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# **Divorce and Custody of Children in Nigerian Family Law: Dilemma of a Divorcee**

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## **ABSTRACT**

Divorce is a heart-breaking experience that changes the lives of parents and children. Therefore, this paper studies how divorce and child custody remain contentious issues in Nigerian family law, posing significant legal and social dilemmas for divorcees particularly women. The dual legal system in Nigeria, encompassing statutory, customary and religious laws, creates a complex legal landscape that complicates the dissolution of marriages and determination of child custody. This research seeks to explore the challenges faced by divorcees in navigating divorce and child custody processes under Nigerian law. It examines the inconsistencies between statutory and customary law, the effects of divorce on children and the socio-economic consequences of divorcees. By employing qualitative methods, this paper aims to highlight the gaps in the legal framework and propose reforms to ensure equitable access to justice. The findings contribute to scholarly discourse and policy development on family law in Nigeria, with a focus on safeguarding the rights of all parties involved especially children. Divorce has a profound effect on the mind of a child and its effect can be on his/her mind and social relationships throughout his life.

**Keywords:** Divorce, Children, Women, Legal System, Family Law, Nigeria.

## **INTRODUCTION**

Divorce is a significant legal and social phenomenon that often challenges the traditional understanding of family structures (Mosunmola, 2021). In Nigeria, the complexity of divorce and child custody is compounded by the coexistence of statutory, customary and religious legal systems. These systems often differ in their approach to marriage dissolution, property division and child custody, creating a challenging landscape for individuals seeking redress. Divorcees, particularly women, frequently face dilemmas that stem from legal inconsistencies, socio-cultural norms and gender biases (Wilson and Damfebo, 2023). These issues not only affect their legal rights but also impact the well-being of children involved in custody disputes. However, the Matrimonial Causes Act (MCA) 1970 governs statutory marriages in Nigeria, providing grounds for divorce such as adultery, cruelty, desertion and irretrievable marriage breakdown. This framework does not fully address the challenges faced by individuals married under customary or Islamic laws, where the processes for divorce and custody decisions vary in nature. For instance, customary laws often prioritize the interests of the extended family over those of the nuclear family, while Islamic law incorporates religious principles that may differ from statutory provisions (Okonkwo, 2019). These divergences frequently result in confusion and inequity for parties involved in divorce cases.

Gender dynamics further exacerbate the challenges of divorce and custody. Women, who are often primary caregivers, face systemic barriers in securing custody of their children particularly under customary law. While statutory law tends to prioritize the welfare of children, customary practices may favour paternal custody especially for male children (Oshio, 2021). Economic inequality also plays a critical role, as many women lack the financial resources to navigate protracted legal battles or negotiate favorable outcomes. The socio-cultural implications of divorce in Nigeria extend beyond legal considerations. Divorcees, particularly women, often face stigmatization, loss of social status and diminished support networks, which can have long-term psychological and economic consequences. For children, custody disputes and post-divorce arrangements may lead to instability and emotional distress, further emphasizing the need for a balanced and equitable legal framework (Adewale, 2020).

This paper aims to examine the interplay between Nigerian family law and the lived experiences of divorcees, with a particular focus on child custody issues. By analyzing statutory and customary legal frameworks, case law and socio-cultural factors, the study will identify the gaps in the current system and propose reforms to enhance fairness and equity. The paper contributes to the broader discourse on family law in Nigeria, offering insights into how legal and policy reforms could address the needs of vulnerable populations including women and children. The paper adopted a qualitative approach to examining the challenges of divorce and child custody in the Nigerian legal system to provide a comprehensive understanding of the issues.

## **Conceptual Understanding**

### **Divorce**

Divorce as “a legal dissolution of the marriage relationship; any formal separation of a man and his wife according to established custom; a complete separation of any children” (Mosunmola, 2021). The word originally referred to the dissolution of legal marriage, though it is now also being used for the separation of two institutions or situations, one from the other. Worthy of note is the fact that there is no divorce except if there was a legal bond of marriage. Divorce is never a day’s journey, it takes time and in some cases it is very cumbersome (Fapohunda, 2021). The reason for a divorce process being cumbersome is to give the couple time for proper thinking and a re-think about their decision to divorce. Divorce is a legal process that formally terminates a marriage. The Nigerian legal system recognises several grounds for divorce and there are specific procedures that must be followed to dissolve a marriage. Understanding the intricacies of divorce proceedings is essential for individuals seeking to end their marriages in Nigeria (Wilson and Damfebo, 2023). The law of divorce consists of the rules on the grounds of divorce and rules on the consequences of divorce. The consequences of divorce relate to distribution of assets held jointly by the spouses, maintenance of the spouses and the interests of the children. That is, who is to have custody of the child, whether the other parent will have access to the child and other matters such as the court’s jurisdiction in divorce matters and divorce procedure. As regards the interests of the children, the law of divorce determines who is to have guardianship of a child of divorcing parents, who is to have custody of the children, whether the other parent has access to the children and who will pay maintenance for the children (Jagdeep, 2021).

### **Children Custody**

Child custody is when a parent or guardian has legal and practical rights, duties and responsibilities towards their children as a result of divorce or separation. It involves decision-making power and physical control over the child’s upbringing and welfare. Generally, child custody is made through court orders or mutual agreement between parents to promote the children’s best interests (Wilson and Damfebo, 2023). The divorce process in Nigeria typically begins with one party (the petitioner) filing a petition with the appropriate court. The petitioner must state the grounds for divorce and provide relevant evidence to support their claim. After filing the petition, the court will serve a copy to the other party (the respondent), who has an opportunity to respond to the allegations made in the petition. If both parties agree to the divorce and its terms, they may reach a settlement agreement which will be presented to the court for approval (Olayinka, 2019).

In cases where the divorce is contested, a trial may be required. The court will examine the evidence presented by both parties and make a determination based on applicable laws and principles of fairness. During the trial, the court may also address issues such as child custody, spousal support and division of assets and liabilities. Divorce proceedings in Nigeria involve navigating a legal framework that incorporates both statutory and customary laws (Ezejiolor, 2020). Understanding the applicable legislation, grounds for divorce and the process involved is crucial for individuals seeking to end their marriages. Legal advice from qualified professionals such as family law attorneys, can offer guidance and support throughout the divorce process, ensuring that the rights and interests of all parties involved are protected. Respecting the legal procedures and fostering open communication can contribute to a smoother and more amicable resolution, minimising potential conflicts and promoting the well-being of all parties especially any children involved.

It is important to note that in most systems of customary law the father has the absolute right to custody of the children of the marriage. Upon his death, the male head of the father's family is vested with the right. Although the day-to-day care of the children may be the responsibility of the mother. However, children are still of a tender age and in need of loving care and affection. The children are kept in the custody of their mother until they can be properly and safely separated from their mother and returned to their father (Aborisade, 2017).

### **Family Law**

The family is the smallest unit in the social structure of any society. It is accepted that the family is the basis of every human community and the family may be regarded as the nucleus of society. Family law is a branch of private law. Thus, family law deals with the law regulating the legal (rules or norms) relationship between spouses (i.e. husband and wife), the legal relationship between parents and children, guardian or curator and the person who is subject to guardianship or curatorship. It includes the law relating to husband and wife, the law relating to parent and child and the law relating to guardianship and custody (Olaniyan, 2019).

### **Problem of the study**

Several studies provide evidence that parental divorce may be linked to less success in young adulthood in terms of education, work and romantic relationships. Adults who experience divorce in childhood have lower educational and vocational attainment and greater employment and economic problems. Divorce and child custody cases in Nigeria are fraught with complexities arising from the country's plural legal system, which encompasses statutory, customary and religious laws. These systems often have conflicting principles regarding marriage dissolution and custody arrangements, creating uncertainty and inequities in their application. Divorcees, particularly women, face significant challenges in navigating this fragmented legal framework, which often fails to protect their rights or prioritize the welfare of children involved.

Under statutory law, the Matrimonial Causes Act outlines procedures and grounds for divorce, with child custody decisions guided by the principle of the child's best interests (Douglas, 2020). However, customary and Islamic laws widely practiced in Nigerian states, especially in the Northern part of the country, frequently diverge from statutory standards. For example, some customary laws prioritize paternal custody or family lineage over the welfare of the child, disadvantaging mothers and undermining the uniform application of justice. Similarly, Islamic law, while emphasizing the welfare of the child, may impose gendered limitations that influence custody outcomes. These legal inconsistencies are compounded by socio-cultural norms that stigmatize divorce and marginalize divorcees. Women, who are often primary caregivers, disproportionately bear the brunt of societal judgment and economic instability following divorce. In many cases, their limited financial resources and unequal access to legal representation hinder their ability to secure favorable outcomes in custody disputes. Children, meanwhile, are left vulnerable to instability and neglect as courts struggle to balance competing interests and uphold their rights (Ayodele, 2019).

Despite the prevalence of divorce and custody disputes in Nigeria, there is limited research addressing the intersection of legal pluralism, gender inequity and child welfare in these cases. This gap in knowledge hinders efforts to develop cohesive policies and reforms that can ensure equitable outcomes for all parties involved. Without addressing these challenges, the Nigerian legal system risks perpetuating injustices and

undermining the stability of families and communities. This causes very serious problems in the development of the lives of children of divorced parents at all stages of their lives as much emotional, psychological, social as it can even lead to trauma (Adewale, 2020). The major consequences include poor performance in academics, loss of interest in social activity, difficulty in adapting to change, being emotionally sensitive, anger or irritability, feelings of guilt, the introduction of destructive behaviour, an increase in health problems, etc. This study seeks to address these gaps by critically examining the dilemmas faced by divorcees in Nigeria, particularly in the context of child custody. It aims to identify the shortcomings of the existing legal framework and propose solutions that promote fairness, gender equity and the welfare of children.

### **Literature Review**

Divorce and child custody have been the subject of significant legal, social and academic inquiry in Nigeria. These issues are embedded within the country's plural legal framework, which incorporates statutory, customary and religious laws. Each of these systems offers unique perspectives on marriage dissolution and the welfare of children, often leading to conflicts and inconsistencies in their application (Okonkwo, 2019).

### **Legal Frameworks and Divorce in Nigeria**

Statutory marriages in Nigeria are governed by the Matrimonial Causes Act (MCA) 1970, which provides grounds for divorce, such as adultery, cruelty, desertion and irretrievable marriage breakdown. The Act emphasizes procedural fairness and the welfare of children in custody disputes, yet its application is limited to statutory marriages (Ezejiofor, 2020). Customary and Islamic laws, on the other hand, offer alternative processes for marriage dissolution. Customary law often prioritizes communal and family interests over individual rights, which can disadvantage women seeking divorce. In Islamic law, the principles of talaq (repudiation) and khul' (mutual consent divorce) govern dissolution, with distinct implications for child custody (Adewale, 2020). The coexistence of these legal systems creates challenges for uniformity and predictability in divorce cases. Studies have noted that the statutory system's welfare principle, focused on the best interests of the child is often undermined by the patriarchal tendencies inherent in customary and Islamic laws (Oshio, 2021). These disparities result in inconsistent custody outcomes, depending on the legal framework applied.

### **Gender Dynamics and Custody Disputes**

The gendered nature of divorce and custody decisions in Nigeria is well-documented. Under customary law, paternal custody is often presumed, especially for male children, reflecting societal norms that prioritize the father's lineage and authority. Women, even as primary caregivers, face significant hurdles in securing custody of their children, particularly when financial resources or extended family support are lacking (Okonkwo, 2019). Statutory law attempts to mitigate these biases by emphasizing the child's welfare, yet practical barriers remain. Research shows that many women lack access to legal representation or the financial means to pursue lengthy custody battles. This economic disparity often forces them to accept unfavorable custody arrangements or relinquish their claims entirely (Adewale, 2020). Furthermore, societal stigmatization of divorced women exacerbates these challenges. Divorcees, particularly those who seek custody, are often viewed as rebellious or irresponsible, reducing their perceived credibility in court proceedings (Ezejiofor, 2020). This stigmatization not only affects their legal standing but also their mental health and ability to rebuild their lives post-divorce.

### **Impact of Divorce on Children and the Welfare Principle**

The welfare principle is a cornerstone of statutory family law, aimed at ensuring that custody arrangements serve the child's best interests. However, its application across Nigeria's plural legal systems is inconsistent. Oshio (2021) notes that while statutory courts prioritize the welfare principle, customary and Islamic courts may give precedence to cultural or religious norms, sometimes to the detriment of the child's well-being. Children caught in custody disputes often face instability, emotional distress and disrupted relationships with one or both parents. Studies indicate that prolonged custody battles can lead to long-term psychological effects, including anxiety and difficulty forming stable relationships in adulthood (Adewale, 2020). These outcomes highlight the urgent need for reforms that

harmonize the welfare principle across all legal systems and ensure that children's needs remain paramount.

The effects of divorce on children can be both emotional and psychological. Children may blame themselves for their parents' breakup and/or wish they would get back together. Children may think that if only they didn't behave badly in some way, their parents would not be so angry with each other and would be happy and together (Fathia, 2018). Of course, in reality, children are innocent victims in a divorce, as it is only about the parents and not the parent-child relationship, but the children may not understand it. This can confuse children as the parent-child relationship becomes a major focus in the time to come through and through the divorce. Parents tend to fight more over children, and it can unreasonably make a child feel that he or she at least helped cause the separation between mother and father (Jagdeep, 2021). However, divorce can be a difficult time for a family. But in the last fifty years, there has been a rapid change in the mindset regarding marriage in a society. Proper upbringing of children requires love and affection from both the parents, but after divorce, the child is separated from one of the parents, and this separation breaks his tender mind from inside. Some children are not able to easily bear this distance between the parents and get depressed. The study also revealed that children of divorced couples do not have proper social and mental development. They also lag behind other children in studies (Kurdek, 1993).

#### **Calls for Reform**

Scholars and legal practitioners have long called for the harmonization of Nigeria's plural legal systems to reduce the disparities in divorce and custody cases. Okonkwo (2019) advocates for a unified family law framework that incorporates the strengths of statutory, customary and Islamic laws while addressing their shortcomings. Such reforms would require significant legislative and policy changes, as well as public education to shift deeply entrenched cultural norms. Similarly, Oshio (2021) emphasizes the need for judicial training and awareness programs to ensure that courts consistently apply the welfare principle, regardless of the legal framework in question. These reforms are essential for creating a family law system that is fair, equitable and focused on the rights and welfare of all parties involved.

#### **EFFECTS OF DIVORCE ON CHILDREN**

Divorce can alter the lives of parents and children in different ways. Along with their emotional adversity, parents of divorce have to suffer the burden of residential relocation, change of employment, and economic hardship. This transitional process drastically affects their life and their ability to ensure their children's well-being. Being proactive and having the courage to overcome this difficult situation may help parents and children in building a resilient attitude essential in their adjustment process (Karake, 2020). However, divorce has an effect on children in Nigeria, both emotionally and psychologically. During divorce proceedings, children may experience a range of emotions such as sadness, anger, confusion, and fear. They often find themselves caught between their parent's conflicts and may struggle to express their feelings or comprehend the reasons behind the separation. Divorce can disrupt a child's performance (Ezejiofor, 2020). The stress and upheaval brought about by divorce proceedings can lead to difficulties in concentration, decreased motivation and overall lower academic achievement. Behavior changes are also common among children going through divorce. They may become more withdrawn. Exhibit behaviour and some even display regressive behaviors such as bed-wetting (Karake, 2020).

The disruption in their family structure can make them feel insecure, resulting in issues. Furthermore, the emotional stress associated with divorce can negatively impact a child's health too. Sleep problems, appetite changes, increased susceptibility to illnesses, and other stress-related health concerns are not uncommon during this time. Divorce also has implications for a child's ability to form and maintain relationships. Trust issues and fear of abandonment often arise, making it difficult for them to develop connections with others. Additionally, divorce may influence a child's choices concerning education and career paths well due, to the uncertainty and instability it brings about, which can affect decision-making processes while limiting opportunities (Jagdeep, 2021). However, the effect of separation between parents is the most on their children, and sometimes this effect is very destructive. Small children start feeling annoyed, angry and suspicious towards their parents; even a child who does not speak now, a fear also

creeps in. The child would like to cling to his mother, keep touching her, follow her back, sleep clinging. By holding clothes, he will start doing things like gold, which he did not do before. Children from divorced families may face more externalizing problems, such as conduct disorder, delinquency, and impulsive behavior, than children from two-parent families. In addition to increasing behavior problems, children may also experience greater conflict with peers after a divorce (Ubong, 2018).

Fapohunda, (2021) demonstrates that divorce can also have an impact on your child's physical health. Physical health can have a bad effect on children's youth as well. According to the report, if there is a quarrel in the family in the beginning, then it has a very bad effect on the immune system of the children. Divorce can increase the risk for mental health problems in children and teens. Regardless of age, gender and culture, studies show that children of divorced parents experience an increase in psychological problems. Divorce can trigger an adjustment disorder in children that resolves within a few months. But, studies have also found depression and anxiety rates higher among children of divorced parents. Everyone in the family finds divorce to be challenging. Children may become distracted and perplexed when trying to comprehend the shifting family dynamics. One of the repercussions of divorce on children could be evident in their academic achievement due to this disruption in their daily attention. Children who are more easily distracted are less likely to be able to concentrate on their schoolwork (Ukwu, 2020). Also, divorce may also have a negative social impact on kids. Children whose families are divorcing could find it more difficult to connect with others and tend to have less social interactions. Children can experience insecurity and question if their family is the only one that has had a divorce (Jagdeep, 2021).

A family going through a divorce may experience a range of various emotions, and the affected children are no different. This change may cause feelings of wrath, sadness, uncertainty, worry, and a host of other emotions. Children who experience divorce may experience emotional sensitivity and stress. According to Wilson and Damfebo (2023), children may experience the effects of divorce through how they process their emotions; therefore, they need a safe place to express their feelings. They also need someone to talk to and listen to them. Children frequently ask why their parents are divorcing. They will seek explanations, questioning whether their parents are no longer in love with one another or whether they are at fault (Demo and Alan, 1988). These guilt feelings are a fairly common consequence of divorce for kids, but they can also cause a lot of other problems. Guilt puts more strain on the body, which can result in sadness, stress, and other health issues. These emotions of guilt can be lessened by providing context and counselling so that a child understands their part in a divorce (Demo and Alan, 1988).

Finally, despite their hopes of having stable relationships of their own as adults, children who have experienced divorce are more likely to divorce when they are in their own partnerships. According to some studies, children from divorced households may have a two- to three-times higher tendency for divorce than children from families without divorce. It is worth mentioning that not every child will go through these effects, since resilience and personal circumstances also come into play. However, offering assistance, empathy and access to counseling services can assist in lessening the consequences of divorce on children in Nigeria. Both parents and professionals involved should prioritise the well-being of the children (Ayodele, 2019).

## CONCLUSION

Inclusion, divorce can be a difficult time for a family. Not only are parents realizing new ways of relating to each other, but they are learning new ways to parent their children. When parent's divorced, the effects of divorce on children can vary. Some children react to divorce in a natural and understanding way, while other children may struggle with the transition. Divorce, also known as dissolution of marriage, is the process of terminating a marriage or marital union. Even though these are some potential outcomes of divorce for children, they are in no way set in stone or absolutes. Families are becoming more and more aware of how difficult divorce is for both themselves and their children. Families are starting to seek assistance from supportive agencies like family means in order to divorce amicably. For the benefit of the parents as well as the children involved, we are assisting families through this transition more smoothly through our collaborative divorce programme. Even though divorce is difficult for families, staying together just for the benefit of the children may not be the wisest course of action. Children may be more

likely to experience behavioural problems and mental health problems if they grow up in families where there is a lot of fighting, antagonism, and discontentment. As a result, it's common for youngsters to struggle with their emotions and conduct after a parental separation. But if your child's behavioural or mood concerns continue, get expert assistance. Your children's feelings may be sorted out with individual counselling. To address modifications in family relationships, family therapy could also be suggested. Children's support groups are also available in some places. Children in specific age groups can connect with others who might be going through similar family structure changes through support groups.

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