

The Theory of Divorce and the Christians Concept of no Divorce in Contemporary Nigeria Society

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Abstract: *The legal framework for the dissolution of marriage in Nigerian is the Matrimonial Causes Act. The Act came into force to cater for the dissolution of marriages and other reliefs such as custody of the children, maintenance, settlement of property etc. The significance of the Act is that, the lone ground to which a divorce can take place is where the marriage has broken down irretrievably. Dissolution of marriage is discharging the couples of their matrimonial duties owed to each other in order to preserve the stability of men. Although, some Christian denominations have kicked against dissolution of marriage, seeing it as an aberration, a mistake in our laws, and a frustration of the purpose of God concerning marriage. But it is obvious that, the essence of the dissolution of marriage is not to separate willing couples but unwilling ones. This study is focused on the theory of divorce and the Christian concept of no-divorce in contemporary Nigeria society. The study examines: the theories of divorce and the statutory concept of divorce in Nigeria, the concept of no-divorce and associated challenges. The study observed that the legal framework of divorce in our nation is based on the fault theory of divorce while due to the no divorce theory of the Christian Church, couples who suffer from violence and other social abuses are compelled to live in the marriage union at the risk of their lives. The study therefore recommends that, the no fault divorce theory be introduced while the Church should also relax her no-divorce concept in the face of life-threatening issues.*

Keywords: theory of divorce, Christians concept of no divorce, contemporary Nigeria society

INTRODUCTION

The family is the hub on which the society rotates. It is the minutest but at the same time the live wire of the society. The family occupies a pivotal place in every society and in the Africa Continent at large. It is indeed the bedrock of the state, nation, continent, and world at large. Healthy families

produce a healthy nation and healthy continent while weak families breed weak, corrupt, and a disarray nation and continent.

Family, a group of persons united by the ties of marriage, blood, or adoption, constituting a single household and interacting with each other in their respective social positions, usually those of spouses, parents, children, and siblings.¹ So, the family is a very sensitive unit which when affected negatively, could lead to the total collapse of the society. This may just be the reason why some Christians are of the view that divorce should be avoided at all cost: till death parts the relationship. Thus, this study is out to examine the theories of divorce, no divorce concept by some Christian denominations.

What Is Divorce?

Divorce is the act by which a valid marriage is dissolved usually freeing the parties to remarry.² The Arabic word for divorce is Talaq which means “freeing or undoing the knot”. Talaq signifies the dissolution of marriage or the annulment of its legality by the pronouncement of certain words.³ According to the King James Bible Dictionary, divorce is A legal dissolution of the bonds of matrimony or the separation of husband and wife by judicial sentences. This is properly called a divorce a vincula matrimonial⁴

God created marriage as an integral part of its plan to prosper His world and bless mankind. And because marriage is critical to God’s mission of redeeming the world Satan has made its destruction a priority. This strategy is to undermine the importance of marriage, minimize the effect divorce will have on the family and seduce people to embrace funny and embarrassing lifestyle leading to separation or divorce. To the law Dictionary, Divorce is the legal separation of man and wife, effected, for cause by the judgment of a court and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of parties.⁵

LEGAL GROUNDS FOR DIVORCE IN NIGERIA

According to section 15(1) of the Matrimonial Causes Act, 2004 either party to the marriage may petition for the dissolution of same, upon the ground that a marriage has broken down irretrievably. It is therefore an established fact that the sole reason why there can be dissolution of marriage is the irretrievable breakdown of it. However, there are some grounds or factors that lead to the irretrievable breakdown of the marriage that the court may consider. They are as follows:

¹ A, J. Barnard, (2025) <https://www.britannica.com/topic/family-kinship> (accessed on 08/05/2025)

² Britannica <https://www.britannica.com/>...> sociology & society>: Accessed on the 5/3/2024

³ Sahih Muslim, Book 9: The Book of Divorce <https://www.unm-edu-my-009-suit> dated Accessed 23-3-2004

⁴ King James Bible Dictionary <https://kingjamesbibledictionary.com...> (Accessed on the 5/3/2024)

⁵ <https://thelawdictionary.org>D> Accessed on the 23-3-2004

Willful and Persistent Refusal to Consummate Marriage

Proof of willful and persistent refusal of a spouse to consummate the marriage will enable a court hearing a divorce petition to decide that, he has broken down irretrievably, section 15(2) Matrimonial Causes Act. Obviously, what constitute willful and persistent refusal to consummate depends on the facts of each case. Thus, mere neglect to comply with a request is not necessarily the same as refusal, refusal implies conscious act of volition, neglect may be nothing more than a failure or omission to do what has been suggested. Refusal must be shown to be a conscious act of the respondent. In *Owobiyi v Owobiyi*⁶ the court held that before there can be a refusal there must be a number of request or implied, and an opportunity to comply with such request must exist. In order for a court to determine whether or not there has been a refusal the whole history of this marriage must be considered *Jodla v Jodla*.⁷

For a court to find that there is willful and persistent refusal to consummate, section 12 of the Matrimonial Causes Act requires it to be satisfied that the marriage has been consummated up to the commencement of the hearing of the petition *Oladele v Oladele*.⁸

The fact that a husband habitually uses contraceptives inspite of his wife's protect does not constitute a willful refusal to consummate. *Baxter v Baxter*⁹ infact, a marriage is consummated where the parties have full intercourse even though the man (husband) is sterile.

Adultery and Intolerability

By Section 15(2)(b) of the Matrimonial Causes Act, 2004 a court will come to the conclusion that a marriage has broken down irretrievably where, since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. This section effected a major change in the concept of adultery as a fact, upon which the court may dissolve a marriage. Before 2004, the mere proof of adultery was sufficient to grant a decree of divorce. But under the Matrimonial Causes Act, 2004 this is no longer the case. The petitioner has to prove not merely the commission of adultery by a spouse but also that the petitioner finds it intolerable to live with the respondent.

In satisfying the subsection, two elements must be established:

1. The commission of adultery and
2. The petitioner finds it intolerable to live with the respondent.

In addition, it has to be established that these factors occurred after the celebration of the marriage. Commission of adultery may be defined as voluntary sexual intercourse between a spouse and a third party of the opposite sex, not being the husband or wife during the subsistence of the marriage.¹⁰

⁶ *Owobiyi v Owobiyi* (1960) WLR 236

⁷ *Jodla v Jodla* (1960)1 All ER 625.

⁸ *Oladele v Oladele* C.C.H.C.J 12/72, 119 61

⁹ *Baxter v Baxter* (1948) AC 274 60

¹⁰ *Clarkson vs Clarkson* (1930)143 LT 773

Obviously, the element of free will is fundamental to the concept of adultery. Consequently, where a spouse has extra-marital sexual intercourse against his or her real consent, adultery will not be established. This point is buttressed in the case of *S. v S.*¹¹ where the respondent who was insane engaged herself in a sexual relationship with a third party not knowing the nature and consequences of her act because she was acting under the influence of her insanity. It has been held that where an insane spouse engages in sexual relationship with a third party, if he does not know that the nature of his act is wrong, the M’Naghten rules apply to the finding of adultery. It was in that case that, adultery cannot be established against the insane party if he does not know that the nature of his act is wrong.¹²

Also, a spouse that commits adultery while under the influence of alcohol or drugs so that he or she does not understand the nature and consequences of the act, the position would be akin to insanity and adultery will be negative.¹³

Once a spouse establishes adultery, the intercourse need not be complete as would constitute consummation of marriage but there must be some penetration in the female organ by the male.¹⁴ The standard of proof of commission of adultery is a matter of act which under the matrimonial causes Act 2004 must be proved to the satisfaction of the court.¹⁵ To ascertain this standard of proof the evidence must be cogent and convincing so as to satisfy the court as to the truth of the alleged adultery.¹⁶

The court will not divorce a marriage without a tangible proof where the case of adultery is cited as the reason for divorce. E.I. Nwogugu explains that the court desires a proof of adultery which should be evident from the following:

Sexual intercourse, where the sexual intercourse must be voluntary and one of the parties must be married.

Familiarity and opportunity: If parties are intimate and have been together in circumstances where adultery could reasonably be inferred, it will be presumed unless proven otherwise.

Venereal disease: If the petitioner can prove that the respondent contracted a venereal disease from a third party during the marriage, it suggests adultery.

Brothel visits: If a spouse visits a brothel with a third party, it is presumed they have committed adultery.¹⁷

¹¹ *S. vs S.* (1962) p. 133

¹² *Hanbury vs Hanbury* (1982) p. 222.

¹³ Section 82 of MCA 2004

¹⁴ *Briginshaw vs Briginshaw* (1938)60 CLR 336

¹⁵ *Weatherly vs Weatherly* (1854)1 SPECC & Ad 193

¹⁶ Section 115(3) MCA 2004.

¹⁷ E.I. Nwogugu (2014) pp. 180-182

Confessions and admissions: These are scrutinized due to the potential for fabrication. The court considers all circumstances, including the confessing party's desire for divorce, and usually requires corroboration.

The birth of a child: Gestation periods are considered. For instance, if a spouse has children with another party, it can be evidence of adultery.

Frequent hotel visits can also infer adultery. For example, if a husband frequently visits hotels and returns home drunk late at night, it may indicate adultery.

Conduct which the Petitioner cannot reasonably be expected to Bear

Section 15(2) of the Marriage Causes Act¹⁸ enables the court to find that a marriage has broken down irretrievably where, since the marriage, the respondent has behaved in such a way that, the petitioner cannot reasonably be expected to live with the respondent. Some of the type of conduct which satisfy section 15(2)(c) of the matrimonial causes Act are simplified in section 16(1).

Example of such conduct are: rape, sodomy, or bestiality as represented under section 16(1)(b) while section 16(1)(c)¹⁹ states that since the marriage, the respondent has within a period not less than five years suffered frequent convictions in respects of which the respondent has been sentenced in the aggregate to imprisonment for not less than three years. Section 16(1)(d) states that since the respondent has been in prison for a period not less than three years after conviction for an offence punishable by death or for a period of five years or more section 16(1)(e) went ahead to state that since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of having attempted to murder or unlawfully kill the petitioner or have committed an offence involving the intentional infliction of grievous harm. Subsection (f) states that the respondent has habitually and willfully failed throughout the period of two years immediately preceding the date of petition to pay maintenance for the petitioner and ordered to be paid under an order of a registrar in the federation or agreed to be paid under an agreement between the parties to the marriage providing for their separation, the respondent as of the date of the petition of unsound mind and likely to recover and or since the marriage and within the period of six years immediately preceding the date of the petition.

Rape, sodomy or Bestiality are very grave conducts and the court will conclude or rule that the petitioner cannot live with the respondent. In this case, any certificate that is duly signed by the registrar of the court for conviction shall be taken as evidence.²⁰

Habitual, drunkenness or intoxication: habitual drunkenness has been described as a person who drinks in excess.²¹ That is to excess which makes him incapable of controlling his actions or affairs.

¹⁸ Cap M7 LFN 2004

¹⁹ Matrimonial Causes Act Cap M7 LFN 2004.

²⁰ Cap M7 LFN 2004

²¹ Cap M7 LFN 2004

To satisfy this position, the respondent must frequently drink heavily or to such an extent that he loses self-control. Thus in *Alexander v Alexander*,²² Cubson J. stated that, it sufficed to say that the vital question is made that a man is a habitual drunkard is the condition which has addition to drink produces and not necessarily or solely the extent in which he partake in the drink. Conviction and nonsupport: under Section 16(1)(a)²³ the fact that since the marriage the respondent has within a period not exceeding five years suffered conviction in respect of which the respondent has been sentenced in the aggregate to imprisonment or not less than three years and has habitually left the petitioner without reasonable means of support. A man who has been convicted and imprisoned may yet have left his wife well provided for out of his means, as stated in *Weiler v Weiler*.²⁴

Imprisonment: Section 17(1)(d)²⁵ implied that the respondent has been in prison for a period of not less than three years or more in respect of an offence, punishable by death or life imprisonment, the jettisoned spouse can petition for divorce.

Similarly, if the respondent has been imprisoned for five years or more and he is still in prison, the jettisoned spouse can petition for divorce on the ground that, the offence committed is quite serious and that it could be unfair to compel the petitioner to stay, alone for more than five years. In *Symes v Symes*,²⁶ it was held that since the marriage, the respondent has been imprisoned for not less than three years after conviction for an offence punishable by imprisonment for a period of five years or more.

Desertion

Under Section 15(2)(d) of the Matrimonial Causes Act, a marriage will be regarded as lawfully broken down irretrievably where the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. Desertion is the separation of one spouse from the other with an intention on the part of the deserting spouse to bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse²⁷.

To however constitute desertion, three elements must be present at the same time. These are:
The de facto separation of the Respondent.
Lack of just cause for the withdrawal from cohabitation.
The absence of the consent of the deserted spouse.

²² (1962)3 F.L.R 84

²³ Cap. M7 LFN 2004

²⁴ (1956)2 W.L.R 1071

²⁵ Cap. M7 LFN 2004

²⁶ (1972) F.R.L.51

²⁷ *Nwabugwu v Nwabugwu* (1974)4 UILR280

Living Apart for at Least Two Years.

The court would hold that a marriage has broken down irretrievably if the parties to it have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted. A respondent who does not object to a petition is expected to file a former response stating that they have no objection to the petition. This could either be done through a document called an “Answer” where they explicitly state their lack of opposition to the petitioner’s claim or by personally appearing in court to verbally confirm their non-objection. There are therefore two arms of the Provision – living apart for two years and no objection by the respondent. Thus, Oputa J. in the case of *Ibeawuchi v Ibeawuchi*²⁸ held that those relying on section 15(2)(f) of Decree No 18 of 1970 will to succeed, endeavor to secure a more positive proof of the fact that the respondent does not object to a decree being granted.

Living Apart for at Least Three Years.

A petitioner who shows that he or she had been living apart from the other spouse for at least three years immediately preceding the petition may be granted a decree of dissolution of the marriage. This is a matter of fact evidencing irretrievable breakdown of marriage and is provided by section 15(2)(f). The period of separation must be continuous and should have lasted for at least three years.

The basic concept of living apart applies in paragraph (f) of Section 15(2) of the MCA²⁹ as it does to paragraph (e). There are however two basic differences between the two subsections. Firstly, while two years’ separation is required in subsection (e) the parties must have lived apart for three years for the purpose of subsection (f). Secondly, the question of the respondent not objection to a decree being granted which is applicable to the subsection (e) has no place in respect of Subsection (f). There is no doubt that subsection (f) is safer to rely on than (e) however, there are serious doubt as to whether separation for three years without more should be enough ground for the dissolution of marriage. The period seems rather short in view of the fact that an innocent spouse may be divorced against his or her will on this fact. A longer period than the three years prescribed in subsection (f) would be necessary to show adequately that the marriage has broken down.

Non-Compliance with Decree of Restitution of Conjugal Rights

A marriage may be dissolved on the fact of irretrievable breakdown where the respondent has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal right. This provision will come into effect where the respondent in defiance of a court order, has refused to resume cohabitation with the petitioner for the statutory period. It is submitted that the period of one year or over must of necessity immediately precede the presentation of the petition. That is, the core of the case against the respondent would be that he has failed to resume cohabitation with the petitioner in compliance with a court order to that effect. This, therefore would imply that the

²⁸ (1970) 4 UILR 280

²⁹ *Pheasant v Pheasant* (1972) Fam 202.

refusal to cohabit must continue up to the presentation of the petition. Moreover, the statutory period of at least one year must be continuous as any intervening resumption of cohabitation would constitute would constitute compliance with the judicial decree.

Presumption of Death

A marriage may be dissolved on the fact that the respondent has been absent from the petitioner for such a time and in such circumstances as to provide reasonable grounds for presuming that the respondent is dead. This fact may be established by proof of the respondents continuous absence for seven years immediately before the petition and the fact that the petitioner has no reason to believe that the other party was a live at any time within the seven years period, proof of seven years absence will not suffice if it is shown that the respondent was alive at any time within the period, the burden of proof is on the petitioner to satisfy the court that nothing has happened within seven years as to give him or her cause to believe that the respondent was alive. If the respondent is found to be alive before the decree nisi is made absolute, the court will rescind the decree. The position would differ where the decree has become absolute that effectively dissolves the marriage Beck v Beck.³⁰

Where the petition for dissolution of marriage is based on the fact specified in Section 15(2)(h) MCA³¹ the petitioner must state the latest date on which the petitioner has reason to believe the respondent to have been alive as the circumstances in which the petitioner has reason to so believe. It must also state the petitioner enquires for the purpose of locating the respondent. A decree made in respect to the petitioner under Section 15(2)(h) of the MCA shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

Theories of Divorce

According to Jus Corpus Journal in primitive society, marriage was considered sacred bondage and it can never be broken down³². He holds that with changing times and dynamic society, the word divorce came into the picture which puts an end to a marriage. Therefore, he outlines five theories that could lead to a divorce situation. He is not alone in the propagation of these theories as Mohanty, H. and Ayarzagotia, (2020)³³ opines that these theories can help in determining the dissolution of marriages deemed fit for divorce. The theories are:

Fault Theory

In the fault theory, marriage can only be dissolved when either party in the marriage had committed a matrimonial offence. This theory holds that there must be a guilty and an innocent party in the

³⁰ (1946) SASR 309 at p. 314

³¹ Cap. M7 LFN 2004

³² J. Corpus (2021) Theories of Divorce in Jus Corpus Law Journal (Sept. 8, 2021) <https://www.juscorpus.com/theories-of-divorce/> Retrieved on 8th July, 2025

³³ H. Mohanty, and J. Ayarzagotia, (2020) The Philosophy of Divorce in Indian Legal Context: A Study of Theories of Divorce (November 9, 2020) retrieved from <https://dx.doi.org/10.2139/ssrn.3727641> on 8th July, 2025

marriage for the innocent party to seek divorce. However, at the instance where both parties are at fault, there is no remedy available.

No Fault/Mutual Consent Theory

This theory holds that since the two parties could marry by their freewill, they should also be allowed the privilege to decide to go their separate ways by their free will. Critics however believe that this theory will promote immorality as it leads to hasty divorces and parties would dissolve their marriage based on slight incompatibility of temperament.

Irretrievable Breakdown of Marriage Theory

According to this theory, if a marriage had broken down irretrievably, it should be dissolved, without taking cognizance to the fault of either party. The irretrievably breakdown theory is concerned with the fact of breakdown of marriage. Where a marriage is said to have been broken down beyond repair, divorce should be granted based on the fact that there is no use in retaining the empty shell.” The implication here is that, If party can satisfy the court that his marriage has broken down irretrievably, and that he/she desires a divorce a situation that has gone beyond tolerance, then the marriage shall be dissolved whatever may be the cause.

Indissolubility of Marriage Theory

This theory postulates that marriage between a husband and wife is indissoluble. It is believed that marriage is a union of bone with bone and flesh with flesh and as such, there should be no ground for divorce. Marriage by this theory is eternal. The indissolubility theory does not permit divorce not even on the ground that the parties in the marriage are unhappy. It holds that the couple can only be separated by death and nothing else. This is the theory the Christian Church upholds

The Frustration Theory

This theory holds that if a party in a wedlock is seen to be living in frustration in the marriage even though the other party is not guilty of any marital offence; where the other party is proven to be suffering from mental unsoundness or has changed his religion or renounce the world or has disappeared for a very long period. Where the frustrated party decides to seek release from such a frustrating marriage, according to this theory, he or she should be allowed. Divorce in this case is a relief from frustration.

The Christians Concept of No Divorce

This concept will be looked at from both the Old and New Testaments of the Bible.

The Concept of “No Divorce” in the Old Testament

The concept of no divorce is conditionally reflected in Deut. 22:13-19, 28–29. Deuteronomy 22 gives two other cases that assume the right to divorce. In verses 13–19 where a man falsely accuses his wife of not being a virgin as at the time of their marriage. The moment the “proof of the wife’s virginity”³⁴ is given, the man having paid the father a hundred shekels must stay married to his

³⁴ G. Wenham, “Betulah - A Girl of Marriageable Age,” *Vetus Testamentum*, 22:4 (1972) 331–332.

wife without an option of divorce implying that he loses every right of divorce. Where this law is not considered or enforced, an Israelite could divorce his wife. Again, Deut. 22:28-29 explains the case of rape³⁵ and the woman is given to the rapist as wife; having paid a fifty shekel marriage fine to the father; the rape victim remains the wife of the rapist as long as she lives.” It is thus obvious that had there been no rule to that effect, then man could divorce his wife when he gets fed up of her.

It is made clear in Deuteronomy 23, that a man who falsely accused his wife of adultery or a man who rapes a virgin is made to marry her without divorce. Mal 2:10–16 also makes divorce impossible. There are other passages that are purportedly thought to condemn divorce: Lev 21:7, 14; 22:13. 1. Mal 2:10-16. A text roughly contemporary with the fifth-century activities of Ezra and Nehemiah, Mal 2:10-16 condemns any Jew who divorces his Jewish wife and marries *“the daughter of a foreign god”* (v.11) — that is, a foreign woman.³⁶ The fundamental offense is the violation of the marriage: *“You have broken faith with her... the wife of your marriage covenant”* (v. 14).³⁷ Here comes the voice of Yahweh announcing in clear terms the highest comprehensive condemnation of divorce in the Old Testament: *“I hate divorce,” says the LORD God of Israel*” (v.16 NIV; cf. RSV, NASB). But this rendering is an impossible translation of the Masoretic Text (MT), one that can only be retained on the basis of hypothetical clarification without the support of any manuscript.³⁸ In the MT: Masoretic Text, the verse reads literally *“kî* [a particle with a wide variety of senses] he [third person, not first person] hated/hates (šānē) sending away (sallah), says the LORD.” Being that some of the LXX manuscripts render “If you hate your wife, put her away,” which makes sallah an imperative rather than an infinitive; it is thus not fundamentally impossible to interpret the verse as a directive in favor of divorce. That notwithstanding, the Septuagint presentation hardly agrees with the context, where the divorcing the wives of Jewish descent is condemned and where the second clause of the verse expresses disapproval of these divorces. If MT is kept, one would render it something like: *“When his purpose of hating is for the purpose of divorce, says, the LORD God of Israel, then he covers himself with lawlessness as with a garment.”*³⁹ The phrase *“he hates”* could be in relation to the divorce procedure. In a fifth-century Jewish divorce certificate from Elephantine in Egypt the divorce procedure is *“I hate my wife”* or *“I hate my husband”*. There is no need to rectify Mal 2:16. Although, it is okay to note that what v.16 condemns in context is not necessarily every

³⁵ The usual interpretation of “seize” (tapa) is that the text implies that the man seizes the woman by force and rapes her. G. P. Hugenberger (Marriage as Covenant: A Study of Biblical Law and Ethics Governing Marriage Developed from the Perspective of Malachi [VTSup 52; Leiden: Brill, 1994] 255–260),

³⁶ Not a “goddess”; cf. Hugenberger, G. P... *Marriage as a Covenant: A study of biblical law and ethics governing marriage developed from the perspective of Malachi*. (1991, pp. 34–36).

³⁷ For a detailed defense that Malachi refers here to marriage as a covenant cf. *ibid.* 27–47

³⁸ C. J. Collins, “The (Intelligible) Masoretic Text of Malachi 2:16 or, How Does God Feel About Divorce,” *Presbyterion* 20/1 (1994) 36–40. The Qumran copy of this verse, though it varies from the MT, does not support the common emendation; cf. R. Fuller, “Text Critical Problems in Malachi 2:10–16,” *JBL* 110/1 (1991) 47–57.

³⁹ Hugenberger (Marriage 72–76) independently comes to a very similar rendering: “If one hates and divorces.” He takes sallah to be the equivalent of a finite verb, perhaps as a biform of the infinitive absolute, whereas I take the infinitive to be a result clause.

divorce under every condition, as if the text is opposed to the actions of Ezra and Nehemiah⁴⁰ but specifically in relation to the divorce of innocent Jewish wives simply because their husbands would rather be with foreign wives. This leaves one with two grounds of condemnation: Firstly, they were marrying pagan wives who will undermine Israel's beliefs and their covenant with God, and secondly, they were too indifferent in renouncing without cause as against the marriage covenant with their original Jewish wives. One cannot therefore, conclude from this verse that God opposes divorce in any and every circumstance. The context is limited. Yes, the God of Israel is opposed to these particular conditions and act of divorce, and not necessarily any and every divorce regardless of circumstance. Where this fact is not well stated, one would take the text as a contradiction to the passages in the Old Testament where divorce is permitted. You will notice that in all the Old Testament passages treated above, the divorce right was basically on the man and not the women. Women were not to initiate divorce, but the men were by law allowed to issue certificate of divorce to the women.

The New Testament idea of Divorce

Divorce remains a core topic for New Testament theologians and canonists as the New Testament teaching on divorce has come under serious scrutiny. Harrington maintained that Matthew's 'exceptive clauses' do form a real exception⁴¹. In looking into the teaching of Jesus on divorce, it will be wise to take full note of the four passages in which the gospels report his teaching: Mark 10: 2-12, Matt. 19:3-9, Luke 16: 18; Matt. 5:31, 32. The most notable differences in these four portions of the Gospel accounts is that the two passages in Matthew contain the exceptive clause, **"except for fornication,"** while that of Mark and Luke omit the clause. Undermining this difference will be a herculean task. If taken as a formula of practice, these four passages will be in direct contradiction with one another. However, if on the contrary, they be removed from a formula of practice as to be expressive of a consistent view, this in itself is a fact of cardinal importance for their interpretation.⁴² Our first duty, then, is to discover, if possible, whether we ought to attribute both forms to Jesus, and, if not, which represents his thought. In Matthew's account, Jesus appears to permit divorce only if adultery has occurred: **"Whoever divorces a wife, except for sexual indecency, and remarries, commits adultery"**.⁴³ This passage of scriptures has been interpreted in several different ways. Majority of the New Testament scholars believes that Jesus allows divorce only for adultery. Some on the contrary argue that Jesus originally didn't allow even that. Only in Matthew does he offer an out from marriage: based on sexual indecency."

⁴⁰ Mentioned as an "unlikely" possibility by E. Good's annotations to Mal 2:13-16, New English Bible with the Apocrypha: Oxford Study Edition (ed. S. Sandmel; New York: Oxford University, 1976) 1031. Hugenberger (Marriage 95-98) argues in detail against this view.

⁴¹ w. Harrington, 'Jesus' Attitude towards Divorce', ITQ 37 (1970). 199-209.

⁴² E. D. Burton, The Biblical Teaching concerning Divorce: II. New Testament Teaching, the Journal of Religion, (1907) 29(3), 191-200.

⁴³ Matt. 19:9

Beyond the saying of Jesus, Paul as well allows divorce. His ground of permitting divorce was on abandonment by an unbeliever (1 Cor. 7:12-15).⁴⁴ Though several theologians see this as an additional reason for divorce, there are Pastors and preachers who find this teaching a hard nut to swallow, because it seems so unrealistic and as well cruel in certain situations. To them, the teaching suggests that there can be no divorce for physical or emotional abuse. Paul even seems to forbid separation (1 Cor. 7:10). In light of this obvious submission, some Christians silently ignore this assumable "impractical" biblical teaching or find ways around it. In doing this, they submit that in referring to 'sexual immorality'; Jesus possibly included other things such as abuse. Again, giving abandonment by an unbeliever as a reason for divorce/remarriage, Paul certainly had included any of such behaviors that are not helpful for the sustenance of the marriage union.

Apostle Paul's teaching on marriage and divorce is found in I Cor. 7, and Rom. 7:2, 3. In the first he went beyond the restatement of Jesus' teaching by applying same to the Corinthian Church situation. He however doctored it to some extent by his personal preference for celibacy, and his expectation of the near end of the present order of things⁴⁵. The other passage points to the issue only incidentally as a personal view on the discourse. The core ideologies in his perception are: 1) Celibacy should be desired rather than marriage as he believes that marriage is a division of attention between God and their spouse, which comes with its own distress, 2. Marriage, which is not sinful, protects the man or woman from immoral acts.⁴⁶

The "No Divorce" Principle in Contemporary Christian Society

There are four different schools of thought in the Christian discourse on divorce. Laney, who propounded the first, opines that, divorce and re-marriage are not permissible within the Christian society adding that:

"If we believe the bible is totally true, we cannot dodge its claims on our lives in sensitive issues such as divorce"⁴⁷.

He upholds the view that the biblical decree on the permanence of the marriage union makes neither divorce nor remarriage a no-go area for Christian couple. To further buttress his point, he gave an analogy from Genesis which states that:

"For this reason, a man will leave his father and mother and cleave to his wife, and they will become one flesh."⁴⁸

The obvious implication here is that God's original plan and purpose for marriage is its permanence and eternal value. Thus, the idea of "becoming one flesh" is not time-bound but of permanence. Laney's view emphasizes the God-factor in the institution of the marital union. He sees God as the sustainer of the union which was directly and intentionally founded by Him, which simply explained without equivocation here:

⁴⁴D, Instone-Brewer, and What God Has Joined: What does the Bible really teach about divorce? 1. *Christianity Today*. <http://www.christianitytoday.com/ct/2007/october/20.26.html?start=4> (Accessed S27/09/2024)

⁴⁵ V, Paul Furnish, *The Moral Teachings of Paul* (Nashville: Abingdon, 1979), p. 42

⁴⁶ E. D. Burton, E. (1907). P.196

⁴⁷, J.C Laney, *No Divorce, No Re-marriage in House. Divorce and remarriage: Four Christian Views*. Illinois: Intervarsity Press.1990 p. 136

⁴⁸ Genesis 2:24

***"So they are no longer two, but one flesh. Therefore, what God has joined together, let no one separate."*⁴⁹**

The second school of thought does permit divorce, however, it rejects the remarriage option asserting that Jesus' teachings in the Gospels accounts and Pauline's discourse on remarriage in his first epistle to the Corinthian Church provides the golden rule governing divorce and remarriage.⁵⁰ Their core scriptural focus is the account of Mark where Jesus said:

***"Anyone who divorces his wife and marries another woman commits adultery against her. And, if she divorces her husband and marries another man, she commits adultery."*⁵¹**

In this line, the submission of Jesus in Luke 16:18 and Mathew 5:31-32 reiterates the above scriptures with clear cut terms that ***"...anyone who marries the divorced woman commits adultery."*** This suggests that though divorce is permitted on grounds of immorality, remarriage is however not permitted.

The third school of thought submits that divorce and remarriage are permitted on the ground of adultery or conflict of faith. This view leans on the Mosaic Law as documented in Leviticus 24: 1-4 which does not prohibit divorce in its totality, but sites the case of indecent and unpleasant acts. Here however, the law only demands that the men issue certificates of divorce to their estranged wives. The proponents of this school of thoughts posited that Jesus' statement in Mathew, Mark and Luke agrees with the Mosaic Law which permitted circumstantial divorce as he interprets what the law termed as indecent and unpleasant act to mean adultery⁵² This view is as well berthed on the Pauline's discourse of the matter in 1 Corinthians 7:15 where he stated that a believer is free from a marital covenant if an unbelieving partner quits the union. Remarriage is thus given as an option or a way of relief from the emotional distress and traumatic experiences caused by the act of divorce. It therefore implies that social despondency and the aloneness that affects people after divorce could be adequately addressed through remarriage.

Wayne, the core proponent of the fourth argument avers that beyond the cases of adultery and conflict of faith, divorce and remarriage could be allowed in other unbearable circumstances. This view admits that though the Holy Scripture renounces divorce as a painful experience, it as well acknowledges it as a practical reality resulting from human weaknesses.⁵³ Wayne and his fellow scholars claim that the cases of adultery and conflict of faith were only used as being part of the many unbearable challenges and irreconcilable evidences that could necessitate divorce. Their argument is that any other issues that incessantly and gruesomely endanger the harmonious and peaceful continuity of the marriage union can lead to divorce. They believe that every marital union is meant to be pleasurable and enjoyable. If on the contrary, the problems become

⁴⁹ Matt. 19:6

⁵⁰ A.W. Heth, and Wenham, J.G, *Jesus and divorce: The problem with the evangelical consensus*. New York: Paperback Publishers. (1985)

⁵¹ Mark 10:11-12

⁵²R, Edgar Divorce and remarriage for adultery in House, W. ed. *Divorce and Remarriage: Four Christian views*. Illinois: Intervarsity 1990 Press. P. 65

⁵³ H, Wayne, (ed). *Divorce and remarriage: 4 views*. London: Intervarsity Press. 1990 P.56

intolerable, termination could be allowed. Moloney, posited that Adultery and conflict of faith are integral part of some examples of agonizing challenges, and as such not the only grounds for divorce.⁵⁴

Observations and Recommendation

Observations

The study observes as follows:

1. That some Christian denominations seem to frown at the provisions of the law in the area of providing valid grounds for divorce in section 15 (1) and (2) of the Matrimonial Causes Act.
2. That the marriage institution has been polluted as a result of civilization where homosexuality and other sexual pervasions are permitted by law in some societies thereby frustrating the intended purpose of marriage (man and woman union).
3. That the legal framework of divorce in our nation is based on the fault theory of divorce hence many souls have been lost as a result of domestic violence, and habits that could lead to the death or deformity of a partner in marriage.
4. Women in recent times have become so powerful, vocal, wealthy and very outspoken as a result of the women liberation movement, which has reduced the position of the husband to that of a mere figure head.
5. Due to the no divorce concept of the Christian Church, couples who are known for violence and other social abuses are compelled to live in the marriage union at the risk of their lives.

Recommendations

Based on the observations, the study recommend as follows:

1. The provision in section 15(1) and (2) (a-h) is not an aberration or a mistake to the marriage institution. Thus, the general public should be educated about divorce laws, rights and responsibility of individuals going through it.
2. To curb the menace and pollution of the marriage institution, where a couple claims to be frustrated in his or her marriage union, divorce should be permitted in line with the frustration theory of divorce.
3. There should be the introduction of the “no fault” divorce where couples can end their marriage without assigning blame to any of the parties. This will reduce bitterness and acrimony between spouses.
4. The religious bodies especially the Church and the society should draw a line between the activities of a woman at home and in the society as it relates to her marriage vows.
5. The Christian Church should relax the no divorce theory of marriage, giving the excesses of some parties in the marriage union. Also, the divorce laws should be

⁵⁴F.J A Moloney, *body broken for a broken people: Divorce, remarriage and Eucharist*. New York: Paulist Press. 2016 P.112

periodically reviewed to ensure that they remain relevant and responsible to evolving societal norms and needs.

CONCLUSION

Considering the observations and recommendations above, one of the issues to be considered is whether the No-Divorce theory of the Church fits into the reality of the contemporary Nigeria Society. A critical look at the social factors accounting for the rise of divorce cases amongst Christians and non-Christian has become a call for concern in recent time. There is therefore a pressing societal desire for the interpretation of the Christian no-divorce injunction to meet modern societal needs with proper consideration of the fact that entering marriage is a decision that should not be made carelessly.

Moreover, both the man and the woman considering marriage must come to terms with the understanding of the Church's concept of no-divorce before venturing into the union of marriage. But beyond that where the marriage relationship doesn't reflect biblical laws of peaceful coexistence between couples, the no-divorce concept should be considered to meet the present day societal need to save life rather than waste it on the idea of No-Divorce.

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