

Marriage, Divorce and Welfare of Children in Nigeria

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Abstract

God created man in his image according to the bible. The initial intention of God towards man was cut short because man sinned. Sin was a result of man's disobedience to God's law. Ever since then, it has not been easy for man. Corruption, injustice, murder, envy and numerous other factors inhibits man's joy and voluminous aspiration for better life in his environment. Infact Cain's killing of Abel being the first recorded case of murder as a result of jealousy has continued to unleash devastating effect on man. This work is therefore an insight into the concept of marriage, divorce and welfare of children in Nigeria. Using doctrinal approach, this article analyzes the challenges of marriage, pointing out that some marital challenges usually lead to divorce. Recommendations were also made to either reduce the number of divorce cases or cushion the effect on children.

Keywords: Marriage, Divorce, welfare, children, Nigeria.

Introduction

God created man called Adam.¹ He later gave him "an helper" called Eve.² That was the first family on earth. Both of them lived together, happily and in one accord until Serpent deceived Eve and Eve in turn deceived Adam whom she was meant to be helping.

Eventually, they were sent out of the beautiful place called garden of Eden. So, God placed curse on the man-Adam, Eve and the deceiver-Serpent. That was unarguably, how suffering and death entered into the life of God's most valuable creature-man.

The family is the first and most basic formation in any given human society. Therefore, research on family law and family development occupies a pride of place in all human endeavor. To further adumbrate on the importance attached to the family, the constitution³ of the Federal Republic of Nigeria (CFRN) 1999 as amended confers all dissolution of statutory marriages on the National Assembly (NASS). Save for customary law marriages, only the NASS can make or amend any laws relating to or incidental to marriages.

Conversely, there can be no family without marriage and conjugal relationship. This however, is dependent upon how you look at the argument.

Obviously, Nigeria took greater part of her family law regime from the English law and patterned its legislation of statutory marriages and matrimonial causes following English law of marriage. The act of 1914 followed the 1884 marriage ordinance of the Colony. While the matrimonial causes Act of 1970 was a mere transcription of the English reform divorce act of 1969.

Furthermore, while the English law on the regulation of marriage and matrimonial causes has metamorphosed in response to modern problems of the society, its counterpart in Nigeria has remained stagnant like most other Nigeria laws crying for necessary reforms from the law makers, academics and social commentators. The very essence of this paper is to analyze some of the challenges of marriages in Nigeria. It also undertakes to proffer solutions to such challenges, identifying some causes of failure in marriages while at the same time raising awareness as to how peace in the family can assist towards meeting the contemporary problems in family law.

Spouses Under Common Law with Respect To Contractual Relationship

Under the common law, there is doctrine of legal unity of the spouses which govern the contractual relationship of husband and wife. Under this doctrine, a man is barred from entering a contract with his wife during the existence of the marriage because they are presumed to be one- husband and wife. The simple logic here is that since the husband and wife are one person it follows that a person cannot contract with himself. Again, in common

¹ Gen. 5 vs 2

² Gen 3 vs 20

³ See the second schedule, part 1, item 61.

law then, A wife cannot sue his husband, but the husband can sue the wife⁴ under this doctrine.⁵ With utmost respect, this common law provision with regards to married women is not just discriminatory on the basis of gender but at best gender insensitive, an infringement on the contractual rights of women and gross deprivation of the human rights of the feminine gender.

However, the defect in that anti-human (female) rights to enter into a contract has been cured by an act.⁶ Under that act⁷ married women were not just liberated but emancipated. It empowers women to enter into, maintain and even sustain action in any valid contract they entered into against any person with regard to any of their personal separate property.⁸ This is of course, in tandem with the prevailing circumstances on the ground. It gave credence to women's right to enter into contracts and strengthens gender equality.

Conceptual Discourse

The term marriage attracts various shades of meanings from divergent authors with different perspectives of the subject matter-marriage. Suffice it to say that there are several definitions of marriage, but what stands out in all the formulations is that marriage is a union between male(s) and female(s)- the opposite sex. But recently, the idea of same sex marriage has reared its ugly head into the scheme of things in the affairs of man and is being legalized especially in the west.⁹

Marriage is a social contract between persons (males & females) who are in most cases from different families, background and different social standing brought together in agreement to live together, love each other, procreate and engage in other issues related with the union-marriage. It appears that marriage is divinely ordained, yes, it is. God permitted the idea of marriage when he said to Adam and Eve

“Be fruitful and multiply and replenish the earth, and subdue it: of the sea,
and over the fowl of the air, and over every living thing that moved upon the
earth.”¹⁰

Also, to buttress God's love for marriage, Jesus Christ turned water into wine¹¹ to ensure that guests at a marriage ceremony continued to drink.

Marriage ceremony has since become a very fundamental aspect of human affairs. Though social in nature but has very numerous elements of spirituality attached to it. Marriage ceremony is quite expensive in some places.

Legally speaking, marriage is of different types thus: in *Hyde v Hyde*, Lord Penzance described monogamous marriage as:

.. the voluntary union for life of one man and one woman to the exclusion of
all others.¹²

From the foregoing and logically too, polygamous marriage which is the next after monogamous marriage is therefore:

“ a voluntary union for life of one man and two or more wives”.

The characteristic feature of polygamous marriage is the capacity of the man to marry as many wives as he pleases.¹³

Polyandry is another type of marriage founded on the erroneous saying that “whatever a man can do, a woman can also do and do even better as the proponents of that assertion claim. Presumably, it is on this false premise that polyandry sprang up as a type of marriage in which a woman has more husbands at a time. That is to say, that one woman is married to many men. This is seen as being more of prostitution and irresponsibility in Nigeria but has been and is still being practiced successfully in India. One man's food is another man's poison I should say.

⁴ Blackstore, Sir, W Commentaries on the laws of England; Book 1, 1st edn (Oxford 1765), ch 15, 442; 18th Edn ed. J. Williams (London 1821-2), 504.

⁵ The Legal Unity doctrine.

⁶ Married Women's Property Act of 1882 amended in 1893.

⁷ Ibid

⁸ Secs. 1 & 12 of the Married women's Property Act, 1882.

⁹ Austria, Brazil, Canada, Cuba, Denmark, Ecuador, France, Germany etc

¹⁰ Gen 1 :28

¹¹ John 2 vs 9

¹² (1886) 1r 1 p & d, 130, 133.

¹³E. I Nwogwugu 'family law in Nigeria, remised edn (HEBN Publishers Plc) p.

Expectedly, this cultural variation cuts across national borders.

Obviously, in Christendom, marriage is not merely a human agreement but a solemn institution built on a relationship in which God changes the status of a man and that of a woman from being single to being married, twosome- husband and wife are no longer two but “one flesh, one blood, one body, one in spirit and thought”. The married couples now leave their parents to form their own family. “One flesh” includes but not limited to sexual union¹⁴ and other conjugal rights of the husband and wife.

The presumption, though rebuttable is that immediately marriage takes place, the newly married couple are unified from that moment in a mysterious way that belongs to no other human responsibilities that they never had before the marriage.¹⁵

Ideally, marriage is supposed to create the closest of all relationship among couples. But it is usually not so, as we see under divorce.

Conversely, one of the causes is loss of interest in the relationship and this is usually triggered by retinue of factors. Today, a lot of married men have jumped from one wife to two, three or more wives as the case may be. Some men have series of reasons for doing that. Some women have also moved to many men.

Divorce

Divorce is derived from the Latin word “ Divortere” which means to turn different or separate ways. The belief in Christendom is that marriage which is said to be for better for worse is anticipated to stand the test of time. In fact, the meaning of “until death do them apart” as usually vowed during Christian marriage is that the husband and wife can only be separated by death. In other words, both are expected to live together throughout their life time. Unfortunately, it is not so and has not been so except in some circumstances and can never be so because man is fallible. marriages are therefore not indissoluble.

Simply speaking, divorce is the termination of marriage. It brings to an end, the marital relationship, rights and privileges enjoyed by spouses as a result of being married.

Certainly, divorce is prevalent in our societies today. The consequences of divorce are also very precarious especially on the children. And because children live with their parents who usually quarrel before taking the divorce option, the children also learn from the incompatibility of their parents and grow along that quarrelsome line ending up in divorce when their eventually marry too.

Undoubtedly, divorce is recognized and accepted as a solution to a breakdown in marital affairs especially when love is lost and preferably in a situation where the man beats the wife like a punching bag. In the latter case, it is preferable to gain divorce than to allow the man kill the wife in the name of marriage and living together. Separation could also be recommended but separation allows some level of coming together than divorce and a man who gets easily provoked can assault the wife in the former than in the later.

The courts are usually not hesitant to decree divorce when it finds that the cord that held a marriage has broken down irretrievably. Reason being that, it is of no moment to compel parties who have lost confidence in themselves to still stay together.

Some Factors that Could Lead to Divorce are:

- i Adultery¹⁶
- ii Lack of Submission to the husband by the wife
- iii Consistent refusal to consummate the marriage
- iv Desertion and so on.

However, of all the above written factors that could lead to divorce, adultery and disobedience are more compelling and are discussed here under.

The primacy and importance given to adultery and disobedience in this paper derives from the fact that even the Holy Bible and the Koran condemn adultery in retinue of chapters and verses.

Adultery has also been judicially defined thus: in *Erhahon V. Erhahon*¹⁷ the court opined thus:

¹⁴ Genesis 2: 24

¹⁵ https://www.crossway.org/articles/10.key_bible_verse_on_marriage/ accessed 12th January, 2024.

¹⁶ Agu G. A and Odike E. A “Modern Nigeria Family law and Succession p. 122.

¹⁷ (1997) 6 NULR (p. 510) pg 41

“Adultery is a consensual sexual intimacy between a married person and a person of the opposite sex other than the spouse; and that for adultery to exist, there must be penetration of the woman by the man although the act of sexual intercourse need not have been completed”.

The above judicial decision is not just apt but very correct. Just like in the case of rape and other sexual offenses. The act is complete upon penetration per vaginum.

In trying to establish the crime in some sexual offenses the victim is usually expected to establish or prove that the male reproductive/sexual organ was inserted into her “private part” sexual organ. The victim needs not to prove whether sperm was discharged into her vagina.

Adultery is a ground to dissolve a marriage when duly established. Incidentally, it is about the only ground recognized and duly approved in the bible (the holy book used by Christians also known as the word of God) to grant divorce so also the courts are willing to dissolve marriages in which adultery is successfully established. Therefore, adultery is morally and legally wrong though adultery is not a crime in Southern Nigeria but it is a crime in the Northern Nigeria where penal code crafted under Maliki jurisprudence applies. Even at that, the petitioner seeking dissolution of marriage on the ground of adultery shall ensure that a sufficient ground to warrant such dissolution on the ground of adultery exists. The sexual intimacy must be voluntary and not obtained by force or fraud. Thus, the petitioner shall show that the respondent was not raped. Again, it is usually of great advantage to satisfy the court that the adultery is such that the petitioner has found intolerable to live with, as held in *Oke vs Oke*.¹⁸ Adultery under the Northern Nigeria customary law is also an offence.¹⁹

Some recognized and approved grounds for divorce are

- i Willful and persistent refusal to consummate
- ii Engaging in conducts which the petitioner is not reasonably expected to bear²⁰
- iii Desertion²¹
- iv Separation and the respondent’s consent for dissolution²²
- v Presumption of death²³

When the husband and wife fail to act like one, think like one and do things in common divorce becomes inevitable.

“A husband and wife must function like two wings on the same bird. They must work together or the marriage will never get off the ground.”²⁴

Lack of Submission

This is a crucial factor that has led to the untimely collapse of many marriages. In fact, as in most cases the men continue to manage the marriage with hope that things will improve. Lack of submission which is the hall mark of disrespect has formed an important factor in divorce. Unfortunately, even in Christian marriages nowadays, lack of submission abounds. Yet, there is a biblical instruction²⁵ that instructively directs thus:

“Wives, submit yourselves unto your own husbands as unto the Lord for the husband is the head of the wife, even as Christ is the head of the Church: and his is the Saviour of the body. Therefore, as the church is subject unto Christ, so let the wives be to their own husbands in everything.

The above bible version says it all. But the reality on ground is that even some “Christian mothers” of today find it very difficult in most cases to respect their husbands. We do not apply the teachings of the bible to our situation and when something untoward happens we either heap the blame on the husband, the devil, family of the husband and even his friends. Expectedly the bible and other holy books maintained the same instruction that wives should

¹⁸ (1974) 1 All NLR 443

¹⁹ Sec 387 of the Northern Penal code cap 89 laws of the Northern Nigeria 1963.

²⁰ Sec 15 (2) C of the matrimonial causes Act (MCA).

²¹ Sec 15 (2) D of the matrimonial causes Act (MCA).

²² Sec 15 (2) E of the matrimonial causes Act (MCA).

²³ Sec 15 (2) H of the matrimonial causes Act (MCA).

²⁴ Dave Willis.org.

²⁵ Ephesis 5:22-24 of King James version available at <https://quod.lib.umich.edu>>idx accessed on 3rd July, 2023.

submit themselves to their husbands. There are also many bible chapters and verses²⁶ on that and that is to underscore the importance attached to wives submission to the husbands by God.

Men ought to show love to their wives too so as to strike a balance and elongate the life span of the marriage. Women shall not live as slaves in their husband's house but they should earn it by their submission, love, perseverance and support. Assumption of authority by women over men is outrightly condemned by the holy books for instance the bible says

“But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence”,²⁷

Wonderful! Women are you in silence when the men rage? Back to business, the phrase “but to be in silence” is a holy admonition and if adhered to it can save a lot of ugly incidents and avert danger and even death. Again, the reality on ground is that some women tend to talk more than the men. Some are abusive and quite intolerable. This has led to untimely death of so many women due to anger that leads to deadly blows from the men. In Igbo land there is a saying that “Nwata noro nwayo, ihe ga-eme ya anoro nwayo”. Literally this means that “if a child keeps quiet what will happen to the child keeps quiet too”. But the silence required here is not to tell your husband that silence is the best answer to a fool then you keep quiet. To a man of quick temperament this may attract some blows. The point am making here is that absolute silence saves life but to some “hard men” silence is misunderstood and can spur them to assault the woman. In all cases, prayer is the key.

Welfare of Children in case of divorce in Nigeria

“We are guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need could wait – the child cannot”²⁸

- 1 Children are Gods special gift to parents. Any family lacking children as a result of barrenness is always in pensive mood. So, families all over the world usually receive child birth with overwhelming joy, gladness and gratitude to the Almighty God.
- 2 Conversely, when marriage breaks down irretrievably divorce sets in, after which custody of the children which is a segment of the welfare of the children becomes an issue. Custody issue can also arise as a result of death of either of the parent or separation of the parents. But in deciding who takes custody of the child or children the overall interest of the child or children takes primary. Divorced parents usually resort to the battle of who will take custody of the proceeds of the marriage the children if at all the marriage is blessed with children. Some go out of their way to disobey the court decision on who takes custody of the children. Ideally, the age of the children at the time of divorce plays a vital role in determining who takes custody of the children in Nigeria. Generally, if the children are of tender years, custody is awarded to the mother. Reason being that mothers are presumed to have Midas touch of care on children. However, courts can award custody to the father if the mother is of unsound mind, always under the influence of alcohol and so on. But in award of custody the best interest of the child or children is usually looked into.
- 3 Expectedly, the world attaches much importance to the welfare of children hence retinue of laws abound with regards to the welfare of children. For instance, the international connection on the rights of the child is a law of international flavour²⁹ is very detailed on the rights of the children. As usual, Nigeria adopted, ratified and domesticated this all important law on the rights of the children which includes welfare of the children. But one thing is to adopt, ratify and domesticate a law another thing is implementation of such law.

Records show that Nigeria has the largest number of out-of-school children in the world.³⁰ Statistics on the well-being of the Nigeria children are very deplorable. An estimated 13.5 million Nigeria children are out of school.³¹

²⁶ Colossians 3:18, 1 Peter 3:5

²⁷ 1 Timothy 2:12s

²⁸ Children poet-diplomat, educator and humanist, Lucila Godoy Akayaga, known for her pseudonym, Gabriel Mistral, quoted by Taiwo Ojoye in “Effects of corruption on Nigeria children” Punch Newspapers 17/6/23 pg.1/9 available at <https://punching.com/effects-of-corruption-on-nigeria-children/> accessed on 19/6/23.

²⁹ Adopted by the United Nations General Assembly (UNGA) in 1989, ratified by 194 state parties excluding Somalia. Nigeria adopted and domesticated it in 2003.

³⁰ Adamu Hussaini permanent secretary, federal ministry of education, quoted in BBC report of July 25th, 2017.

³¹ Hammid Bobboyi, Executive Secretary of the Universal Basic Education Commission. Footnotes 3&4 are also available at <http://punching.com/effects-of-corruption-on-nigerian-children/> accessed August 29th, 2023. See also Taiwo Ojoye and jide Ojo's article on punch newspapers on effect of corruption on Nigerian children June 19th, 2019 at page 1/9-5/9.

Regrettably, this is despite the passage of the CRA in 2003, unfortunately only 25 of the 36 states have passed the Act.

However, all hope is not yet lost. Just recently the wife of the executive Governor of Enugu state Mrs. Nkechinyere Mbah took the bull by the horn. She enjoined governments at all levels, international development partners and public-spirited individuals to prioritize the welfare and total development of Nigerian children.

She also called for the effective development of the digital skills of Enugu children in particular and Nigeria in general so that children would not be left behind in the fast-evolving global economy. Her Excellency expressed her readiness to partner with government at all levels including the wives of council chairmen, development partners and kind-spirited individuals to ensure that Enugu children enjoy their childhood and grow into responsible and happy adults. She cautioned against all forms of child abuse, child labour and every act that undermines the total development of children, stressing that Enugu children do not only deserve education as of right, but also one that is smart and digitally compliant.³²

Children welfare or welfare of children is to be examined briefly in two senses. Firstly, the narrow sense of welfare of children when a marriage has broken down irretrievably and divorce sets in, and the broader sense also addressed by the author of this article as welfare of the children generally. The former is always contentious and that is when divorce is successfully pronounced in court thereby dissolving a marriage, in that case, custody of the children-the proceeds/offspring of the broken marriage is also pronounced by the court. When custody is awarded to either of the parents, the children suffer certain parental deprivation. Their stay with and closeness to both parents wean. The children now stay more with whoever has custody of them. The other partner merely visits them at will and not always. The implications on the children development, care and welfare are enormous. Gradually, that parental care, love, control, support, affection and courage diminishes. Such children begin to learn from their custodian alone and not both parents as it was originally meant to be. But children who enjoy what I classify as general welfare from both parents are surely, stronger, bolder and exhibits more sense of knowledge and high standard of responsibility than children on the former scenario. Undoubtedly, children raised by a single parent usually have some social, moral and economic shortcomings.

Effect of Divorce on the Nigerian Child

Divorce is better imagined than felt. It has no positive impact on the children. In fact, the advantage one should see in divorce is that it may help save life, especially the life of a woman if the husband is an incurable wife beater. In that circumstance it becomes expedient to push for divorce. Again, it may be in the interest of the woman to leave a man who is promiscuous at least by so doing, she may be free from sexually transmitted disease (s). But on the children, divorce is filled with disadvantages, disadvantages and disadvantages all over. Once divorce sets in, both the parental, moral and other supports on the children dwindle. Couples can survive on their own because they are adults but it is not so with the children. In fact, instances abound where either of the parent transfers his or her aggression on the children, abandoning their duty to train the children. In fact, in some situations if the man or woman loses the custody of the children in court that may trigger anger and transfer of unnecessary aggression on the children by the party that lost custody.

It then follows that if the mother is the bread winner and she loses her quest to take custody of the children she may withdraw her financial responsibility on the children and vice versa.

Divorce affects the moral, social and the general welfare of children in Nigeria in particular and the world at large. Certain children even show poor academic performances once their parents are no longer together. Morale and moral values of such children are generally decreasing. It leads children in emotional trauma and feeling of betrayal by their parents which leads to lower academic performances. Children from divorced homes often exhibit high level of anxiety when put in comparison with those from homes that are intact. They lack concentration, keep away from peers, engage in anti-social behaviours, see every environment as a war zone. Depression which is a gate way to suicide is prevalent in the lives of children who hail from divorced marriage. They keep to themselves and take their lives by themselves without revealing their problems to anyone.

Under The Child Rights Act 2003

³² Her Excellency, the wife of the present Governor of Enugu state made this clarion call in her goodwill message to Enugu children to mark 2023 Day of the African children with there “The rights of the child in the Digital Environment.

The rights and responsibilities of a child in Nigeria are clearly spelt out. So is the system of child justice administration, care and the supervision of a child, among other things part 1-³³ provides that the best interest of the child shall be given paramount consideration in all actions. Whether undertaken by an individual or administrative or legislative authority.

- 2-(1) A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions services, agencies, organisations or bodies legally responsible for other child.
- 2 Every persons, institution, service, agency, organization and body responsible for the care and protection of children shall conform with the standards established particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.

Recommendations

- i Ideally, there should be ideal courtship before marriage. Courtship devoid of sexual immorality and other sinful attractions between intending couples.
- ii Mutual respect for both intending couples founded on love and good understanding should be enthroned.
- iii Parents to both intending couples should not be the problem of the marriage.
- iv Both parties should endeavor to have jobs that will be reasonable to take care of their needs as a family.
- vi They should not use the affluence of other families/couples as a parameter to measure their own families. Rather fear of God, trust in God, faith in God and hard work shall be the way to follow.
- vii Parents should prioritize the moral, social and other aspects of their children upbringing.
- viii Government should as a matter of urgency enact laws that will mandate political office holders who have capacity to see to the welfare of children do so. Welfare here includes but not only building of schools, renovating of schools, sincere amend of scholarship to those who merit it, establishment of vocational schools and support to the teachers. Again all existing laws both local and foreign in that are in the best interest of the Nigerian child shall be adhere to. In other words respect should be accorded to all domestic and international legal instruments that promote the welfare of children in Nigeria.
- ix There shall be attitudinal over hauling of all negative, harmful and unethical customary practices that encourage the exploitation of children in Nigeria.
- x Education shall be reintroduced and reinforce as the key to the elimination of the scourge that impede the welfare of the Nigeria child.
- xi Violence against women shall be eradicated or at best drastically reduced because it makes the children more vulnerable to abuses and other forms of exploitation.
- xii Conceptual violence against the Nigeria child should be dealt with in accordance with the law and there shall be no sacred cow in this regard.

Conclusion

The saying that children are the leaders of tomorrow is a defective one. This is because children from divorced homes usually do not lead themselves not to talk of leading others. Agreeably, most of the leaders we have today had bad upbringing going by the way they do things. Leadership problems can be a thing of the past if and only when things are gotten right by ensuring that children are trained to become responsible leaders. There is a ray of hope in the statement of the amiable wife of the present Governor of Enugu state and it is believed that if her proposals are implemented and emulated by other states in Nigeria, it shall go a very long way in sanitizing the society and production of responsible leaders that will turn things around. This is because the Enugu State governor's wife has brazed the trail.

³³ JN Ezeilo, Human Rights document relevant to women and children's rights in Nigeria, women Lagos, Eddy Asae Nigeria Press. 2008 pg. 499