

PROSPECTS AND CHALLENGES OF RESOLVING MARRIAGE DISPUTES THROUGH ALTERNATIVE DISPUTE RESOLUTION MECHANISMS*

Abstract

Marriage is a union entered into by two parties although the legal processes involved vary from one jurisdiction to another. Marriages often experience disputes which range from divorce to custody of children and maintenance. In resolving those disputes, recourse is made to adjudication but overtime various shortcomings are found in relation to litigation. These include unnecessary delay caused by congestion of court, high cost of litigation, confrontational nature of litigation amongst others. This study was limited to marriage conducted under the statute. In adopting doctrinal method of research the paper reveal that the Matrimonial Cause Act, Cap M7, Laws of the Federation of Nigeria 2004 which operate within Nigeria did not provide adequately for alternatives disputes resolution means of settling disputes. The study presented an outlook of litigation in resolving marriage disputes and also pointed out its shortcoming. Hence, various alternatives to litigation have emerged in resolving matrimonial disputes, which include collaborative divorce, divorce mediation and divorce arbitration. The advantages they have over litigation in their application to marriage disputes were also examined including promotion of confidentiality, cost and time saving. The challenges the use of these alternatives which include inadequate skills, lack of enforcement were also highlighted. Recommendations for addressing these challenges were suggested.

Keywords: Marriage, Disputes, Litigation, Alternatives, Challenges, Prospects

1. Introduction

Marriage is a universal institution which is recognized and respected in various jurisdictions, though the legal formalities of statutory marriage, which this paper is limited to, may be different. Besides the general view that marriage is a social institution from which societies are formed, it is also a union sanctified by God and may probably be termed sacred. If marriage is a union sanctified by God therefore, it will be devastating to the parties involved in a marriage, their children and the society at large, if the marriage is dissolved. It is not the intention of the writer to encourage dissolution of marriage or separation of parties to it. It should be noted that where divorce or separation is resorted to, issues of maintenance of parties and their children and custody of children also spring up. Where divorce or separation proceedings are however instituted in court, parties' emotional status, before, during and after the proceedings are not taken care of. Besides, the adversarial nature of the proceeding and the delay accompanied with it often worsen parties' emotional health not to talk of the children who experience shame and instability because of lack of confidentiality in the proceeding. These, amongst others, had led to the intervention of alternatives to litigation. The purpose of this paper is to amongst other examined the challenges and prospects of resolving marriage disputes through various forms of alternative dispute resolutions like collaborative divorce, divorce mediation and divorce arbitration. The paper also examined challenges facing the application of the named alternatives to marriage disputes and which may jeopardize their effectiveness or bestride the reasons behind their inception, hence recommendations.

2. Meaning of Alternative Disputes Resolution Mechanisms

'Alternative Disputes Resolution (ADR) Mechanisms' is a name for several disputes resolution techniques, which are believed to be outside the normal litigation. ADR has gained acceptance in the general domain and the legal profession. It is a process by which legal conflicts and disputes are resolved privately other than through litigation in public courts¹. It is the means or methods of resolving legal disputes or conflict privately through the intervention of a third party, other than via litigation. As the name implies, it is a process where the disputing parties themselves are directly involved in the efforts towards finding a common ground or mutually acceptable solution.² According to Akinbuwa:³ 'Alternative Dispute Resolution refers to a range of mechanisms designed to assist disputing parties in resolving their disputes without the need for formal judicial proceedings. They are those mechanisms that are used to resolve disputes faster, fairer, and without destroying on-going relationships'.

3. Types of Alternative Dispute Resolution Techniques

There are various types of alternative dispute resolution which are applicable to issues ranging from business to matrimony. However, for the purpose of this paper it shall be limited to the following namely: Collaborative divorce, divorce mediation and divorce arbitration.

*By **J. O. ABUSOMWAN, LLB (Hons) (Benin), BL, LLM (AAU), PhD (IUO)**, Lecturer, Department of Private and Property Law, Igbinedion University, Okada. Email: abusomwanventures1@gmail.com, Tel: 08035534611, 09048986955

¹ P. Dele. *What is Alternative Dispute Resolution?*, Lagos, Dee-sage Nig. Ltd, 2005, p.3

² K. Anya , 'Alternative Dispute Resolution' *Nigeria Law and Practice Journal*, Council of Legal Education, Nigeria Law School, vol. 2, No. 1, March 1988, PP. 169-170.

³A. A. Akinbuwa, 'Citizens Mediation Center and Multi-Door Courthouse in Lagos State' in *Law, Politics and Development*, published by NBA Ikeja Branch, 2010, p.327

Collaborative Divorce

Collaborative divorce (also called collaborative law, collaborative practice and collaborative family law) is a voluntary and facilities family law process, enabling couples who have decided to end their marriage, to work with their lawyers and other family professionals, in order to achieve a settlement that best meets the specific needs of both parties and their children, thus, avoiding the uncertain outcome of the court. This process is initiated when couples voluntarily sign a contract (Participation Agreement) binding each other to the process and disqualifying their lawyers to represent either of them in a future family related litigation. This alternative was created in 1990 by Minnesota Family Lawyer, Stuart Webb⁴, who saw that traditional litigation was not always helpful to parties and their families and was often damaging. Since 1990, the collaborative law movement has spread rapidly to most of the United States, Europe, Canada and Australia. It was launched in England in 2003.⁵ ADR methods, collaborative law inclusive, have been incorporated in Texas Family Code⁶ and the code provides that parties to dissolution of marriage may agree with their attorneys in an agreement, to conduct the dissolution under collaborative law procedures without court intervention. This growth of collaborative process has equally been encouraged in England and Wales by the judiciary and its family lawyers' organization (Resolution).⁷ In 2008, it was reported that Justice Coleridge, a High Court Judge of the Family Division, had promised that collaborative law would be fast tracked in England and Wales.⁸

As part of the collaborative law process, both parties retain separate attorneys and jointly hire other family law experts (mental health professional, child specialist and financial specialist) whose job is to settle the dispute, making use of team approached. Each party to the dispute signs an agreement called Participation Agreement, which includes the following terms:

- a) No Court/Litigation: this is to the effect that neither party may seek or threaten court action to resolve the dispute. However, if the process fails and parties decide to litigate the dispute, the attorneys must withdraw and the parties must retain new lawyers. This is called 'disqualification provision'⁹. The provision adds a necessary element of trust to the participants, thereby enhancing the likelihood of resolution. Attorneys will want to ensure that the dispute get resolved without making recourse to court and thus learn additional skills that may be needed to resolve the dispute.
- b) Disclosure of Documents/Information: though this is also required in litigation, such litigation is limited to what should be disclosed under rules. In collaborative law however, each party agrees to honestly and openly disclose all documents and information relating to the dispute. Also, neither party may take advantage of a miscalculation or an inadvertent mistake of the other.
- c) Win-Win Solutions: it is agreed that the primary goal of the process will be to work toward an amicable resolution wherein no one loses or is pointed at as guilty. A win-win situation is created for both parties.
- d) Sharing Experts: it is agreed that experts will be neutral and hired jointly by both parties.
- e) Respect and Insulation of Children: the concept that is, behaving in a courteous manner will help foster a smooth future relationship. By insulating the children from the process, the impact of the divorce on them will be minimized.

Making use of attorneys and experts, the collaborative process addresses the three (3) dimensions of divorce: legal, emotional and financial. In a typical litigated case, the lawyers alone perform the roles of addressing all these issues which may not be efficient enough whereas, in the collaborative process, the attorneys appropriately focus on the legal issues while the emotional and financial issues are properly dealt with by trained professionals. This is because family lawyers are trained to deal with legal issues and they may not be trained to deal with emotional aspects of divorce. The mental health professionals work with the couple in managing the emotional components of the dispute. By this, the couple can effectively deal with potentially debilitating feelings that often interfere with negotiations. Ellie Stoddard¹⁰ noted that this preserves the well-being of the parties. Where there are children of the marriage, a child specialist is brought in to educate the parents as to the developmental needs of the children and to explore ideas for parenting plans. The child specialist equally assists the children in understanding that the dispute is not their fault so that they may not become the victims of the divorce. He does speak for the children. The financial specialist, who is also a neutral third party, helps define the values of assets of the parties. The parties agree on some division of cost (e.g. cost of maintenance) and agree to be bound by the appraised value presented by the financial specialist. These experts help the parties to reach resolutions more efficiently and they equally help lawyers to facilitate the process better.

⁴ Collaborative Law History', <<http://www.collaborativedivorce.net/history-of-collaborative-divorce/>>accessed on 6th January 2023

⁵ Collaborative practice in England', <<https://www.collaborativepractice.com/Lasp?M7&T-PracticeGroups>>accessed on January, 2023

⁶ Texas Family Code, 2005 Chapter 6 Subchapter G & 6.603

⁷ Resolution-Alternatives to Court', <<http://www.resolution.org.uk/leditorial.asp?page=i&53>>accessed on 13th Feb. 2023

⁸ 'Rozenberg Joshua, 'Fast – track Separations for Couples Who Agree' Daily Telegraph Newspaper, (London 20 October, 2008) <http://www.telegraph.co.uk/news/newstoppers/lawreports/joshuarozenberg/3197556/fast-track-separations-for-couples-who-agree.html>>accessed on 11th January, 2023

⁹ collaborative law', http://en.wikipedia.org/wiki/collaborative_divorce >accessed on 3rd January, 2023

¹⁰E. Stoddard , 'Collaborative Divorce- A Healthier Alternative' <http://www.divorcesource.com/CT/ARTICLES/stoddard.html> >accessed on 12 July, 2022

Once the parties have reached a resolution, the agreement is submitted to the court for approval. If approved, the court will render the orders necessary to effectuate the agreement of the parties. This is the practice in Texas under Family Code s. 6.603(b), the whole of USA, England and Wales and Australia. The effectuation in these jurisdictions is due to recognition by law and enforcement of collaborative divorce. For instance in USA the United States of America Model Uniform Collaborative Law Act, 2009 was put in place to allow the use of collaborative law in resolving disputes and decisions from such resolution are binding. However, it is not in all jurisdictions that collaborative law resolution has binding effect as it is in USA and the likes. In Nigeria, collaborative divorce is not recognized by law and if any resolution arises from this kind of proceeding in Nigeria, such is merely persuasive and lacks binding effect.

Divorce Mediation

Divorce or Family Mediation is a non-adversarial, facilitative and co-operative decision-making process, where a qualified and impartial third party helps couples resolve disputes in their marriage especially those relating to divorce separation. Once the parties, with the help of their mediator, identify the issues, they then try to resolve those disputes between themselves. The mediator does not make decisions for them but attempts to get them make decisions on their own. Mediators do this i.e. assist the parties in reaching a decision by codes of conduct guiding them to the dispute. Writers in the field of mediation in New Jersey, USA, normally espouse a code of conduct that mirrors the underlying principles of the mediation process.¹¹ The most common aspects of mediators' codes of conduct include:

- a) A commitment to inform parties as to the process of mediation;
- b) A commitment to urge the parties to talk to each other;
- c) A neutral stance towards the parties;
- d) A concern for the psychological and physical well-being of the parties;
- e) Conduct of the mediation in an impartial manner

After a mediator has been introduced, he first has private sessions with each party separately. The private session is called caucus. It is from the caucuses that the mediator understands the positions, demands, interests and oppositions of parties. Having done this, he then has a joint session with the parties.

In divorce mediation, the mediator concentrates on interest and not positions or entitlements of the parties. Amongst the issues wherein interests are considered include budgets; parenting schedules, financial obligations (either to the spouse or children), estates and properties etc. for example, in mediation process, a spouse's position might be that he or she is entitled to a car probably because he or she is responsible for its purchase. In mediation, the question is not 'who is entitled to' but rather, 'what is your interest in having the van?' if a spouse wants to use the van to start a business after divorce to earn income, then, the other spouse may agree to give up the van. Also, a mediator cannot by law give legal – advice. In divorce mediation, a mediator refers spouses to their attorneys for legal advice.¹² The attorneys usually do not attend the sessions and typically act as advisor not as advocates. A spouse with an extremely unrealistic idea of his or her probable legal outcome or one who refuses to understand the consequences of the choices he or she is making, may be helped by hearing a lawyer's advice. The finality of the divorce mediation process occurs when all the issues or terms have been agreed upon and the mediator sends the agreed terms to the judge to sign. The divorce will be granted upon the terms that the two parties have mutually stipulated. Mediation and conciliation are the same process. That is why they are synonymously used. Despite this, there is a slight difference between them. A conciliator, ensuring that the settlement reached achieves statutory objectives, since he is usually a government advocate, makes recommendations to the parties on how they might settle their disputes.¹³ In contrast, a mediator brings the parties together so that they themselves work out a compromise solution to the dispute. He does not suggest a solution.¹⁴

In Nigeria however, divorce mediation has not been fully embraced¹⁵. What readily looks like divorce mediation in Nigeria is reconciliation as provided under section 11 of Matrimonial Causes Act.¹⁶ The section provides:

- (1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of Counsel, that there is a reasonable possibility of such reconciliation, the judge may do all or any of the following, that is to say, he may:

¹¹A. D. Jessani , 'Collaborative Mediation: A Hybrid Solution for Complex and/or Higher Conflict Mediation Cases,' <<http://www.divorceource.com/NJ/ARTICLES/iessani21.html>> accessed on 2nd January, 2023

¹² A. C. Adamopoulos , 'Divorce Mediation-Explained Easily', <<http://www.divorceinoptipns.com/>> accessed on 20 January, 2023

¹³ M. Noone M, *Mediation*, (1996) Cavendish Publications Limited, p. 16

¹⁴ *ibid*

¹⁵M. Aderibigbe, 'Family Life-Line Through Wide-base Support', <<http://www.mediate.com/people/versonnprofile.cfm?avid1099>> accessed on 20 January, 2023

¹⁶ Matrimonial Cause Act 1970, Cap. M7 LFN 2004.

- (a) Adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;
- (b) With the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting reconciliation;
- (c) Nominate a person with experience or training in marriage conciliation, or in special circumstances; some other suitable person, to endeavor with the consent of the parties to effect a reconciliation.

But as good as this alternative is, the context/atmosphere under which it may be applied seems too hostile to achieve its aim. This is because parties would have engaged in litigation adversary before the judge could order reconciliation. The possibility/choice of getting hostile parties to consent to reconciliation is so thin. Besides, Ijaiya¹⁷ stated that the fourteen days slated for reconciliation seems too short to achieve reconciliation. Suggestions for improving on reconciliation will be given at the end of this research.

Divorce Arbitration

Divorce arbitration can be described as a ‘mini-trial’ or an informal litigation wherein divorcing couples select a neutral third party, called an arbitrator, with family law experience to hear their case and gives a final decision (award) having heard from both sides. The arbitrator acts like a judge because he gives a final decision at the end of the process. Unlike a judge, he has a great deal of leniency because the couples can have a say in what the rulings will be. The decision of a divorce arbitrator may be either binding or non-binding, depending on what the parties choose. If the couples elect that the decision be binding, that decision will then be made into a formal judgement. If the parties elect that the decision be non-binding or advisory; the parties can either accept or reject the decision of the arbitrator. If they accept the decision, an agreement to that effect will be entered into and decision will be made into a formal judgement. If either party or both parties later reject the decision on grounds that the arbitrator is partial and that the decision is made wrongly, an appeal can be filled in the court of law. But if the end result is the same as the first decision or is more favorable to the other spouse, the spouse who appeals may be ordered to pay the other’s costs. Except in situation mentioned above, an arbitrator’s decision (award) cannot be appealed against. This makes the choice of an arbitrator very crucial. Generally, both spouses are allowed to settle on who the arbitrator will be or set up the process of how the arbitrator will be selected if they cannot agree on a choice. Arbitrators, like mediators, are often called upon when the divorce proceeding in court derails because the parties cannot agree on one or more issues such as who should pay children’s maintenance or who should be responsible for their custody. It should be noted that arbitrators may be matrimonial lawyers or former judges¹⁸, but in any case, they should be familiar with the family law of the jurisdiction.

As earlier noted, arbitration awards generally are legally binding and enforceable in most jurisdictions. The United States Arbitration Act, 1925, provides for enforcement of arbitration agreements and awards but in inter-state commerce and international contracts though it now has a model law on matrimonial arbitration¹⁹. The Nigeria Arbitration and Conciliation Act²⁰ equally provides for arbitration agreements and awards in commercial disputes only. Arbitration is different from mediation in that while arbitration is less formal than litigation, mediation is less formal than arbitration. Also, unlike an arbitrator, a mediator does not have the power to render binding decisions on couples. An arbitrator holds evidentiary hearings with the couples but a mediator does not. The following are the typical steps divorce arbitration follows:

- a) A party, at court proceedings may file a demand for arbitration;
- b) The other party is notified and reply is requested;
- c) The arbitrator is selected by the parties;
- d) A hearing date and location convenient for the parties and the arbitration is arranged;
- e) At the hearing, testimony and documents are submitted to the arbitrator, witnesses questioned and cross-examined;
- f) The arbitrator then issues a binding award, copies of which are sent to the parties
- g) These steps are what make arbitration an informal litigation or mini-trial.

4. Merits of Using Alternative Disputes Resolution Techniques

There are numerous advantages associated with Alternative Disputes Resolution, which include the followings:

- (1) It is generally less stressful, speedy and informal resolution of disputes.
- (2) It may improve communication between parties thereby preserving or enhancing relationships between parties.
- (3) It is more confidential and devoid of publicity.
- (4) It has high degree of party control; parties usually create their own process and draft their own agreement.
- (5) Legal and/or other standards of fairness can be used in drafting agreement.
- (6) Resolutions can be tailored to the needs and underlying concerns of the parties and can address legal and non-legal issues as well as providing for remedies unavailable through adjudication processes.

¹⁷ H. Ijaiya, ‘Alternatives to Adjudication in Settlement of Matrimonial Disputes’ (2004) Vol. 5 UDUSLJ P. 87

¹⁸ I. Witherspoon,, ‘Divorce Arbitration’, <[http://ezinearticles.com/?expertJames Witherspoon](http://ezinearticles.com/?expertJames%20Witherspoon)> accessed on 20th January, 2023

¹⁹ American Academy of Matrimonial Lawyers: Model Uniform Arbitration Act, 2003

²⁰ 1988, Cap. A19, LFN 2004

- (7) It increases satisfaction and compliance with settlement when parties have directly participated in drafting agreements, and
- (8) It also assists in clarifying and narrowing issues fostering climate of openness, co-operation and collaboration even if a settlement is not reached.²¹

5. Challenges Confronting the Use of Alternative Dispute Resolution Techniques

Lack of Rules

One of the challenges facing the use of these alternatives is the challenge of absence of rules guiding the ADR processes. Various family laws of jurisdiction where ADR is practiced merely recognize ADR process as an alternative to adjudication but fail to describe how the processes are to be conducted. There are no statutory regulations and the excuse given for this is that statutory regulations would destroy the flexible nature of ADR. It is the practitioners that come up with guidelines themselves. The so-called guidelines in use are not satisfactory enough and this makes the clients or parties to ADR processes frustrated. In addition, the flexibility of ADR (since it is not statutorily regulated), if not well checked, may lead to adverse consequences for parties²². For instance, in divorce arbitration, an arbitrator is not bound by the divorce laws of the judicial system, he or she can make whatever decision he or she deems best based on his or her own good judgment (which sometimes may not be the “good judgment” that the clients want).²³ Arbitration’s final decision can be difficult to reverse. If the decision is unfair or illogical, the parties may be stuck with it because arbitration decisions are infrequently reviewed by the courts.

Lack of Proper and Adequate Skills

Furthermore, the lack of proper and adequate skills for ADR practitioner is also hindrance to ADR. Unfortunately every profession has its share of practitioners who are not skilled at what they do and ADR practice is not an exception. Where proper skills are not applied by ADR practitioners in the process, clients become frustrated and unsatisfied. In fact, improper skills may lead to delays and Waste of time, which usually would escalate the costs²⁴. It is not enough for ADR professionals, lawyers inclusive, to be well versed in divorce laws only. As with any profession, if clients have an incompetent professional, they will not have a successful service. The specific risk of an incompetent ADR practitioner is that the less financially sophisticated party/client will probably end up with a bad deal, i.e. get less money and less than his or her fair share of marital assets²⁵.

Non-Recognition and Unenforceability

Another challenge facing the use of ADR is the challenged of non-recognition and unenforceability. The recognition here is that of statutory recognition. Though in USA, Hong Kong and few other advanced jurisdictions, ADR is statutorily recognized and decisions from ADR processes are binding, as the parties like it²⁶, enforceability of such decisions does not exist in other jurisdictions like Nigeria. What could have caused this may be the fact that ADR, in the aspect of resolving marriage disputes, is not recognized under Nigeria statutes. The only ADR method recognized under statutes in Nigeria is arbitration and it is solely for the settlement of commercial disputes.²⁷ Alternatives Dispute Resolution, especially divorce mediation, has been criticized on moral grounds in that it (mediation) does not deal with fault finding. Contrary to this notion of mediation, many separating spouses need fault to be acknowledged because to them, the lack of condemnation (fault finding) by mediators is interpreted to them as condemnation²⁸. Here is a testimony of a father who attended out-of-court mediation: ‘I find this whole system unsatisfactory. It is almost immoral in my opinion... to try and reconcile between rights and wrong is not necessarily the most moral thing to do.’²⁹ Such criticism could slow down the growth and effectiveness of ADR in its application. It has equally been gathered that ADR is not fit for all matrimonial disputes (divorce especially). Feelings of injustice arise where the wife had been a victim of domestic abuse/violence. USA research indicates that 10-15% of divorce mediation cases involving wives that had been battered by their ex-husband were

²¹ See M. Idahosa , ‘Benin Monarch Established BCADRC, Harps on Integrity’ *The Observer*, Bendel Newspapers Company Ltd., Benin City, October 14th, 2017, p. 2 See Idahosa M. ‘Benin Monarch Established BCADRC, Harps on Integrity’ *The Observer*, Bendel Newspapers Company Ltd., Benin City, October 14th, 2017, p. 2

²² K. N NWOSU., ‘Overview of ADR Process’, (2002) Vol. 1 No I *UCLJ* 34

²³ ‘What is Divorce Arbitration and Its Advantages and Disadvantages?’ <<http://www.sfla.co.uldarticles/htm>>accessed on 20 January, 2023

²⁴ ‘Nwosu of ADR Process’ (2020) Vol. No. 1 *UCLJ*, 34

²⁵ D. Neumann ., ‘The Most Common Questions Asked about Mediation’ <http://www.divorcesource.com/MA/index.shtml>>accessed 20 January, 2023

²⁶ E.g subchapter G (s. 6.601-s. 6.604) of Texas Family Code in USA that states the binding effect of ADR decisions if the parties agree that it should be so, Also, the New Jersey Rules of Court (USA) have been amended, so that Rule 5:4-2 provides that, not only is an attorney required to advise clients as to the availability of Complimentary Dispute Resolution (CDR) programs in matrimonial matters, but they must also provide descriptive literature regarding available dispute resolution alternatives (ADR) that they may choose whether the decisions will be binding or not.

²⁷ Arbitration and Conciliation Act CAP A19 LFN, 2004

²⁸ J. Walker., ‘Divorce: whose fault? Is the Law Commission Getting it Right? Family Law 21 p. 236

²⁹ C. Piper ., ‘The Responsible Parent’ (1993) Hemel Hempstead: Harvester Wheatsheaf p. 170

unsuccessful.³⁰ Moreover, as a result of structural inequalities that exists between men and women in the society, which makes women to be generally referred to as the weaker sex/party, ADR has been criticized on the ground that it lacks standard which can be relied upon to prevent oppressive treatment by a party over the weaker party.³¹ This means that a man (husband) will always want to have his way in the negotiation process since it is the general belief that women are weaker parties and should therefore be subject to men's caprices.

Non-Encouraging Behaviour of Parties

Another major challenge facing the use of ADR is parties' negative/non-encouraging behavior of parties. This problem range from cross-talking, rambling and silence on the part of a party or both. The success of mediation depends on willingness to talk. A party's silence or refusal to respond to some words or to open-up can be detrimental to ADR process.³²

6. Prospects of Alternatives Disputes Resolution (ADR) Method

Despite the challenges facing it, there is a great likelihood of the use of ADR becoming more effective than as witnessed now. The little successes recorded now serve as a ray of hope for ADR. In Nigeria, though not statutorily recognized, family/divorce mediation has gained popularity and awareness to some extent. Not being statutorily recognized is the major factor delaying its use in Nigeria. As put by a Nigeria writer,³³ mediation is beneficial in family matters: mediation is private and aims at amicable settlement, but this is not yet fully embraced in Nigeria. Divorce mediation may be practiced by individuals or organizations in Nigeria but none is statutorily recognized nor its decisions binding. Divorce mediation can however be practiced in Nigeria in collaborating with other statutorily recognized services like reconciliation provided for under Matrimonial Causes Act, to resolve matrimonial disputes. Presently in Nigeria, there has not been a record of collaborative approach to divorce and other matrimonial matters. But if divorce mediation has been known and is being used by individuals and private organizations though not statutorily recognized, then there is also hope for collaborative approach to divorce and other matrimonial matters in Nigeria. In Nigeria, arbitration is not statutorily recognized to be applied to divorce or other matrimonial matters but it is statutorily recognized for the settlement of commercial disputes. The recognition, procedures and regulation of arbitration in this regard is contained in Arbitration and Conciliation Act.³⁴ The use of arbitration in commercial aspect, matrimonial/marriage aspect inclusive

7. Conclusion and Recommendations

Marriage, as defined by Lord Pezance, is a union for life between a man and a woman to the exclusion of others.³⁵ This definition is in pan-material with statutory marriage which this research 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 or break down. Occurrences here and there however have shown that some marriages, no matter how much they are guarded by parties to them, still reach the verges of irretrievable breakdown and as put by the Matrimonial Cause Act³⁶ divorce should be considered at such point. Divorce proceedings, when either of the parties petition for it, has overtime wasting, adversarial, and costly. It was further pointed out in this research that divorce proceeding neglects the fact that parties' emotions should be taken care of Children are also negatively affected in such proceeding. As alternatives to litigation, the research examined collaborative divorce, divorce mediation and divorce arbitration which have been developed due to the shortcomings of litigation. It has been stated that these alternatives are all voluntary processes which parties to divorce proceeding may opt for at any point of the proceeding.

Despite the challenges, there is a likelihood of the use of ADR becoming better than the way it is presently. The only thing in place that is statutorily recognized as ADR method in relation to resolving marriage disputes is reconciliation.³⁷ It has been further stated that the condition wherein this reconciliation is sought to be effected is not conducive enough for it to be successful. Legal practitioners may not be ignorant of the existence of these alternative methods but what about the populace? Ignorance is one of the challenges noted to be facing ADR in resolving marriage disputes as a lot of people are not aware that there exist, other means of resolving marriage disputes aside litigation. To this end, it is recommended that 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 Nigerian Bar Associations (NBA) at various levels. The media can equally be made use of.

³⁰ K. Fischer, N. Vidmar & R Ellis ., 'The Culture of Battering and the Role of Mediation in Domestic Violence Cases' (1993) vol. 46(5) *SMU Law Review* p2143

³¹ J. Macfarlane . 'An Alternative to What? Rethinking Dispute: Mediation Alternative' (1997) Cavendish Publication Limited, P17

³² M. Noone , 'Mediation', (1996) Cavendish Publication Limited. P63

³³M. Aderibigbe , 'Family Life Through Wide Base Support', <<http://www.mediate.com/Jpeople/Personprofile.cfn?avid1022>> accessed on 20 January, 2023

³⁴ Arbitration and Conciliation Act 1988, Cap. A19 LFN 2004

³⁵ *Hyde v Hyde* (1866j L.R LP&D 130

³⁶ 15(A)MCA

³⁷ S.II MCA

In Nigeria, reconciliation is statutorily recognized³⁸ and it is being regarded as a divorce reconciliation process.³⁹ It could be said to be very close to divorce mediation which is presently not in operation in the country. But the process of reconciling parties takes place under what has been referred to as 'shadow of the law'⁴⁰ and this is because the court environment is hostile and not conducive for meaningful reconciliation. It is recommended however that reconciliation be made as an alternative to litigation in its real sense and not be ordered where litigation has already begun/at the middle of litigation where parties would have become estranged towards each other. This recommendation is to help in holding marriages that may have broken down irretrievably together again in a very easy manner. It is envisaged that when reconciliation is treated as such in Nigeria, it will attract parties with disputes in their marriages which may be at the verge of divorce no matter how irretrievably their marriages may have broken down. This is because no one wishes for the 'burial' of his/her marriage. This approach should equally be applied to other ADR methods that have been examined in jurisdictions where they are already being made use of. That is, 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 after litigation might have stated. This will ensure an easy and effective settlement of dispute since parties would not have been engaged in court-room adversary. This approach will equally solve the challenge of negative response of parties. If reconciliation is statutorily recognized in Nigeria as ADR method for resolving marriage disputes, then other methods should equally be introduced, at least, for trial. If they are introduced, the above approach (of making them independent) should be employed for their application.

Closely related to the above recommendation is the training and enlightenment of legal practitioners and potential divorce mediators and divorce arbitrators under statutorily recognized institutions. Training of this set of persons under recognized and respected agencies and institutions (government) will erase the challenge of unskilled ADR personnel. Persons other than law students should be given the opportunity to attend the statutorily recognized institutions. This recommendation will serve dual purposes which are: increment in number of ADR professionals and satisfaction of clients. Also, for divorce arbitration, there should be a check on the powers and authority of the arbitrator so that the flexibility of the process may not be abused. When the consciousness of check lies in an arbitrator, he performs his duty with utmost good faith and parties can be rest assured that their cause will be dealt with in all truthfulness devoid of favoritism. Furthermore, rules and guidelines regulating the ADR processes should be statutorily put in place as against the ones being put in place by various associations of legal practitioners like The Model Family Law Arbitration Act⁴¹ in USA which was created by the America Academy of Matrimonial Lawyers to provide guidelines for arbitrators conducting hearings regarding family law matters. The statutory regulation should be such that can be reviewed from time to time so as not to destroy the flexible nature of ADR which is one of its advantages. ADR is therefore a better method of resolving marriage disputes when compared to litigation and therefore gives the above recommendations to make ADR the better option it is meant to be.

³⁸ Matrimonial Causes Act, CAP. M7, LFN 2004(s.11)

³⁹ Training Manual on Alternative Dispute Resolution and Restorative Justice for a workshop organized by the National Judicial Institute, Abuja and sponsored by European Commission, February, 2020

⁴⁰ K. Mnooklin & C. Komhauser ., 'Bargaining in the Shadow of Law: A Case of Divorce' (1978) 88 *Yale Law Journal*. P 950

⁴¹ United State of America Model Uniform Arbitration Act, 2003