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THE CONCEPT OF DIVORCE IN NEW ZEALAND AND NIGERIA: A COMPARATIVE STUDY

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ABSTRACT

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Divorce is a complex yet significant aspect of family law. In Nigeria, it is closely linked with cultural and religious beliefs, particularly in the context of customary marriages, where traditional dispute resolution mechanisms play an important role. In contrast, New Zealand's approach to divorce is primarily governed by secular law, emphasizing fairness and the best interests of children. Mediation, as an alternative dispute resolution method, is examined for its effectiveness within both contexts. This paper provides an overview of the concept of divorce, the legal frameworks regulating it, and the role of mediation as an effective alternative dispute resolution mechanism in divorce proceedings. It further explores the cultural, legal, and societal factors influencing divorce in Nigeria and New Zealand, highlighting similarities and differences in their approaches. The study argues that although mediation has the potential to reduce adversarial tendencies and promote amicable settlements, its effectiveness largely depends on the socio-legal environment in which it is practiced. By comparing these two jurisdictions, the paper demonstrates the value of mediation in achieving equitable outcomes in divorce cases and proposes recommendations for strengthening mediation practice in Nigeria, drawing insights from New Zealand's experience.

Keywords: Comparative, Divorce, Marriage, Mediation, Nigeria, New Zealand

Introduction

Divorce represents an important aspect of family law, marking the legal dissolution of a marriage. It is a complex process that varies significantly across cultural and legal systems. The breakdown of a marriage not only affects the spouses but also has profound implications for children and the wider community. Traditional litigation during marital disputes often fuels animosity among family members, making the resolution process more adversarial.

In Nigeria, divorce is deeply embedded within diverse cultural, religious, and legal traditions. Marriages may be governed by statutory law, customary law, or Islamic law, each with distinct procedures for dissolution. The coexistence of these systems often complicates the divorce process, making it particularly challenging for individuals involved. Furthermore, societal stigma and traditional beliefs surrounding marriage and divorce frequently impose additional pressures especially on women navigating this process.

By contrast, New Zealand adopts a unified, secular legal framework for divorce, prioritizing equitable asset distribution and the welfare of children. The Family Court system in New Zealand emphasizes conflict reduction and fair outcomes. Mediation, as a form of alternative dispute resolution (ADR), is strongly promoted, enabling couples to reach amicable agreements without prolonged litigation.

This study undertakes a comparative analysis of the divorce processes in Nigeria and New Zealand, with a particular focus on the role of mediation in fostering non-adversarial resolutions.

Research Questions

1. What is the legal framework of divorce proceedings in New Zealand and Nigeria?

2. What aspects of New Zealand's divorce laws can Nigeria adapt or learn from?

Aims and Objectives

1. To examine the legal frameworks governing divorce proceedings in New Zealand and Nigeria.
2. To identify and outline aspects of New Zealand's divorce laws that Nigeria can adopt to improve its own system.

Literature Review

This literature review critically evaluates the legal and socio-cultural dimensions of divorce and mediation within the family law frameworks of Nigeria and New Zealand. The reviewed sources reflect a variety of perspectives, with emphasis on statutory provisions, alternative dispute resolution (ADR), and the cultural adaptability of mediation mechanisms.

Although both Nigeria and New Zealand maintain distinct legal systems shaped by their unique historical trajectories, there is a shared trend toward embracing non-adversarial methods in family law. Boswell provides a comprehensive analysis of Family Dispute Resolution (FDR) practices in New Zealand, highlighting the progressive shift from adversarial litigation toward structured mediation. He underscores how compulsory mediation functions both as a procedural requirement and as a tool to reduce court congestion while promoting familial stability.

Beyond efficiency, Boswell stresses the importance of cultural sensitivity in mediation, particularly in New Zealand's multicultural society. He notes, however, the limitations of ADR, including potential power imbalances between parties and the challenges of emotional volatility. Consequently, he advocates for a context-sensitive application of mediation, ensuring that such mechanisms remain both effective and equitable.

In a comparative study on ADR mechanisms in Malaysia, Australia, and New Zealand, the authors similarly underscore the effectiveness of integrated mediation systems in reducing court backlogs and promoting cooperative dispute resolution.¹ They argue that New Zealand's model embodied in its Family Dispute Resolution services demonstrates a sophisticated balance between state oversight and cultural adaptability. Although Malaysia faces unique challenges due to its religious and ethnic diversity, the authors suggest these obstacles can be navigated through a localised, culturally attuned mediation system. Additionally, the emotional and financial benefits of mediation are presented as key advantages over conventional litigation.

Emery and colleagues further expand the literature by highlighting the psychological and relational benefits of divorce mediation, particularly for separating parents.² They argue that mediation not only reduces hostility and improves communication but also yields better outcomes for children. Interestingly, the authors emphasise that effectiveness should not be measured solely by settlement rates but rather by the quality of interpersonal dynamics following separation. In addition to these insights, they advocate for mediators to take a psychologically informed approach, addressing issues such as emotional volatility and power imbalances.

Shifting Focus to Nigeria

Ayorinde examines Nigeria's tripartite legal framework, which recognizes customary, Islamic, and statutory marriages. His analysis covers marriage formation, dissolution, custody,

and maintenance in considerable detail, but only briefly engages with mediation as a tool for resolving marital disputes. While his work provides valuable doctrinal insights, its limited discussion of alternative dispute resolution (ADR) exposes a gap in Nigerian family law scholarship.

Conversely, Nwogugu presents a more comprehensive analysis of divorce under Nigerian law, explicitly recognising the significance of mediation as an alternative to litigation. He discusses the procedural dimensions of the Family Proceedings Act and advocates for the inclusion of trained professionals—lawyers, counsellors, and other mediators—in family dispute resolution. In addition to doctrinal analysis, his work offers practical perspectives on the implementation of mediation in Nigeria's legal framework.

In summary, the literature reflects a growing focus on mediation in both New Zealand and Nigeria, though with differing degrees of institutionalization and cultural integration. New Zealand has developed a robust, state-supported mediation system that acknowledges its multicultural society, while Nigeria's mediation framework remains in developmental stages, facing cultural, structural, and educational challenges. Collectively, these works highlight both the potential and limitations of ADR in family law, stressing the need for culturally sensitive and contextually relevant approaches that prioritize fairness and relational stability.

Concept of Divorce

Divorce, defined as the legal dissolution of marriage, extends beyond its procedural role and represents a phenomenon deeply rooted in the cultural, legal, and social frameworks of society. While its legal implications are universal, its acceptance, form, and consequences vary according to local traditions, religious doctrines, and societal norms.

¹ Nur Ezan Rahmat, Muhamad Ikhwan Mohd Zain, Hartini Saripan, Daleleer Kaur Randawar and Muhammad Fikri Othman, "Mediation as an Alternative Mechanism to Resolve Family Disputes in Malaysia: A Comparative Analysis with Australia and New Zealand" (2022) 30(2) *Intellectual Discourse* 489.

² Emery, D Sbarra and T Grover, "Divorce Mediation: Research and Reflections" (2005) 43 *Family Court Review* 22.

In both New Zealand and Nigeria, divorce is legally recognized but culturally nuanced. New Zealand addresses divorce within a secular legal framework that prioritizes fairness, autonomy, and the welfare of children. In contrast, Nigeria's pluralist system statutory, customary, and Islamic—integrates legal processes with cultural and religious imperatives, resulting in diverse outcomes.

This section explores the concept of divorce in both jurisdictions, beginning with New Zealand's progressive legal system and then examining Nigeria's more complex, multi-tiered framework.

Conceptual Foundation of Divorce in New Zealand and Nigeria

New Zealand's divorce law is firmly anchored in modern liberal legal theory, emphasising personal autonomy, gender equality, and conflict minimisation. The Family Proceedings Act 1980 introduced a no-fault divorce regime, allowing marriages to be dissolved solely on the grounds of *irreconcilable differences* after a two-year separation period. This reform marked a clear departure from fault-based divorce, aligning New Zealand's laws with international human rights principles supporting an individual's right to exit a dysfunctional marriage.

In addition, the Property (Relationships) Act 1976 provides for the equal division of relationship property, except where equal division would be manifestly unjust. This principle ensures equitable treatment of both spouses, regardless of gender or financial contribution, upon dissolution of the marriage.

Mediation and counselling are also integral to New Zealand's divorce framework. Couples are encouraged and in certain cases required to engage in Family Dispute Resolution (FDR) before initiating court proceedings. This reflects a broader policy aim of minimizing conflict and easing the psychological and emotional burdens

of divorce, especially in cases involving children.

Despite its progressive nature, New Zealand's system faces challenges. Scholars such as McIntosh caution that mediation must be implemented with sensitivity to issues such as power imbalances, emotional distress, and the long-term interests of children. Moreover, the Family Court's effectiveness depends significantly on the accessibility and quality of legal aid and counselling services, particularly for vulnerable groups.

Divorce in Nigeria's Plural Legal System

In contrast to New Zealand's unified legal framework, Nigeria operates a plural legal system comprising statutory, customary, and Islamic laws. Each regime provides distinct grounds and procedures for divorce, reflecting the nation's ethnoreligious diversity.

Under statutory law, the principal legislation is the Matrimonial Causes Act of 1970. It provides for the dissolution of marriage on the ground of irretrievable breakdown, demonstrated through specific circumstances such as adultery, desertion, cruelty, or prolonged separation. Although this framework draws from the English common law tradition, it remains largely fault-based, often requiring proof of misconduct by one spouse. This adversarial requirement can prolong litigation and exacerbate personal conflict.

Customary law, by contrast, is more informal and community-oriented. Divorce processes are often mediated by families or village elders, and the grounds vary across ethnic groups. Common justifications include adultery, infertility, cruelty, and incompatibility. However, women frequently encounter structural disadvantages, such as the obligation to return the bride price and the risk of losing custody of their children.

Islamic law, applied predominantly in Northern Nigeria, follows Sharia principles and recognises several forms of divorce. These include talaq (unilateral male repudiation), khul' (divorce initiated by the wife with compensation), and faskh (judicial dissolution due to harm or neglect). While these avenues theoretically provide women with access to divorce, patriarchal interpretations and procedural barriers often limit their effectiveness in practice.

Despite the coexistence of these systems, the role of mediation in Nigeria remains underdeveloped. Although informal reconciliation is common within customary and Islamic settings, structured and institutionalized mediation, as practiced in New Zealand, is rarely implemented. Scholars such as Ayorinde argue that Nigeria's divorce regime remains entrenched in patriarchal norms and lacks the institutional support required for equitable and efficient resolution.

Historical Development of Divorce in Both Jurisdictions

New Zealand

New Zealand's divorce law has undergone significant transformation, reflecting evolving social attitudes toward marriage, gender equality, and individual rights. Initially modelled on English common law in the 19th century, divorce was strictly fault-based and largely accessible only to men and the wealthy. Women faced both legal barriers and social stigma in seeking marital dissolution.

The Divorce and Matrimonial Causes Act of 1898 represented the first notable reform, granting women limited access to divorce. However, the process remained adversarial and morally prescriptive. A major shift occurred with the Family Proceedings Act of 1980, which introduced a no-fault divorce regime. Under this system, dissolution is granted on the basis of irreconcilable differences following a two-year

separation period. This reform aligned New Zealand's laws with global human rights trends and introduced a more compassionate, child-centred approach to family breakdown.

Subsequent developments, including the establishment of specialized Family Courts and Family Dispute Resolution (FDR) services in the late 20th and early 21st centuries, consolidated this transformation. These reforms ensured that divorce proceedings prioritise not only legal rights but also emotional and relational well-being.

Nigeria

Nigeria's divorce laws evolved under the combined influence of indigenous traditions, Islamic jurisprudence, and colonial legal frameworks. Prior to colonial rule, divorce was regulated by customary and Islamic laws, with communal mediation and family negotiation at the centre of dispute resolution. Customary rules varied across ethnic groups, while Islamic law offered codified principles derived from the Quran and Hadith.

British colonial administration introduced English legal principles, culminating in the *Matrimonial Causes Act of 1970*. This Act, modelled on English common law, became the cornerstone of statutory divorce, establishing formal court procedures and fault-based grounds for dissolution. However, it failed to reconcile the realities of Nigeria's pluralistic legal environment.

Since independence, reforms to Nigeria's divorce laws have been limited. Scholars such as Nwogugu have criticised the persistence of patriarchal structures and procedural inequities that disproportionately disadvantage women. The challenge remains how to harmonise Nigeria's diverse legal systems while ensuring fairness, accessibility, and cultural sensitivity in marital dissolution.

Grounds for Divorce

Under New Zealand law, there is a single, simplified ground for divorce: irreconcilable differences, demonstrated by a minimum of two years of separation. This no-fault ground applies universally and does not require proof of blame or misconduct. Mediation is strongly encouraged before formal proceedings begin, particularly in matters involving children or property disputes.

By contrast, Nigeria's plural legal system recognises multiple grounds for divorce across statutory, customary, and Islamic frameworks. These include:

1. Adultery
2. Desertion
3. Cruelty or neglect
4. Irretrievable breakdown (under statutory law)
5. Witchcraft or spiritual concerns (in certain ethnic groups under customary law)
6. Talaq (unilateral male repudiation under Islamic law)
7. Khul' (divorce initiated by the wife with compensation under Islamic law)
8. Faskh (judicial dissolution due to harm or neglect under Islamic law)

Although Nigeria permits divorce on a wide range of grounds, issues of procedural access, patriarchal bias, and unequal treatment especially toward women remain significant challenges.

In conclusion, the grounds for divorce in both countries reflect broader legal, cultural, and historical contexts: New Zealand emphasises simplicity, fairness, and conflict minimisation, while Nigeria's diverse legal traditions continue to generate procedural and structural complexities.

Comparative Analysis

New Zealand's divorce framework represents a progressive, unified legal system prioritising equity, fairness, dignity, and pragmatic

resolution. Its no-fault basis and structured use of mediation reduce adversarial conflict and safeguard the welfare of children.

Nigeria's approach, on the other hand, is fragmented across statutory, customary, and Islamic systems, with procedural hurdles that often prolong disputes and disadvantage vulnerable parties. While cultural and religious contexts differ, several features of New Zealand's framework such as simplified no-fault divorce, mandatory mediation, and child-centred principles offer valuable lessons for reforming Nigeria's outdated and adversarial system.

Adapting these principles within Nigeria's socio-legal environment could enhance the accessibility, fairness, and efficiency of divorce proceedings, while respecting cultural and religious diversity.

The Family Proceedings Act 1980 is a fundamental piece of legislation in New Zealand that governs family law matters, including divorce, property division, and issues related to the care of children. It unifies previously disjointed family law frameworks, thereby promoting more concise and accessible legal proceedings. One of the highlights of the Act is New Zealand's adoption of a no-fault divorce model, parties are allowed to approach the court solely because the relationship has broken down irreparably.³ Under the Family Proceedings Act 1980, a marriage is considered to have irretrievably broken down if the spouses have lived apart for at least two years.

In addition to addressing divorce, the Act outlines how financial and property matters should be resolved following a separation, and it includes specific guidelines for the care and welfare of children affected by the breakdown of the relationship.⁴ The Act encourages the use of mediation and alternative dispute resolution methods to resolve family disputes.

³ Family Proceedings Act 1980 (NZ), s 39.

⁴ Matrimonial Causes Act 1970 (Nigeria), s 71.

The *Property (Relationships) Act 1976* (as amended) represents a foundational shift in New Zealand's approach to property division upon the breakdown of relationships. Originally designed to address the gendered imbalance in property ownership, the Act has evolved into an inclusive framework that applies to marriages, civil unions, and de facto relationships, including same-sex partnerships. A key feature of the Act is the presumption of equal sharing of relationship property.⁵ While allowing the court's discretion to ensure fairness where one party suffers economic disadvantage due to the relationship.

Similarly, The Matrimonial Causes Act of 1970 (MCA) is the primary legal instrument regulating divorce, judicial separation, and other matrimonial causes in Nigeria. It governs marriages conducted under the Marriage Act, which typically covers statutory marriages recognised by the state. The MCA was introduced to provide a comprehensive framework for the dissolution of marriages, setting out the legal grounds for divorce, the procedures involved, and provisions for child custody and maintenance.

Under the Matrimonial Causes Act 1970 (MCA), a petitioner must prove that the marriage has broken down irretrievably. The MCA 1970, Section 71, grants courts discretion to make custody and welfare decisions, but child welfare is not explicitly defined as the paramount consideration.⁶

In customary and Islamic law, custody often follows patriarchal traditions. For example, under Sharia, custody of male children may revert to the father after a certain age.

Some aspects of New Zealand divorce law which can be usefully implemented into the Nigeria system and the risks and benefits include:

⁵ Property (Relationships) Act 1976 (NZ), s 11.

⁶ s 71.

1. No-Fault Divorce

New Zealand's reliance on a no-fault divorce system, where an irreconcilable breakdown, evidenced by two years of separation, is the only requirement, represents a significant departure from Nigeria's fault-based regime.⁷ In the Nigerian context, under the Matrimonial Causes Act, a party must prove specific forms of wrongdoing, such as adultery, desertion, or cruelty, for a court to grant a decree of dissolution.⁸

Adopting a no-fault basis in Nigeria would humanise the legal process and uphold the right to dignity and private life as enshrined in the Nigerian Constitution.⁹ Additionally, it would reduce the adversarial nature of matrimonial litigation, allowing couples to disengage without resorting to personal attacks or reputational harm. However, the shift is not without risk. Critics argue that no-fault divorce might trivialise the sanctity of marriage and lead to higher divorce rates. Nigeria is a deeply religious and culturally conservative society. Many communities, especially in the North and among traditional groups, view divorce as a moral or religious failure. Introducing no-fault divorce could provoke strong resistance from religious leaders (Christian and Muslim) and traditional rulers who may see it as encouraging the breakdown of families and moral decay. While this concern is valid, empirical studies from no-fault jurisdictions, such as New Zealand, suggest that such systems do not necessarily increase divorce rates; instead, they provide an orderly and respectful framework for those whose relationships have already failed.

⁷ Section 39

⁸ Section 15(2)

⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 34 and 37

2. Mediation and Counselling as Foundational Tools

A central feature of New Zealand's Family Court system is the integration of mediation and counselling into the divorce process. Established in 1981, the Family Court was designed not merely to adjudicate but to assist couples in navigating the emotional and practical complexities of separation. Mediation plays a crucial role in reducing conflict, fostering amicable settlements, and safeguarding the welfare of children.

In Nigeria, by contrast, mediation remains underutilised and largely informal. The court system continues to operate in a heavily adversarial manner, often prolonging litigation and exacerbating emotional harm. Formalising and expanding the use of court-connected mediation, particularly in family disputes, could yield significant benefits. Such reforms would help reduce the burden on the judiciary, expedite case resolution, and preserve civil relations between former spouses—especially in cases involving children.

Institutionalizing pre-divorce counselling could also serve as both a filter for frivolous petitions and a support mechanism for couples in genuine distress. However, there is a risk that mediation could be misused to pressure vulnerable partners, particularly women, into remaining in unhealthy or abusive marriages. To mitigate this, mediators must be professionally trained to identify power imbalances and ensure that participation remains voluntary and firmly rooted in the protection of rights.

3. Equitable Division of Property and Recognition of All Contributions

New Zealand's Property (Relationships) Act 1976 (as amended) represents a progressive approach to property division, recognising both financial and non-financial contributions including caregiving, homemaking, and emotional support as equally valuable.

Relationship property, including the family home, furnishings, and other jointly acquired assets, is generally divided equally upon separation. The Act also provides compensatory measures where one partner's earning capacity has been reduced due to responsibilities such as childcare.

Nigeria, on the other hand, lacks a clear statutory framework for post-divorce property division. Courts often rely on general property law or equitable principles, resulting in inconsistent outcomes that may fail to account for the contributions of economically dependent spouses. Women, who frequently sacrifice career opportunities for family responsibilities, are particularly disadvantaged under this system.

Implementing a statutory property division framework similar to New Zealand's would promote fairness, protect vulnerable partners, and reduce post-divorce economic hardship. The key challenge lies in valuing non-financial contributions, which requires judicial discretion and may be influenced by cultural biases. Nonetheless, detailed legislative guidance coupled with judicial training could mitigate this risk.

Comparative Insights

This comparative analysis of New Zealand's divorce framework and Nigeria's *Matrimonial Causes Act* reveals several critical insights for reform:

1. No-Fault Divorce – New Zealand's no-fault divorce regime, based on irretrievable breakdown evidenced by separation, provides a more humane alternative to Nigeria's fault-based model. By removing the need to prove misconduct, it reduces conflict, emotional harm, and stigma.
2. Recognition of Relationship Forms- New Zealand's inclusive recognition of civil unions and de facto partnerships reflects

a commitment to equal protection under the law. Nigeria's exclusion of customary and religious unions from statutory protection perpetuates inequality and leaves many women particularly vulnerable.

3. Integration of Mediation and Counselling – New Zealand's family law system incorporates mediation and counselling as restorative, child-focused mechanisms. Nigeria's lack of institutionalised mediation channels contributes to adversarial proceedings and judicial congestion.
4. Equitable Property Division – New Zealand's codified regime for property division acknowledges both financial and non-financial contributions, ensuring fairness for dependent spouses. Nigerian courts, lacking clear statutory direction, often undervalue caregiving and homemaking roles.

Research Methodology

This research employed a multifaceted methodology, combining doctrinal analysis with comparative legal study. Primary sources included statutory provisions, judicial decisions, and government reports, while secondary sources encompassed scholarly literature on family law, mediation, and socio-legal studies.

Conclusion and Recommendations

To promote fairness, consistency, and accessibility in matrimonial law, Nigeria can draw valuable lessons from New Zealand's framework. At the core of New Zealand's model is a no-fault divorce system that prioritises dignity, autonomy, and emotional well-being over adversarial fault-finding.

Recommendations:

1. Adopt a No-Fault Divorce System – Amend the Matrimonial Causes Act* to include no-fault grounds for dissolution.

This would reduce conflict, expedite proceedings, and affirm constitutional rights to dignity and family life.

2. Recognise and Integrate All Relationship Types – Develop a unified family law framework that extends protection to statutory, customary, and religious unions, ensuring equitable treatment in matters of dissolution, property, and child custody.
3. Institutionalise Mediation and Counselling – Establish mediation and counselling as mandatory components of divorce proceedings, supported by trained professionals to protect vulnerable parties and promote amicable settlements.
4. Codify Property Division- Enact legislation providing clear rules for the equitable division of property, recognising both financial and non-financial contributions, with detailed judicial guidelines and training to minimise bias.

By adopting these reforms, Nigeria can move toward a family law system that is both principled and practical one that balances legal structure with cultural sensitivity, prioritises gender equality, and safeguards the well-being of families.

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