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Alternative Dispute Resolution (ADR) And The Settlement of Matrimonial Disputes in Nigeria

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Abstract

Matrimonial disputes have, in the wake of a regulated system of dispute resolution, been predominantly resolved through litigation which is largely inconsiderate of the emotional and psychological needs of the parties to the marriage relationship. In essence, the 'resolution' of matrimonial disputes has evolved to mean the complete dissolution of the marital relationship; or any other pronouncement by the adjudicator which would allow the aggrieved party to take a leave, whether definite or indefinite, from the matrimony. Remedies provided under extant laws include divorce, annulment and judicial separation. These remedies usually engender a perpetual feeling of hostility between the parties, and invariably, obligations imposed by the adjudicator are typically fulfilled not out of cordiality but under the threat of a sanction for failure. Flowing from the foregoing, there has arisen the need for other effective means of settling matrimonial disputes outside half-hearted attempts at reconciliation. This study examined the role of alternative dispute resolution mechanisms in the settlement of matrimonial disputes, using Nigeria as a case study. It analysed the various causes of matrimonial disputes, remedies and the enforcement thereof. It also discussed the alternative modes of dispute resolution applicable to matrimonial disputes. These were done in order to advocate for the deliberate application of ADR to Matrimonial disputes. Relying on the doctrinal method of research, the study found that while the Nigerian Matrimonial Causes Act encourages reconciliation, collaborative divorce and divorce arbitration have also been applied in matrimonial disputes in other jurisdictions. The study also revealed that, while these methods do not guarantee reconciliation, they certainly engender privacy of the proceedings as well as cordiality between the parties, thereby protecting them from some of the emotional and psychological trauma inherent in litigation. The study concluded although recourse to courts may be inevitable, using ADR for resolving matrimonial disputes is becoming increasingly expedient.

Keywords: Matrimony, disputes, litigation, alternative dispute resolution, settlement

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1. Introduction

The marriage relationship is, both traditionally and contemporarily, considered a sacred one. Indeed, the relationship has been summed up in the Latin phrase *Consortium Omnis Vitae* (Amanda Barratt *et al* 2017). This relationship, hereinafter referred to as the *consortium* is legal and binds both parties with rights and corresponding duties. So important is this relationship that the law not only criminalises any action by either of the parties to violate the *consortium* through an engagement (whether legal or customary) of a third party (Marriage Act Cap M6, LFN 2004 Ss 33, 39 and 46). While some parties enjoy marital bliss spanning decades until death does them part, others are often not as fortunate. Unresolved matrimonial disputes often lead to the aggrieved party or both parties opting out of the *consortium* permanently through dissolution of the marriage by the Court, commonly referred to as "divorce". Although there are other remedies provided under the

Matrimonial Causes Rules (Matrimonial Causes Act Cap M7, LFN 2004 S 2(2)), dissolution of marriage or divorce is one of the most commonly explored remedies. These remedies can only be granted through litigation at the Court of Law, i.e., the High Court.

The High Court, as is any other court, is essentially fixated on its primary legal objectives. These include the rendering of decisions on cases and the dispensation of justice (Aina I., and Oniyire O 2022). By implication, that matrimonial proceedings at the High Court must conform both with the provisions of the Matrimonial Causes Rules as well as the inherent practices of the Court such as publicity (Constitution of the Federal Republic of Nigeria 1999 as altered) and formality of proceedings. Another implication It would also imply that matrimonial causes will be afflicted with the same disincentives inherent in litigation; some of which include delay, high costs, application of technicalities to defeat justice, etc. Most striking of these implications is the prescribed detachment of the Court from the various emotions ranging from deep hurt to angry disappointment often exhibited by the parties (Murphy J., 2010). A combined consideration of these implications would indicate that litigation of matrimonial disputes is becoming inadequate and lacking in precision. Indeed, litigation of matrimonial disputes as prescribed under the extant legal framework does very little to provide specific emotional and psychological safeguards for the children of the marriage (Child Rights Act 2004). In view of the foregoing, this chapter seeks to examine the role of ADR in the resolution of matrimonial disputes. The study shall examine the causes of matrimonial disputes in Nigeria; discuss the current provisions of the extant laws on the settlement of matrimonial disputes in Nigeria; and analyse the various ADR

mechanisms suited to the resolution of matrimonial disputes, as well as their inherent challenges. These will be done in order to advocate for the deliberate inclusion of ADR in the extant laws on the resolution of matrimonial disputes in Nigeria.

2. Definition of Terms

2.1. Matrimonial Disputes

The word "matrimony" is often used synonymously with the word "marriage". Black's Law dictionary defines it as "the ceremony in which two people become married"(Bryan A. Garner 2019). It has also been described as the state of being married (Merriam-Webster 2022). Given the vagueness of the definition of matrimony, it is, therefore imperative to examine the meaning of marriage. Black's law defined it as a "legal union of a couple as spouses". However, it has been comprehensively described as the

> legal status, condition, or relationship that results from a contract by which one man and one woman, who have the capacity to enter into such agreement, mutually promise to live together in the relationship of Husband and Wife for life, or until the legal termination of the relationship (Lehman J., Phelps S. 2005).

A dispute is defined as "**a disagreement, argument, or controversy** often one that gives rise to a legal proceeding (such as arbitration, mediation, or a lawsuit)". A combined application of these two definitions would describe matrimonial disputes as "a disagreement or controversy arising from the matrimonial relationship between a man and a woman which is capable of giving rise to legal proceedings". This definition is adopted in this study.

2.1.1. Litigation

This is described as "a process of carrying on a lawsuit" (Bryan A. Garner 2019). It may also be defined as "the process of taking a case to a court of law so that a judgment can be made" (Colin McIntosh 2013). It is equally defined to mean the "act, process or practice of settling a dispute in a court of law" (Merriam-Webster 2022). The study adopts this definition.

2.1.2. Alternative Dispute Resolution (ADR)

ADR has been defined as "encompassing all legally permitted processes of dispute resolution other than litigation" (Ware Stephen J 2001). Litigation seems to be the default parameter with which a mode of dispute settlement may be clarified as ADR. This, according to Ware, may occasion objections by ADR proponents "on the grounds that [the definition] privileges litigation by giving the impression that litigation is the normal or standard process of dispute resolution." According to him, litigation is actually the less-explored means of dispute settlement as alternative methods, "especially negotiation, are used far more frequently. Even disputes involving lawyers are resolved by negotiation far more often than litigation." He sums up his argument as follows:

> ADR is not defined as everything-but-litigation because litigation is the norm. Litigation is not the norm. ADR is defined as everything-but-litigation because litigation, as a matter of law, is the default process of dispute resolution (Ware Stephen J 2001).

2.1.3. *Dispute Resolution/Settlement*

Dispute settlement is defined as the act of solving disagreements (Colin McIntosh 2022). A "settlement" is described as an "agreement ending a dispute or lawsuit"(Bryan A. Garner 2019). A common ground to these definitions is the reality that the phrase "settlement of disputes" has a lot to do with finding a solution to knotty issues and with reaching a consensus by both parties to the dispute. The concept of dispute resolution will thus be engaged in this study against the backdrop of the foregoing description.

3. Litigation of Matrimonial Disputes In Nigeria

3.1. *The Concept of Marriage*

In *Amobi v Nzegwu & Ors* the Supreme Court of Nigeria referred to the case of *Hyde v Hyde* (1866) LR 1 PD 130) where Lord Penzance defined marriage as the "voluntary union for life of one man and one woman, to the exclusion of all others". Fatula describes marriage as one of the oldest universal institutions which is recognized and respected all over the world (Fatula O.A 2015). Also, in *Shaw v Gould* ((1868) LR 3 HL 55, 82.), the court held that, because marriage constituted the very foundation of civil society, the laws and institutions of any country regulating the formation as well as the dissolution of the contract are of vital importance to its subject (McClean D., Ruiz Abou-Ngim V 2012). In *Ijioma v Ijioma* (2009) 12 NWLR (Pt. 1156) 593 at 607) the Nigerian Court of Appeal, also adopting the definition as given by Lord Penzance in *Hyde v Hyde* (1866) LR 1 PD 130) reiterated the essentials of a valid marriage to include legal capacity of the parties, mutual consent and compliance with the legally prescribed form (*Onwudinjah v Onwudinjah* (1957-58) 11 ERLR 1).

From the definitions considered, two things are recognizable. On the one hand, it is apparent that the *consortium* is meant to be between one consenting man and one consenting woman who have agreed to be bound to each other till death or dissolution. In essence, marriage is meant to be a heterosexual relationship (Same Sex Marriage (Prohibition) Act 2013). Accordingly, the sanctity of the relationship is recognized and upheld by law. On the other hand, the concept of marriage as provided for under English law and, consequently, under Nigerian law is strongly influenced by the Christian roots of England. Indeed, the definition given by Lord Penzance falls on all fours with the Biblical prescription on marriage (Matthew 19:5-6, Genesis 2:24 King James Bible Online). Essentially, the concept of marriage in relations to its nature, structure as well as the duties of both parties to the relationship to each other and to the offspring(s) of the relationship have been described and crafted over time by the law, by means of statutes which, in turn, have been interpreted by the Court(Marriage Act Cap M6 LFN 2004, Matrimonial Causes Act Cap M7 LFN 2004, Child Rights Act Cap C50, LFN 2004). Some of these include the duties of cohabitation, liability of a husband for his wife's contract (Matrimonial Causes Act. 2004), defence of a spouse by the other in the face of danger, and conjugal duties such as continuous consummation of the marriage, fidelity (Matrimonial Causes Act Cap M7 LFN 2004), as well as the exhibition of good and reasonable behaviour in the marriage. It is worthy of note that the law considers the offspring(s) of the marriage to be vulnerable during the period of their minority. Hence, the Child Rights Act is emphatic about the consideration of their best interest in **all** circumstances by **all** parties.

3.2. *Categories of Matrimonial Disputes*

The nature of a matrimony is such that involves a great deal of intimacy as has been observed in this work. The *consortium* is so structured as to guarantee the inevitability of disagreements of varying magnitudes in the course of the relationship. However, there may arise such disputes of gargantuan proportions as to occasion the institution of causes of action by aggrieved parties in a matrimonial relationship. It is trite that the laws of contract, tort and even criminal law contain certain prescriptions on institution of actions by spouses (*Balfour v Balfour* (1919) 2 KB 571, *Spellman v Spellman* (1961) 1 WLR 921). This work will, however, focus strictly on matrimonial disputes within the purview of family law in Nigeria. Hence, this work's consideration of the categories of matrimonial disputes will be shaped by the provisions of the Matrimonial Causes Act.

Matrimonial disputes under the Act are classified according to the remedies which may be sought for such. As has been stated earlier, remedies for matrimonial disputes under the Act are nullity of marriage, dissolution of marriage, judicial separation, restitution of conjugal rights and jactitation of marriage.

3.2.1. Decree of Nullity

Nullity of marriage is the remedy for either void or voidable marriages (Sagay I., 1999). A void marriage is one under which the parties are considered as never having acquired the status of husband and wife. In essence, there was never a valid marriage *ab initio.* Hence, the decree of nullity granted is "merely declaratory of an existing fact (Nwogugu E.I 2001). A voidable marriage is one which is valid until annulled by the court. Hence, the nullity of a voidable marriage takes effect from the date the decree *nisi* becomes absolute (Obidimma A.E. & Okpalangwu C.V 2021). Where parties are seeking a decree of nullity, the causes of dispute will include an existing lawful marriage to another person (whether marriage under the Act or customary); an incurable incapacity to consummate the marriage (*Baxter v Baxter* (1948) AC 274); obtaining consent of a spouse by fraud or mistake as to identity or mistake as to the nature of the marriage ceremony; prohibited degrees of affinity and consanguinity; existence of a communicable venereal disease or pregnancy by another man, knowledge of which is concealed from the other party.

3.2.2. *Dissolution of Marriage or Divorce*

Unlike nullity, the only ground for the grant of a decree of dissolution is that the marriage has broken down irretrievably (*Ezirim v Ezirim* (unreported) Suit No. FCS/L/56/78 February 6 1981). The grounds for dispute under this subhead, therefore, are willful and persistent refusal to consummate the marriage (Nwogugu E.I 2001); adultery and intolerability; conduct which the petitioner cannot be reasonably expected to bear; desertion; separation for two or three years preceding the presentation of the petition; failure to comply with a decree of restitution of conjugal rights for a year; presumption of death. Where the decree of dissolution is granted, parties are relieved of their obligations to each other and the marriage is completely dissolved upon the decree *nisi* becoming absolute. The parties may re-marry as though the marriage had been dissolved by death. This decree may not be sought where the marriage is under two years without leave of court (Matrimonial Causes Act 2004).

3.2.3. *Judicial Separation*

The effect of the decree of judicial separation is to relieve the parties of the obligation to cohabit during the marriage. Hence, while this decree in subsistence, neither of the spouses can be in desertion (Nwogugu E.I. 2001). Disputes which may cause any party to approach the Court for this decree are those considered under decree of dissolution of marriage (*Aja v Aja* (1972) 1 ECSLR 140). This decree is most applicable during the subsistence of the two-year bar on any application for dissolution of marriage (Nwogugu E.I. 2001). Also, the bars and defences to a petition for divorce apply to a petition for judicial separation (Matrimonial Causes Act 2004).

3.2.4. *Restitution of Conjugal Rights*

This is an order used by the Court to mandate the respondent to perform his conjugal duties which include cohabitation and the rendering of conjugal rights (Nwogugu E.I. 2001). Failure to comply with such order may make such party liable for desertion, and the petitioner has to establish sincerity to entertain the respondent's conjugal rights and willingness to reciprocate same. The dispute to be remedied here is, therefore, the persistent refusal of the respondent to perform his conjugal rights.

3.2.5. Jactitation of Marriage

The purport of this decree is to preclude the respondent from falsely and persistently asserting or boasting that there is a marriage between him/herself and the petitioner. Thus, the dispute herein is the false and malicious allegation of marriage. This decree is often made in the discretion of the court.

4. Litigation of Matrimonial Disputes in Nigeria

Litigation of matrimonial disputes in Nigeria is done at the State High Court/High Court of the Federal Capital Territory. The procedure for litigating matrimonial disputes is contained in the Matrimonial Causes Rules (Matrimonial Causes Rules 1983). These Rules are applied to matrimonial cases in High Courts throughout the Federation, and the territorial jurisdiction of High Courts do not apply for matrimonial disputes. Therefore, a litigant may approach any High Court regardless of such person's territory of residence, as long as he/she is

domiciled in Nigeria (Matrimonial Causes Act 2004). Litigation of any matrimonial dispute is to be instituted by way of Petition (Matrimonial Causes Act 2004). Information to be contained on the petition include the full name, address and occupation of the parties, their dates of birth, domicile, and particulars of their cohabitation. Other information include the particulars of their child(ren), whether there have been previous proceedings between the parties, a statement that there is no connivance between them and that the grounds listed in Section 15 (2) (a) – (h) have not been condoned. The reliefs sought by the petitioner must be stated in unequivocal terms in the Petition; and the petition must bear the date and day of filing as well as the name of the legal practitioner filing same. petition must equally be supported by an affidavit deposed to by the petitioner verifying all the facts contained therein. The petition must be in accordance with "Form 6" as contained in the first Schedule to the Matrimonial Causes Act. Non-compliance with the above-stated provisions may have varying consequences on the proceedings ranging from an outright fatality to a non-fatal irregularity (Aina I., and Oniyire O 2022).

The trial is conducted just as any other trial involving the testimony of witnesses and the tendering of documents by both parties; after which the case is closed and the Court is addressed by the parties or their counsel. Thereafter, judgment is delivered and is subsequently enforced (*David Ogunlade v Ezekiel Adeleye* (1992) LPELR-2340 (SC)).

5. Drawbacks of Litigation in Matrimonial Disputes Settlement in Nigeria

A lot has been said about litigation and its attendant drawbacks over the years. For some, the adversarial nature sported by the mechanism is its greatest disincentive (Carbonneau T.E 1986). This nature gives rise to the "winner-loser" result which, given the nature of man himself, does very little to guarantee the cordiality of future relationships, whether business or domestic. For others, the high propensity for delay owing to the latitude for appeals up till the Supreme Court (Akpata E 1997), as well as the attendant cost-intensiveness of the whole process is its most prominent drawback (Carbonneau T.E 1986).

Also, the Court has to keep track of and, indeed, balance the need to focus on the deciding the extant case and to ensure that the proceedings comply with the substantive and procedural rules of law. These rules, according to Carbonneau, sometimes develop "a technical consistency and logic of their own, and risk becoming estranged from the human reality that underpins the controversy" occasioning the dispute. An example of such situations can be seen in the legal requirement for the proof of adultery where the petitioner seeks to dissolve the marriage on that basis. The Matrimonial Causes Act provides that where adultery is alleged, the party being alleged shall be made a party to the proceedings (Matrimonial Causes Act 2004), and where the Court is not satisfied that the alleged adultery was actually committed, the Court shall dismiss the party from the proceedings. The Act further provides that

> 85 (1) A witness in proceedings under this Act **who, being a party, voluntarily gives evidence on his own behalf** or, **whether he is a party or not, is called by a party**, may be asked, and shall be bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness, where proof of that adultery would be material to the decision of the case.
>
> (2) Except as provided by subsection (1) of this section, a witness in proceedings under this Act (whether a party to the proceedings or not) **shall not be liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery** (Evidence Act 2011). (emphasis supplied)

Further, the Evidence Act provides that, while parties to any proceedings instituted due to adultery are competent witnesses, they are not bound to "answer any question tending to show that he or she has been guilty of adultery" where he/she has not previously given evidence in disproof thereof (Evidence Act 2011). A conjoined interpretation of these provisions would indicate that an alleged adulterer may conduct him/herself during trial with such wisdom as to make him/herself not liable to be compelled to give incriminatory evidence. Asides that, debates as to the legal provisions on adultery have a minuscule effect on "personal dilemma and… legal rights with respect to common assets and liabilities, child support and custody, or spousal support and maintenance. Another question to be answered under this part relates to **when** can be said to have been committed especially in peculiar situations such as homosexual acts, artificial insemination with a third party carried out without the other party's consent, close relationships beyond conventional friendships, etc.

Amongst the myriad of litigation's inherent disadvantages, however, this gravamen of this study is on the question as to whether matrimonial disputes are really **resolved** in the real sense of that word. As has been observed earlier, the concept of dispute resolution has a lot to do with the parties finding a common ground or reaching a consensus wherein the subject of dissention will be addressed. The essence of the word "resolution" is such that parties involved would walk away from the dispute devoid of feelings congruent to defeat. The very nature of litigation, however, gives no such guarantees. Litigation is adversarial in nature; hence the mere fact that judgment is entered for a party against the other is primarily antagonistic to the concept of resolution as stated above. This study concedes that the extant law on matrimonial causes allows the Court to "give consideration, from time to time, to the possibility of a reconciliation of the parties" and may take steps such as adjourning the proceedings, interview them in chambers with or without counsel, or nominate a marriage conciliator with their consent to effect a reconciliation. However, this study argues that the tone of the law as regards conciliation is merely suggestive and half-hearted since the judge is only meant to "give consideration" to the "possibility of a reconciliation". Where the Judge deems the proceedings as being "of such a nature that it would not be appropriate" to give any consideration to the possibility of a reconciliation, he would have fulfilled the requirement of the law as well. Moreover, by virtue of the Act reconciliation may only be considered only after litigation proceedings have been initiated. In essence, pleadings which would outline in sufficient details the shortcomings of both parties would have been filed and would have constituted part of public records. At this point, it would not be uncommon for the parties to have mentally jettisoned any prospect of reconciliation. Holistically, the provisions of the Act on reconciliation have been considered as being "more of a shadow to litigation (Aina I., and Oniyire O 2022)".

Another angle to the question as to whether litigation fosters actual reconciliation is the emotional and psychological upset that usually accompanies litigation of matrimonial proceedings, especially in contentious cases. The emotional upset is often compounded where children are involved and are privy, as well as other members of the public, to proceedings where all manner of "secrets" between their parents are divulged. According to Carbonneau, "the gamesmanship of adversarial posturing usually exacerbates rather than attenuates the spouses' conflicts".

In summary, litigation of matrimonial disputes does very little to "resolve" disputes. It does more to strengthen the incidents occasioning the litigation which, ultimately, causes further distress between the parties. Hence the need to explore other modes of matrimonial dispute resolution.

5. Adr And Matrimonial Dispute Resolution

5.1. *Mediation – Hong Kong as a Case Study*

Mediation is a structured process in which one or more impartial individuals without adjudicating a dispute or any aspect of it assist the parties to do any or all of the following:

a. identify the issues in dispute;

b. explore and generate options;

c. communicate with one another;

d. reach an agreement regarding the resolution of the whole, or part of the dispute (Hong Kong Mediation Ordinance Cap 620).

Overall, it is a process wherein an impartial yet qualified third party is engaged to assist the disputants to reach a settlement. This process is a non-adversarial one, and the mediator acts in a facilitative role. He guides the disputants in the co-operative decision-making process, but refrains from making decisions for them as he adopts a neutral stance in the proceedings. Instead, by helping them to identify issues, they would be better positioned to reach their own decision.

Divorce Mediation is a non-adversarial, facilitative and cooperative decision-making process, where a qualified and impartial third-party help couples resolve disputes in their marriage, especially those relating to divorce or separation. Once the parties, with the help of their mediator, identify the issues, they then try to resolve those disputes between themselves rather than referring them to an outsider the judge. The mediator does not make decisions for them but attempts to get them to make decisions on their own.

Hong Kong, for example has a working mediation framework for family disputes and for other sorts of disputes. The Hong Kong Mediation Group was established in 1995 as a part of the Hong Kong International Arbitration Centre (HKIAC). Under that group, the Family Mediation Interest Group was established in order to foster the resolution of family disputes through mediation. The Mediation Ordinance was enacted in 2012 to "provide a regulatory framework in respect of certain aspects of the conduct of mediation" It applies to mediations conducted in Hong Kong or where there is a consensus between the parties to the agreement to apply the Ordinance or the laws of Hong Kong.

Mediation in Hong Kong can either be private or court-related (Melissa Pang 2021). Most mediations in Hong Kong are referred by the parties *suo motu*, while court-related mediation has been known to arise as a result of the various schemes employed by the Hong Kong Judiciary to promote mediation as a healthy substitute to litigation.

In Nigeria, the provisions of the Matrimonial Causes Act on court-considered/ordered reconciliation seem to be closely related to mediation (Matrimonial Causes Act 2004). This is because mediation and conciliation are quite closely related. However, the distinctions lie in the fact that mediation in Hong Kong can be initiated by the parties on their own, ever before any action is instituted at the court. Furthermore, mediation in Hong Kong is legally regulated, while there exists no such legal regulation in Nigeria. In essence, the procedure for the reconciliation would be left to the wisdom or otherwise of the reconciliator. Finally, the legal environment in Hong Kong presents itself to be more deliberate about the need to resolve family disputes than what is obtainable in Nigeria. Hence, the provisions of the Matrimonial Causes Act on reconciliation seem to be an "afterthought", as opposed to Hong Kong's deliberate provisions on mediation.

There are certain advantages of divorce mediation over litigation. First, mediation may be more financially friendly than litigation as the process may not involve filing of papers and engagement of legal practitioners. Asides financial expediency, parties equally wield a greater degree of control over the mediation process, i.e. they appoint the mediator who **cannot** impose any decision on them as would be done in court. Further, family mediation is less contentious, speedy and does not involve any legal peculiarities as are obtainable in litigation. Perhaps the most attractive feature of this mode of resolution in privacy. Mediation proceedings offer a great measure of privacy and confidentiality because proceedings are held outside the glare of the public.

On the other hand, mediation proceedings do not guarantee settlement of disputes. This is because parties are not legally bound to follow the proceedings through (as they are bound in honour only); and the mediator is also not empowered to reach any definite decision for the parties. Thus, in any event that negotiations break down, parties would not only have wasted their time but also their resources (Maisha Khanom 2022).

5.2. *Family/Matrimonial Arbitration – The Indiana Model*

Although the regulation of arbitration in the United States dates as far back as 1632 (C.M. Zack 2020), the Federal Arbitration Law (FAA) was adopted by congress in 1925 as the federal law which would *inter alia* apply throughout the United States and ensure the proper attitude by courts to arbitration agreements. However, the FAA only applies to transactions involving commerce; thus, family law cases did not fall within the ambit of its scope (*Verlander Family Ltd. Partnership v. Verlander* 2003 WL 304098 (Tex. App. Feb. 13, 2003) (Unreported)). In 1999, the state of North Carolina enacted the North Carolina Family Law Arbitration Act. Indiana adopted the Family Law Arbitration Act in 2005 and over the next couple of years, forty-nine (49) have enacted some form of family law arbitration; and in 2005, the American Academy of Matrimonial Lawyers (AAML) adopted the Model Family Law Arbitration Act (MFLAA) which was modelled after the North Carolina Act.

In Indiana, both parties are required to be represented by counsel or be self-represented. There cannot be a self-represented party and a counsel-represented party. Further, there must be a mutual agreement between parties to arbitrate written and filed, which will be valid, enforceable and irrevocable (Indiana Code IC 34-57-5-3). The arbitrator may be appointed by either the parties or by the court in conjunction with the parties and swear to "faithfully perform the duties of the family law arbitrator; and (2) support and defend to the best of the family law arbitrator's ability the constitution and law of Indiana and the United States (Indiana Code IC 34-57-5-5)."

Matters which may be addressed under family arbitration include dissolution of marriage, division of property, child support, child custody or parenting time, modification of a decree, judgment, or an order (Indiana Code IC 34-57-5-8). Also, paternity matters may arbitrated where the paternity itself has either been established or determined by the court. Family Law Arbitrators cannot rule on contempt or sentence individuals to jail. They may, however, rule on fees (Indiana Code IC 34-57-5-12). Parties are free to decide what rules of evidence to be

applies, but are placed under oath before giving evidence. The Indiana Supreme Court Rules for Alternative Dispute Resolution apply to family law arbitration. Arbitrators are then required to make "written findings of fact and conclusions of law," and submit to the court, after which the court will enter same as its judgment.

Of the other ADR mechanisms for matrimonial disputes, arbitration stands out as the only adjudicatory method. Hence, the arbitrator can make actual findings which, if followed through, would have the effect of a court judgment. This is a great incentive which, when combined with the element of control that parties have over the proceedings, makes arbitration a much desirable ADR for matrimonial disputes. Further, it shares the features of privacy, confidentiality as well as speed with the other ADR; and it may be more cost-effective than litigation in many respects. Parties are treated to a less-formal environment of their own selection and they have the latitude to draw out their own proceedings.

However, one of the drawbacks of arbitration is its limitation to specific issues. This may thus occasion recourse to courts, thereby slowing down the process of divorce. Also, arbitrator fees and ancillary charges may make the process more expensive in certain circumstances, particularly where the arbitration is institutionally administered. Further, not only can the arbitrator make mistakes (being an infallible human), the tribunal may also not be able to handle family disputes involving extreme animosity and conflict. Further, the involvement of legal practitioners may give the arbitration an underlying legal tone by detracting from ADR's quality of minimal formality.

5.3. *Reconciliation – The Nigerian Model*

This procedure readily resembles mediation and is provided for under Sections 11-14 of the Matrimonial Causes Act. The process requires the court to periodically consider the possibility of reconciliation during any matrimonial cause proceedings, unless it would not be appropriate to so do because of the nature of the proceedings. The judge may adjourn proceedings, interview parties with their consent, or nominate a professional conciliator for the parties who will be required to take an oath/affirmation of secrecy before an authorized oaths or affirmation officer. Either party to the case may request for the continuation of the hearing after 14 days of adjournment, and the case may be resumed by that judge or be transferred to another upon the request of the parties **as soon as practicable.** Statements made in course of the attempt at reconciliation are inadmissible in further proceeding of **any nature,** and the conciliator is mandated to take an oath of secrecy before commencing his duties.

As has been earlier observed, the provision of the law on reconciliation appears to be rather half-hearted and is rarely of any effect in divorce proceedings in Nigeria. The law requires that a Certificate of Reconciliation stating that attempts to reconcile the parties have failed must be signed by the legal practitioner and filed with the pleadings at the High Court. In practice, however, this Certificate is attached as a mere formality (Matrimonial Causes Rules 1983). Also, the shortcomings of mediation discussed above apply thereto.

5.4. *Collaborative Divorce*

This method was developed by Stu Webb in 1990. Webb was a family lawyer in Minnesota, United States of America, who observed the harm often done to parties and families by the traditional divorce proceedings in courts. Since then, collaborative divorce has spread to other parts of the country and the world. The procedure is recognized under the United States of America Model Uniform Collaborative Law Act, 2009 which was established to regulate its use (Reiter E and Pollack D 2022). Under this procedure, couples work with their lawyers and other experts on family matters to reach an agreement which would be tailored after the needs of both parties as well as any children of the marriage. It is a voluntary, facilitative and inclusive process under which the uncertainty of outcome in litigation may be best avoided. A combination of mediation and negotiation is employed to ensure that a suitable agreement is reached by the parties (Heinig M., 2022). Once the parties reach an agreement, the terms will be documented into a settlement agreement to be signed them. The judge would thereafter sign the agreement and it would constitute a final and binding judgement of divorce.

In Italy as at 2014, parties with children may either divorce "no fault/no children" before the General Registrar of the Townhall, or "no fault but with children" with the help of two Family Law lawyers through collaborative law (*Negoziazione Assistita)* (Calabrese M., 2017). These are both forms of collaborative divorce.

Under this process, the parties exercise more discretion over decisions about their children, property, finances, etc. Also, the children are better shielded from the trauma of divorce litigation since they do not participate in the process. Parties often exit the marriage with their dignities and emotional health intact; and the process is often less-hostile than litigation.

Notwithstanding the inherent advantages of this method, there are some disadvantages. If collaborative divorce breaks down, not only would it result into a more tenuous and emotionally damaging divorce proceedings; it would also result to a waste of financial resources because the litigants would then have to contract new lawyers to represent their interests in court. Further, there may arise the need to involve other professionals such as property assessors or therapists who would assist in determining the value of property or calm frayed nerves respectively during the proceedings. Lastly, the method may not be suitable to cases where the level of conflict between the parties is very high.

6. Conclusion And Recommendations

Of the modes of ADR discussed above, only reconciliation is provided for under the extant laws. However, various forms of ADR are employed at informal levels of the society to resolve matrimonial disputes which are not serious in nature; while the serious ones are usually referred to courts.

In spite of the benefits of ADR in family disputes, there is still need to refer to the court for the validation of the resultant agreement. Also, the court may be needed to enforce the ADR agreement or the award. Therefore, ADR does not completely remove matrimonial disputes from the courts. In the same vein, ADR may be unsuitable for serious family disputes. Those may need the strong will of the courts. Furthermore, ADR may become more cost intensive, especially where professional arbitrators/mediators are involved. These professionals charge by the hour, and there are also ancillary expenses, including the cost of renting a suitable venue.

Nevertheless, advantages and effect of ADR in matrimonial disputes cannot be overstated. Matrimonial disputes should no longer be used as avenues to debilitate and lacerate one another. The real spirit of resolution/settlement must be imbibed. There is no better way to so do than through a deliberate entrenchment of ADR in the legal and institutional framework for matrimonial disputes, especially in a family-oriented society such as Nigeria. This can be done by promulgating an Act for the regulation of Alternative Dispute Resolution in Matrimonial Disputes. This Act would contain elaborate provisions on each method discussed above. The scope of the current Nigerian Arbitration and Conciliation Act is purely commercial and cannot accommodate matrimonial disputes.

There is also the need to educate legal practitioners and judicial officers on the importance of amicable settlement of matrimonial disputes in such ways as to ensure continued cordiality between parties. Matrimonial disputes involve more than the direct parties to the case: issues revolving around guardianship and welfare of children, distribution of property, etc. also come to play. These issues would be more adequately resolved under airs of cordiality as against the hostility engendered by litigation. Therefore, pending the promulgation of a Family ADR law, provisions of Marriage Act on reconciliation should be reinforced and applied in the genuine spirit of reconciliation and not merely as a matter of procedure.

It is commendable that some Nigerian states have designated family courts. Lagos State, for example, operates a family court which has the overriding objective of "giving protection and care as necessary for the wellbeing of the child, taking into consideration the rights and duties of the child's parents, legal guardians, individuals, institutions, services, agencies, organizations or bodies legally responsible for the child" (Family Court of Lagos State (Civil Procedure) Rules 2012). The Rules of the Court empowers it to encourage parties to use ADR and to take active steps to facilitate its use. However, while it is important to prioritize the offspring of the marriage, children thrive better when they are with their married parents as "parents' ability to communicate effectively, generate emotional closeness, and support each other's decisions likely has implications for their children's well-being and development" (Goldberg J.S. and Carlson M.J., 2014) and "family instability is strongly associated with poorer outcomes for children" (Manning W.D 2015). Hence, equal priority must be placed on the need to ensure a sustained cordial relationship between the parents even if the marriage relationship ends.

Conclusively, parties who decide to explore ADR in matrimonial disputes must be strategic in selecting their mediators or arbitrators as well as their legal practitioners if they wish to be legally represented. For ADR to be effective, parties must be willing to cooperate with each other, be forthright and ensure that they act with decorum.

References

Aina I., and Oniyire O., "Marriage Disputes in Nigeria: Alternative Dispute Resolution Mechanisms as a Means of Resolution" *Abuad Law Review*< https://djetlawyer.com/alternative-dispute-resolution-in-marriage-dispute/> accessed 20 May 2022

Aja v Aja (1972) 1 ECSLR 140

Ajabor I. and Chukwuma S.C., (2015) "The Conjugal Rights and Obligations of Parties to a Statutory Marriage in Nigeria *Continental Journal of Arts and Humanities* 40-47

Akpata E., (1997)*The Nigerian Arbitration Law in Focus* (1st Ed., West African Book Publishers) 124
Amanda Barratt, "The Core of Marriage – *Consortium Omnis Vitae"* in Amanda Barratt *et al* (eds), *Law of Persons and the Family* (2nd Ed., Pearson, 2017) 259

Balfour v Balfour (1919) 2 KB 571

Bamgbala v Bamgbala (1976) 5 CCHCJ 1431

Baxter v Baxter (1948) AC 274

Bryan A. Garner (ed.), *Black's Law Dictionary* (11th Ed., Thomson Reuters, 2019) 1171.

C.M. Zack, (2020) *Family Law Arbitration in the United States: Practice, Procedure and Forms* (American Bar Association) 1.

Calabrese M., "Collaborative Divorce: Is it Valid across Borders" (*Linked In, 18 January 2017)* <https://www.linkedin.com/pulse/collaborative-divorce-valid-across-borders-marco-calabrese-attorney> accessed 30 November 2022.
Carbonneau T.E., (1986) "A Consideration of Alternatives to Divorce Litigation" 4 *University of Illinois Law Review* 1123
Child Rights Act Cap C50, LFN 2004

Constitution of the Federal Republic of Nigeria 1999 (as altered)

David Ogunlade v Ezekiel Adeleye (1992) LPELR-2340 (SC)

Evidence Act 2011

Ezirim v Ezirim (unreported) Suit No. FCS/L/56/78 February 6 1981

Family Court of Lagos State (Civil Procedure) Rules 2012

Fatula O.A., (2015) *Feminism, Women, Family and Children's Law* (Afribic Law Centre, 208.

Goldberg J.S. and Carlson M.J., (2014) "Parents' Relationship Quality and Children's Behaviour in Stable Married and Cohabiting Families" 76(4) *Journal of Marriage and Family* 762

Heinig M., (2022) "How Does Collaborative Divorce Work and Is It Right for You?" (*DivorceNet, Published by NOLO*) <https://www.divorcenet.com/resources/how-does-collaborative-divorce-work-and-is-it-right-for-you.html> accessed 30 November 2022.
Hong Kong Mediation Ordinance Cap 620

Hyde v Hyde (1866) LR 1 PD 130

Ijioma v Ijioma (2009) 12 NWLR (Pt. 1156) 593 at 607

Indiana Code IC 34-57-5-3. See <https://statecodesfiles.justia.com/indiana/2013/title-34/article-57/chapter-5/chapter-5.pdf> accessed 30 November 2022.

Lehman J., Phelps S. (eds.), *West's Encyclopedia of America Law* (2nd Ed, Thomson Gale, 2005)

Litigation" in Colin McIntosh, *Cambridge Advanced Learners Dictionary* (4th Ed., Cambridge University Press, 2013) <https://dictionary.cambridge.org/dictionary/english/litigation> accessed 31 May 2022.
Maisha Khanom (2022) "Advantages and Disadvantages of Family Mediation" (Connaughts) <https://www.connaughtlaw.com/advantages-and-disadvantages-of-family-mediation/> accessed 7 April 2023

Manning W.D., "Cohabitation and Child Wellbeing" (2015) 25(2) *Future Child* 55-66.
Marriage Act Cap M6, LFN 2004 Ss 33, 39 and 46

Matrimonial Causes Act Cap M7, LFN 2004 S 2(2)

Matrimonial Causes Rules 1983.

MC Okany, (2009) *Nigerian Commercial Law* Africana First Publishers PLC, 471.
McClean D., Ruiz Abou-Ngim V., (eds.), *Morris on the Conflict of Laws* (8th Ed., Sweet & Maxwell, 2012) 197

Melissa Pang, (2021) "Mediation in Hong Kong" (*Association Européenne des Avoçats* – European Association of Lawyers <https://aea-eal.eu/mediation-in-hong-kong/> accessed 17 September 2021.
Merriam-Webster, "Litigation" in *Merriam-Webster Online Dictionary* <https://www.merriam-webster.com/dictionary/litigation> accessed 31 May 2022.
Merriam-Webster, "Matrimony" in *Merriam-Webster (Online) Dictionary* https://www.merriam-webster.com/dictionary/matrimony accessed 6 June 2022

Merritt v Merritt (1970) 1 WLR 1211

Murphy J., (2010) "Revitalising the Adversary System in Family Law" 78 *University of Cincinnati Law Review* 891.

Needle Cuda Divorce and Family Law, "Divorce Arbitration- Advantages and Disadvantages" <https://www.needlecuda.com/advantages-disadvantages-of-divorce-arbitration/> accessed 7 April 2023.
Nwogugu E.I., (2001) *Family Law in Nigeria* (Heinemann Educational Books) 147

Obidimma A.E. & Okpalangwu C.V., (2021) "Arbitrating Family Disputes in Nigeria: Benefits and Challenges" *International Journal of Comparative Law and Legal Philosophy* 71.
Onwudinjah v Onwudinjah (1957-58) 11 ERLR 1

Reiter E and Pollack D., (2022) "Collaborative Divorce has Many Advantages, but some Disadvantages Too (Daily Business Review, 1 April 2022) <https://www/law/com/dailybusinessreview/2022/04/01/collaborative-divorce-has-many-advantages-but-some-disadvantages-too> accessed 7 April 2023.
Sagay I., (1999) *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Malthouse Press Ltd).
Sagay I.O., (1985) *Law of Contract* (Spectrum Law Publishing) 83-85

Same Sex Marriage (Prohibition) Act 2013

Section 258 of the Evidence Act 2011

See King James Bible Online, <https://www.kingjamesbibleonline.org/> accessed 31 May 2022

Shaw v Gould (1868) LR 3 HL 55, 82.

Sheriffs and Civil Processes Act 1945

Spellman v Spellman (1961) 1 WLR 921

Verlander Family Ltd. Partnership v. Verlander 2003 WL 304098 (Tex. App. Feb. 13, 2003) (Unreported),

Ware Stephen J., (2001) *Alternative Dispute Resolution* West, 5

Woodley M. (ed.), *Osborne's Concise Law Dictionary* (11th Ed., Sweet & Maxwell, 2009) 256