

## AN APPRAISAL OF THE IMPLICATIONS OF GENDER IN DIVORCE PROCEEDINGS

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### Abstract

*Divorce, as the legal dissolution of marriage, is an enduring social phenomenon that carries significant gender implications. Across societies, its impact is shaped by cultural, economic, and legal frameworks, often resulting in unequal burdens on men and women. In Nigeria, for instance, the consequences of divorce manifest more severely on women due to entrenched patriarchal norms, economic dependency, and inadequate legal protections, despite constitutional provisions guaranteeing equality. Similar gendered patterns can also be observed in other jurisdictions such as Ghana and the United States, though the degree of protection and social support varies considerably. In examining these issues, this study looked at statutory frameworks such as the Matrimonial Causes Act in Nigeria and comparative legal principles from other jurisdictions. It highlights the failure of existing laws to adequately address the asymmetrical consequences of divorce, particularly on women, and underscores the relevance of international human rights instruments advocating equality in marriage and family relations.*

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*The paper concludes that although divorce is legally intended to provide relief from marital breakdown, it often reinforces gender inequalities and recommends stronger enforcement of custody and maintenance orders, fairer property division, gender-sensitive judicial practices, and broader legal reforms to ensure more balanced outcomes for both men and women.*

**Keywords:** Gender, Divorce, Divorce proceeding, Matrimonial cause, Patriarchy

## 1.0 INTRODUCTION

Divorce, as the legal dissolution of marriage, carries profound consequences for the individuals concerned and for society at large. In Nigeria, these consequences are far from gender-neutral. Men and women often encounter the aftermath of divorce differently, shaped by socio-economic disparities, cultural expectations, and the interpretations of the courts. While men may generally retain financial stability and social freedom post-divorce, women frequently experience economic hardship, custodial responsibilities, and lingering social stigma.<sup>1</sup>

The intersection of gender and divorce raises critical questions about equality, justice, and the adequacy of existing legal frameworks. For instance, issues of property settlement, child custody, and maintenance orders often reflect deep-rooted gender roles that disadvantage women.<sup>2</sup> Despite the statutory guarantees of equality under the Nigerian Constitution,<sup>3</sup> customary law and religious practices continue to

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<sup>1</sup> O Ighodalo, *Women and Divorce in Contemporary Nigeria* (Lagos: Malthouse Press, 2018) 45.

<sup>2</sup> E Okereke, 'Gender and Family Law in Nigeria: Rethinking Custody and Maintenance' (2020) 12 *Nigerian Journal of Family Law* 23, 30.

<sup>3</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42.

reinforce patriarchal norms, thereby increasing the challenges faced by women post-divorce. The Matrimonial Causes Act<sup>4</sup> seek to regulate divorce, yet their implementation often reveals systemic gender biases. Issues of maintenance and property settlement also remain particularly contentious, and more often than not, women are left in a disadvantaged situation.<sup>5</sup>

Notwithstanding the above provisions, the inherent discrimination between women and men continues to rear its head in the property rights of spouses at divorce.<sup>6</sup> The strict application of the law on the settlement of property in Nigeria has in most cases prevented women from claiming a beneficial entitlement to their husbands' property at divorce. They are, thus, left uncompensated for reasonable losses suffered or which they might be capable of suffering at divorce.<sup>7</sup>

Women are also unrewarded for all the indirect financial contributions which they made to the purchase or development of any property directly linked to their male spouses.<sup>8</sup> Their role as a homemaker and her obligations towards the welfare of the family are not taken into consideration in determining the question of whether they are beneficially entitled to any property. The reasons for this are not farfetched, as the extant law does not empower the courts to redistribute the property of spouses or to alter their property interest at divorce on a just and equitable basis.

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<sup>4</sup> Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria 2004

<sup>5</sup> E Okereke, 'Gender and Family Law in Nigeria: Rethinking Custody and Maintenance' (2020) 12 *Nigerian Journal of Family Law* 23, 30.

<sup>6</sup> *Onwuchekwa v Onwuchekwa & Obuekwe* [1991] 5 NWLR (Pt 194) 739, where the female spouse could not establish her financial contribution to the marriage and was left empty-handed; Adekile 2010

<sup>7</sup> <http://www.pambazuka.org/gender-minorities/assessing-women%E2%80%99s-rights-nigeria> pdf. accessed on 11 September 2025

<sup>8</sup> *Amadi v Nwosu* 1992 Legalpedia SC UJBT 1, 4 ; *Essien v Essien* [2009] 9 NWLR (Pt 1146) 306, 331-332.

In *Dairo v. Dairo*<sup>9</sup>, a husband who instituted an action for the dissolution of the marriage. The respondent wife averred that upon an agreement with her husband early in the marriage she spent her income in maintaining the family and providing their needs while the husband deployed his earnings into building their matrimonial home. Upon the suit for dissolution of the marriage, she prayed the court for a share in the home. It is instructive that although her averment was not contradicted by her husband, the trial court completely ignored her prayer for settlement of the house and to be given a share as her earlier agreement and sacrifice to maintain the home were not recognized.

In *Nwanya v. Nwanya*,<sup>10</sup> the trial court after granting the decree of divorce proceeded to settle property between the couple especially their country home in Nnewi. The wife claimed that she contributed of N6,000.00 to the construction of the country home even though she could not tender any evidence in support of such claim. The trial court accepted her claim but awarded the sum of N5 ,000.00 to her as part of her visible and invisible contributions to the construction of the house. This position of the trial court was, however, frowned upon by the Court of Appeal which insisted that the woman should have tendered evidence of her contributions to the house in form of receipts and witnesses before an award of settlement should be made to her.

To this day, the social reality of the domestic and mothering roles of wives in Nigeria means that they remain in a totally dependent position with no rights in matrimonial property if the marriage ends, unless they can show evidence of a substantial financial contribution to the purchase of such property.

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<sup>9</sup> Unreported; Suit No ID/90HD/86 of 15/7/88.

<sup>10</sup> (1987) 3 NWLR (Part 62) 239.

In societies such as the United States and Ghana, for instance, structural inequalities, differences in earning power, and entrenched cultural expectations influence the lived experiences of divorced men and women. What emerges, therefore, is a recognition that beyond the legal aspect, divorce operates within broader socio-cultural frameworks that either reinforce or challenge gender inequality. Thus, understanding the gender implications of divorce is therefore essential for developing a legal system that upholds fairness and protects vulnerable parties. This inquiry goes beyond doctrinal analysis, and engages with sociological and feminist legal perspectives to reveal how law interacts with power dynamics in family relations.

## **2.0 DEFINITION OF CONCEPTS**

### **i. Gender**

Gender refers to the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. It is a defined difference between men and women based on culturally and socially constructed mores, politics, and affairs.

### **ii. Divorce**

Divorce is the formal process that legally terminates a marriage, effectively dissolving the marital union and allowing both spouses to remarry. It's a court-granted decree that ends all legal rights and obligations of the marriage, providing a final resolution to issues such as property division, child custody, and support.

### **iii. Alimony**

Alimony is a court-ordered payment that one spouse may have to pay to the other after a divorce or separation to provide financial support. Also known as spousal support or maintenance, it aims to help the

lower-earning spouse meet their financial needs and maintain a standard of living similar to what they enjoyed during the marriage.

### **3.0 LEGAL FRAMEWORK ON GENDER IMPLICATIONS OF DIVORCE IN NIGERIA**

#### **3.1 Constitution of the Federal Republic of Nigeria, 1999**

section 42 of the constitution prohibits discrimination on the basis of sex, which should, in theory, ensure equal treatment of men and women in divorce proceedings. Section 34 guarantees dignity of the human person, relevant in protecting women from degrading practices during and after divorce. However, gaps exist between constitutional provisions and the practical application of customary, Islamic, and statutory laws, often disadvantaging women, leading to inequality.

#### **3.2 Matrimonial Causes Act (MCA) 1970 Statutory Marriage**

The Act Governs dissolution of marriages contracted under the Marriage Act. It Provides grounds for divorce example; adultery, desertion, cruelty, irretrievable breakdown of marriage. Under the Nigerian Matrimonial Causes Act, the single ground for divorce is that the marriage has broken down irretrievably. This irretrievable breakdown can be proven by demonstrating one or more of the following conditions: the respondent has refused to consummate the marriage, has committed adultery, has behaved in such a way that the petitioner cannot reasonably be expected to live with them, has deserted the petitioner, or that the parties have lived apart for a certain period of three years, or two years with the respondent's consent.

In theory, the law is gender-neutral, but in practice, women often face difficulties in proving fault-based grounds such as cruelty or adultery. In addition, Issues of maintenance and custody often reflect societal gender roles, with women being primary recipients of custody but often

without adequate financial support.

### **3.5 Customary law**

Divorce under customary law is regulated by ethnic customs and traditions. Here, grounds for divorce often include infertility, disobedience, or neglect of family duties, grounds that disproportionately disadvantage women. The implication of this is that Women may face loss of bride price repayment before being “released” from marriage. Property rights are minimal for women under the customary law, and custody of children, especially older male children, often goes to the father or his family.

### **3.6 Islamic or Sharia Law, applicable in Northern Nigeria**

Sharia law regulates marriages and divorce for Muslims. It Provides multiple forms of divorce such as **Talaq** a husband’s right to repudiate, **Khul’** a wife’s right to seek divorce with compensation and **Faskh** which is a judicial annulment on grounds such as cruelty, neglect and impotence.

### **3.7 Child Rights Act 2003**

This act Prioritizes the best interest of the child in custody matters. In practice, mothers are often awarded custody of younger children, while fathers may retain control over older children and financial resources.

## **4.0 INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS.**

**4.1 Convention on the Elimination of All Forms of Discrimination Against Women CEDAW, 1979**, calls for equality in marriage and family relations. Similarly, article 16(1) of the Convention requires State Parties to take all necessary steps to eliminate

discrimination against women in marriages and family relations.<sup>11</sup> It emphasizes the equal rights and responsibilities of spouses during marriage and at divorce.<sup>12</sup>

**4.2 Protocol to the African Charter on the Rights of Women in Africa Maputo Protocol, 2003**, guarantees women's rights in marriage, divorce, and property distribution. Article 6 Guarantees equality between men and women in marriage, requiring free and full consent, registration of marriages, and equal rights during marriage and at its dissolution.

*“Women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enjoy the same rights and be regarded as equal partners in the marriage and its dissolution.”*

Article 7 Provides that women and men shall have the same rights in case of separation, divorce, or annulment, including rights to custody of children based on the best interests of the child and equitable sharing of joint property.

**4.3 The Universal Declaration of Human Rights 1948 & International Covenant on Civil and Political Rights ICCPR, 1966** in its article 23, guarantee equal rights in marriage and dissolution. Unfortunately, Nigeria is yet to domesticate CEDAW. An attempt to domesticate CEDAW via the Gender and Equal Opportunities (GOE) Bill, 2016 met stiff religious and cultural resistance and therefore it is yet to be passed. The proposed bill, if passed, will empower women to acquire and own property, benefit from their late husband's estate, and provides for her right to the choice of nativity and identity at divorce.

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<sup>11</sup> *Convention on the Elimination of All Forms of Discrimination against Women* (1979) (hereafter the CEDAW) 13; note that Nigeria is yet to domesticate CEDAW.

<sup>12</sup> Art. 16(1)(c) of the CEDAW.



However, the bill has no provision for property right at divorce.<sup>13</sup>

#### **4.4 Judicial Precedents**

Nigerian case law plays a significant role in interpreting divorce laws. Courts have sometimes adopted progressive interpretations like granting custody to mothers on welfare grounds, but in other cases, patriarchal norms dominate. Case law also shows inconsistencies between statutory courts, customary courts, and Sharia courts.

### **5.0 GROUNDS FOR DIVORCE**

The Matrimonial Causes Act provides one principal ground for divorce, that the marriage has broken down irretrievably. To prove this, the petitioner either husband or wife must establish one or more of seven statutory facts that demonstrate the breakdown of the marriage:

#### **5.1 Adultery**

Divorce may be granted if the respondent has committed adultery and the petitioner finds it intolerable to continue living with them. The petitioner must show both the act of adultery and the resulting emotional or psychological impact.

#### **5.2 Unreasonable Behaviour**

Where the respondent's conduct is such that the petitioner cannot reasonably be expected to live with the Respondent. This includes physical abuse, cruelty, neglect, humiliation, or persistent quarrels.

#### **5.3 Desertion**

The respondent must have intentionally abandoned the petitioner for at least one continuous year without consent, justification, or intention to return.

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<sup>13</sup> Proposed *Gender and Equal Opportunities Bill 2016 (GOE Bill)*.

**5.4 Separation for Two Years (with Consent)**

If both parties have lived apart for at least two years, and the respondent consents to the dissolution, the court may grant the divorce.

**5.5 Separation for Three Years (without Consent)**

Where the spouses have lived apart for three years or more, the petitioner can obtain a divorce even without the other party's consent.

### **5.6 Failure to Comply with Decree of Restitution of Conjugal Rights**

If a court has ordered one spouse to resume marital cohabitation and they willfully fail to comply. This serves as proof of irretrievable breakdown. The court in the circumstance will be left with no option than to divorce the couple.

### **5.7 Presumption of Death**

If one spouse has been missing and unheard from for at least seven years, the other may petition for divorce on the presumption that the missing spouse is dead. These seven grounds serve as evidence that the marriage has collapsed beyond repair. The court will not dissolve a marriage unless at least one of these facts is satisfactorily proven. The emphasis is not merely on fault, but on whether continuing the marriage is reasonable or possible.

## **6.0 IMPLICATIONS OF GENDER IN DIVORCE PROCEEDINGS**

Divorce, as the legal dissolution of marriage, carries profound gender implications that vary across societies depending on cultural, economic, and legal frameworks. In Nigeria and many other countries, these implications are often asymmetrical, affecting women more adversely than men. One major dimension of the effect of divorce on women is economic vulnerability. In many Nigerian marriages, men are traditionally regarded as breadwinners, while women often shoulder unpaid domestic and caregiving responsibilities. Upon divorce, women are frequently left disadvantaged, as property rights are not always equitably enforced. Unlike in some jurisdictions where matrimonial property is automatically divided equitably, Nigerian courts have been inconsistent in granting women a fair share of marital assets, unless the

woman can prove direct financial contribution.<sup>14</sup>

This standard overlooks the non-financial contributions of women, such as homemaking and childcare, thereby perpetuating economic inequality after dissolution. In *Odusote v Odusote*,<sup>15</sup> the Court recognised the importance of children's welfare in custody disputes but failed to fully address the financial vulnerability of the mother. Similarly, in *Mojekwu v Mojekwu*,<sup>16</sup> though not strictly a divorce case, the Court of Appeal struck down a discriminatory Igbo customary practice of male inheritance, highlighting the judiciary's awareness of gendered inequality but also showing the limitations of reform within rigid cultural frameworks.

Another implication relates to custody and child welfare. Nigerian courts, while applying the principle of the "best interest of the child," have often awarded custody of young children to mothers.<sup>17</sup> While this may seem favourable, it imposes an additional economic burden on women who are rarely guaranteed financial support from ex-husbands, given weak enforcement mechanisms for alimony or maintenance orders. In contrast, men may retain stronger financial security and freedom after divorce.

Divorce also intersects with social and cultural stigma. Divorced women are often subjected to discrimination, social exclusion, and reduced marriage prospects, while men tend to remarry with fewer obstacles. This unequal social perception reinforces patriarchal norms and discourages women from seeking divorce even in abusive or oppressive marriages.<sup>18</sup>

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<sup>14</sup> *Musa v. Musa* (2008) 6 NWLR (Pt. 1083) 89.

<sup>15</sup> (2012) 3 NWLR (pt. 1288) 478.

<sup>16</sup> (1997) 7 NWLR (Pt. 512) 283.

<sup>17</sup> *Williams v Williams* (1987) 2 NWLR (Pt. 54) 66.

<sup>18</sup> A. Oyebanji, "Gender and Divorce in Nigeria: Socio-Legal Perspectives" (2018) *Nigerian Journal of Family Law* 45.

At International level, comparisons show a more balanced approach in some jurisdictions. For example, in the United States, equitable distribution laws and enforceable alimony provisions aim to mitigate post-divorce economic disparities.<sup>19</sup> Ghana has also adopted progressive interpretations of matrimonial property rights, recognizing women's indirect contributions to family wealth, as seen in *Mensah v. Mensah*<sup>20</sup> where the petitioner filed for divorce and sought an equal share of assets acquired during the marriage.

At the time of marriage, neither party owned any property. During their marriage, the plaintiff assisted in building their business and managed their shop while her husband continued to work for the Controller and Accountant General's Department. The plaintiff also advised the respondent on property investments. The respondent denied that the petitioner contributed to the business and claimed that she embezzled money from him, and therefore should not be considered an equal holder of marital assets. The trial court and the Court of Appeals ruled in favour of the petitioner, finding that she was a joint owner of the property and was therefore entitled to an equal share of the marital assets.

The Supreme Court affirmed. Previous case law denied a wife a share in property acquired during the marriage unless the wife could show that she had made a "substantial contribution" to the acquirement of these assets. Yet, because more recent cases supported the "equality is equity" principle in the division of marital assets, the Supreme Court concluded that "the death knell has been sung to the substantial contribution principle, making way for the equitable distribution as provided for under Article 22 (3) of the Constitution 1992." Thus, the

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<sup>19</sup> See Uniform Marriage and Divorce Act (United States, 1970).

<sup>20</sup> [2012] 1 SCGLR 391 (Ghana Supreme Court).

court held that even if it determined that the petitioner did not make a substantial contribution to the acquisition of marital property, she would still be entitled to a share of the property. To further support its decision, the Supreme Court referenced Article 1 and Article 5 of CEDAW, in addition to the Universal Declaration of Human Rights, which emphasize equality between the sexes.

Nigeria, however, continues to lag behind due to its reliance on rigid statutory and customary frameworks that disadvantage women. The cumulative effect is that divorce entrenches existing gender inequalities, with women facing greater risks of poverty, diminished social status, and reduced access to justice. While men are not immune to adverse consequences such as emotional distress or the potential loss of daily contact with children, the disproportionate burden falls on women.

Addressing these gendered implications requires legal reform to ensure equitable division of property, robust enforcement of maintenance obligations, and social reorientation to dismantle cultural stigma. Without such reforms, divorce will continue to reproduce structural inequalities rather than serve as a just resolution to marital breakdown.

## **7.0 BREAKTHROUGH IN DIVORCE PROCEEDINGS IN NIGERIAN LEGAL SYSTEM**

There has been a recent breakthrough in the Nigerian legal system where the principles in the Mensah case have been applied, grounding a decision of equitable proportions for both spouses in a divorce proceeding. In the case of *Mr. Alexander Ibeabuchi vs. Mrs. Nneka Ibeabuchi*,<sup>21</sup> the trial court awarded the property at No.48, Sarki Yaki, Nomaonds Land Kano to the Respondent(wife) even where there was

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<sup>21</sup> (2016) LPELR- 41268

no evidence of contribution to the property, as it was just and equitable to do so. The court in reaching its decision relied on the provisions of Section 72 of the Matrimonial Causes Act, that settlement of property is based on what is just and equitable in the circumstance of the case. The court further held that in determining the rights of parties on what is just and equitable, the court has a wide discretionary power to exercise, and it is immaterial that another judge would have done it differently or would have considered a different arrangement to be just and equitable.

Also, in *Okere vs. Akaluka*,<sup>22</sup> the court held that it would be unconscionable to deprive a woman and her children of the right in a property to which she contributed substantially regarding its acquisition and development. The court was also of the view that the indirect contribution of wives to the matrimonial property should grant them a beneficial entitlement to the property on the basis that it was the performance of their functions as wives that enabled their husbands to perform theirs.

In the case of *Aguolu v. Aguolu*<sup>23</sup>, the Court reinforced the principle that being married alone does not entitle anyone to half of the property. However, the positive take away from the case is that the court affirms that a woman need not have only made financial contributions to have a fair share of the man's property, she may also effectively make emotional contributions, or through homemaking.

Essentially Section 72 MCA grants the courts discretionary powers to come to this equitable distribution of property. Section 72 of the Nigerian Matrimonial Causes Act grants the court the power to order the settlement of property for the benefit of the parties and children of

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<sup>22</sup> (2014) LPELR -24287 (CA) 1, 60-61.

<sup>23</sup> (2025) LPELR-80269(CA)

the marriage during divorce proceedings, ensuring that settlements are just and equitable based on the circumstances of the case. The court can order one or both parties to make a settlement from property they are entitled to, and this provision is intended to ensure the well-being of the family unit, particularly the children.

## **8.0 GENDER BIAS IN DIVORCE UNDER NIGERIAN CUSTOMARY LAW**

Gender bias in divorce proceedings in Nigeria reflects deep-rooted social, cultural, and legal inequalities that continue to disadvantage women despite constitutional and international guarantees of equality. The Nigerian legal system operates under three main forms of marriage statutory, customary, and Islamic or Sharia each with its own procedures and implications for divorce. While statutory marriage under the Matrimonial Causes Act 1970 provides equal rights for both spouses, discriminatory practices persist under customary and Islamic laws, resulting in gender asymmetry in access to divorce, property rights, and post-divorce entitlements.<sup>24</sup>

Under the statutory regime, either spouse may petition for divorce on the ground that the marriage has broken down irretrievably, relying on set of statutory grounds such as adultery, cruelty, desertion, or prolonged separation.<sup>25</sup> In theory, this framework upholds gender equality. However, in practice, women often encounter systemic barriers such as financial dependence, limited access to legal representation, and societal stigma attached to divorced women.<sup>26</sup> Courts may also display implicit gender bias, particularly in the assessment of evidence in cases involving adultery or unreasonable behaviour, where women are often judged more harshly than men.<sup>27</sup>

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<sup>24</sup> s 15 (2), Matrimonial Causes Act 1970

<sup>25</sup> Ibid.

<sup>26</sup> E.I. Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books, 2014) 88.

<sup>27</sup> *Osamwonyi v Osamwonyi* (1972) 2SC 1



By contrast, under customary law, gender bias is more overt and structural. A man may unilaterally repudiate his wife without judicial proceedings, often by returning her to her family, whereas a woman cannot dissolve the marriage without refunding the bride price and securing the consent of the husband or his family. This practice reflects patriarchal norms that view women as marital dependents or properties rather than equal partners. Moreover, post-divorce, women frequently lose rights to marital property or custody of children, since traditional systems often regard these as belonging to the husband or his lineage.

In Islamic (Sharia) law, the husband enjoys the unilateral right to *ṭalāq* while a woman must seek divorce through *khul'* or *faskh*, both of which require the husband's consent or court approval. This imbalance places women in a position of dependence and makes access to divorce contingent on male authority. Although Sharia courts in Northern Nigeria have made efforts to interpret the law more equitably, patriarchal interpretations continue to dominate judicial reasoning.

The cumulative effect of these frameworks is a persistent gender bias that undermines women's autonomy, economic security, and dignity in marital dissolution. Despite the constitutional guarantee of non-discrimination under Section 42 of the 1999 Constitution, and Nigeria's ratification of CEDAW, implementation remains weak due to the entrenched plural legal structure that allows discriminatory norms to coexist with progressive statutory provisions.<sup>28</sup>

The gender imbalance inherent in customary and Islamic divorce practices reveals the enduring influence of cultural and religious

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<sup>28</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s.42; UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on Nigeria's Combined Seventh and Eighth Periodic Reports*, 2017.

patriarchy within Nigeria's plural legal system. While statutory marriage law embodies modern egalitarian principles, the persistence of customary and Sharia norms continues to constrain women's autonomy and access to justice in marital dissolution. This disparity highlights the urgent need for harmonization and reform aimed at promoting gender equality in matrimonial rights and obligations across all marriage systems in Nigeria.

Recent advocacy by human rights organizations, feminist scholars, and legal reform movements has called for harmonization of matrimonial laws and stronger enforcement of women's rights in divorce proceedings. Legislative and judicial reforms that integrate customary and Islamic laws with human rights principles are essential to eliminate gender bias and promote equality in family law across Nigeria.<sup>29</sup>

## **9.0 WAY FORWARD**

The implications of divorce on women in Nigeria reveal systemic inequities in property division, alimony, and divorce settlements. It is imperative that addressing these challenges, will require certain changes in the law, fairer court decisions, and shifts in cultural attitudes.

The Matrimonial Causes Act should be amended to expressly recognize non- financial contributions such as homemaking, childcare, and emotional support as valid contributions toward matrimonial property. This would align Nigerian law with progressive jurisdictions where the economic value of domestic labour is acknowledged.

Clear statutory guidelines on alimony and maintenance should be introduced to reduce the wide discretion currently left to judges, ensuring more predictable and equitable outcomes. Harmonization of

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<sup>29</sup> A.A. Oba, "Law, Religion and Gender Equality in Nigeria" (2015) 3 *Journal of Comparative Law in Africa* 95.

statutory, customary, and Islamic family laws is essential to reduce the disparities in how women's rights are treated across different marital regimes.

Courts should adopt a purposive interpretation of “contribution” in matrimonial property cases, considering indirect contributions as equally valuable. Nigerian courts could draw inspiration from regional and international instruments like the Maputo Protocol and CEDAW, which obligate state parties to eliminate discrimination against women in marriage and divorce. Development of guiding precedents that balance equity with social realities would gradually shape a fairer family law jurisprudence.

The efficacy of divorce settlements and maintenance orders depends on enforcement. Family courts should be empowered with specialized enforcement units to monitor compliance and penalize defaulting spouses. Simplified and affordable enforcement procedures should be introduced to ensure that economically vulnerable women can access remedies without prohibitive costs. Legal reform must be complemented by public sensitization campaigns to challenge patriarchal norms that undermine women's rights in marriage and divorce. Civil society organizations should play a stronger role in educating women about their rights under statutory and international law. Establishment of legal aid schemes dedicated to family law disputes would ensure women, especially those from low-income backgrounds, can effectively pursue their claims. Economic empowerment programs targeting divorced women should be integrated into social welfare policies to reduce the risk of post-divorce poverty.

The way forward requires a deliberate effort to bridge the gap between Nigeria's legal framework and the lived realities of women in divorce

proceedings. By enacting progressive reforms, empowering courts to recognize all forms of marital contribution, and addressing cultural impediments, Nigeria can build a more equitable family law system. Ultimately, the protection of women's rights in divorce is not only a matter of legal justice but also a necessary step toward achieving broader gender equality.

## **10.0 COMPARATIVE ANALYSIS ON THE IMPACT OF DIVORCE LAWS ON WOMEN IN NIGERIA, USA, AND GHANA**

On the contrary, in United States, divorce laws vary between two main systems. A few states use the community property model, where marital assets are split equally 50/50. Most states follow the equitable distribution model, where courts divide property fairly, not necessarily equally.<sup>30</sup> In these states, judges consider factors like how long the marriage lasted, each spouse's financial situation, and both financial and non- financial contributions. This means that indirect efforts such as homemaking and childcare can also be recognized when dividing property.<sup>31</sup>

### **10.1 Matrimonial / Property Division**

Under the Matrimonial Causes Act (MCA), Nigerian courts have the power to divide property after divorce, but they usually require wives to prove they made direct financial contributions. Contributions like childcare and homemaking are not always given proper recognition. This situation is even harder for women in customary and Islamic marriages, where property is generally regarded as belonging to the husband.

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<sup>30</sup> D. Chambers, *Making Fathers Pay: The Enforcement of Child Support* (University of Chicago Press 1979) 45; see also Cal. Fam. Code § 2550 (community property).

<sup>31</sup> *O'Brien v. O'Brien* 489 NE2d 712 (NY 1985).

Similarly, In Ghana, courts have gradually adopted fairer principles for dividing marital property. They often give spouses a share in assets if they can show they helped to acquire or improve them.<sup>32</sup> However, under customary marriages, women's rights to property are still restricted.<sup>33</sup>

### **10.2 Enforcement and Access challenges**

Nigeria and Ghana both face significant enforcement challenges: even when courts issue property or maintenance orders, women often struggle to enforce them due to cost, weak mechanisms, and limited legal aid.<sup>34</sup>

Unlike Nigeria and Ghana, U.S. states have stronger enforcement systems for spousal and child support, including wage garnishment, contempt proceedings, and specialized child-support agencies,<sup>35</sup> with additional support from pro bono and legal aid services, although low-income litigants still face some challenges.

### **10.3 Socio-Cultural Context**

Customary and religious systems dominate many marriages in Nigeria and Ghana, entrenching patriarchal norms that prioritize male ownership of property.<sup>36</sup> Women married under these regimes often receive less protection than those married under statutory law.<sup>37</sup> In the U.S., higher female labour force participation and stronger welfare frameworks reduce women's post-divorce vulnerability. while In

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<sup>32</sup> *Mensah v. Mensah* [2012] 1 SCGLR 391 (Ghana SC).

<sup>33</sup> N. Ezeilo, "Customary Law and Women's Property Rights in Nigeria and Ghana" (2002) *Third World Legal Studies* 15(1), 19–34.

<sup>34</sup> A. Odike, *Women and Family Law in Nigeria* (Spectrum Books 2008) 144.

<sup>35</sup> U.S. Code, Title 42, § 666 (Child Support Enforcement).

<sup>36</sup> *Abdul-Raheem v. Abdul-Raheem* (2009) 11 NWLR (Pt. 1151) 1.

<sup>37</sup> C. Okeke, "Economic Consequences of Divorce for Women in Nigeria" (2019) *Nigerian Law Journal* 23(2), 67– 89.

Nigeria and Ghana, economic dependence and limited property rights expose women to greater hardship.

## **11.0 RECOMMENDATIONS**

### **i. Legislative Reform**

the Matrimonial Causes Act should be amended to expressly recognize domestic and non-financial contributions in property division. And there should be Provision of clear statutory guidelines on spousal maintenance and divorce settlements to reduce judicial inconsistencies. Courts should also adopt a purposive interpretation of “contribution,” drawing on international instruments such as CEDAW and the Maputo Protocol in divorce cases as well as Establish specialized family court units to monitor compliance with custody, maintenance, and property orders, while introducing simplified enforcement procedures such as automatic wage garnishment for child support and maintenance.

### **ii. Access to Justice**

There should be an expansion of legal aid and pro bono services for indigent litigants, particularly women, in divorce proceedings. And increased public awareness campaigns on family law rights, especially in rural areas where customary law predominates.

### **iii. Socio-Cultural Transformation**

Civil society organizations should be supported in providing community-level legal education to increase women’s awareness of their rights. There should be an Implementation of public sensitization programs to challenge patriarchal norms that stigmatize divorced women. Government should integrate or support women’s post-divorce reintegration through economic empowerment schemes, vocational training, and access to credit.

Ultimately, while all Nigeria, USA and Ghana provide formal

frameworks for regulating divorce, the degree of substantive justice for women varies sharply. Nigeria and Ghana can draw important lessons from the U.S. experience in enforcement and recognition of indirect contributions, while the U.S. can, in turn, learn from African contexts about harmonizing plural legal systems. For divorce law to truly protect women, reforms must move beyond legal texts to embrace effective enforcement, judicial sensitivity, and socio-economic.

## **12.0 CONCLUSION**

Divorce does not affect men and women equally. Women face greater risks of economic deprivation, social stigma, and custodial burdens, while men bear heavier financial obligations and risk emotional alienation from their children.

Nigerian divorce law, like that of many jurisdictions, reflects gendered assumptions about provision and caregiving, which creates imbalances in post-divorce consequences. Women are disproportionately affected by weak recognition of non-financial contributions in property division, limited and poorly enforced spousal maintenance orders, and enduring social stigma that hampers their economic and personal reintegration after divorce. A truly equitable system must recognize both financial and non-financial contributions, ensure fair distribution of obligations, and address the distinct vulnerabilities faced by both genders.

Comparative insights from jurisdictions like the United States and Ghana demonstrate that more robust enforcement mechanisms, clearer statutory provisions, and recognition of domestic labour as economic contribution can significantly reduce gender disparities.

Ultimately, Nigeria's divorce laws and practices, influenced by statutory, customary, and religious norms, continue to reproduce structural inequalities between men and women despite constitutional

and international guarantees of equality. These gaps leave many divorced women economically vulnerable, especially those who devoted their lives to unpaid domestic labour.