ed. 2009) 112

⁸ CAP M7 LFN 2004

LITIGATION OF MAJOR MARRIAGE DISPUTES

Litigation of major marriage disputes is what the act refers to as proceedings in principal relief. Principal relief, according to S.75 (4) of the act, means ‘relief of a kind referred to in (a)-(b) of the definition of “matrimonial cause” in s. 114(1) of this act.’ Litigation of major marriage disputes is a complex process that involves a variety of factors, including the grounds for divorce, custody and maintenance matters, the procedure for instituting actions, and the applicable law for customary and Islamic marriages. In Nigeria, the Matrimonial Causes Act (MCA) of 1970 outlines the grounds for dissolution of marriage, custody and maintenance matters, and the procedure for instituting actions in court. However, customary and Islamic marriages are also recognized in Nigeria, and their dissolution may be governed by different principles.

- a) **Grounds for Dissolution of Marriage:** The MCA provides several grounds for dissolution of marriage, including adultery, desertion, cruelty, exceptional hardship, and irretrievable breakdown of marriage.
- b) **Custody and Maintenance Matters:** The MCA also provides for the custody and maintenance of children following the dissolution of marriage. The court will consider the best interests of the child when making a custody order. Maintenance is financial support that one spouse may be required to pay to the other spouse or for the upkeep of the children.
- c) **Procedure for Instituting Actions:** To institute an action for dissolution of marriage in Nigeria, the petitioner (the spouse seeking the divorce) must file a petition in the High Court of the state or Federal Capital Territory where the parties reside or where the marriage was solemnized. The petition must state the grounds for divorce and provide evidence to support the allegations. The respondent (the other spouse) will then have the opportunity to file a response to the petition.
- d) **Alternative Dispute Resolution (ADR):** Alternative dispute resolution (ADR) methods such as mediation or arbitration are becoming increasingly popular in Nigeria as a means of resolving matrimonial disputes without going to court.
- e) **Customary and Islamic Marriages:** Dissolution of customary and Islamic marriages may be governed by different principles than those set out in the MCA. In customary marriages, the dissolution process may involve traditional mediation and reconciliation efforts. In Islamic marriages, the dissolution process is governed by Islamic law and may involve the appointment of an arbitrator.
- f. Property division post pre-nuptial agreement arrangement made which is governed by the Matrimonial Causes Act, 1970 and the court will consider the following factors when making orders for the settlement of property, may treat the property regime as separate property and require strict proof of ownership, contribution and including the source of the property⁹:
 - a) The length of the marriage
 - b) The contributions of each spouse to the acquisition of the property
 - c) The needs of each spouse
 - d) The welfare of any children of the marriage
 - e) The cultural and religious background of the parties.

⁹ Paras Diwan, *Family Law*, 8thed, Allahabad Law Agency, Faridabad, 2008.

LITIGATION IN DISSOLUTION OF MARRIAGE (DIVORCE)

Traditionally, when people celebrate statutory marriage, they do so on the understanding that the union is meant for better and for worse until death do them part.¹⁰ However, along the line marriages run into trouble waters with either of the parties wanting to bring the marriage to an end or temporary separation with the hope that the problem facing the marriage will be sorted out. However, at times after all the efforts to save a troubled marriage, it becomes unavoidable not to put an end to the union. Putting to an end a valid and existing but troubled marriage within legal parlance is known as Divorce or Dissolution of marriage¹¹.

Under Nigerian law, the process of effecting a divorce petition in court leaves a lot to be desired. With regard to statutory marriage, divorce petitions are usually executed through litigation and are subject to the general vicissitudes of litigation such as publicity, toxicity, technicality and legal formalities. Divorce proceedings are characterized by parties exposing things that are considered as 'secrets.' It is almost a case of washing dirty linens in public. Several interests are involved especially where there is a child or children from the marriage. The process of divorce can bring to bear on either the Petitioner or Respondent not just psychological but emotional and physical trauma. The socio-cultural and religious view of divorce through litigation further compounds the experience of the parties. Culturally and religiously, marriage is considered as 'for better or for worse till death' and where spouses opt for divorce they are viewed as 'failures' being unable to keep their marriage. The man is regarded as not being 'man enough' and the woman is seen as 'unruly.' Biblically, where there is a divorce, the divorcee is enjoined to remain divorced and whoever marries him or her is considered to have committed adultery.¹²

According to the act, except where divorce proceedings are based on the facts of willful and persistent refusal to consummate, adultery or the commission of rape, sodomy and bestiality, no proceeding for divorce may be instituted within two years of marriage without leave of court¹³. Such leave can only be granted on the ground that to refuse to grant such leave would impose exceptional hardship on the applicant or exceptional depravity on the part of the other party to the marriage¹⁴. However, what constitutes exceptional hardship and depravity cannot be pin-pointed. The judge essentially determines the construction of the above provision, especially the word 'exceptional'. In *Akere v Akere*¹⁵, where leave for the institution of divorce proceedings was sought on ground of exceptional depravity on the part of respondent and exceptional hardship suffered by the applicant, the judge held that the allegation against the respondent of committing adultery with three women; inordinate sexual demands from the applicant who was in ill-health and had just returned from the hospital, constant negligence and

¹⁰ This is usually contained in the marital vows exchanged by the parties at the solemnization of holy matrimony particularly in the church.

¹¹ The provision of divorce as an escape route to a trouble marriage itself negate the definition of marriage by Lord Penzance in the case of *Hyde v. Hyde* (1886) LR 1 P& D 130,133 when the Law Lord defined marriage as a 'voluntary union between two consenting adults of the opposite sex to the exclusion of all others for life.' Though one can argue that the definition represents the Law Lord's aspiration for what marriages should be.

¹² Mark Chapter 10:1-12; Matthew 19:3-9 Old King James Version. However, Verse 9 of Matthew 19 recognizes one ground for divorce thus 'And I say unto you, whosoever shall put away his wife, except it be for fornication, and shall marry another, commiteth adultery: and whoso marrieth her who is put away doth commit adultery.'

¹³ S.30(1) Matrimonial Causes Act, CAP M7 LFN, 2004

¹⁴ S.30(3) Matrimonial Causes Act, CAP M7 LFN, 2004

¹⁵ (1962) WNLR 328

quarrelling with the applicant, infecting the applicant with venereal disease and turning the applicant out of his home all constituted exceptional hardship on the applicant and exceptional depravity on the part of the respondent. The leave for institution of divorce proceedings was thus granted.

In contrast, in *Blackwell v Blackwell*¹⁶, the English court held that the husband's behavior merely amounted to extremely adulterous conduct. In that case, the parties had been living together five years prior to their marriage. After the marriage, the husband started committing adultery with another woman and went to live with her. On one occasion that the wife complained about the husband's association with the other woman, he was violent with her. The wife then applied for leave to present a petition for divorce on the ground of exceptional hardship suffered by her and exceptional depravity on the part of the husband. The application, both on trial and appeal, was rejected.

Whether a leave is granted to institute action for divorce before the expiration of two years of marriage or the divorce proceedings is instituted after the expiration of two years, the petitioner is required to petition for divorce on the ground that the marriage has broken down irretrievably¹⁷. One or more of the facts contained in S.15(2)(a)-(h) of the act, as held in *Ezirim v Ezirim*¹⁸ must be proved before it can be held that the marriage has irretrievably broken down. These facts are:

- (a) That the respondent has willfully and persistently refused to consummate the marriage;
- (b) That 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 the petitioner for a continuous 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;
- (f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;
- (g) That the other party to the marriage has, for a period of not less than one year failed to comply with a decree or restitution of conjugal rights made under this Act;
- (h) 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.

The act provides that matrimonial proceedings must, unless in recognized exceptions, be heard in open court¹⁹. Thus, where the hearings of matrimonial case took place in the Judge's chambers and none of the parties requested for such, the Supreme Court held that since the proceeding did not contain such matter which by law, ought to be heard in camera, the said proceeding did not constitute a regular hearing of an action in

¹⁶ (1974) 4 Fam. L. 79

¹⁷ S.15(1) Matrimonial Causes Act, CAP M7 LFN, 2004

¹⁸ (Suit No FCA/L/56/78[unreported] Feb 6, 1981, Court of Appeal, Lagos Division)

¹⁹ S.103(1) Matrimonial Causes Act, CAP M7 LFN, 2004

a court²⁰. Nevertheless, how is 'such matter' supposed to be recognized since they are not specified in the act?

A divorce proceeding must be instituted by petition²¹. It is in the petition that the petitioner must state the grounds on which a decree of divorce is sought. A decree of divorce is usually in two stages namely: (a) decree nisi and (b) decree absolute²². A decree nisi is like a temporary decree, made to leave the marriage open for three months after which such decree becomes absolute. The decree nisi shall not become absolute unless the court is satisfied that proper arrangements have been made for welfare and advancement of the children, where there are children of the marriage or that there are such special circumstances that the decree should become absolute notwithstanding that the court is not satisfied that such arrangements have been made. In *Adeyemi v Adeyemi*²³, the Western Court of Appeal held that before a decree nisi is made absolute, the judge must be convinced that satisfactory arrangements have been made for the children of the marriage and if there are special circumstances that warrants that the decree becomes absolute even if arrangements for the children have not been made, such circumstance should be stated.

LITIGATION IN JUDICIAL SEPARATION

Judicial Separation is also called Legal separation. It is a situation where, although still legally married, a couple is allowed by court to live separately and not have the full rights and duties of a married couple (including, conjugal rights and duties)²⁴. The husband may be guilty of rape if he forces the wife to have sexual intercourse with him²⁵. With judicial separation, a couple becomes practically divorced in terms of life affairs and relationships but still legally married, so none of them can marry another person. However, where the parties resume co-habitation voluntarily, the decree ceases to operate and either party may apply to the court for an order to discharge the decree. It is a court ordered separation and often takes care of all post marriage issues, like custody of children and child support.

Judicial separation, which is court ordered should not be confused with mere separation; a situation where a couple live separately (that is, living apart) without an order of court. Judicial separation is provided for under the act precisely S.39 to 45. It provides that an order for judicial separation is to be based on the same grounds as those for a divorce as stipulated in S.15 (2) (a) – (h) of the act and these grounds must be proved to the satisfaction of the court. Therefore, in *Aja v Aja*²⁶, a decree of judicial separation was granted on the proof of the ground of the husband's adultery. In addition, proceeding for judicial separation must be heard in an open court²⁷.

Where upon the making of a decree of judicial separation, a husband is ordered to pay maintenance to his wife and the maintenance is not duly paid, the husband shall be liable for necessaries supplied for the wife's use²⁸.

²⁰*Oviasu v Oviasu* (1973)1 All NLR(PT II) 75

²¹ S.54(1) Matrimonial Causes Act, CAP M7 LFN, 2004

²² S.56 & 57 Matrimonial Causes Act, CAP M7 LFN, 2004

²³ (1971) 1 NMLR 255

²⁴ Action4JusticeNigeria, 'Right to exit a Marriage' <https://nigeria.action4justice.org/legal_areas/womens-rights-focusing-on-marriage-rights/right-to-exit-a-marriage/> accessed 18 October, 2023

²⁵*R v Clarke* (1949) 2 All E. R 448

²⁶ (1922) 1 ECSR 140

²⁷ S.103 Matrimonial Causes Act, CAP M7 LFN, 2004

²⁸ S.42(3) Matrimonial Causes Act, CAP M7 LFN, 2004

LITIGATION IN RESTITUTION OF CONJUGAL RIGHTS

Where the spouses are separated, a petition for the restitution of conjugal rights requests the court to direct the respondent to resume cohabitation with the petitioner. The jurisdiction of the High Court in respect of a petition for divorce is the same as in the case of proceedings for a decree of restitution of conjugal rights. The institution of marriage under matrimonial laws is a union, which imposes upon each of the parties a number of marital obligations or duties, which may collectively be referred to as consortium. Some of these imposed duties or corollaries of marriage include the right to live together as husband and wife, the right to have the marriage consummated, sexual fidelity, mutual defense amongst others. The law provides remedies in certain cases where either of the spouses fails or refuses to fulfill one or more of these marital obligations²⁹.

It follows therefore that after a marriage has been validly contracted, if any of the parties to the marriage without reasonable excuse refuses to cohabit with, and render conjugal rights to the other, then the aggrieved party has the legal right to file a petition for a decree of restitution of conjugal rights.³⁰ This relief is one, which is common and appropriate in cases where matrimonial cohabitation has ceased for one reason or the other and one of the parties is desirous of resuming cohabitation. However, this is not to say that the remedy is not available where both parties never cohabited at any time after the marriage. The Court after hearing the petition of the aggrieved party may upon being satisfied that the party against whom the decree is sought has without just cause or excuse refused to render conjugal rights to the petitioner, make a decree of restitution of conjugal rights. However, the Court will not make a decree for restitution of conjugal rights unless it is satisfied that the petitioner genuinely desires cohabitation. Sincerity is therefore a crucial element. To succeed in an action for decree of restitution of conjugal rights the petitioner must establish the following:

- a) That he or she sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent.
- b) That a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made³¹.

It is important to state that the above pre-conditions are very critical to the grant of a petition for a decree of restitution of conjugal rights and where a petitioner fails to establish compliance with the above preconditions, the court will not make the decree, and where it does, such a decree will be set aside on appeal. In *Eyofor v Eyofor*³² the respondent (Petitioner at the trial court) petitioned for a decree of restitution of conjugal rights as well as ancillary reliefs which included maintenance. The trial judge granted a decree for restitution of conjugal rights. On appeal, the Court of Appeal allowing the appeal held that S.49 of the Matrimonial Causes Act lays down the statutory condition precedent to the granting of prayer for restitution of conjugal rights and the conditions are mandatory. Since the learned trial judge failed to show that, the provisions of that section

²⁹ Chaman Law Firm Team, 'The concept of Restitution of Conjugal Rights' <<https://www.chamanlawfirm.com/the-concept-of-restitution-of-conjugal-rights>> accessed 18 October, 2023

³⁰S.47 Matrimonial Causes Act, CAP M7 LFN, 2004

³¹ S.49 (a) (b) Matrimonial Causes Act, CAP M7 LFN, 2004

³² (Suit No: FCA/B/42/78 [Unreported] May 17 1979, Court of Appeal

had been complied with before granting the decree in favour of the respondent that decree cannot stand.

Thus, once the petitioner has proved his or her case, the burden of proof shifts to the respondent to prove the defense of just cause or excuse. Upon hearing a petition for restitution of conjugal rights, the Court can only order cohabitation but cannot enforce sexual intercourse. Thus, the decree cannot be granted where the respondent already lives with the Petitioner but refuses to have sexual intercourse with the petitioner³³.

Notably, a decree for restitution of conjugal rights cannot be enforced by attachment nor can refusal to comply with the decree constitute contempt of court although such a refusal to comply with the decree for one year will constitute a ground for dissolution of the marriage under S.15 (2)(g) of the act as the respondent will be deemed to have deserted the Petitioner.

Further, the Petitioner cannot forcibly adduct and compel the respondent to cohabit with him or her in order to enforce the Court's decree for restitution of conjugal rights. Such forcible compulsion may render the petitioner liable to damages in an action in tort or for the breach of the Respondent's fundamental rights.

LITIGATION IN JACTITATION OF MARRIAGE

Jactitation of marriage refers to a false assertion that one is married to someone to whom one is not actually married to. And though proceedings for jactitation were abolished by the Family Law Act 1986, an injunction may be sought to restrain such claims being made and may be useful in preventing a presumption of marriage from arising. This provides relief for a petitioner that alleges that he or she is not married to a respondent who is wrongfully and persistently boasting or asserting that he or she is married to the petitioner³⁴. It should be noted that the making of the decree shall be at the discretion of the court³⁵, notwithstanding anything contained in the Act. The effect of the Decree of Jactitation of Marriage is that the respondent in this instance will be restrained from falsely boasting and asserting that a marriage has taken place between the respondent and the petitioner³⁶.

ALTERNATIVE TO LITIGATION

With the above stated it is obvious that litigating a marriage dispute hence the need to explore an alternative that will adhere to the parties need, save cost, is flexible, preserve the relationship of the parties while considering reconciliation mode for the benefit of the child or children involved, It helps to properly manage the emotions of the disputing parties as they will be allowed to analyze their issues in a friendly atmosphere as against litigation which takes an adversarial approach³⁷ and give parties the opportunity to dictate how the dispute will be resolved. Most times when an alternation mode is considered for dispute it is usually for huge commercial transactions, not meant for non-contentious dispute such as mediation and arbitration which have been introduced as means of

³³ Chaman Law Firm Team, 'The Concept of Restitution of Conjugal Rights' <<https://www.chamanlawfirm.com/the-concept-of-restitution-of-conjugal-rights>> accessed 18 October, 2023

³⁴ Flavia Agnus, *Family law : Marriage, Divorce and Matrimonial Litigations*, Vol. II, Oxford University Press, New Delhi, 2011, p.53

³⁵ S.50 Matrimonial Causes Act, CAP M7 LFN, 2004

³⁶ Yejide Gbenga-Ogundare, 'What do you know about Jactitation of Marriage' Nigerian Tribune (June 7,2023)

³⁷ Vijender Kumar, "Irretrievable breakdown of marriage: Right of a married couple", *Nelsar Law Review*, Vol 5, No.1, 2010, p. 17

settlement of matrimonial dispute divorce inclusive in jurisdictions like the United State and Canada³⁸.

The alternative could be virtual or physical taking into consideration our present reality which this article we will explore by sharing more light on the following three ADR mechanisms which are collaborative divorce, divorce mediation, and divorce arbitration.

- i. Collaborative divorce: When both parties in a marriage agree to divorce, they collaborate with their lawyers and other family members to develop an agreement called **the Participation Agreement** before their marriage that benefits both parties and their children after the divorce. This procedure allows couples to easily negotiate the conditions of their separation without going through a formal process.

It is interesting to note that, Stuart Webb, a Minnesota Family Lawyer, introduced this alternative in 1990 in the US. He recognised that traditional litigation was often detrimental to both parties and their families. Collaborative law has rapidly expanded across the US, Europe, Canada, and Australia since 1990. It debuted in England in 2003.³⁹

Finally, during the collaborative process, both parties engage separate lawyers and collaborate on hiring other family law professionals, such as a mental health professional, child specialist, and financial expert.

- ii. Divorce mediation is a voluntary and confidential process in which a neutral third party, known as a mediator, assists divorcing couples in reaching mutually acceptable agreements on various issues such as property division, child custody, spousal support, and more. It can take the form of a private mediation, court-referred mediation, or hybrid mediation in resolving marriage disputes.
- iii. Divorce arbitration it entails the couples resolving their disagreement in a private environment before an Arbitrator, as opposed to a public tribunal.⁴⁰ An arbitration hearing is held at a time and location that is convenient for all parties, as opposed to a court trial, which is scheduled based on the availability of a trial judge.⁴¹

In Divorce Arbitration, the divorcing couple and their respective attorneys select and agree on an arbitrator. The arbitrator is then given with the precise issues that prohibit resolution. Divorcing couples may also specify the procedure to be followed and the time frame within which the Arbitrator must make a decision in Arbitration. Following a hearing, the arbitrator gives a ruling, known as an award, on the specific contested issues. Compared to a court trial, the Arbitrator's Award is rarely appealable.

CONCLUSION AND RECOMMENDATION

Marriage, as defined by Lord Pezance, is a union for life between a man and a woman to the exclusion of others⁴². This definition is in pari-material with statutory marriage, which this article is concerned about. It has been pointed out that if marriage is as defined above and a social-religious institution tagged 'sacred', it should then not be wished to crumble

³⁸ Paras Diwan, *Modern Hindu Law*, 17th ed, Allahabad Law Agency, Faridabad, 2006, p. 68-77.

³⁹ Paras Diwan, *Family Law*, 8thed, Allahabad Law Agency, Faridabad, 2008, p. 303.

⁴⁰ Massachusetts Dispute Resolution Services, Divorce Arbitration

⁴¹ Ibid

⁴² *Hyde v Hyde* (1866) L R 1 P&D 130

or break down. However, it is not uncommon for circumstances to evolve, constraining the parties to opt for divorce, thereby bringing the intended permanent institution to a permanent halt. Thus, under the Matrimonial Causes Act, the only recognized mode of bringing to an end a troubled but valid and existing marriage is litigation, notwithstanding the various shortcomings of litigation, particularly that of formality, rigidity, publicity, and inability to attain a win-win outcome. Because of these shortcomings, Alternative Dispute Resolution has emerged as a complimentary dispute resolution mechanism to litigation, though alien to matrimonial disputes in Nigeria. However, it is hoped that the incorporation of ADR into matrimonial dispute resolution will help stem the impasse associated with litigation of matrimonial disputes, as there is a dire need to preserve the various conflicting interests during and after the end of a marriage.

This article suggests knowing that litigating a marriage dispute in Nigeria can be a complex and stressful process. It is important to seek legal advice from an experienced family law attorney to understand your rights and options.

RECOMMENDATIONS

Based on the observations made during this write-up, the following is however recommended:

1. Seek legal advice: If you are considering filing for divorce or if you have been served with divorce papers, it is important to seek legal advice from a qualified family law attorney. An attorney can help you understand your rights and options, and they can represent you in court.
2. There should be a highly recognized level of public awareness in various jurisdictions, especially Nigeria, where the level of recognition of ADR is low. This can be done by organizing various seminars for the public by bar associations at various levels. Parties should have the option of either going to court to litigate their dispute or opting for any of the ADR methods, and not that the ADR methods be introduced or agreed upon by parties.
3. The Marriage Act and the Matrimonial Causes Act should be amended to incorporate the Alternative Dispute Resolution methods in order to minimize or eliminate the acrimony that accompanies divorce proceedings occasioned by the shortcomings of litigation.
4. Be prepared to negotiate. Negotiation is a key part of the divorce process. It is important to be prepared to compromise in order to reach an agreement.
5. Be mindful of the impact of divorce on children. Divorce can be a difficult time for children. It is important to be mindful of their needs and to involve them in the decision-making process as much as possible.

Create a Family Dispute Resolution Clinic (FDRC) in collaboration with ADR and online dispute resolution institutions, as well as multi-door courthouses, to alleviate court dockets and provide faster dispute resolution solutions for family-related disputes classified as domestic disputes. This model was adopted by Gautam Buddha Police in collaboration with Sharda University in Greater Noida, India.

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