NO-FAULT DIVORCE AND LEGAL REFORM IN NIGERIA: LESSONS FROM THE AUSTRALIAN FAMILY LAW MODEL

Evelyn Membere-Asimiea*

Abstract

This article examines the principle of no-fault divorce under Australia's Family Law Act 1975 (Cth) and evaluates its potential relevance for reforming Nigeria's Matrimonial Causes Act 1970. Employing a doctrinal and comparative legal methodology, the study analyses statutes, judicial decisions, parliamentary materials, and academic literature from both jurisdictions. The article argues that although Nigeria formally recognises irretrievable breakdown as the sole ground for divorce, this is not a free-standing ground; rather, irretrievable breakdown is the conclusion to be drawn from proof of one or more statutory facts under section 15(2), most of which remain fault-based. Consequently, the Matrimonial Causes Act retains a predominantly fault-based structure that promotes adversarial litigation, procedural complexity, emotional hostility, and evidential manipulation. In contrast, Australia's no-fault divorce framework simplifies matrimonial dissolution by relying primarily on separation as objective evidence of marital breakdown, while separating divorce from ancillary disputes relating to children and property. Drawing on legal transplant theory, constitutional pluralism, feminist family law scholarship, and comparative jurisprudence, the article proposes reforms including redefining irretrievable breakdown through separation alone, shortening statutory separation periods, limiting the role of fault in ancillary proceedings, strengthening alternative dispute resolution mechanisms, and recognising separation under one roof. The article concludes that carefully calibrated reform would modernise Nigerian matrimonial law, reduce acrimony and perjury in divorce proceedings, improve access to justice, and align statutory family law with contemporary social realities while respecting Nigeria's constitutional diversity and socio-religious context.

* LL.B, B.L, LL.M (University of London) PhD Candidate, Rivers State University, Nkpolu, Port Harcourt, Nigeria

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1.0 INTRODUCTION

Marriage occupies a central place in legal systems and social organisation.[1] Beyond its role as a private relationship, it is a social institution shaped by religion, culture, morality, constitutional norms, and state policy.[2] Divorce law reflects prevailing ideas about morality, gender relations, family structure, and the role of the state in intimate life. It therefore offers a valuable lens through which wider legal and social transformations may be examined.[3]

Historically, common law jurisdictions adopted fault-based divorce, inherited from English matrimonial law, requiring proof of offences such as adultery, cruelty, or desertion.[4] Rooted in the view of marriage as a moral institution, fault-based systems demanded identification of a guilty party. [5] By the mid-twentieth century, however, criticism intensified: scholars and judges argued that fault encouraged perjury, prolonged hostility, complicated proceedings, and failed to capture the reality of marital breakdown without wrongdoing.[6]

Australia became a leading reformer with the Family Law Act 1975 (Cth), which introduced a unified federal system and made irretrievable breakdown evidenced by twelve months' separation the sole ground for

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[1] John Eekelaar, Family Law and Personal Life (Oxford University Press 2006) 3.
[2] TO Elias, The Nigerian Legal System (Routledge & Kegan Paul 1963) 12.
[3] Patrick Parkinson, Family Law and the Indissolubility of Parenthood (Cambridge University Press 2011) 25.
[4] B Fehlberg and J Behrens, Australian Family Law: The Contemporary Context (Oxford University Press 2008) 52.
[5] H Finlay, 'Fault, Violence and the Family in Australian Legal History' (2005) 10(1) *Australian Journal of Family Law* 45, 47.
[6] Patrick Parkinson, 'The Impact of No-Fault Divorce on Children' (2007) 21(2) *Australian Journal of Family Law* 143, 145.

divorce. [7] This removed judicial inquiry into fault and simplified dissolution. Nigeria, by contrast, retains a hybrid regime under the Matrimonial Causes Act 1970.[8] Although irretrievable breakdown is formally the sole ground, it must be proved through statutory facts, most of which remain fault-based. As noted above, the Act does not permit a court to find irretrievable breakdown based solely on separation; rather, separation is merely one of several facts listed in section 15(2). Nigerian matrimonial litigation thus continues to exhibit adversarial features of traditional fault systems.[9]

The persistence of fault in Nigerian divorce law fosters hostility, evidential manipulation, delays, and costs, while complicating cooperation over children and property. Women are disproportionately affected, facing economic dependency, evidential barriers, and social stigma. Reform proposals must nevertheless account for Nigeria's plural legal order – statutory, customary, and Islamic – and the enduring influence of religious and cultural conceptions of marriage.

This article considers whether principles underlying Australia's no-fault model can inform reform of Nigeria's statutory regime. It does not advocate wholesale transplantation but argues for calibrated reform sensitive to Nigeria's constitutional pluralism and socio-cultural realities.

The article proceeds in six parts. Part Two outlines the methodology and conceptual framework, focusing on legal transplant theory and comparative family law. Part Three examines Australia's no-fault regime. Part Four analyses Nigeria's Matrimonial Causes Act 1970 and the continuing role of fault. Part Five evaluates the adaptability of the

[7] Family Law Act 1975 (Cth).
[8] Matrimonial Causes Act 1970 (Nigeria).
[9] Matrimonial Causes Act 1970 (Nigeria) s 15(2).

Australian model within Nigeria's plural legal order. Part Six proposes incremental reforms. The conclusion argues that Nigeria can modernise matrimonial law through context-sensitive no-fault reform, drawing on comparative insight rather than mechanical transplantation.

2.0 RESEARCH METHODOLOGY AND CONCEPTUAL FRAMEWORK

2.1 Methodology

This article adopts a doctrinal and comparative legal approach. Primary sources, including statutes, judicial decisions, constitutional provisions, parliamentary debates, law reform reports, and policy documents from Nigeria and Australia, are examined alongside secondary literature in family law, comparative law, feminist legal theory, and legal pluralism.[10]

The doctrinal analysis focuses on divorce under the Australian Family Law Act 1975 (Cth)[11] and Nigeria's Matrimonial Causes Act 1970.[12] Particular attention is given to judicial interpretation of irretrievable breakdown, separation, fault-based grounds, and ancillary relief. The comparative component evaluates similarities and divergences between both jurisdictions, not only in statutory text but also in institutional structures, socio-cultural context, and constitutional arrangements. Comparative analysis is especially significant in family law, where matrimonial institutions are deeply shaped by social values and cultural norms.[13]

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[10] Patrick Parkinson, Family Law and the Indissolubility of Parenthood (CUP 2011); Alison Diduck and Felicity Kaganas, Family Law, Gender and the State (3rd edn, Hart 2012).
[11] Family Law Act 1975 (Cth).
[12] Matrimonial Causes Act 1970 (Nigeria).
[13] John Eekelaar, 'Family Law and Personal Life' (2006) 122 LQR 337.

Finally, the article employs legal transplant theory as an analytical framework for assessing the feasibility of adapting aspects of Australia's no-fault divorce model within Nigeria's plural legal system. [14] It recognises that legal rules cannot be transferred mechanically without regard to local social, cultural, and constitutional realities.

2.2 Legal Transplant Theory

The concept of legal transplantation occupies a central place in comparative legal scholarship. Alan Watson argued that legal systems frequently borrow rules and institutions from other jurisdictions, and that such borrowing constitutes one of the principal mechanisms of legal development.[15] According to Watson, many successful reforms have historically emerged through the transfer of legal ideas across borders.

Legal transplant theory, however, has attracted sustained criticism. Pierre Legrand contends that legal rules cannot be detached from the cultural and intellectual contexts in which they operate, and that transplantation is inherently problematic because law is embedded within social meaning, professional culture, and historical experience.[16] Otto Kahn-Freund similarly cautioned that the success of legal borrowing depends on the degree of compatibility between donor and recipient legal systems.[17]

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[14] Alan Watson, Legal Transplants: An Approach to Comparative Law (2nd edn, University of Georgia Press 1993).
[15] Watson (n 14).
[16] Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 *Maastricht Journal of European and Comparative Law* 111.
[17] Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 *Modern Law Review* 1.

These debates are particularly relevant to family law, where legal rules are closely intertwined with religion, morality, kinship structures, and gender relations. Divorce law cannot therefore be analysed solely as technical legislation divorced from broader social realities. This article adopts a moderate position between strict transplantability and complete scepticism. It argues that while wholesale transplantation of Australia's no-fault divorce regime into Nigeria would be inappropriate, selective adaptation of its underlying principles remains possible. The aim is not to reproduce the Australian model in identical form but to draw comparative lessons capable of informing context-sensitive reform.[18]

2.3 Legal Pluralism and Family Law

Legal pluralism describes the coexistence of multiple normative orders within a single state, often producing overlapping and sometimes competing systems of regulation. [19] In family law, pluralism is particularly pronounced because marriage and divorce are deeply embedded in cultural, religious, and social traditions. Nigeria exemplifies this dynamic, with statutory law, customary law, and Islamic law each providing distinct frameworks for matrimonial regulation.[20] Statutory marriages are governed by the Marriage Act and dissolved under the Matrimonial Causes Act 1970, while customary marriages follow indigenous norms that vary across ethnic groups, and Islamic marriages are regulated by personal law in many northern states.[21] This multiplicity of regimes creates complex constitutional and

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[18] Esin Örücü, 'Law as Transposition' (2002) 51 International and Comparative Law Quarterly 205.
[19] John Griffiths, 'What is Legal Pluralism?' (1986) 24 Journal of Legal Pluralism and Unofficial Law 1.
[20] Chuma Himonga and Nhlapo T W (eds), African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives (OUP 2014).
[21] Amina Lawal, 'Islamic Family Law in Northern Nigeria' (2002) 16 *International Journal of Law, Policy and the Family* 318.

policy challenges, especially for divorce reform, where attempts to impose uniform secular standards risk resistance from communities that view marriage as a religious or cultural institution.[22]

This pluralism carries important constitutional and policy implications for divorce reform. Any attempt to impose a uniform secular framework across all forms of marriage would encounter constitutional and political resistance.[23] Accordingly, the reform proposals advanced in this article are directed principally at statutory marriages.

2.4 Feminist Perspectives on Divorce Law

Contemporary family law scholarship increasingly recognises that divorce law produces gendered consequences. Fault-based systems often disadvantage women because of economic dependency, unequal bargaining power, evidential difficulties, and the social stigma attached to marital breakdown. Feminist scholars such as Martha Fineman have criticised traditional family law for reinforcing patriarchal assumptions about marriage and dependency, arguing that fault-based litigation exposes women to intrusive scrutiny and discourages exit from dysfunctional or abusive relationships.[24]

Feminist scholarship cautions, however, that no-fault divorce does not automatically advance gender equality. Critics note that no-fault regimes may obscure the economic disadvantage experienced by women after divorce, particularly in relation to property division and maintenance.[25] This article therefore approaches no-fault reform with

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[22] Yemi Osinbajo, 'Divorce and the Nigerian Constitution' (1990) 1 Nigerian Current Law Review 45.
[23] Osinbajo (n 22).
[24] Martha Fineman, The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies (Routledge 1995).
[25] Carol Smart, The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations (Routledge 1984).

caution. It argues that removing fault from divorce proceedings must be accompanied by stronger protections in areas such as maintenance, property distribution, child welfare, legal aid, and access to justice, in order to mitigate structural inequalities.[26]

3.0 THE AUSTRALIAN NO-FAULT DIVORCE MODEL

3.1 Historical Development of Divorce Law in Australia

Prior to the enactment of the Family Law Act 1975 (Cth), Australian divorce law largely reflected English matrimonial traditions grounded in fault. Divorce legislation varied across Australian states and territories, producing fragmentation and inconsistency. Matrimonial offences such as adultery, cruelty, desertion, habitual drunkenness, and insanity constituted grounds for dissolution.

The fault-based system attracted sustained criticism during the twentieth century. Reformers argued that the requirement of proving fault encouraged dishonesty and intensified hostility between spouses. Matrimonial litigation often involved humiliating evidence concerning intimate marital conduct. In many cases, parties fabricated allegations or colluded to obtain a divorce.

Broader social changes also contributed to pressure for reform. Increasing urbanisation, women's economic participation, changing social attitudes toward marriage, and the decline of rigid religious control over family life transformed public perceptions concerning divorce.

[26] Joanne Conaghan, 'Gender and Family Law' in Anne Bottomley and Stephen Parker (eds), Law and the Family (Dartmouth 1993).

The Divorce Reform Act 1969 in the United Kingdom influenced reform debates throughout common law jurisdictions. In Australia, the Commonwealth Government referred family law reform to the Senate Standing Committee on Constitutional and Legal Affairs. The Committee recommended a unified federal family law system grounded in no-fault principles.

The resulting Family Law Act 1975 (Cth) represented one of the most significant reforms in Australian legal history. The legislation abolished fault-based divorce and established irretrievable breakdown evidenced by separation as the sole ground for dissolution.

3.2 The Legislative Framework of the Family Law Act 1975

Section 48 of the Family Law Act 1975 provides:

"An application under this Act for dissolution of marriage shall be based on the ground that the marriage has broken down irretrievably."

The Act further provides that irretrievable breakdown is established where parties have lived separate and apart for a continuous period of at least twelve months immediately preceding the filing of the application.[27]

The simplicity of the Australian framework is striking. Judicial inquiry into blame, misconduct, or moral culpability is unnecessary. Courts are not required to determine whether either spouse caused the breakdown of the marriage. The legislation also recognises "separation under one roof." Parties may satisfy the separation requirement despite continuing to reside within the same household, provided evidence proves that the marital relationship has effectively ended.

[27] Family Law Act 1975 (Cth) s 48.

Importantly, the Australian system separates divorce from ancillary matters such as property settlement and parenting arrangements. Applications concerning financial adjustment and child welfare proceed independently of dissolution itself.

3.3 Judicial Interpretation of Separation

Australian courts have played a significant role in defining separation within the meaning of the Family Law Act. In Pavey v Pavey, the Family Court emphasised that separation involves more than physical distance. The court held that separation occurs where one or both parties form the intention to sever the marital relationship and act upon that intention.[28]

Similarly, in In the Marriage of Falk, the court recognised that parties may remain physically cohabitant while living separate emotional and domestic lives. The court therefore focuses on the breakdown of the consortium vitae, including cessation of sexual relations, separate finances, reduced companionship, and independent social lives.[29]

3.4 Separation of Divorce from Ancillary Matters

One of the defining features of the Australian model is the separation of divorce proceedings from ancillary disputes. Divorce itself is treated as a straightforward administrative process. In many cases, applications are filed electronically and may be determined without the need for an oral hearing.[30]

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[28] Pavey v Pavey (1976) FLC 90-051.
[29] In the Marriage of Falk (1977) FLC 90-247.
[30] Family Law Act 1975 (Cth) s 48; Australian Government, Federal Circuit and Family Court of Australia, 'Divorce' (2024) https://www.fcfcoa.gov.au/fl/divorce accessed 15 March 2026.

Parenting and financial matters are addressed under distinct principles. Parenting disputes are resolved according to the best interests of the child, while property settlement involves consideration of the parties' contributions, their future needs, and equitable distribution. [31] This bifurcated approach reduces incentives for strategic allegations of misconduct. Since fault ordinarily has little relevance to financial or parenting outcomes, parties are less likely to weaponise matrimonial allegations in order to secure advantage.[32]

3.5 Alternative Dispute Resolution in Australian Family Law

The Australian family law system places significant emphasis on alternative dispute resolution (ADR), particularly in parenting matters. Section 60I of the Family Law Act 1975 requires parties to attempt family dispute resolution before commencing parenting litigation. [33] Accredited mediators assist parents in negotiating agreements concerning children, with the aim of fostering cooperative arrangements outside the courtroom.[34] ADR mechanisms have been shown to reduce judicial workload, lower litigation costs, and encourage more constructive parenting relationships following separation.[35]

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[31]Family Law Act 1975 (Cth) ss 60CC, 79; Patrick Parkinson, Australian Family Law in Context: Commentary and Materials (7th edn, Thomson Reuters 2022) 198–205.

[32] Juliet Behrens, 'No Fault Divorce and the Divorce Process' (1996) 10 Australian Journal of Family Law 1.

[33] Family Law Act 1975 (Cth) s 60I.

[34] Australian Government, Attorney-General's Department, 'Family Dispute Resolution' https://www.ag.gov.au/families-and-marriage/family-dispute-resolution accessed 20 May 2025.

[35] Helen Rhoades, 'Mandatory Dispute Resolution in Australian Family Law: Issues and Challenges' (2010) 16 Journal of Family Studies 253.

3.6 Sociological Impact of No-Fault Divorce in Australia

Critics of no-fault divorce frequently argue that simplified divorce undermines the institution of marriage. However, empirical research concerning Australia presents a more nuanced picture.

Following reform, divorce rates initially rose, but scholars attribute this to the release of previously "trapped" marriages rather than long-term instability. Over time, divorce patterns reflected broader social and economic developments rather than the mere availability of no-fault dissolution.[36]

No-fault reform also reduced incentives for perjury and collusion, simplified proceedings, and improved accessibility. [37] Criticisms remain, however. Some argue that it weakened perceptions of marital permanence, while others note that the emotional and economic consequences of divorce persist despite procedural simplification. [38] These debates show that no-fault reform is not a universal solution to family breakdown. Yet the Australian experience demonstrates that legal systems can facilitate dignified marital dissolution without eroding social commitment to marriage.[39]

4. THE NIGERIAN MATRIMONIAL CAUSES REGIME

4.1 Historical Development of Nigerian Matrimonial Law

Nigeria's matrimonial law reflects the country's colonial history and plural legal structure. During colonial rule, English matrimonial law was gradually received into Nigeria through ordinances and judicial practice.

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[36] Bruce Smyth, 'Divorce and the Family in Australia: A Demographic Perspective' 004) 18 Australian Journal of Family Law 1.
[37] Behrens (n 32).
[38] Margaret F Brinig, 'No Fault Divorce and the Divorce Rate' (1990) 18 Family Law Quarterly 1.
[39] Parkinson (n 31).

Prior to 1970, statutory divorce in Nigeria largely mirrored English fault-based principles. Matrimonial offences such as adultery and cruelty dominated divorce proceedings.

The enactment of the Matrimonial Causes Act 1970 represented an attempt to modernise Nigerian divorce law. Influenced partly by reforms occurring in England and other Commonwealth jurisdictions, the Act formally adopted irretrievable breakdown as the sole ground for divorce. However, despite this apparent shift, the **legislation retained** fault-oriented structures through the requirement that breakdown be established by proof of specified statutory facts.

4.2 Structure of the Matrimonial Causes Act 1970

Section 15(1) of the MCA provides that a petition for dissolution may be granted where the marriage has broken down irretrievably.
Section 15(2), however, requires the petitioner to establish one or more specific facts, including adultery, unreasonable behaviour, desertion, separation, imprisonment, unsoundness of mind, non-compliance with restitution decrees, and refusal to consummate. Although separation-based provisions exist, the statutory framework remains substantially fault-oriented.[40]

The practical consequence is that many petitioners continue to rely on allegations of misconduct because separation-based provisions involve lengthy waiting periods or require consent.

4.3 Adultery as a Fault Ground

Adultery remains one of the most frequently invoked grounds under section 15(2)(a). Nigerian courts require proof not only of adultery but also that the petitioner finds continued cohabitation intolerable. In *Ogbu*

[40] Matrimonial Causes Act 1970 (Nigeria) s 15.

v Ogbu, the Court of Appeal emphasised the necessity of proving both adultery and intolerability.[41]

Because direct evidence of adultery is rare, courts often rely on circumstantial evidence demonstrating opportunity and inclination. However, adultery allegations frequently intensify hostility and encourage intrusive investigations into intimate relationships.

4.4 Behaviour and Cruelty-Based Petitions

Section 15(2)(b) permits divorce where the respondent has behaved in such a way that the petitioner cannot be expected to live with them. Nigerian courts frequently apply principles derived from English jurisprudence.

In *Livingstone-Stallard v Livingstone-Stallard*, the English court formulated an objective test focusing on whether a reasonable person in the petitioner's position could continue cohabitation.[42] Nigerian courts have adopted similar reasoning.

In *Adesanya v Adesanya*, the court recognised that conduct must be sufficiently grave to render continued marital life unreasonable. [43] Although behaviour-based petitions may provide relief in difficult marriages, they frequently encourage exaggerated allegations and adversarial litigation.

4.5 Desertion and Separation

Desertion under section 15(2)(c) requires proof that one spouse abandoned the other without consent or justification for a continuous

[41] *Ogbu v Ogbu* (2004) LPELR-1233(CA).
[42] *Livingstone-Stallard v Livingstone-Stallard* [1974] Fam 47.
[43] *Adesanya v Adesanya (*1974) 1 All NLR (Pt II) 19

period. In Anioke v Anioke, the Court of Appeal emphasised the necessity of establishing both physical separation and intention to terminate cohabitation.[44]

The statutory separation provisions theoretically provide a no-fault avenue for divorce. However, the required periods are lengthy. Section 15(2)(d) requires three years' separation, while section 16 permits divorce after two years' separation with consent. These provisions often prove impractical. Spouses may prefer fault allegations rather than prolonged waiting periods.

4.6 Practical Problems within the Nigerian Framework

The continued reliance on fault within Nigerian divorce law generates a range of practical difficulties:

i. Hostility and acrimony: Fault-based litigation often promotes hostility between spouses, as parties are encouraged to catalogue grievances and publicly accuse one another of misconduct.[45]
ii. Evidential manipulation and perjury: The system creates incentives for evidential manipulation and collusion, with litigants exaggerating allegations or fabricating evidence to meet statutory requirements.[46]
iii. Delay and cost: Proceedings based on fault tend to prolong litigation and increase costs, thereby placing additional strain on the judicial system and the parties involved.[47]

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[44] *Anioke v Anioke* (2011) LPELR-4262(CA)
[45] Joanna Miles, 'Responsibility in Family Law' (2013) 35 Journal of Social Welfare and Family Law 105.
[46] Brian H Bix, Family Law: Cases, Text, Problems (4th edn, Carolina Academic Press 2019) 287–289.
[47] Parkinson (n 31) 198–201.

iv. Disadvantage to vulnerable spouses: Economically vulnerable spouses, particularly women, are disproportionately disadvantaged, as they may lack the resources necessary to pursue complex litigation. [48]

v. Adverse effects on children: Fault-oriented divorce can have adverse effects on children by intensifying parental conflict and undermining cooperative post-divorce arrangements.[49]

4.7 Gender Dimensions of Fault-Based Divorce

The operation of fault-based divorce law cannot be divorced from broader gender inequalities. Women in Nigeria frequently experience economic dependency within marriage because of unequal access to employment, property ownership, and financial resources.

Fault litigation may therefore expose women to coercive bargaining, reputational damage, and evidential disadvantages. In some cases, women remain trapped within dysfunctional marriages because they cannot satisfy evidential requirements or afford litigation. Allegations of adultery or immoral behaviour may carry greater social stigma for women than men. These realities strengthen arguments for procedural simplification and reduced emphasis on fault.

4.8 Customary and Islamic Divorce Systems

Any discussion of Nigerian divorce law must recognise the continued importance of customary and Islamic matrimonial systems.

Customary law marriages are governed by diverse indigenous traditions. In many communities, dissolution involves family

[48] T Olasupo, 'Women and Access to Justice in Nigeria' (2019) 13 African Journal of Legal Studies 45.

[49] Mavis Maclean and John Eekelaar, Family Law, Family Policy and the Family (Hart 2013) 72–74.

negotiation, return of bride price, and community mediation. Islamic law similarly provides distinct mechanisms, including talaq, khul, and judicial dissolution. Notably, khul allows a wife to initiate divorce without proving fault, typically by returning her dower or forgoing financial claims – an early form of no-fault dissolution within an Islamic framework. Importantly, these systems are constitutionally recognised. Consequently, reform of the MCA must respect constitutional pluralism and avoid imposing uniform secular norms upon all marriages.[50]

5. ADAPTABILITY OF THE AUSTRALIAN MODEL TO NIGERIA

5.1 Comparative Lessons and Contextual Limitations

The Australian experience offers important lessons for Nigerian matrimonial reform. Australia demonstrates that divorce can be simplified through objective separation-based criteria while reducing incentives for hostility and evidential manipulation. However, comparative borrowing must remain sensitive to contextual differences. Australia operates within a largely secular and institutionally unified legal system. Nigeria, by contrast, is characterised by constitutional pluralism, strong religious influence, ethnic diversity, and uneven judicial infrastructure. Accordingly, direct transplantation would be inappropriate.

5.2 Constitutional Considerations

The Nigerian Constitution recognises customary and Islamic legal institutions and guarantees freedom of religion. [51] Any attempt to impose mandatory no-fault divorce across all forms of marriage would likely provoke constitutional controversy. Reform should therefore be

[50] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 38, 275–279.
[51] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 38, 275–279.

introduced initially in relation to statutory marriages governed by the Matrimonial Causes Act 1970. [52] This limited approach preserves Nigeria's commitment to legal pluralism while allowing statutory matrimonial law to be modernised in line with contemporary principles of family justice.

5.3 Religious and Cultural Concerns

Marriage in Nigeria frequently carries strong religious and communal significance. Some religious groups may perceive no-fault divorce as undermining marital permanence and moral responsibility. These concerns deserve serious consideration rather than dismissal.

Nevertheless, no-fault divorce does not compel dissolution. It merely changes the legal process through which already broken marriages are terminated. Moreover, the current fault-based system often incentivises dishonesty, collusion, and public hostility, outcomes arguably inconsistent with religious morality.

5.4 Institutional and Infrastructural Constraints

The effective implementation of no-fault divorce reform in Nigeria would require significant institutional strengthening. Nigerian courts remain overburdened and under-resourced, with delays, inadequate digital infrastructure, and limited access to legal aid continuing to impede access to justice.[53] Simplified divorce procedures could help reduce judicial workload by eliminating extensive evidential hearings concerning fault. [54] Reform should therefore be accompanied by investment in court administration, the digitisation of filing processes,

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[52] Osinbajo (n 22).
[53] Chidi Anselm Odinkalu, 'Access to Justice in Nigeria' (2004) 1 Sur International Journal on Human Rights 83.
[54] Parkinson (n 31) 198–201.

expansion of legal aid services, judicial training, and the development of alternative dispute resolution infrastructure.[55]

5.5 African Comparative Perspectives

Nigeria would not be the first African jurisdiction to move toward simplified divorce procedures. South Africa's Divorce Act 70 of 1979 recognises irretrievable breakdown as the sole ground for divorce, allowing proof by either separation or fault-based facts, a more flexible model than Nigeria's closed list.[56] Kenya's Marriage Act 2014 similarly adopts broader conceptions of marital breakdown, reflecting a shift away from fault-based regimes.[57] These developments demonstrate that reform is not uniquely Western but part of a wider evolution within modern family law systems across Africa.[58]

5.6 Feminist Implications of Reform

No-fault reform may improve women's access to justice by reducing evidential burdens and simplifying proceedings. However, reform must also address economic inequality.

Simplified divorce without adequate maintenance, property adjustment, child support, and legal aid could expose vulnerable spouses to hardship. Accordingly, reform should be holistic rather than limited solely to grounds for dissolution.

6. RECOMMENDATIONS FOR LEGAL REFORM IN NIGERIA

i. Redefining Irretrievable Breakdown

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[55] Akin Oyebode, 'The Imperative of Judicial Reform in Nigeria' (2010) 2 Nigerian Law and Practice Journal 1.
[56] Divorce Act 70 of 1979 (South Africa) s 4(1).
[57] Marriage Act 2014 (Kenya) s 6
[58] Himonga and Nhlapo (n 20).

The central reform advanced in this article is the amendment of section 15 of the Matrimonial Causes Act 1970 to establish separation as the sole determinant of irretrievable breakdown. The current list of fault-based facts should be repealed. A revised provision could read: "An application for dissolution of marriage shall be based on the ground that the marriage has broken down irretrievably, and such breakdown shall be established where the parties have lived separate and apart for a continuous period of not less than twelve months immediately preceding the filing of the petition."

Such reform would align statutory divorce law with the practical reality that many marriages fail without clearly identifiable wrongdoing. It would also reflect comparative developments in jurisdictions such as Australia, where the Family Law Act 1975 (Cth) introduced separation as the sole ground for divorce, thereby simplifying proceedings and reducing adversarial conflict.

ii. Reduction of Separation Periods

The existing two-year and three-year separation requirements under Nigerian divorce law are unduly prolonged. A twelve-month separation period is proposed, although a phased approach, e.g., 18 months initially, with a statutory review after five years, might attract less conservative opposition. In addition, legislation should expressly allow spouses to attempt temporary reconciliation of up to three months without interrupting the separation period, thereby encouraging genuine efforts at repair while maintaining procedural clarity.

iii. Recognition of Separation Under One Roof

Given prevailing economic realities and housing pressures in Nigeria, many separated couples may continue to reside within the same household. The law should therefore expressly recognise the possibility of separation under one roof. In determining whether separation has

occurred, courts should consider factors such as the existence of separate sleeping arrangements (recognising that in extended family compounds, strict separation may be culturally or economically impossible; the focus should be on the cessation of consortium vitae rather than rigid physical separation);the cessation of sexual relations; financial independence; the pursuit of independent social activities; and clear communication of the intention to separate (including, where appropriate, external communication to family or community).

It is acknowledged that no Nigerian appellate court has yet clearly held that separation under one roof suffices under section 15(2)(d). This recommendation therefore proposes legislative clarification to fill that gap. Recognition of these indicators would ensure that the law reflects the lived realities of couples while maintaining the integrity of the principle of irretrievable breakdown.

iv. Limiting the Role of Fault in Ancillary Proceedings

The Matrimonial Causes Act 1970 presently permits consideration of marital conduct in certain ancillary proceedings. Reform should limit the relevance of fault to exceptional circumstances where its exclusion would result in serious injustice. Decisions concerning property settlement and parenting arrangements ought to be guided primarily by:

a) the parties' respective contributions (including non-financial contributions such as homemaking and childcare);
b) their future needs;
c) the welfare of children; and
d) principles of equitable distribution.

Such an approach would ensure that ancillary matters are resolved on substantive grounds rather than being distorted by adversarial allegations of misconduct.

Further, the Act should be amended to include a presumption of equal contribution to marital property, rebuttable only by clear evidence that a distinct division is just and equitable. Spousal maintenance criteria should be revised to avoid requiring proof of "inability to support oneself", a threshold that disproportionately disadvantages older or stay-at-home spouses.

v. Strengthening Alternative Dispute Resolution

Family mediation and ADR should become central features of Nigerian family law. Legislation could require parties to attempt mediation before commencing parenting or property proceedings. However, safeguards must exist for cases involving domestic violence or coercive control:

a) Domestic violence exception: Mediation shall not be mandatory where there is a pending protection order, a credible allegation of domestic violence, or where a court, on application supported by a simple affidavit of fear or coercion, exempts a party from ADR.
b) Courts should have power to exempt parties from ADR on filing a simple affidavit of fear or coercion, without requiring a full evidentiary hearing.

ADR mechanisms should incorporate culturally appropriate dispute resolution practices were consistent with constitutional rights and gender equality.

vi. Expansion of Legal Aid and Access to Justice

Meaningful reform of family law requires improved access to justice. Strengthening legal aid services, expanding family court infrastructure, enhancing judicial training, and promoting public legal education are all essential measures. Simplified filing procedures and the adoption of digital case management systems would further reduce barriers, making

the process more efficient and accessible to litigants. These reforms are particularly significant in matrimonial litigation, where procedural complexity and limited resources often hinder vulnerable parties, especially women, from securing fair outcomes.

vii. Protection of Children's Welfare

No-fault reform must not diminish protection of children. The welfare principle under section 71 of the MCA should remain paramount. Reduced parental hostility resulting from no-fault procedures may, in fact, improve post-divorce parenting relationships.

viii. Respect for Legal Pluralism

The proposed reforms should apply exclusively to statutory marriages unless parties voluntarily opt into the statutory framework. This approach preserves constitutional respect for customary and Islamic legal systems. Statutory reform may gradually influence broader societal attitudes toward less adversarial approaches to marital dissolution.

To address the common situation where parties have contracted both a customary marriage and a statutory marriage, a coordination provision should be added: a no-fault divorce granted under the reformed Matrimonial Causes Act shall be recognised as terminating the customary marriage as well, provided the statutory marriage was validly celebrated and the parties have complied with any necessary customary acknowledgment (without requiring a separate customary divorce proceeding).

7.0 CONCLUSION

The evolution of divorce law reflects broader transformations concerning family, gender, religion, and the role of the state within intimate relationships. Australia's transition from fault-based divorce to

a no-fault regime under the Family Law Act 1975 demonstrates that matrimonial dissolution may be simplified without necessarily undermining social commitment to marriage.

Nigeria's Matrimonial Causes Act 1970 formally recognises irretrievable breakdown yet continues to operate through predominantly fault-based mechanisms. The resulting framework often promotes hostility, evidential manipulation, procedural complexity, and emotional harm.

This article has shown that aspects of the Australian model offer valuable comparative lessons for Nigerian reform, but change cannot occur through mechanical transplantation. Nigeria's constitutional pluralism, religious diversity, customary institutions, and infrastructural realities demand a context-sensitive approach.

Accordingly, the proposals advanced here emphasise incremental reforms: separation-based irretrievable breakdown, shorter waiting periods, recognition of separation under one roof, limiting fault in ancillary proceedings, strengthening ADR (with a domestic violence exception), expanding access to justice, and adding a coordination provision for dual marriages. These measures would modernise Nigerian statutory matrimonial law while respecting constitutional pluralism and, more importantly, promote a humane and less adversarial response to family breakdown.

The objective of no-fault reform is not to trivialise marriage or encourage divorce. Rather, it is to recognise that where marriages have genuinely failed, the law should facilitate honest, dignified, and equitable resolution rather than compel parties to engage in destructive contests of blame.