

LEGAL ASPECTS ON DIVORCE ON CHILDREN

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ABSTRACT

Lord Penzance defined marriage as "the consensual union for life of one man and one woman to the exclusion of all others" as one of the oldest institutions in human history. It's important to keep in mind that once a marriage has irretrievably broken down, it becomes a source of potentially intractable legal and societal issues. Even if a couple is eager to end their marriage and get a divorce, the question of how to protect the interests of the couple's children in the event of a divorce can cause seemingly insurmountable social challenges. There are many challenges and problems that arise when a marriage fails, and the purpose of this study is to examine them critically in order to provide for the emotional, social, psychological, physical, and moral well-being of the children of such a marriage that has ended in divorce. A comparative confluence between the psychology of divorce and the law will be created by analysing the existing laws of the Matrimonial Causes Act, which govern divorce and custody, using analytical, critical, historical, and empirical methods.

KEYWORDS: *Legal; Psycho-social; divorce; child custody*

INTRODUCTION

The institution of marriage dates back thousands of years in human history. For the goal of reproduction and society, a man and a woman join together. On March 20, 1866 Lord Penzance presided over a court case that defined marriage as "the voluntary union for life of a man and a woman to the exclusion and exclusion of all others." A lawful marriage can only be celebrated with the registrar's certificate, which is required by law. When it comes to the law, marriage is defined as "the legal union of two people as spouses" in the case of *Amobi v Nzegwu* (2014 ALL FWLR pt 730, 1285). Marriages celebrated in accordance with national law and custom will also be included in this paper as a continuing union in which matrimonial mishaps can occur. Because marriage is a social compact, it has an impact on every level of family and society. As a result, anything that has an impact on marriage bond is bound to have an impact on society. We'll focus on the effects of

divorce on children because that's what this study is about. At this point, we have a clearer idea of what it means to be a child.

LITERATURE REVIEW

Ms. Ezhiloviya S.P. (2021) Divorce has a profound effect on a child's life, no matter what their age. Seeing the breakdown of parental affection, having parents break their marriage vows, and adjusting to the daily absence of one parent while living with the other parent all create a difficult new family situation. It is a pivotal moment in a child's life when their parents split. Life afterward is vastly different from the way it was before. It is undeniable that children are profoundly affected by divorce. The youngster will have a difficult time fitting in with a traditional society after they are no longer part of the family. Overall, divorce tends to make children more reliant on their parents while also increasing their sense of independence; it often causes the child to regress while also making the teenager more aggressive. Regardless of how old they get, children will always be more reliant on their parents for support and guidance. Separated and far from parents, the adolescent world could be a more self-sufficient one where friends have grown closer and where the main axis of one's social life now stretches out from family and into a wider universe of life experience.

Pinky Anand, Chambers of Ms Pinky Anand(2020) Questions and answers cover a wide range, from jurisdiction and conflict of law to pre-nuptial agreements and matrimonial property regimes to divorce, nullity, and judicial separation to children and surrogacy/adoption to cohabitation to family dispute resolution to civil partnership/same-sex marriage to controversial areas and reform to the impact of COVID-19.. Secularism is widely practised in India, where a wide range of religions are allowed. Hinduism, Islam, and Christianity are the three primary religions practised. The majority of statutory personal laws codify the religious rituals and ceremonies used to celebrate marriage.

Brian D'Onofrio and Robert Emery (2019) Divorce, separation, and the effects of non-marital childbearing/cohabitation are causing an increasing number of children around the world to endure familial instability. 1. Western countries (including Australia and New Zealand) are the most likely to have alternatives to a long-term marriage, while industrialising Asia is the least likely. Northern and Western Europe have the highest rates of cohabitation, a relationship that is more unstable than marriage and therefore less likely to end in divorce. A rise in divorce in the late 1960s, followed by an explosion of non-marital births with or without cohabitation, made the Indias a "leader" in family reform. After a decade or two, most other Western countries saw a rise in divorce; industrialising Asia appears to be undergoing a similar shift. Only Latvia has a lower percentage of its children living with their married, biological parents than the Indias does now, at under 60%. Divorce and separation are seen as relatively harmless, even a positive development for women in unhappy

marriages or children exposed to high conflict by some, while others see it as a serious public health hazard for children. There is strong evidence that parental divorce/separation increases a child's or adolescent's risk for adjustment problems, including lower grades and school dropout, disruptive behaviours (such as conduct and substance abuse problems), and depressed mood². It is also more likely that children of divorced or separated parents will participate in risky sexual activity, live in poverty, and have their own experiences of family instability. There is a 1.5-2 rise in risk for every dollar invested.

Bruce M. Smyth, Richard Chisholm (2017) In Australia, the family law system underwent major reforms in 2006. Changes were based on the premise that courts and divorce specialists should assess whether a kid's best interests and practicality would be served by the youngster spending "equal" or "substantial and significant" amounts of time with each parent. To better safeguard children from danger, family violence legislation has been implemented recently. However, it doesn't appear that each set of legislative reforms has had a significant impact on the prevalence of shared-time arrangements. We look into the various causes of this unexpected event.

Jane Anderson (2014) For nearly three decades, researchers have studied the effects of family structure on children's health and well-being, and they've found that kids who live with their married, biological parents are healthier, happier, and do better in school. Preventing children from being born in unhealthy families should be a top priority for paediatricians and society. Except for parents who cannot resolve their marital violence, the most recent scientific data reveals that children do better when their parents work to keep their marriages together. As a result, society should do everything it can to promote happy marriages and discourage people from being divorced.

MATRIMONIAL LITIGATION A psychologist is one of the best people to conduct an assessment of a marriage's emotional, mental, and social health. Both parties are not treated fairly by the legal system, which only serves to exacerbate the rage, despair, and reasons that lead to divorce. Even if a judge's signature on a dissolution decree constitutes a formal divorce, an emotional divorce is a process that can last anywhere from a few months to several decades. Before the divorce is finalised, one or both spouses may begin to feel a variety of negative emotions, including disillusionment, discontent, worry, and a sense of isolation. According to research on divorce, between 75 and 90 percent of all current divorces are the result of one spouse wanting out of the marriage while the other does not (Ahrons, 1981; Kaslow & Schwartz, 1987; Kelly, 1982; Kressel, 1985; Wallerstein & Kelly, 1980); women are more likely than men to be the ones to initiate the divorce (Kelly, 1982).

- Matrimonial Causes Act of 1970 governs the contract, dissolution, and ancillary reliefs of marriage in Nigeria. The Matrimonial Causes Act stipulates in Section 15 as follows:
 - Either spouse may petition the court for a decree of dissolution of marriage under this Act on the grounds that the marriage has irretrievably broken down.
 - In order for a court to grant a divorce, the petitioner must prove that the marriage has broken down irretrievably, and only if they do so.
 - For the purposes of this section's paragraph (2) (e) and (f), spouses are considered to be living apart if they are not in the same household.

COST OF LITIGATION

Lawsuits can cost a lot of money, and they can lead to both emotional and financial ruin. It is true that marital dispute arises from personal issues between the couples, and litigation is adversarial in character. Issues that threaten to derail a marriage are always difficult, personal, and detrimental to the mental, physical, and social well-being of those involved in the marriage contract. Forcing couples to go to court to settle their differences is an adversarial technique of conflict resolution that is sure to enrage them in the long run.

EMOTIONAL COST

When it comes to marital emotional cost, rage and irritation are always the driving forces. It's vital to keep in mind that threats of any kind are almost always the result of a primary emotion: anger (Saposnek, 2004). To put it another way, it's an emotion that serves to mask more fundamental ones like anger, remorse, guilt, shame, and a sense of helplessness. Professionals participating in divorce cases may mistakenly interpret the husband's threats as evidence of his violent inclinations when, in fact, they are the result of a variety of basic sensations that he may be experiencing and are therefore perfectly comprehensible (Holmes & Rahe, 1967). At least a rejected spouse can inflict enough agony on an ex-partner so that he isn't completely forgotten or neglected (Kessler, 1975).

One of the emotional costs of marriage is cruelty. This bad attitude might come from one spouse or both of the couples. The court must consider the fact that cruelty can result from a single act or a series of acts when assessing what constitutes cruelty in divorce cases. The evaluation is unbiased." For more information, consult *Williams v Williams* (1966) ALL NLR, P.1775, Para F. Prior to making a decision on whether or not the conduct of either spouse poses a danger to the victim's life, limb, or health, the court must analyse all information presented to it and make an objective assessment of cruelty.

ECONOMIC COST

During the litigation process, the financial well-being of both parties is a top priority. The cost of splitting a single household in two is usually prohibitive for most married couples. Initially, it may seem impossible for the parties to maintain two residences at the same time, but they will eventually get used to it. It is possible that both partners will experience intense sentiments of ambivalence and dissatisfaction as a result of this ambiguity. These thoughts are further heightened when attorneys begin making proposals back and forth (usually positioned firmly for tactical considerations) (Saposnek, 2004). However, it's not uncommon for couples who've always been friendly to each other to suddenly turn on each other in these conversations. Attorneys' exaggerated stances for bargaining advantage contribute to this behaviour, but so does the parties' sense of hopelessness and powerlessness when talks are conducted in a manner beyond their control (and frequently beyond their knowledge) (Saposnek, 2004). Mediation as an ADR method has numerous advantages over litigation-based negotiations, one of which is that it gives the parties more influence over the divorce process by allowing them to engage directly and constructively.

DEFINITION AND UNDERSTANDING WHO A CHILD IS

Encyclopedia Britannica describes "a child" as a "unborn or recently born young person" who is a "son or daughter of human parents" (2014:E-Copy). Human parents are referred to as "parents" in this definition, while the term "child" refers to both a newborn and a person who has yet to reach the age of adulthood. "Young human being: A young human being between birth and puberty, somebody not yet of age: somebody under a legally specified age who is considered to be legally responsible for his or her actions, immature adult: An adult who is regarded as behaving in a childish or inappropriately childlike way, etc." is another clear definition of a child. Child's e-copy (Child 2009). We're not really interested in other definitions of a child, such as a product of something or a descendant of a person, in this work. People under the age of fourteen are considered children in some circles, and the definition of what a child is brought to light. Although it is safe to use the definition of the term "kid" in two international instruments, it is safe to say that:

Nigeria is a signatory to the OAU Charter on the Rights and Welfare of Children (1991) and the United Nations Convention on the Rights of the Child (1989). Article II defines a kid as someone under the age of eighteen. Article I of the United Nations Convention on the Rights of the Child defines a child as any human being under the age of 18 years, unless maturity is established earlier under the legislation applicable to the child.

In the eyes of the law and society, a youngster is inexperienced and naive. This creates a child's dependence on both its parents and other adults in the community. Since children are particularly vulnerable, they are entitled to a number of protections and protections of their own. The family is the proper context and locus for the exercise of these rights. As a result, the child(ren) is/are the most harmed in the event of a divorce. Listed here are some of the repercussions of divorce on kids.

EFFECTS OF DIVORCE ON CHILDREN: The following are some of the effects of divorce on children:

Problems of Adjustment: When they are in primary or nursery school, the children will be asked by their peers why they only have one parent at home. A change in key relationships and maybe restricted contact with one of the parents will be challenges for them to overcome (mostly the father). Additionally, "they must deal with parental conflict, which may continue after the divorce, and with attempts by each parent to acquire the child's loyalty and affection at the expense of the other parent" (p. (Lauer 1995:251). Children whose parents divorce are more likely to suffer from both mental and physical issues. Many young adults who had their parents' divorce when they were still in their teens or early twenties had a hard time dealing with the breakup of their parents' marriages.

Psychological Problems: Children of divorced parents often suffer psychologically as a result of their parents' separation or divorce. When their peers are talking about their own parents and families, the children can feel a little isolated from the conversation. People with this mental health issue may even bring it into their own marriages.

Object of Abuse by Parents/Others: In the absence of their ex-spouse, divorcing parents may take out their frustrations on their children. As a result, they inflict their children with a sense of aggressiveness. Self-esteem is often undermined as a result, and youngsters may even become targets of abuse and humiliation in society at large. As a result, these youngsters are subjected to abuses rather than the parental warmth that is anticipated of a developing child.

Hatred towards One Parent: Children of divorce may develop animosity against one of their parents, believing that the other is to blame for the split. Because of the information they got, especially if the divorce occurred when they were very young, this is the most common explanation given.

Lack of Balance Training: In most cases, children are taught by both parents, with each providing what the other parent may be lacking. The children will only be taught by one parent in the event of a divorce. Being a single parent has its own set of problems that can be easily passed on to one's children.

Prone to Social Problems: Lauer is correct when she says, "Children of divorce are prone to social issues" (1995:442). It is possible for children to join classmates and adults outside the school who may introduce them to vices that are harmful both to their lives and to society. It is possible for them to engage in sex crimes, drug use, alcohol abuse, theft, etc. In spite of this, Lauer contends that divorced children have a higher rate of involvement in these vices (444). Divorced children may exploit the visit of one parent to further their wicked deeds. As a result, they may be more prone to behavioural issues in the future.

Economically: Though studies demonstrate that children from divorced parents suffer more economically than those from non-divorced homes, this is not universal. This has a negative impact on their academic performance as well as their future plans and goals.

Starting of Live All Over Again: It's important to remember that divorce, especially in a terrible marriage, can have a good influence on children. There are times when divorce can be beneficial for children who have grown up in a dysfunctional family where both parents are constantly fighting and bickering at the slightest provocation. Divorce can have a good effect on people's lives since it frees them from painful and stressful relationships (Olson & Defrain, 1994:96). All members of a family can be negatively affected by a high-conflict household (children inclusive). Children's reactions to this kind of setting can range from depressed rage to academic difficulties and beyond. Children of such marriages may benefit from the dissolution of the union. In light of this, Edet A. Ukpung asserts that "the children may suffer initial psychological, financial and other impacts, their separation from one of their parents may give them initial emotional upset or trauma, but they have the advantage of being away from conflict and animosity." (2014:195).

CONCLUSION

It is possible that divorce has positive impacts on divorcees and other members of society, but the negative effects it has on children outweigh the favourable effects. If divorce can be eliminated or reduced to the bare minimum, society will be a better place. Thus, the following suggestions are made to alleviate the negative consequences of divorce on children in this research.

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