

# CONTEMPORARY ISSUES UNDER THE NIGERIAN FAMILY LAW: THE NEED FOR LEGISLATIVE REVIEW TO CATALYSE GROWTH

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## ABSTRACT

The study examines some available legislations in Nigeria that are relevant to family law and identifies some areas of family related issues which were due for reforms. These include bigamy, recognition of foreign marriage, Assisted Reproductive Technology, cohabitation, marriage requirement and many others. The study finds and concludes that some salient legal issues under the family law in Nigeria have not been adequately covered thereby creating lacuna due to constant societal change and outdated laws. The study recommends that relevant parts of Nigerian legislations on family related issues be amended to conform with the best international practices as well as societal sensitization on the current change in times and laws among others. The law reform is a continuous process that changes with time as the society develops in order to meet up with the global standard. This constant change in time and season brought in some new trends which the existing legislations regulating family law in Nigeria do not cover. This study looks at the various laws regulating family matters in Nigeria and identifies some gaps in them that require reform in order to align with the international best practices. This study adopts doctrinal method of legal research with the combination of both primary and secondary sources such as legislations, textbooks, case-laws, journal articles, and other relevant online materials.

**Key words:** Contemporary issues, law reform, legislation, Nigeria

## 1.0 INTRODUCTION

Family law regulates the various forms of marriage in Nigeria which are statutory marriage, customary marriage and marriage under Islamic law. It guides the institution of marriage, the requirement for marriage, spousal and children maintenance during the pendency of the marriage and beyond, matrimonial causes, settlement of properties owned during the pendency of the marriage between parties, testate and intestate succession, rights of parties under a valid marriage, paternity, guardianship, adoption, fertility and assisted birth methods, family planning, domestic violence, human trafficking, children upbringing and so on.<sup>1</sup>

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<sup>1</sup>. E.I. Nwogugu, *Family Law in Nigeria* (Ibadan, HEBN Publishers Plc., Third Ed. (2014). pp *Lx-Xviii*.

Marriage is said to be the voluntary union of one man and one woman for life, exclusive of third party interference.<sup>2</sup> This definition best suits a monogamous marriage of two opposite sex, it does not apply to other types of marriage in this contemporary period. Therefore, marriage may be defined as the voluntary union of two or more persons for life or till it is dissolved. In the course of marriage, disputes are bound to occur, when this happens parties have the option of either settling amicably through any of the Alternative Dispute Resolution mechanisms or proceeding to the High courts, Sharia courts or the Customary court depending on the type of marriage conducted for redress. The basic laws regulating family issues in Nigeria are the Constitution of the Federal Republic of Nigeria, 1999 as amended, Marriage Act 1914, the Matrimonial Causes Act 1970, Islamic law and Customary law. Other legislations relevant to this aspect of law are the Wills Act 1837, Violence Against Persons (Prohibition) Act 2015, Child Rights Act, 2015 among many others.

Many of these laws are now outdated due to change in times which is reasonably expected because the society must keep evolving and once it does, the laws must also be amended where necessary to effect the change. Therefore, no law must be static.<sup>3</sup>

This study adopts doctrinal legal research with the use of both primary and secondary sources of it so as to effectively justify this topic. The primary sources used in this study include legislations and case laws while those of the secondary sources include journal articles, newspaper publications, textbooks and other internet materials.

Family law in Nigeria is very wide and an area where the state is interested in because family is the smallest unit of the society and whatever affects the family may directly or indirectly have impact on the society. This interest of the Nigerian government in the welfare of families is reflected in the various laws made available to Nigerians to regulate marriages and other family affairs.

Such legislation includes the Constitution of the Federal Republic of Nigeria 1999 as amended, the Matrimonial Causes Act, Marriage Act, National Health Act, Wills Act, Trafficking in Persons (Prohibition) Enforcement and Administration Act, Wills Act, Child's Right Act, Same Sex Marriage (Prohibition) Act, Violence Against Persons (Prohibition) Act, 2015 etc. many of which have been domesticated by the states if it is within their power to do so.

Despite the numerous laws regulating family law in Nigeria, there are still many aspects of it that are controversial, due for reform or require new enactments because some of the legislations are outdated while some do not cover the whole field of their aspect. There are also some trending family related issues on law which are yet to be legislated upon thereby hindering the efficiency and implementation of family laws in Nigeria from moving in line with the societal and global changes such as Assisted Reproductive Technology (ART).

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<sup>2</sup>. Hyde v Hyde & Woodmansee (1866) LR 1 PD 130 at 133.

<sup>3</sup>. Abiola Sanni, *Introduction to Nigeria Legal Method* (Ile-Ife, Obafemi Awolowo University Press Ltd, 2<sup>nd</sup> Ed. 2006). p. 6

This study is divided into six parts. The first part introduces the topic, states the methodology used in the research, the background to the study and states the problem. The second part gives a brief summary of some of the various laws regulating family law in Nigeria. The third part examines the areas of family law in Nigeria that require reform. The fourth part discusses the various problems leading to the existing gaps in our laws. The fifth part concludes the study while the last part makes some recommendations for reform.

## 2.0 RELEVANT LEGISLATIONS ON FAMILY LAW IN NIGERIA

There are several legislations in Nigeria that touch one aspect or the other of family law. The following are some of the most relevant ones to family law in Nigeria:

- i. **The Constitution of the Federal Republic of Nigeria, 1999 as amended**- it is the *grundnorm* in Nigeria such that any other law inconsistent with it will be void to the extent of its inconsistency.<sup>4</sup> It gives powers to the legislature to make laws in Nigeria and it established the court for aggrieved persons to approach whenever their rights are being trampled upon in its sections 4 and 6 respectively. Section 7 established the local government and grants it certain powers laid down under the Fourth Schedule such as registration of births, deaths and marriages.<sup>5</sup> It further guarantees certain fundamental rights to persons in Nigeria under its chapter 4 among which are right to life, right to dignity of persons, right to fair hearing, right to private and family life and right to freedom from discrimination pursuant to sections 33, 34, 36, 37 and 42 respectively.
- ii. **Marriage Act, 1914**- this Act regulates celebration of statutory marriage in Nigeria. The basic requirements and procedure of contracting a valid marriage under the Act are also stipulated.
- iii. **Matrimonial Causes Act, 1970**- it regulates institution of matrimonial causes such as dissolution of marriage, judicial separation, jactitation of marriage, restitution of conjugal right. It equally provides for application for ancillary reliefs. It also stipulates the prohibited degrees of consanguinity and affinity between intending couples.<sup>6</sup>
- iv. **Matrimonial Cause Rules, 1983**- it basically lays down the rules and regulations to be applied both by the court and parties to matrimonial causes in Nigeria. It is a subsidiary legislation to Matrimonial Causes Act stipulating the practice and procedure of courts on matrimonial causes.
- v. **Customary law**- due to the cultural diversity of Nigeria as a nation, customary laws are not codified, they only form part of our laws upon passing through the validity tests. Customary laws of various ethnic groups in Nigeria regulate customary marriage of the people who subject themselves to it and such laws must pass the three validity tests before they can be applied in Nigeria which are repugnancy test, inconsistency test and public policy test pursuant to the Evidence Act.<sup>7</sup> In *Mojekwu v Mojekwu*,<sup>8</sup> the court declared the 'Oli-ekpe' customary practice of Nnewi people which prevents women from inheritance as repugnant to natural justice, equity and

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<sup>4</sup>. Constitution of the Federal Republic of Nigeria, 1999 as amended, sec. 1.

<sup>5</sup>. Ibid., Para 1(i) IV Schedule

<sup>6</sup>. Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2010, First Schedule.

<sup>7</sup>. Evidence Act, 2011 as amended, sections 16-19.

<sup>8</sup>. (1997) 7 NWLR (Pt 512) 283.

- good conscience. It was also held that such discriminative practice against women on ground of sex is unconstitutional and void.
- vi. **Islamic law**- an aspect of Islamic law known as Islamic family law regulates marriages under Islam. It teaches the importance of marriage in Islam, teaches how to build a good family, teaches moral uprightness in marriage, rights of members of the family, succession etc.<sup>9</sup>
  - vii. **Wills Act, 1837**- it regulates testate succession under the law. It administers and applies to the making of testamentary document, validity of wills of a testator, execution of wills among other things.
  - viii. **Child's Right Act, 2015**- it sees to the care and welfare of a child. It states that every action concerning a child must be taken in consideration of his best interest.<sup>10</sup> In addition to the fundamental rights of persons guaranteed by the Constitution of Nigeria, it prohibits child sexual abuse and exploitation in all forms. It equally regulates guardianship, wardship, adoption and fostering among many others.
  - ix. **Evidence Act, 2011 as amended**- it regulates judicial proceedings in every court in Nigeria such as matrimonial causes, fundamental rights and specific orders of courts. Where evidences brought before the court are satisfactory enough, it presumes legitimacy of a child and equally presumes marriage between husband and wife under the Islamic law and Customary law.<sup>11</sup> It recognises all types of marriage validly contracted under the Customary law, Islamic law and Marriage Act in its section 258.
  - x. **Violence Against Persons (Prohibition) Act, 2015**- it prohibits all forms of violence against persons including domestic violence usually suffered by spouses, children and other dependants. It is a very germane aspect of family law. It creates offences related to domestic violence,<sup>12</sup> harmful widowhood practices,<sup>13</sup> female genital mutilation,<sup>14</sup> rape,<sup>15</sup> harmful traditional practices,<sup>16</sup> stalking,<sup>17</sup> intimidation,<sup>18</sup> administering harmful substances<sup>19</sup> and many others. It punishes offenders to the offences created and sees to the compensation of victims.
  - xi. **Same Sex Marriage (Prohibition) Act, 2014**- it prohibits same-sex marriage in Nigeria. It criminalises the act as an offence for anyone who engages in it, who aids the act and anyone who witnesses the act. It also specifies punishment of 14 years for persons found guilty of the same sex marriage or civil union.<sup>20</sup>
  - xii. **Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015**- the Act creates several offences in relation to human trafficking and equally provides the victims of the offences access to health services and protection against discriminatory treatment.

<sup>9</sup>. T.A. Yusuf, A.F. Ahmed and A.R. Mustapha, *Islamic Family Law* (National Open University, Study Guide)

<sup>10</sup>. Child's Right Act, 2015, sec 1

<sup>11</sup>. Evidence Act, 2011 as amended, sections 165 and 166 respectively.

<sup>12</sup> For example, see sections 2, 4, 9, 10, 12-14. 16 and 19, Violence against Persons (Prohibition) Act 2015.

<sup>13</sup>. Ibid., section 15.

<sup>14</sup>. Violence against Persons (Prohibition) Act 2015, section 6.

<sup>15</sup>. Ibid., section 1.

<sup>16</sup>. Violence against Persons (Prohibition) Act 2015, section 20.

<sup>17</sup>. Ibid., section 17.

<sup>18</sup>. Ibid., section 18.

<sup>19</sup> Violence against Persons (Prohibition) Act 2015, section 21 and 22.

<sup>20</sup>. Same Sex Marriage (Prohibition) Act 2014, sec 5.

### 3.0 CONTEMPORARY AREAS UNDER FAMILY LAW THAT NEED URGENT LEGISLATIVE REACTION

The law is dynamic in nature, it moves with the society as it changes. It is therefore important to amend the laws in a given society to align them with the societal dictates. The Nigerian family law in this regard is full of certain burning issues that need to be addressed, some of which are:

#### 3.1 Bigamy

Bigamy is the contract of another marriage with a different person from which a person is previously married to under the statute. At least, one of the parties to the second marriage must be married to a person who is different from the present partner. The implication of law on this second marriage is that it is rendered *void ab initio*.<sup>21</sup> It is only applicable to a statutory marriage and constitute an offence both under the Matrimonial Causes Act and the Criminal Code. The punishment for the offence under the Matrimonial Causes Act is 5 years,<sup>22</sup> while it is 7 years under the Criminal Codes<sup>23</sup> There is need for harmonization of the punishment to this offence in the Matrimonial Causes Act to align with the provisions of the Criminal Code.

Aside the issue of difference in the punishment to the offence, it is also note-worthy that the Nigerian courts are always reluctant to convict on this offence and where they do, they impose ridiculous punishments as a result of which victims who are usually women are being discouraged from litigating on it.<sup>24</sup> An example of this is the decision of court in *R. v Princewill*<sup>25</sup> where the husband got married to his wife under the Marriage Act while he was still a Christian. He later changed his religion to Islam and contracted another marriage in line with Islamic law where he is allowed to marry more than one woman. The court found him guilty of the offence of bigamy but went ahead to impose a ridiculous conviction of 1 (one) month imprisonment as against the 7 years prescribed by section 370 of Criminal Code. This attitude of the courts is premised on the societal beliefs that an average African or Nigerian man is polygamous and therefore, a woman should not because of the subsequent marriage of her husband to another person send him to prison.<sup>26</sup> As a result, the offence is seen as a toothless bull dog as many Nigerian men keep damning the consequence of it by committing the offence and even going to the extent of publicising it on social media. An example is the case of Yul Edochie, a popular Nigerian actor and social media influencer. He recently contracted a second marriage to another person despite his statutory marriage to another woman and goes about flaunting it on the social media thereby encouraging other

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<sup>21</sup>. *Ademola v Aina* (1958) 31 ALL NLR Pt 1

<sup>22</sup>. Marriage Act, Cap M6 Laws of the Federation of Nigeria 2010, sec 46.

<sup>23</sup>. Criminal Code Act 1916, sec 370.

<sup>24</sup>. M.A. Lateef and N.K. Adegbite 'Bigamy and Dearth of Prosecution in Nigeria' (2017) OAU Journal of Public Law. 91-117

<sup>25</sup> (1963) ALL NLR 478

<sup>26</sup>. C.E Ochem and C.T. Emejuru 'Bigamy in a Polygamous Society: An Appraisal of the Law of Bigamy in Nigeria' (2017) Journal of Law and Criminal Justice, Vol. 5(2). 96-102

Nigerian men to damn the consequence of the law.<sup>27</sup> As at the time of compiling this work, nothing has been done to arrest and try him in court for this offence either by the wife or police because it relates to bigamy and not any other offence. The only action taken against him that these writers are aware of is mere condemnation by some *netizens* for committing the offence. Though, it may look like a private and family affair; however, an offence has been committed thereby giving the police the power to arrest and prosecute him.

Whereas, the Police and Economic and Financial Crimes Commission were proactive enough to arrest and prosecute other celebrities like Funke Akindele, popularly known as “Jennifa” together with her husband,<sup>28</sup> AbdulRasheed Bello popularly known as “JJC Skillz” for disobeying lock down directive and Idris Okunneye, popularly known as “Bobrisky” for abusing the Nigerian currency respectively.<sup>29</sup> The courts were also quick enough to convict and sentence them even to the maximum punishment in order to deter other persons because of their social media influence. The question here is that ‘will the courts and law enforcement agencies have done the same if the offences were to be bigamy’?

It may be argued that marriage is a private affair between couples. However, commission of any offence such as bigamy is a public affair as it is in the public interest. Family is regarded as the smallest unit of the society.<sup>30</sup> Therefore, whatever affect families will directly or otherwise have effect on the society at large.

Another instance is the case of Helen Prest Ajayi, former Miss Nigeria and a legal practitioner. She had a customary law marriage with Late Dr. Tosin Ajayi under the Kalabari native law and custom.<sup>31</sup> The man initially contracted a statutory marriage with another woman in 1974 but they had been living apart for about ten years before he met and married Helen without undergoing a formal divorce proceeding with her and Helen also failed to consider the implication of this on her marriage to him. It is very alarming to know that as wealthy and educated as the man was, he died intestate.

Upon his death, the wife and children of the substantive marriage refused to recognise Helen as a wife, reminding her that she ought to have known that her marriage to the deceased was void and therefore has no right to inherit the deceased. This fact was never raised during the

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<sup>27</sup>. Ovwe Medeme ‘Polygamy: Eight Months After, Yul Edochie Apologises to First Wife’ *Premium Times* (Nigeria, 21 December 2022) < <https://www.premiumtimesng.com/entertainment/nollywood/571653-polygamy-eight-months-after-yul-edochie-apologises-to-first-wife.html>> accessed 5 May 2024

<sup>28</sup>. Henry Ojelu ‘Covid-19 Lockdown: Funke Akindele, Husband sentenced to Community Service’ *Vanguard* (Lagos, 7 April 2020)<[<sup>29</sup>. Friday Omosola ‘Updated: Naira Abuse: Court Sentences Bobrisky to Jail Without Option of Fine’ \*Premium Times\* \(Lagos, 12 April 2024\) <<https://www.premiumtimesng.com/regional/ssouth-west/685390-just-in-court-sentences-bobrisky-to-six-months-in-jail.html>> accessed on 7 May 2024.](https://www.vanguardngr.com/2020/04/covid-19-lockdown-funke-akindele-husband-sentenced-to-communityservice/#:~:text=NOLLYWOOD/actress/Funke/Akindele/and,(Emergency/Prevention)/Regulation/2020.>accessed on 6<sup>th</sup>, May, 2024.</a></p></div><div data-bbox=)

<sup>30</sup>. Adem Arslan ‘Characteristic, Types and Functions of Family Concept’ (2023) *African Educational Research Journal*, Vol. 11(1) 45-48.

<sup>31</sup>. Wale Igbintade ‘Ex-Beauty Queen, Helen Prest Challenges Admissibility of 1974 Marriage Certificate’ *Thisdaylive* <<https://www.thisdaylive.com/index.php/2023/12/07/ex-beauty-queen-helen-prest-challenges-admissibility-of-1974-marriage-certificate>> accessed 8 May 2024.

life time of the deceased by anybody; therefore, the offenders were never punished for bigamy. Her only saving grace was the business of the deceased, First Foundation Medical Engineering Company Limited because she became a partner in the company in 1996 during the lifetime of the deceased and the court declared her entitled to 50% of the net asset of the company following the non-appearance of the Respondents in court to controvert the averments of Helen despite due service of court process on them.<sup>32</sup> They obviously did not believe that their attitude will lead to that decision of court.

It is hereby opined that no matter the justification for the attitudes of Nigerians, the Police and courts on bigamy; the law is still what it is until it is amended or repealed. No one is forced to contract statutory marriage which is monogamous. Whoever wants to be polygamous in Nigeria has the option of customary or Islamic marriage which are also recognized under the Nigerian law.<sup>33</sup> Therefore, until the law says otherwise, the courts should apply it as it is so as to encourage other victims of the offence to pursue the prosecution of the offence.

### **3.2 Cohabitation**

This relates to the kind of relationship that exist between persons living together under the same roof without being legally married. It arises where two adults live together in a relationship which resembles a marriage to a large extent, without being formally married under the law.<sup>34</sup> In the western world, it applies to both homosexual and heterosexual cohabitation but in Nigeria, it is applicable only to heterosexual relationship. It may or may not produce children.

Technically, no law in Nigeria regulates heterosexual relationship in respect of cohabitation. This is however practiced and now given some form of acceptance in the society. Many people live together as couples without formal marriage under excuses like testing their compatibility before marriage, lack of money to perform marriage rites, not being ready to be committed to one spouse, desire to be independent of the control of a spouse,<sup>35</sup> to enjoy some benefits that marriage may not avail them,<sup>36</sup> to avoid seeking consent of persons who may be against their union, reluctance to allow the law regulate their relationship, incapacitation to contract marriage in respect of age.<sup>37</sup> Other common excuses are mistaken belief that the law will deem it as a common law marriage, hope to marry in future (which may never be), either or both parties grew up under cohabiting parents, one partner already married to another

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<sup>32</sup>. Maritha Ebolusue 'Court Grants Ex-Miss Nigeria 50% of Late Husband's Asset' *Punch* (Nigeria, 8 September 2021) <<https://punchng.com/court-grants-ex-miss-nigeria-50-of-late-husbands-assets/>> accessed 8 May 2024

<sup>33</sup>. Evidence Act 2011, as amended, sec 258.

<sup>34</sup>. 'A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform' Legal Assistance Centre, Research Brief, 2015. 1.12

<sup>35</sup>. This is largely applicable to women in Nigeria, many of them prefer to remain single in order to avoid male dominance and control.

<sup>36</sup>. For instance, maintenance after divorce ends upon remarriage to another person but it usually continues if the party who is receiving maintenance remains unmarried.

<sup>37</sup>. Applicable to boyfriend-girlfriend relationship

person i.e., ‘baby mama/daddy syndrome’,<sup>38</sup> to save for wedding cost, to avoid abusive spouse, to avoid polygamy or bigamy etc.<sup>39</sup>

The Nigerian law has given some form of recognition to such relationship especially when either of them approach the court for some reliefs under the customary or Islamic marriages such as child maintenance and joint properties. The law will presume marriage in favour of the relationship till the contrary is proven where evidence of long years of cohabitation is given.<sup>40</sup> Aside this, the applicant must show further proof to the court to support his case such as evidence of attending social functions together as couple, children certificates bearing their names together as couple, in-law recognition, purchase of joint properties as couple etc.<sup>41</sup>

As a result of recognition of such relationship under the law and to protect the relationship which is already accepted in the society in the best interest of the children, the legislature should enact some laws to regulate premarital cohabitation as it is in other countries such as the Bermuda’s Domestic Partnership Act, 2017.

### 3.3 Foreign marriage

In developed jurisdictions such as the United States, marriage celebrated in foreign countries is recognized except if it contradicts the strong public policy of the state or country where the marriage was celebrated.<sup>42</sup> In determining the validity of such marriage, the law of place of celebration, *res celebrationis* will be applied to check the territorial scope and powers of the authorities who conducted the marriage.<sup>43</sup>

However, in Nigeria, the law though recognises foreign marriage, restricts the validity of it to when one of the parties is a Nigerian and the said marriage was celebrated before and in the office of a marriage officer who must either be a Nigerian diplomatic or a consular officer of the rank of Secretary or above in the country to which he is accredited.<sup>44</sup> This simply means that any marriage conducted outside Nigeria before any other marriage office or in any licensed place of worship no matter how well constituted is not recognized in Nigeria. It is hereby opined that the conditions are too restrictive and therefore, tantamount to rejection of foreign marriages. Hence, there is a need for a reformation under the Nigerian legislations for a wider scope.

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<sup>38</sup>. Kayode Ajulo ‘Babydaddy, Babymama Syndrome Shouldn’t Be Encouraged’ Punch (Nigeria, 18 November 2018) <<https://punchng.com/babydaddy-babymama-syndrome-shouldnt-be-encouraged-kayode-ajulo/>> accessed 8 May 2024.

<sup>39</sup>. ‘A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform’ Legal Assistance Centre, Research Brief, 2015. 1.12

<sup>40</sup>. Evidence Act, 2011 as amended, sec 166.

<sup>41</sup>. ‘Presumptions in Favour of Marriage’

<[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ore.exeter.ac.uk/repository/bitstream/handle/10871/32819/The\\_presumptions\\_in\\_favour\\_marriage-100418.doc%3Fsequence%3D1&ved=2ahUKEwi-2f6m4Z-IAxUq9bsIHVN3HpqFnoECBoQAQ&usg=AOvVaw02whOoRcV2TAsvJhcaZYdz](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ore.exeter.ac.uk/repository/bitstream/handle/10871/32819/The_presumptions_in_favour_marriage-100418.doc%3Fsequence%3D1&ved=2ahUKEwi-2f6m4Z-IAxUq9bsIHVN3HpqFnoECBoQAQ&usg=AOvVaw02whOoRcV2TAsvJhcaZYdz)> accessed 19 May 2024

<sup>42</sup>. Restatement (Second) of Conflict of Laws (1971), sec, 283(2).

<sup>43</sup>. Guilles Cuniberti ‘Conflict of laws: A Comparative Approach’ (2022) Family Law Supplement, 2<sup>nd</sup> Ed.

<sup>44</sup>. Marriage Act, Cap M6 Laws of the Federation of Nigeria 2010, sections 49-53.

### 3.4 Marriage requirements

The procedure for celebration of marriage under the Marriage Act is very cumbersome especially for two consenting adults who do not require consent of anybody to marry each other. It goes from the period of notification of marriage which is 21 days in accordance with Form A,<sup>45</sup> before the Registrar's Certificate, Form C can be issued if the parties satisfy the conditions attached under section 11 of the Act. The said marriage must be celebrated within 3 months from the date of notice if there is no caveat to forbid the marriage. Problem arises when caveat is entered to forbid the marriage by any interested person, the matter will then be referred to the High court for determination of the validity of the ground of caveat. Though the period spent at the court will not affect the 3-month ultimatum to celebrate the marriage, however, it may take another long period of time depending on the congestion of the court.<sup>46</sup>

The ground for caveat for two consenting adults is usually the previous marriage of either or both intending couples. A fact which can be generated within few minutes if the ministry of interiors have an efficient unified central database for married persons in Nigeria to confirm the marriage statuses of intending couples. The unified marriage database comprises list or register of all married persons under all the recognised forms of marriage which is statutory, customary and Islamic in Nigeria.

This issue of long period of wait and caveat has been addressed in developed climes where they have efficient database for married persons. In the United States for example, many States make it possible for intending couples to get married immediately where they are ready for it. They apply and get married same day if they so wish.<sup>47</sup>

### 3.5 Marriage certificates

On validity of marriage certificate in respect of powers of issuing authorities to issue same, there is controversy as to superiority of issuing authority in Nigeria. It is not in doubt that many places of worship may not have marriage licence and many who have may fail to renew their licences, a fact which is usually unknown to intending couples. It is equally not in doubt that the Ministry of Interior has provided for unified marriage certificates for all local governments' marriage registry in Nigeria, therefore, no local government marriage registry's certificate is superior to the other as established in *Eti-Osa Local Government Council & Ors v Min of Interior & Anor*.<sup>48</sup> However, when married couples intend to travel out of the country with their marriage certificates as evidence of marriage, foreign embassies usually have preference for marriage certificate issued by the Federal Marriage Registries

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<sup>45</sup>. Marriage Act, Cap M6 Laws of the Federation of Nigeria 2010, sec. 7

<sup>46</sup>. Ibid., sections 14-17.

<sup>47</sup>. 'Marriage Services' Instant Marriage in Los Angelis

<[https://www.instantmarriage.co/?utm\\_source=google&utm\\_medium=conversions&utm\\_campaign=search&utm\\_id=branded&gad\\_source=1&gclid=CjwKCAjwi\\_exBhA8EiwA\\_kU1MpXiR0vklc9vDqkklnzPoF0NVAXN08VoGalnf5DLQgAnLGRoCgC8QAvD\\_BwE](https://www.instantmarriage.co/?utm_source=google&utm_medium=conversions&utm_campaign=search&utm_id=branded&gad_source=1&gclid=CjwKCAjwi_exBhA8EiwA_kU1MpXiR0vklc9vDqkklnzPoF0NVAXN08VoGalnf5DLQgAnLGRoCgC8QAvD_BwE)> accessed 8 May 2024.

<sup>48</sup>. Suit No. FHC/ LS/CS/816/18 (Unreported, judgment delivered on December 14, 2021 per Hon. Justice D. E. Osiagor).

thereby making it appear superior to other local government marriage registries in Nigeria.<sup>49</sup> This, they continue to do despite the court's decision in *Eti-Osa Local Government Council & Ors v Min of Interior & Anor*.<sup>50</sup>

This issue is worrisome as many couples, both intending and married troop to federal marriage registries to have their marriage celebrated or re-celebrated as the case may be. It is understandable if they reject marriage certificates of places of worship if they are not sure of the validity of their licenses but rejecting those of other marriage registries in Nigeria is out of place. This problem can only be resolved by the ministry of interior by calling the attention of the Nigeria Immigration Service to it.

### 3.6 Divorce

The procedure of going about divorce in Nigeria is very cumbersome and may equally be time wasting. It commences with counsel trying their best in ensuring parties reconcile out of court before divorce petition can be filed. Form 3 or 3A will be filed to the effect that efforts to make parties reconcile failed which will accompany the divorce petition.<sup>51</sup> The judge to whom the Petition is assigned must give opportunity for parties to reconcile from time to time and he also has some roles to play in this.<sup>52</sup> Then comes the compulsory conference, application to set the matter down for hearing, hearing proceedings, period within which to file addresses by counsel, judgment writing period and the decree *nisi* period. Altogether, it may take from months to years depending on the level of congestion of the trial court.

However, in developed climes, dissolution of marriage can be effected between the parties by appending their signatures on the divorce papers just within days without necessarily going to the court formally. The reason is that, where one party has decided to end the marriage in a legal way especially for a reason best known to him or her and decides to come under a no fault ground, legal proceedings should not be used as an impediment against it, and the other spouse must not be allowed to use his or her refusal to coerce the party willing to leave.<sup>53</sup> A willing party cannot as a matter of law be forced on an unwilling party.

The Government reasons that, if one spouse has concluded that the marriage is over, then the legal process should respect that decision and should not place impediments in the way of a spouse who wants to bring the marriage to a legal end. Importantly, this change would also prevent the legal process from being used to exercise coercive control by one spouse over the other spouse who may be a victim of domestic abuse.

### 3.7 Definition of marriage

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<sup>49</sup>. Taiwo Adebulu 'Investigation: Extortion, Inflated Cost... the Nigerian Marriage Registry Where Fraud is a Norm' <<https://www.thecable.ng/investigation-extortion-inflated-costs-the-nigerian-marriage-registry-where-fraud-is-a-norm/>> accessed 8 May 2024.

<sup>50</sup> Supra

<sup>51</sup>. Matrimonial Causes Rules 1983, Order II

<sup>52</sup>. Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2010, sections 11-12.

<sup>53</sup>. Michael Attah and Linda Osagie 'Reforming the Irretrievable Breakdown Rule- Historical Perspectives From Common Law Jurisdiction and Lessons for Nigeria' NAUJILJ 11 (1) 2020. 29-46

There is need for a clear definition of what marriage is under the Nigerian laws to reinforce the stand of Nigeria on lesbianism, gay, bisexual, transgender, queer, intersex, asexual and the likes (LGBTQ+) which have become a global concern. In 2017, Australia updated her Marriage Act, 1961 to allow LGBTQ+ relationships by defining marriage as the union of two people to the exclusion of others, voluntarily entered into for life.<sup>54</sup> The words “a man and a woman” were deleted and replaced with “2 people”.<sup>55</sup>

Recently, the Same Sex (Prohibition) Act, 2015 was passed into law and it prohibits homosexuality in Nigeria. Both the Marriage Act and Matrimonial Causes Act fail to define what marriage means in Nigeria. There is therefore need to amend these laws to clearly define marriage in Nigeria in line with the Same Sex (Prohibition) Act, 2015.

### **3.8 Matrimonial causes**

Alternative Dispute Resolution mechanisms are not applicable to divorce and some other matrimonial issues under the Nigerian laws. This is because they require a decree of the court in Nigeria and parties will have to prove to establish their facts and evidences to the satisfaction of the court before such decree can be made, the applicable court for matrimonial causes is any state High Court.<sup>56</sup> Even when it is an undefended suit, the petitioner or cross petitioner must prove their case before they can be entitled to the decree. The law is that parties who seek declarative reliefs must rely on the strength of their case as held by the court in *Ofongo v A.P.C.*<sup>57</sup>

### **3.9 Surrogacy and other Assisted Reproductive Technology**

This is one of the most trending areas of family law in Nigeria and beyond. The issue of infertility and some other health issues have made it necessary for persons affected to yield to this type of assisted reproduction. This method have been used to solve many fertility issues in many jurisdictions and it is backed up by their laws so as to provide ethical guidelines to technicians/consultants and patients such as the United Kingdom and Australia. However, many married couples who find it difficult to procreate as a result of infertility or other health issues and single persons who wish to have children as single parents may face some challenges in the course of the transaction or thereafter due to lack of adequate legal framework to regulate it.<sup>58</sup>

The provisions of the National Health Act, 2014 expressly prohibits the practice of assisted reproduction in Nigeria by criminalizing manipulation of genetic material of human gametes, zygotes or embryos; engagement in activities like nuclear transfer or embryo splitting so as to clone human being and export or import of human embryo. This restriction is rather making it more difficult for medical development in this area.<sup>59</sup> This provision is based on the religious sentiment in Nigeria that assisted reproduction is against the order of nature.

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<sup>54</sup>. Marriage Act 1961, sec 5.

<sup>55</sup>. Marriage Amendment (Definition and Religious Freedoms) Act 2017, sec 3.

<sup>56</sup>. Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria 2010, sec. 2

<sup>57</sup>. (2022) 4 NWLR (Pt 1821) 543 at 574.

<sup>58</sup>. J.O. Fadare and A.A. Adeniyi ‘Ethical Issues in Newer Assisted Reproductive Technology: A View from Nigeria’ (2015) Nigerian Journal of Clinical Practice, Vol. 18(7). S57- S6

<sup>59</sup>. National Health Act, 2014, sec 50.

Despite this, the number of fertility clinics and consultants keep growing in Nigeria by the day. The issue of ownership of babies and complications after birth are also rampant between surrogate mothers and couples despite their contractual agreements. There is therefore an urgent need for the government to look into this area and legislate on it.

### **3.10 Domestic violence**

Recently, domestic violence became a topical issue of great concern under the Nigerian family law and in response, the Violence against Persons (Prohibition) Act was enacted in 2015. The law identified and addressed the issues such as infliction of physical injury on a person, wilfully putting a person in fear of injury, forceful ejection from home or wilful denial of access to it, depriving a person of his or her liberty, financial or economic abuse of a person, forceful isolation of a person from family and friend, emotional or psychological and verbal abuse of a person, abandonment of a spouse or any other dependent without providing any means of sustenance and battering a spouse by punishing both the offence and the attempt to commit them.<sup>60</sup> Such persons may be either spouse or child of the marriage or aged parent or anybody living with the family.

However, given the fact that it is a federal enactment, it is only operative in the Federal Capital Territory; few states are yet to domesticate it and this accounts for the continuous violation of the law in Nigeria because the practices of such acts do not amount to offences in the affected states.<sup>61</sup>

One of the ways of ensuring justice in a given society is the compensation of the victim of an offence because justice is tripartite: to the offender, the victim and the society at large.<sup>62</sup> The victim compensation measures provided in the Act is only in the aspect of punishment of the offender if found guilty, there is no provision for financial compensation. This is grossly inadequate compared to the gravity and the effect of the offence on the victim which include permanent disability and death.

The Act also fails to provide adequate punishment for violation of the offences stated above given the serious nature of the practice of domestic violence within the country. The maximum punishment stipulated for commission of the offences created by the Act is 3 years imprisonment or a fine of not more than ₦500,000.00. There is therefore an urgent need for the review of the law in these respects for better effectiveness.

## **4.0 PROBLEMS LEADING TO THE EXISTING GAPS**

1. Outdated legislations: many provisions of the laws regulating family law are outdated and require urgent amendment in order to ensure that these laws move in the direction of societal change.

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<sup>60</sup>. Violence against Persons (Prohibition) Act 2015, sections 2, 4, 9, 10 12-14, 16 and 19 respectively.

<sup>61</sup>. 'VAPP Tracker' Partners West Africa Nigeria <<https://www.partnersnigeria.org/vapp-tracker/>> accessed 20 October 2024.

<sup>62</sup>. Deborah C. England, 'Criminal Liability' Nolo <<https://www.criminaldefenselawyer.com/resources/criminal-liability.htm>> accessed 20 October 2024.

2. Reluctance to adapt to new societal changes: though not all changes are good enough for the law governing the society to align with, there are some which are necessary for the development and growth of the society. If not, the society will remain stagnant forever.
3. Improper or inadequate application of existing laws: some of the provisions of family law legislations are not properly executed and applied. An example is the law on bigamy as an offence which is rarely prosecuted in Nigeria and where they do, the court will be reluctant to impose adequate punishment on the offender where found guilty.
4. Inadequate technical know-how: inadequate knowledge of relevant government personnel on the use of technology even where they have the basic equipment. This can be seen in the area of improper record or lack of unified database for registered married couples in Nigeria which is making it difficult for staff of marriage registries and licensed places of worship to ascertain the marital statuses of intending couples. What they have resorted to is to demand for affidavit of spinsterhood or bachelorhood as the case may be.<sup>63</sup>
5. Cultural influence: the beliefs and culture of Nigerians on some aspects of family law also tend to contribute to the setback especially on bigamy. Women happen to be the major victims of this offence; however, it is hardly prosecuted because of the cultural belief that a woman should not send her husband and father of her kids to imprisonment because of adultery or subsequent marriage with another person.<sup>64</sup>
6. Religious influence: many of the adherents to the three basic religions in Nigeria, Christianity, Islam and Tradition hold sentiments against certain developments in Nigeria especially on abortion and assisted reproductive technology that they are against the order of nature. This normally reflect in the reasoning of Nigerian legislature in legislating towards those aspects.

## 5.0 CONCLUSION

Family law is a very wide aspect of law with many legislations regulating it some of which were briefly discussed in the course of this study. Relevant areas of family law that require reform and quick legislative action were also discussed and this gave the basis for the identified problems causing the existing gaps in our laws such as outdated legislations, cultural influence on our laws, reluctance of the people to adapt to societal changes easily, religious influence among others.

Based on the foregoing, this study therefore concludes that there are many gaps to be filled under family law in Nigeria which were created by outdated laws, inadequate laws to cover the contemporary issues that keep evolving as a result of social change. Change is the only constant thing; the law is therefore bound to be amended to address the issues created by societal change.

## 6.0 RECOMMENDATIONS

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<sup>63</sup>. 'Marriage Requirement' Ministry of Interior <<https://ecitibiz.interior.gov.ng/marriage/requirements>> accessed 5 May 2024.

<sup>64</sup>. C.E Ochem and C.T. Emejuru 'Bigamy in a Polygamous Society: An Appraisal of the Law of Bigamy in Nigeria' (2017) *Journal of Law and Criminal Justice*, Vol. 5(2). 96-102

Having identified the above problems causing the existing and recurrent gaps under the Nigerian family law, the following solutions are proffered as recommendations to this study: The family laws to be amended by the legislature need to suit the current changes and rampant family related issues with the view of meeting the recent and global trends for a holistic societal development. The courts are also encouraged to keep recommending boiling issues to the legislature to consider. Because it is part of their powers to even do so in the course of delivering judgments.

The courts should also be proactive enough to apply the law the way it is, purging themselves of all cultural sentiments especially on the issue of bigamy. Whoever comes under the umbrella of statutory marriage should be ready to face the consequences if they act contrary to it because they had options to contract other forms of marriage.

Given the wide practice of assisted reproductive system in Nigeria, there is therefore need for the legislature to amend the National Health Act, 2014 by removing section 50 of it which places ban on such infertility solutions and add more sections to cover the field or come up with a new enactment on it.

It is also recommended that the legislature should amend family law legislations to provide a clear definition of what marriage means in line with the Same Sex (Prohibition) Act 2014. This will project the firm stand of Nigeria as regards LGBTQ+ in line with our cultural heritage.

The society should also be sensitized about the law and their implications, especially on bigamy. This will reduce the level of the commission of the offence.