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AN EXAMINATION OF THE LEGAL AND RELIGIOUS DIMENSIONS TO SEPARATION IN MARRIAGE

Dr. Oluségun Peter OKÉ

Department of Religious Studies, University of Ibadan

Abstract

Separation in marriage has become a burning issue that has generated a lot of debates in Nigeria today as it affects many homes and the society at large. Scholars in order to deal with the problem have approached the subject matter from the cultural, psychological, and sociological perspectives. But, an area where little or no attention has been paid over the years which necessitated this study is the religious and legal dimensions to the discourse. That is, a religious and legal look at what constitutes separation in marriage and how the menace can be brought to the barest minimum. The method adopted in the study is the use of materials that are relevant to separation and divorce. Recommendation will be made on how to address the issues involved in separation and how separated couples can live a better life thereby enhancing peace and harmonious relationship in the society.

Keywords: Examination, Legal, Religion, Separation, Marriage.

Introduction

Among the Yoruba people, issue of marriage is not taken with levity hands. It is so important to the extent that celibacy is seen as a taboo because such act is conceived as a way of bringing to an end the lineage of the affected person (Arowolaju, 2005: 1-7). Yoruba people has a very strong belief that there can never be a successful and productive life until an individual marries. Therefore, all over Yoruba land, marriage is taken very seriously despite the various social, cultural and economic practices attached to it. But, it is quite disheartening to note that the institution of marriage in recent times has suffered a serious setback. One of such, is the menace of divorce and marital separation. Marital separation is a situation where partners to a marriage stop living together. That is, when two legally married individuals agree on certain terms to stay away for one reason or the other (Gadua, 2011). On many occasions, the affected couples agree to separate to give peace a chance (Bernstein, 2011). This is quite different from divorce. The couple may decide to separate based on these main reasons; as a step in the divorce process, to gain a perspective on the marriage, and to enhance the marriage. Though, there is no hard and fast rule as to the period for the separation, But some experts regard a six-month separation as good amount of time for a temporary separation, since it is long enough to set up a second household and gain a perspective, but not long enough to seem permanent (www.salon.com). There are two major ways of initiating separation, it can be done informally or it can be through a legal process which is usually pronounced by the court after meeting the lay down requirements (www.griffitslawpc.com).

In a clear language, separation takes place when a couple lives apart. From a legal dimension, separation in marriage takes place when spouses take either of the two options available to them. The court recognizes a formal request to make a final determination on all aspects of the marriage like the custody and the maintenance of the child to the marriage which is quite different from divorce (www.linntts.co.uk/family). (Other matters for determination by the court include the division of property, assets and debts, spousal support, child support, visitation and so on. There is the need at this juncture to make a clear distinction between separation and divorce from the legal parlance. The difference between separation and divorce is that with a separation, the marriage is still legally intact. The spouses are still technically and legally bound and are not under whatever condition permitted by law to remarry. But in a divorce, either of the parties makes a formal request to the Court to make a final determination regarding all aspects of the marriage, including the dissolution of the marriage (i.e. the ultimate decision to ending marriage in its entirety). All properties, debts, assets and other aspects of the marriage will be addressed in a final divorce decree and both spouses will be free to remarry (www.wgc.com.au/legal-new).

The first decree made by the court for the dissolution of such marriage is called decree *nisi* minimum of six weeks before the court makes the decree an absolute one (www.jmw.com.uk/services). The court gives allowance for the two parties involved to look at the possibility of resolving their problem and settle amicably. After the expiration of the three months and no effort is made by the two sides to resolve the issues that led into divorce petition, the judge will then make the decree nisi an absolute one. That means the marriage has been dissolved, though, a divorce is not

feasible in all cases. When there is a barrier to a couple divorcing, which can be as a result of culture, religious beliefs, financial situation, or just their own perspective of the marriage and the prospect of ending it, legal separation (www.kanecountydivorceattorney.com) can be a useful way to detach from each other without actually ending the marriage (Christis, K. and Alan, B. 2000: 16). This gives the couple the opportunity to reflect on their relationship to determine the possibility of ming together again as successful couple or proceed to divorce. Some legally separated couples do go on to divorce while others remain content living singly while legally separated.

Separation and Custody of Child from the Legal Perspective

Child custody becomes an issue for determination during separation by couple, this is because the interest of the child is of utmost importance to the court. Separation is usually the same with divorce proceedings with little variation. In marital separation, what happens and how do you sort out child custody? One thing that is germane as far as separation is concerned is that, the court is most concerned with the interest of the child in the marriage and will do everything possible to protect the interest of such a child (<https://oureverydaylife.com>). While this sounds simple enough, the best interest standard can vary from state to state, and courts and mediators can consider a range of factors when making child custody decisions. Separating parents fight dirty to convince the court for the custody of the child. Before the court can grant any application made by either parties to the custody of the child, certain factors must be taken into consideration. Factors like the child's wishes, if the child is old enough and state law allows it. If the child is old enough to decide whom he/she wants to follow, it is very important because, as it was mentioned earlier, the concern of the court is the interest of the child. Another factor that is taken into consideration is the mental state of the parents (www.city-data.com/forum/relationship). The court will like to know who among the parents has the mental capacity to take care of the child. Also, the court looks through evidences if any of the parents is involved in drug, alcohol, or sex abuse or parental use of excessive discipline or emotional abuse. This also is very important in order not to have a negative influence on the child eventually (www.google.en.wikipedia.org/wiki/childcustody). All these among others are considered before the court grants the custody of the child to either of the parents. But, another consideration open to the separated parents for the custody of the child is for the parents to work together to resolve custody disputes. The court in most cases allows the parents to have a mutual agreement regarding child custody, and this court honours this agreement without any hesitation. The court determines if the said agreement is done in good faith. In order to make it formal therefore, the parties must put such mutual agreement in writing, in case of any likely dispute that may arise later ([www.lawfirms.com/resource/child-custody/child-basics/custody out of court](http://www.lawfirms.com/resource/child-custody/child-basics/custody%20out%20of%20court)).

It is very important at this point to argue that couples in separation usually do not bother themselves over who takes custody of the children, especially if they are still infants or minors. For instance, in the Supreme Court case of *Odogwu v. Odogwu* (1992) 2 NWLR (pt. 225) 539. The presumption is that the mother will usually have custody since the children are still minor. But, in the case cited above, the presumption was rebutted because the mother who was to take the custody of the children is immoral, she has an infectious disease, she suffers insanity or is cruel to the child. As a

result of this fact, the court is thereby guided in awarding custody to either of the parties, whether the father or the mother (<https://digit/commonlaw>). The age of the child notwithstanding, the court will not want to give custody of a child to an immoral mother. The issues are however not as straightforward and simple as it sounds. Though, Matrimonial Causes Act is silent on the provision for the maintenance of children in such situation. However, the Child Rights Act, 2003 and other related legislations in States within the Federation have bailed out children who are caught in this situation. That is, the Child Rights Acts of 2003 has made adequate provision for their maintenance and welfare (www.unicef.org/Nigeria/ng-publications Child Rights Acts, 2003).

Unfortunately, it is quite unfortunate to note that many of the parents of the affected children have failed to obey the maintenance order of the court and the court also fail to make a follow up if the parents actually carry out the order of the court. Due to this lackadaisical attitude of most parents in this regard, the affected children continue to suffer and do not appear to take advantage of the law that is rightly in their favour. During separation, parents need a visitation schedule. The visitation schedule is important so that the right of the child will be preserved. Separated parents, just like their divorced counterparts, need to plan for the children who do not live with them since the court is not concerned with the conflict between parents, but the child wellbeing. During visitation, the separated parents have the right to make major decisions about the child's health, education, welfare, and religion. It ordinarily includes a right to physical care of the child (<https://court.kg.gov/court/family>). When a court grants access to a child of the marriage to the separated couple, he/she has the right to ask questions and to be given information in respect of the total wellbeing of the child which include his /her health, education, and welfare.

Separation in Marriage from the Religious Perspective

It is important to consider the issue of separation in marriage from the religious perspective in order to have a holistic approach to the subject matter. First and foremost, this work will take a look at the issue of separation from the Christian angle. It will not be out of place to know the position of the Scripture by those who wish to separate, but not divorce (www.christianitytoday.com/women, 2016: 5). In 1 Cor. 7: 10-11 Paul is clear on this matter: when he says: "And unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband: But and if she depart, let her remain unmarried, or be reconciled to her husband: and let not the husband put away his wife" The view of Paul here is apposite to our discussion from the legal parlance that, it is not a sin for couple to separate when the situation demands of it, but such a separated couple should not make any attempt to remarry. But, rather, make effort to seek reconciliation (www.psychologytoday.com/us/blog).

The position of Paul here is ancillary to what we have in Genesis 2; 18 where God himself says that: "And the Lord God said, it is not good that the man should be alone; I will make him a help meet for him." What the passage above is saying in essence, is that, one entity alone was insufficient; it took two to make a full complement. The woman was created from the man (Gen. 2: 22) to complete God's supreme creation. The man complemented the woman as her provider and protector. Each was intended to help the other. Therefore, separation or divorce as the case may

be, was not in the agenda of God acts and family life) ([www.livingchristianlife.com/marriage,sexual](http://www.livingchristianlife.com/marriage/sexual)).

Marriage is a covenant bond—a divine institution entered into by means of a vow from two willing individuals. The sanctity of marriage is usually addressed at any marriage ceremony where the minister who is to join the couple together read out certain words to this effect: “Since marriage is a divine institution and we are asking God to join you as husband and wife, it is fitting and right that each of you should faithfully promise, before God, to accept the sacred marriage covenant, according to the divinely ordained conditions imposed by Almighty God (www.psychology.com/us//blog). Do you then (his name) faithfully promise and covenant with God in the presence of these witnesses to take (her name) to be your lawful wedded wife, to cleave to her unto death, to love her, to cherish her, to honor her, and provide for her? (He answers). Do you (her name) faithfully promise and covenant with God, in the presence of these witnesses to take (his name) to be your lawful wedded husband for the remainder of your natural life, and, as God has ordained, to submit yourself unto him as unto God; to be subject to him in everything, and to reverence him?” (She answers) (<https://en.wikipedia.org/wiki/>). With this pronouncement made by the two parties in marriage, separation should not be the solution when one is faced with problem. Since marriage is bound by a vow or covenant, God requires that we keep our vows. This is also supported in the book of Ecclesiastes that: “When thou vow a vow unto God, defer not to pay it; for he hath no pleasure in fools: pay that which thou hast vowed. Better is it that thou should not vow, than that thou should vow and not pay” (Eccl. 5: 4-5) (<https://bibliacommentary.com/bible/nkjv/>). This is further corroborated by Jesus who states clearly the importance of what we speak out of our mouths: “But I say unto you, that every idle word that men shall speak, they shall give account thereof in the day of judgment. For by thy words thou shall be justified, and by thy words thou shall be condemned” (Matt. 12:36-37). “Idle words” are words spoken without foundation. One who takes his marriage vows lightly either does not grasp or does not really mean what he says. His words are without foundation, and he stand accountable before God.

From the Islamic point of view, the relations between the spouses should be based on tranquility, love and mercy (<https://aboutislam.net/family-society/husband-wife>). This is contained in Ar-Rum 30: 21 where Allah says, “*And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are signs for those who reflect.*” Tranquility (*sakan*) (<https://aboutislam.net/family-islam/findingpeace>), love (*mawaddah*) (https://aboutislam.net/finding_counselling), and mercy (*rahmah*) (<https://aboutislam.net/spirituality-guide-allahs-mercy-forgiveness>) are very important concepts in Islam. These three summarize the ideals of Islamic marriage.

The position of the Quranic passage above, is that it is of great importance to say that, it is the duty of the husband and wife to see that they are sources of comfort and tranquility for each other. Islam enjoins couples to live together and protect each other against evils and devils. Separation is not the main objective of marriage in Islam. The description of spouses as homes (*sakan*) is very significant in Islam. This means a place where couple has peace of mind, love, compassion and affection. However, Islam does not stop, prevent or prohibit couple who wish to

separate to do so. At times, separation can help both couple to reflect on their stand in the relationship as long as such separation will not be detrimental to their marriage and will not lead one of them to commit any prohibited actions ([www.islamwomen.com/marriage/fight of marriage](http://www.islamwomen.com/marriage/fight_of_marriage)). In essence, temporary separation is permitted in Islam if such action is jointly agreed upon and it is for the benefit of the two.

In the traditional society, most especially among the Yorubá, marriage is between families and not just individual man and woman who met somehow and think that they can live the rest of their lives together, this is why cases of separation is rare (Olu, D. and A. Jeje, 1969: 78). In most cases, it is the two parents who do the dating or courtship on behalf of their son and daughter. It was even a taboo for the husband and wife to be, to meet even on the street before the marriage night (Famulusi, O.O. 1999:26). This is predicated on the fact that it is a social and family dishonor and disgrace for a bride not to be found as a virgin (Ajibade, O. G. 2004: 224-237) on the night of the wedding when the marriage is traditionally consummated (Adeoye, C.L. 1979: 275). This means that premarital intimacy or intercourse is treated as a social taboo or even an abomination by the Yoruba, which no one thinks of committing.

Separation after marriage is not welcome because of the serious pre-marital investigation made by the two families. The two families painstakingly and thoroughly embark on checks which were conducted to make sure that there are no communicable diseases like leprosy, lunacy, insanity or any other genetically transferable malformations or defects like barrenness (Fadipe, N.A. 1970: 203). They will also check for criminalities or such social vices within each other's families or lineages. The family of the bride to be will also have to make sure that the groom to be is not lazy but hard working and being able to provide and care for his new family (Ajibade, O.G. 2009: 67).

It is only after the two families were satisfied with the results of the background checks that the family of the man will formally arrange for a special ceremonial visit to the woman's home to inform her family of their interest in her and their desire to have her as a wife for their son. If the answer is yes, then, courtship starts, and again, it is between the two families. How long it lasts before engagement and marriage is decided by the two families (www.allthingsnigeria.com.2012.) Because of this high level of involvement of the families, they say: *lyàwó búburú se é fé, àna burúkú ní kò se ní* (One can marry a terrible wife but, one should have a terrible in-law. This suggests that issue of marriage should not be trivialized (Fadipe, N.A. 1970: 65). Separation in marriage was the last step, as the family of either couple will not be happy to see their daughter coming back home after marriage to start a new life.

The parents will therefore, do everything possible to make the marriage work. In Yorubá land, any woman that comes back home to stay with parents after marriage is refer to as *Ó dálemosú* (Leaving the husband house to stay with her parents). This action is frowned at by the Yoruba people because it is considered as an anathema (Dopamu, P.A. and Alana, E.O. 2004: 40).

In fact, some communities sing songs to condemn the action of any woman who after marriage separates from her husband. The position of the family usually was that, no matter the situation, she should endure as no condition is permanent. Many

even try to encourage their daughters to endure the relationship because of their children (www.nigeriawomenworld.com/highlights/traditional). One of the popular songs rendered to show their resentment to any woman that separates from her husband is the one below:

A dálemosú ò è, a dálemosú o à, e pàdà sílé ọkọ yin ò adálemosú (Akorede, Y.O, 2011: 37).

(You that leave your husband house to stay with your parents, go back to your husband). At times, siblings of the affected woman are always at loggerhead when there is any misunderstanding. *Kò si yàrá yín níbíyì mó o.* (You don't have any room here again).

The import of our discussion here is that separation is not permitted among the Yorùbá, but, when the situation is getting out of hand and death is imminent, such a step can be suggested to the couple. They use this proverb to support their decision: *Kòrò ayé sàń jù kòrò ọrun lọ.* (It is better to be alive than to be living in hell while on earth) or *Ọkèlè gbígbe pẹlu itẹlọrùn sàń jù ilé tó kún fọfọ fún ọúnjẹ lài sí aláfià lọ* (Little food eaten with peace of mind is much more better than a place full of food but always in discord). As a result of this, Parents of such daughter will prefer having such a daughter under them and seek settlement to the misunderstanding as quickly as possible (Oyewole, D.I. 1999: 52). Marriage in the traditional Yorùbá society is held very sacred and in very high esteem; and of a very social and moral value among the traditional Yorùbá. As far as Yorùbá people are concerned, there are certain Yorùbá cultural values that an average man or woman is expected to uphold and honour irrespective of location and distance from the core-culture and home (Abimbola, W., 1995: 54).

Conclusion and Recommendation

It will be a convenient point for us at this juncture to make some recommendations that will strengthen relationship rather than incessant separation which has over the years become the bane of our society. Such recommendations will be for the separated couple, their parents, the society, the church, marriage counselor and the government. If these categories of people play their roles accordingly, various factors that led to separation and divorce will be reduced to the barest minimum and the society will be better for it. Since we all know that family is the basic unit of the society and whatever affect family negatively, will definitely have a detrimental effect on the society generally. It is therefore a known fact that separated couples were accompanied by two socially undervalued labels as 'divorced woman' or 'single mother'

Therefore, in order to save couples and family from ridicule and public disgrace, certain recommendations are needed for individuals in such a situation. Since, divorce and separation are gendered and women are at a disadvantageous position whether it is within marriage or during separation. Separation in marriage if it will lead to better relationship is not something difficult to do. For instance, separated couple must define some rules of engagement after they part ways, this will be crucial at this their critical time for the health of the relationship, It is also very important as it will wedge a greater divide between the two parties. Both parties must know how often they want to talk and what should be expected as they step into separation.

Separated couple must also know with a clear distinction if the separation is for the two parties to reflect on the relationship and see how such can be restored as soon as possible or is the marriage heading towards divorce. It is a time for a sober reflection where they will pour out their minds on reasons why they separated. This will help the two to quickly know where things went wrong. That is, they must really understand why they find themselves in such an ugly situation.

Time of separation between couple is not a time to shift blame rather; it is a time to really talk on the period to come together again. If any of the parties is going with the mindset of when he/ she is ready she will come, this will defeat the whole purpose; Separation can become a marital purgatory if there isn't a time frame in which it is experimented with. If separated couple do not pay particular attention to how they will come together again. It may last for more than three years. This may not be healthy for the relationship.

During separation, couples find it extremely difficult to relate because of the wound and several mental and psychological trauma suffered by the two individuals, and this can lead to break up if proper care is not taken by them. In a situation like this, couples that are still interested in coming together as one must as a matter of necessity maintain a cordial relationship with the person they have separated from. Each of them must make his/her expectations clear and listen to his partner.

Though, many separated couples view separation as a liberating and a learning experience at a personal level as many might have experienced a total transformation in their lives and that they rediscovered themselves, observed many positive changes in self, and felt independent. However, independence enjoy as claimed may come with it many problems especially with women. They experience a feeling of insecurity out of the marriage. If frantic efforts are not made, separation may be a platform to find an appropriate partner in future. Separated couple must guide against this to save their marriage and home.

Counseling is also needed for separated couples. The importance of counseling to separate couples cannot be over-emphasized. But, quite unfortunately, there are a lot of couples who will wait until they feel totally hopeless within their relationship before even considering seeing a professional marriage counselor, but the reality is that it's healthy for all couples to go at least a couple of times per year. Through this, couples will get to know viable tools as remedies for the problems they are having or to make their marriage even stronger. Marriage counseling is proven to improve physical and emotional intimacy, increase communication and establish an overall better connection between spouses.

Children who have experienced their parents' separation display a range of emotional and behavioural reactions due to their parents' separation, children may regress, display anxiety and depressive symptoms, appear more irritable, demanding and noncompliant, and experience problems in social relationships and school performance. Separated couples should let their children know that they are not responsible for the separation, that they are loved by both parents, and that their needs will be met. Failure on any separated couples to do this will have an adverse effect on the children.

From the religious angle, couples involved in separation should talk matters over calmly and fully. No doubt, angry words have been exchanged; perhaps they have nagged, fought and threatened each other. It is important for the couples to set aside a time to reflect together about their relationship and what are the underlining difficulties that led them to the separation. To this end, both self-examination and admonition have a role to play, but the former should precede the latter: This is apposite to what we have in Mt 7.5, Lk 6.42. "First take the log out of your own eye, and then you will see clearly to take the speck out of your neighbor's eye". Therefore, each spouse should repent his or her own sins, ask the other's pardon, and ask for forgiveness.

During separation, parents are often overwhelmed with their own issues and with making sure their children are alright. In this state, the role of grandparents and extended family members cannot be over-emphasized. They play valuable role in the areas of giving advice and support. They need to be good listeners while staying neutral. At this critical stage of their children marital experience, parents' should provide comfort, reassurance and answers for angry and confused children, not always knowing exactly what is going on themselves. Also, parents should learn from the approach adopted by parents in the indigenous society which made their marriage to last longer than the ugly experience being experienced today.

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