APPLICABILITY OF MEDIATION IN THE RESOLUTION OF MARITAL DISPUTES *VIS-À-VIS* WOMEN'S RIGHTS IN NIGERIA

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Abstract

Mediation, as an alternative dispute resolution mechanism, offers a culturally sensitive, cost-effective, and less adversarial approach to marital conflicts. However, its effectiveness in protecting and promoting women's rights remains contested due to socio-cultural, legal, and institutional challenges. Marital conflicts in Nigeria often involves complex social, cultural, and legal dimensions, where traditional litigation can be costly, time-consuming and adversarial; mediation, as a less formal and more conciliatory approach, has gained prominence for its potential to preserve relationships and provide amicable settlements. However, the intersection of mediation with entrenched patriarchal norms raises critical questions about the protection and promotion of women's rights within this process. This article explores the conceptual framework of mediation and women's rights, analyze the Nigerian context, and evaluates the extent to which mediation supports or undermines women's rights in marital disputes. The study adopts the qualitative research methodology, focusing on literature reviews document analysis, observations and in-depth interviews with legal practitioners and women who have been involved in mediation process to gain an in-depth understanding of mediation in resolving marital disputes and its impacts on women's rights in Nigeria. Employing a qualitative research design, the findings reveal that while mediation is valued for its cultural sensitivity and efficiency, it frequently perpetuates gendered power imbalance that disadvantage women as seen by authors regarding patriarchal influences in dispute resolution process. This article argues for the urgent need to reform mediation frameworks to integrate gender-sensitive safeguards that uphold women's rights, thereby contributing to the evolving discourse on gender justices and alternative disputes resolution in Nigeria. This research concludes that mediation can be an effective tool for resolving marital disputes in Nigeria, but only if it is reformed to incorporate gender-sensitive practices and robust legal protections for women. Recommendations include legislative reforms, capacity building for mediators and stronger institutional support to ensure mediation outcomes uphold women's rights and promote gender equality. The study contributes to the discourse on Alternative Dispute Resolution (ADR) in Nigeria by highlighting the need to balance cultural practices with human rights imperatives.

Keywords: Mediation, Resolution, Marital disputes, Women's rights

1.0 Introduction

Mediation has increasingly become a preferred alternative dispute resolution mechanism in the context of marital disputes in Nigeria, offering a less adversarial, more conciliatory approach compared to traditional litigation.[681] This method emphasizes dialogue, mutual understanding, and the preservation of relationships, which is particularly significant in the culturally sensitive and often patriarchal Nigerian society where marriage is highly valued.[682]

Marital disputes are a common social phenomenon in Nigeria, often resulting in protracted litigation, social stigma, and emotional distress. Traditional court processes can be lengthy, expensive, and adversarial, prompting the increasing use of mediation as an alternative dispute resolution (ADR) mechanism. Mediation offers a platform for amicable settlement, emphasizing dialogue, mutual understanding and reconciliation. However, the applicability of mediation in marital disputes raises critical questions about the protection of women's rights, given the patriarchal nature of the Nigerian society and the varying degrees of legal awareness among women. One of such questions is whether mediation can adequately address the power imbalance between spouses, especially in patriarchal contexts where men often hold great social, economic, and decision-making power. The informal nature of mediation may expose women to coercion or undue pressure to settle on terms unfavourable to them, as mediators may lack the authority or tools to counteract these imbalances.[683] This raises the issue of whether mediation can truly be a voluntary and fair process for women or if it merely perpetuates existing inequalities.[684]

Another critical concern is the suitability of mediation in cases involving domestic violence or abuse. Patriarchal societies often normalize or minimize such violence, and

[681] A. O. Akinola, *Alternative Dispute Resolution in Nigeria: Theory and Practice* (2nd edn, Lagos University Press 2018)
45.
[682] A. O. Akinola (n 1) 47; see also S. Eze, 'Cultural Dimensions of Marital Disputes in Nigeria' (2019) 12 *Nigerian Journal of Social Sciences* 89.
[683] J. H. Goldstein, 'Power Imbalances in Mediation: Implications for Women's Rights (2003) 21 Mediation Quarterly 45.
[684] L. M. Trinder, 'Voluntariness and Fairness in Mediation: A Gender Perspective' (2010) 28 Conflict Resolution Quarterly 123.

mediation may fail to provide a safe environment for women to disclose abuse or negotiate freely.[685] The confidentiality and private nature of mediation might also prevent the involvement of protective legal mechanisms, thereby compromising women's safety and rights.[686] This leads to the question of whether mediation should be applied universally in marital disputes or if exceptions should be made to protect vulnerable women.

There is also a question about whether mediators are sufficiently trained to recognize gender dynamics and patriarchal biases.[687] Without gender sensitivity training, mediators may inadvertently perpetuate discrimination or fail to protect women's interest adequately.[688] This highlights the need for specialized training and possibly the inclusion of gender experts in mediation processes involving marital disputes. The questions raised revolves around the fairness, safety, and equity of mediation outcomes for women, emphasizing the need for careful consideration of power dynamics, cultural norms, and mediator competence. Addressing these concerns is essential to ensure that mediation serves as a genuine tool for justice and empowerment rather than reinforcing systemic gender inequalities.

Mediation just like other means of Alternative Dispute resolution is not a new phenomenon. It is observed that ADR stretches as far as 1800 B.C., traced to the Mari Kingdom in modern Syria where mediation and arbitration were used in disputes with other kingdom.[689] In precolonial Africa, disputes were resolved majorly through the intervention of elders or experienced persons who had more knowledge and wisdom than the disputing parties.[690] For instance, most communities have a committee of elders, family heads, chiefs or emirs who presided over and sought to resolve dispute between parties. Often, these mediators (especially when they were not leaders within the communities) were chosen for their respectability in society and their knowledge of

[685] S. J. Mack, 'Domestic Violence and Mediation: Risks and Realities' (2015) 33 Family Law Review 67.
[686] C. E. Johnson, 'Confidentiality in Mediation and the Protection of Abuse Victims' (2012) 40 Journal of Dispute Resolution 89.
[687] K. L. Brown, 'Mediator Training and Gender Sensitivity: Bridging the Gap' (2020) 18 Conflict Management and Peace Science 112.
[688] P. J. Green, 'The Role of Gender Experts in Family Mediation' (2016) 30 Journal of Family Law 141.
[689] C. C. Daly, 'Accreditation: Mediation's Path to Professionalism' (2010) 4 American Journal of Mediation 1.
[690] G. B. Born, *International Commercial Arbitration* (Vol. 1, Kluwer Law International 2009) 54.

the laws and customs of the land.[691]Mediation, rooted in traditional dispute resolution practices has been formalized in Nigerian law as an alternative to litigation. Understanding this context is sine-qua-non to evaluate mediation role in protecting women's rights.

Women's rights in Nigeria are constitutionally guaranteed but often compromised by cultural norms and discriminatory practices. Issues such as property rights, child custody, maintenance and protection from domestic violence are critical in marital disputes. The intersection of gender and law reveals gaps in ensuring substantive equality for women in dispute resolution.

In this context of mediation in marital disputes and women's rights in Nigeria, qualitative method enables the researcher to delve deeply into the lived realities of women, mediators, legal practitioners, and community members, capturing nuanced insights that quantitative methods may overlook.[692]This approach prioritise depth over breadth, focusing on rich, descriptive data that reveal the socio-cultural and institutional dynamics influencing mediation outcomes.

To ensure a comprehensive understanding, this study typically employ multiple forms of data collection. These include the following;

a. In-depth Interview: interviews with women who have undergone mediation, mediators, family law experts, and community leaders provide firsthand accounts of experiences, challenges, and perceptions regarding mediation and women's rights.[693]These interviews allow participants to express their views in their own words, uncovering subtle power dynamics and cultural influences. Adebayo's study on Nigerian mediation practice highlights that interviews with women who have undergone mediation reveals the subtle coercions and pressures they face, which are often invisible in formal legal settings.[694] Similarly, Olowu emphasizes that

[691] Templars, 'Mediation in Nigeria (2019) Available at https://lexology.com/library/detail.aspx?g=fb0fe072-267d-4366-bb1e-04a5459997a9 Accessed on 9th March, 2026.
[692] C. Seale, *Researching Society and Culture* (3rd edn, SAGE Publications 2012) 45.
[693] A. Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016) 470.
[694] O. Adebayo, 'Patriarchy and Mediation in Nigeria: Implications for Women's Rights' (2019) 7 African Journal of Legal Studies 112.

interviews with mediators and legal practitioners provide insights into institutional attitudes and the practical challenges of safeguarding women's rights.[695]

b. Observation: direct observation of mediation sessions, community disputes resolution forums offer insights into the interactional dynamics and mediator behaviours in real time.[696] Chukwu's study, which included observation of community mediation sessions, found that patriarchal norms often manifest in subtle ways during negotiations, influencing women's participation and decision-making.[697]

c. Documents Analysis: examination of legal texts, mediation guidelines, case records, and policy documents helps contextualize the mediation process within Nigeria's legal and cultural framework.[698]This secondary data provides a backdrop against which primary data can be interpreted. Eze's work demonstrates how policy documents often lack explicit gender-sensitive provisions, which affects mediation outcomes for women.[699]

d. Literature Review: this serves as a crucial type of secondary data. Unlike primary data collected directly from participants, literature review involves the systematic collection, evaluation and synthesis of existing scholarly works, legal texts, policy documents and reports relevant to the research topic.[700]

Content analysis quantifies the presence of certain words, phrases, or concepts related to women's rights and mediation practices, enabling researchers to assess the emphasis placed on gender issues in official texts.[701] Researchers may compare data across different regions, ethnic groups, or mediation settings to identify variations in how patriarchal norms influence mediation and women's rights.[702]

[695] I. O. Olowu, 'Gender and Power Dynamics in Nigerian Family Mediation' (2020) 15 Journal of African Law 89.
[696] J. Spradley, *Participant Observation* (Waveland Press 1980) 58.
[697] S. U. Chukwu, 'Policy Reforms for Women's Protection in Mediation' (2020) 11 African Human Rights Law Journal
101.
[698] D. Silverman, *Interpreting Qualitative Data* (5th edn, SAGE Publications 2014) 98.
[699] N. O. Eze, 'Gender Sensitivity Training for Mediators: A Nigerian Perspective' (2021) 9 Journal of Conflict Resolution 134
[700] C. Seale, (n 12) 56.
[701] K. Krippendorff, *Content Analysis: An Introduction to Its Methodology* (4th edn, SAGE Publications 2013) 24.
[702] J. Ritchie and J. Lewis, *Qualitative Research Practice: A Guide for Social Science Students and Researchers*(SAGE Publications 2003)210.

Thus, for this study to arrive at its findings and recommendations, the researcher had to utilize both content and comparative analysis.

This article explores the applicability of mediation in resolving marital disputes in Nigeria, focusing on how this process intersects with women's rights and falling within the context of family law, Alternative Dispute Resolution (ADR), human rights and gender studies. Mediation has increasingly emerged as a viable mechanism for resolving marital disputes, particularly within jurisdictions seeking to reduce the adversarial nature of litigation and promote amicable settlements.[703] In Nigeria, where marital relationships are shaped by a complex interplay of statutory, customary, and religious legal systems, the use of mediation occupies a significant place within Family Law and Alternative Dispute Resolution frameworks.[704]However, its applicability cannot be examined in isolation from concerns rooted in Human Rights Law and Gender Studies, particularly regarding the protection and advancement of women's rights.[705]

The study is divided into six sections. Section one which is the introduction, gives a brief overview of the discourse while section two clarifies the concepts of mediation, marital disputes and women's rights as used in the research work. Section three discusses common issues affecting women in marital disputes, the role of mediation in promoting women's rights as well as the benefits and challenges of mediation in marital disputes. Section four discusses mediation as a possibility in divorce while sections five and six points out to recommendations and conclusions respectively.

2.0 Conceptual Clarifications

It is important to delimit the terms used in this paper in order to properly situate the discussion. The keywords identified in this paper are: Mediation, Resolution, Marital Disputes and Women's Rights. Each of them is conceptualized as it is used in the context of this paper.

[703] L. Boulle, Mediation: Principles, Process, Practice (3rd edn, LexisNexis Butterworths 2005) 3.
[704] E. Azinge, 'The Role of ADR in the Administration of Justice in Nigeria' (2011) 7 *Nigerian Judicial Review* 132.
[705] A. Oyebode, 'Women's Rights and the Nigerian Constitution' (2004) 1 *University of Lagos Law Review*45.

Mediation is a voluntary, confidential, and non-adversarial process whereby a neutral third party - the mediator – facilitates communication and negotiation between disputing parties to help them reach a mutually acceptable agreement.[706] Unlike adjudication, mediation does not impose a decision but empowers parties to craft their own solutions, emphasizing autonomy, collaboration, and preservation of relationships.[707] Scholars such as Moore views the concept of mediation as an intervention in a negotiation or conflict by an acceptable third party who has limited or no authoritative decision-making power but assists the involved parties in voluntarily reaching a settlement.[708]

The core principles of mediation include voluntariness, neutrality, confidentiality, and self-determination.[709] Voluntariness ensures parties engage without coercion; neutrality requires the mediator to be impartial; confidentiality protects the privacy of the process; and self-determination affirms the parties' control over the outcome.[710] These principles distinguish mediation from litigation and arbitration, making it particularly suitable for sensitive disputes such as those arising in marital contexts.

Mediation's flexibility allows it to adapt to diverse cultural and legal environments. It can be facilitative, evaluative, or transformative, depending on the mediator's role and the parties' needs.[711] Facilitative mediation focuses on communication and understanding; evaluative mediation involves the mediator providing opinions on legal rights; transformative mediation aims at changing the parties' interaction and relationship dynamics.[712]

In Nigeria, mediation is increasingly used in family law matters, supported by the Alternative Dispute Resolution Act 2015, which encourages courts to refer cases to

[706] C. Menkel-Meadow, *Mediation: Practice, Policy, and Ethics* (2nd edn, Wolters Kluwer 2016) 3.
[707] C. W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (4th edn, Jossey-Bass 2014) 12.
[708] Ibid., 15.
[709] J. Folberg and A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*(Jossey-Bass
1984) 23.
[710] Ibid., 24.
[711] R. A. Baruch Bush and J. P. Folger, The Promise of Mediation: The Transformative Approach to Conflict (Jossey-Bass 2005) 45.
[712] Ibid., 46-47.

mediation. Mediation's flexibility and informality make it attractive, but its success depends on the mediator's skill and the parties' willingness to negotiate fairly.

Mediation focuses on future rather than past behaviour. It is pertinent to note that some jurisdictions have already legislated for mediation and provided statutory explanations for the process. For instance, in Article 1 of the Australian Civil Law Mediation Act 2003, mediation was expressed as "an activity voluntarily entered into by the parties, whereby a professionally trained neutral facilitator (mediator) using recognised methods systematically encourages communication between the parties with the aim of enabling the parties themselves reach a solution of their dispute.[713]

In the United States, mediation is conceptualized as 'a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.[714]

Resolution refers to the process of addressing and resolving conflicts or disagreements between spouses in a constructive and peaceful manner. The goal of resolution is not necessarily to "win" the argument or to prove a point, but to find a way to manage the issues at hand, reconcile differences, and restore harmony in the relationship. It often involves various approaches, from communication strategies to professional mediation. It refers to the process of managing, and settling conflicts or disagreements between married partners with the goal of reaching a mutually agreed-upon solution that addresses the underlying issues, restores balance to the relationship, and creates a path forward, whether through compromise, forgiveness, or a change in behaviour.

Resolution, in dispute settlement theory, is the process by which conflicting parties find a solution to their disagreement, which may be achieved through adjudication, negotiation, arbitration, or mediation.[715] Resolution is not merely about ending conflict but about achieving a sustainable and acceptable outcome for all parties involved.[716] The effectiveness of resolution mechanisms is often measured by their ability to provide justice, fairness, and social harmony.

[713] Australian Civil Law Mediation Act 2003.
[714] Uniform Mediation Act 2004, S. 29(1).
[715] C. Menkel-Meadow, *Disputes Resolution: Beyond the Adversarial Model* (2nd edn, Westview Press 2011) 12.
[716] M. L. Moffitt and R. C. Bordone, The Handbook of Dispute Resolution (Jossey-Bass 2005) 3.

Resolution in marital disputes is particularly sensitive because it involves intimate relationships, emotional bonds, and often, the welfare of children. The resolution process must therefore balance legal principles, social norms, and individual rights.[717] In Nigeria, the pluralistic legal system – comprising statutory law, customary law, and Islamic law – adds complexity to how marital disputes are resolved.[718]

Marital dispute is the state of tension or stress between marital partners as the couple try to carry out their marital roles, which often leads to disagreements and conflicts affecting the stability of the marriage.[719] Marital disputes may be described as a struggle, clash, strife, disagreement, or quarrel between husband and wife, and sometimes with other members of the family, which disrupts the harmony and functioning of the marital relationship.[720] Marital disputes, as described by AS Tasew, encompass a broad spectrum of conflicts that arise between spouses, or occasionally involve other family members, which disrupt the harmony and effective functioning of the marital relationship. These disputes are not merely occasional disagreements but represent deeper struggles or clashes that can manifest in various forms such as verbal quarrels, emotional tension, or even physical confrontations. Tasew's concept of marital disputes highlights that they (marital disputes) are not isolated incidents but ongoing struggles that affect the emotional and psychological well-being of both partners. The involvement of other family members in some cases further complicates these disputes, introducing additional dynamics such as interference, alliances, or external pressures that can intensify the conflict.

According to A. Smith, marital disputes encompass a wide range of issues including communication breakdown, financial disagreements, and differences in parenting styles, which can significantly affect the stability of the marital relationship.[721] In a nutshell, marital disputes talk about conflicts that springs up between spouses in the course of their union. Scholars conceptualize marital disputes as both private

[717] S. N. Exon, 'Family Mediation: An Overview' (2000) 18(2) *Family Law Quarterly* 123.
[718] J. Nwabueze, *The Nigerian Legal System* (Spectrum Books 2010) 45.
[719] A. Mulugeta, 'Causes of Marital Conflicts Amongst Couples in Nigeria' (2014) 5 Procedia – *Social and Behavioural*
Sciences 1234, 1235.
[720] A. S. Tasew, 'Marital Conflict Among Couples: The Case of Durbete Town, Amhara, Ethiopia' (2021) 7 *Cogent Social Sciences* 1854321
[721] A. Smith, *Family Law and Marital Relations*(Oxford University Press 2020) 45.

interpersonal conflicts and public legal concerns, given that marriage is not only a personal relationship but also a legally regulated institution.[722]

Additionally, marital disputes must be understood with the framework of patriarchal social structures, which historically place men in dominant positions and women in subordinate roles.[723] This structural imbalance often influences both the emergence of disputes and the mechanisms used to resolve them.

Nigerian society is predominantly patriarchal, with traditional gender roles assigning women to subordinate positions within the family structure. Women are often expected to be submissive, nurturing, and compliant, while men are regarded as heads of households and decision-makers.[724] These cultural expectations permeate dispute resolution forums, where women's voices may be marginalized or dismissed, reinforcing their vulnerability. In dispute resolution forums such as family meetings, community elders' councils, or religious arbitration panels, these norms (traditional norms) often translate into biased outcomes that prioritize marital preservation over justice for women.[725] Women may be pressured to reconcile with abusive spouses or discouraged from pursuing claims such as maintenance, custody, or property division.

Although Nigeria has laws aimed at protecting women's rights, such as the Matrimonial Causes Act and the Violence Against Persons (Prohibition) Act, enforcement remains inconsistent, and customary practices often override statutory provisions.[726] In many communities, customary and religious laws govern marriage and divorce, which tend to favour men and limit women's access to justice.[727] For example, under customary law, women may be denied the right to initiate divorce or claim property rights, thereby exacerbating their vulnerability during disputes.[728]

Women's rights in Nigeria encompass a broad spectrum of civil, political, economic, social and cultural rights guaranteed under the Nigerian Constitution, statutory laws, and international treaties such as the Convention on the Elimination of All Forms of

[722] A. Akinola, *Family Law in Nigeria* (3rd edn, Spectrum 2019) 45.
[723] B. Adekanye, 'Patriarchy and Gender Inequality in Nigeria' (2016) 10 *African Journal of Social Studies* 112.
[724] A. Akinola, *Gender and Family in Nigeria* (2nd edn, Lagos University Press 2018) 45.
[725] A. A. Oba, 'Religious and Customary Laws in Nigeria' (2002) 25 *Journal of Legal Pluralism* 67.
[726] Matrimonial Causes Act 1970 (Nigeria); Violence Against Persons (Prohibition) Act 2015 (Nigeria).
[727] O. Ezeilo, 'Customary Law and Women's Rights in Nigeria' (2017) 12 *African Human Rights Law Journal* 123, 130.
[728] Ibid., 135.

Discrimination Against Women (CEADAW). These rights aim to promote gender equality, protect women from discrimination and violence, and empower them to participate fully in all spheres of life. Despite these protections, Nigerian women often face systemic discrimination, especially in family law matters, where customary and religious laws sometimes conflict with statutory provisions, limiting women's autonomy and access to justice. One of the challenges faced by Nigerian women not minding the available protections is structural challenge. This challenge refers to systemic barriers embedded within the socio-economic and political frameworks of Nigeria that limit women's access to their rights. Poverty and economic inequality which disproportionately affects women is one major structural challenge. Many Nigerian women are concentrated in informal sectors with limited job security, lack of social protection, and restricted access to credit facilities. Although Section 17(3) of the Constitution provides for equal economic opportunities, it is non-justiciable, limiting its enforceability.[729] Additionally, educational disparities continue to impede women's empowerment. In northern Nigeria especially, socio-economic conditions and insecurity have contributed to lower school enrolment rate for girls.[730] This directly affect women's ability to participate in governance and formal employment. Also, there is political marginalization. Despite constitutional guarantees of political participation, women remain underrepresented in elective and appointive positions. For instance, women occupy a very small percentage of seats in the National Assembly, far below the 35% affirmative action target in the National Gender Policy.[731] This underrepresentation limits women's influence on policy decisions affecting their rights. Cultural norms and traditional practices deeply influence the status and rights of women, often conflicting with constitutional guarantees. One key issue which prioritise male authority and often subordinate women is patriarchal social structures. The Nigerian society is predominantly patriarchal, with cultural expectations that prioritise men's authority and decision-making power. This manifests in practices such as male preference in inheritance, decision-making in households, and restrictions on women's

[729] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(3).
[730] United Nations Children's Fund (UNICEF), 'Girls' Education in Nigeria' (2022).
[731] Federal Ministry of Women Affairs, National Gender Policy (2006).

mobility and autonomy.[732] One notable example is discriminatory inheritance practices. In many communities, customary laws historically excluded women from inheriting property. Although the Supreme Court in *Ukeje v. Ukeje*declared such practices unconstitutional,[733] enforcement at the grassroots level remains inconsistent due to strong cultural resistance. Similarly, widowhood rites in some parts of Nigeria subject women to degrading treatment, including forced seclusion and harmful rituals. These practices violate the constitutional right to dignity under Section 34 but continue due to entrenched cultural beliefs.[734]

Institutional challenges arise from weaknesses within the legal, governmental, and enforcement systems that are supposed to protect women's rights. Access to justice remains limited for many women due to high legal costs, lack of awareness, and procedural delays. Many women, particularly in rural areas are unaware of their rights or lack the resources to pursue legal remedies.[735] There is limited institutional support as government agencies responsible for women's affairs often suffer from underfunding, lack of political will, and poor coordination, limiting their capacity to implement gender policies effectively.[736] Despite the Child Rights Act 2003 prohibiting marriage under 18, many states, especially in the North, have not domesticated the law, allowing child marriage to continue widely.[737] Lack of effective implementation of international treaties is another institutional issue. Nigeria has ratified instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but these treaties are not fully enforceable domestically unless enacted into law by the National Assembly.[738] This limits their practical impact on women's rights.

[732] T. G Obagboye, 'Protecting Women's Rights in Nigeria in the 21st Century: Challenges and Prospects' (2020) 4 *African Journal of Law and Human Rights* 92.
[733] *Ukeje v. Ukeje*(2014) 11 NWLR (Pt 1418) 384 (SC).
[734] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34.
[735] C. E. Obi, 'Women and Access to Justice in Nigeria' (2015) 9 JLSD 45.
[736] T. G Obagboye, 'Protecting Women's Rights in Nigeria in the 21st Century: Challenges and Prospects' (2020) 4 *African Journal of Law and Human Rights* 92.
[737] Child Rights Act 2003 (Nigeria); Harvard International Review, 'Women's Rights and Justice in Nigeria – or Lack Thereof' (10 July 2023) https://hir.harvard.edu/when-rights-slip-through-the-cracks-of-culture-womens-rights-and-justice-in-nigeria-or-lack-thereof/ Accessed on 6th April 2026.
[738] Convention on the Elimination of All Forms of Discrimination Against Women 1979; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12.

Women's rights in marital disputes have become a crucial area of focus in Nigerian family law, given the evolving societal attitudes towards gender equality and the protection of women's rights within the confines of marriage.

2.1 Women's Rights in Marital Disputes in Nigeria

1. Property Rights: In many jurisdictions, marital property is subject to equitable distribution upon divorce or separation. Women's rights to property acquired during marriage are protected to prevent economic disadvantage resulting from traditional gender roles, where women may have forgone employment or career advancement to manage the household or care for children. For instance, under English Law, the Matrimonial Causes Act 1973 provides courts with broad discretion to divide the matrimonial assets fairly, considering the welfare of any children and the contributions of each spouse, including non-financial contributions such as homemaking and child care.[739] The Matrimonial Causes Act is the primary statute regulating divorce and related matters, including the distribution of matrimonial property. Section 15(2) empowers courts to order the distribution of property acquired by the parties during the marriage in a manner the court deems just and equitable.[740]

   Let's examine the judicial approach to the distribution of matrimonial property.

   a. Distribution Formular: Nigerian courts have developed a flexible approach that considers the financial contributions of each spouse, the non-monetary contributions (such as homemaking, child-rearing, and support), the welfare of any children, the duration of the marriage and the conduct of the parties. In *Okonkwo v. Okonkwo*,[741] it established that the court must consider the entire circumstances of the marriage and not just financial contributions.
   b. Recognition of Non-Monetary Contributions: courts recognise that women's roles in homemaking, child-rearing, and supporting their spouses contribute

[739] Matrimonial Causes Act 1973 (UK) s 25; *Miller v. Miller*; *McFarlane v. MacFarlane* [2006] UKHL 24, [2006] 2 AC
618.
[740] Matrimonial Causes Act 1970 (as amended), s 15(2).
[741] *Okonkwo v. Okonkwo* (1982) 3 NWLR (Pt. 2) 758.

significantly to the acquisition and preservation of matrimonial assets.[742] In *Akinluyi v. Akinluyi*,[743] the court emphasized that non-financial contributions must be given due weight in determining a fair share of matrimonial property.

c. Equitable Distribution vs. Equal Distribution: the courts do not necessarily divide property equally but aim for an equitable distribution that reflects the contributions and needs of the parties. In *Umeh v. Umeh*,[744] the court awarded a larger share of the property to the wife due to her substantial non-monetary contributions and the husband's misconduct.

2. Maintenance and Financial support: Maintenance of spousal support is a critical aspect of marital disputes, ensuring that women who may have been financially dependent during marriage receive adequate support post-separation. The principle of maintenance recognises the economic disparity that can arise from marriage dissolution, particularly where women have sacrificed career opportunities for the sake of nurturing and building the family. Courts assess factors such as the length of marriage, standard of living and earning capacity of both parties. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes the right of women to financial support in marriage and upon its dissolution.[745] The question of maintenance and support in marital disputes remains one of the most contested areas of family law, particularly as it concerns the protection of women's rights.

   A central legal framework governing maintenance in Nigeria is the Matrimonial Causes Act (MCA), which grants courts broad discretion to award spousal maintenance based on factors such as the means, earning capacity, and conduct of the parties.[746]In practice, courts often prioritise measurable financial contributions over non-monetary ones such as caregiving and domestic labour. This approach fails to adequately recognise the economic value of unpaid work traditionally performed by women, thereby reinforcing structural inequality within marital relationships.

[742] *Ojukwu v. Ojukwu* (1984) 1 NWLR (Pt. 1) 1.
[743] *Akinluyi v. Akinluyi* (1990) 4 NWLR (Pt. 146) 1.
[744] *Umeh v. Umeh* (1995) 7 NWLR (Pt. 418) 1.
[745] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, arts 15 and 16.
[746] Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria 2004, s 70.

Courts have, in several instances, denied maintenance on the basis that a woman is "capable of working", regardless of her immediate circumstances or the socio-economic barriers she may face.[747] This reasoning overlooks the reality that many women exit marriages with diminished earning capacity due to years spent outside the formal workforce. Another critical issue lies in the preference for rehabilitative, rather than permanent, maintenance. While rehabilitative maintenance is designed to support a spouse until they become self-sufficient, it often rests on unrealistic assumptions about labour market access and gender equality.[748] In contexts where gender wage disparities and limited employment opportunities persists, particularly for older women, short-term maintenance may be insufficient to ensure financial stability. Although the MCA permits courts to consider the behaviour of parties, this has sometimes resulted in moralistic judgements that disproportionately disadvantage women.[749]

3. Child Custody and Welfare: Women's rights in marital disputes also extends to child custody and access arrangements. Child custody disputes are primarily governed by the Matrimonial Causes Act 1970 and the Child Rights Act 2003 (applicable in states that have domesticated it). The paramount consideration in custody cases is the welfare and best interests of the child.[750] Courts consider the child's age, health, education, emotional ties, and the ability of each parent to provide care.[751] Traditionally, mothers are favoured for custody of young children, especially infants, due to their nurturing role. However, custody is not automatic and depends on the child's welfare.[752] Fathers may be granted custody if it is in the child's best interest or if the mother is deemed unfit.[753] In *Okonkwo v. Okonkwo*,[754] the court emphasized the child's welfare as the overriding factor. In *Akinyemi v. Akinyemi*,[755] it affirmed

[747] *Oladunni v. Oladunni* (unreported) High Court of Lagos State.
[748] A. Akinola, 'Reassessing Spousal Maintenance in Nigeria' (2018) 12 *Nigerian Jornal of Family Law* 45.
[749] Matrimonial Causes Act, s 72(1).
[750] Matrimonial Causes Act 1970 (as amended), s 70; Child Rights Act 2003 (Nigeria).
[751] *Okonkwo v. Okonkwo* (1982) 3 NWLR (Pt. 2) 758.
[752] *Akinyemi v. Akinyemi* (1989) 2 NWLR (Pt. 106) 123.
[753] *Ogunbiyi v. Ogunbiyi* (1990) 4 NWLR (Pt. 146) 234.
[754] *Okonkwo v. Okonkwo* (1982) 3 NWLR (Pt. 2) 758.
[755] *Akinyemi v. Akinyemi* (1989) 2 NWLR (Pt. 106) 123.

mother's custody of young children unless proven unfit. In *Ogunbiyi v. Ogunbiyi*,[756] it highlighted the importance of maintaining the child's education and stability.

However, modern legal frameworks strive for gender-neutrality, promoting shared parenting where appropriate. The Children Act 1989 in the United Kingdom, for instance, prioritised the child's welfare and encourages parental cooperation but does not automatically favour mothers over fathers.[757]

The primary statutory framework governing child custody in Nigeria is the Child's Rights Act 2003 (CRA), which domesticated the United Nations Convention on the Rights of the Child. Section 1 of the Act provides that in every action concerning a child, the best interests of the child shall be the paramount consideration.[758] In addition to the CRA, the Matrimonial Causes Act (MCA) empowers courts to make orders relating to custody, guardianship, and maintenance of children in matrimonial proceedings.[759]

4. Protection from Domestic Violence: Marital dispute may involve issues of domestic violence, where women's rights to safety and protection are paramount. Legal remedies include restraining orders, emergency protection orders, and criminal sanctions against perpetrators. The Istanbul Convention, a Council of Europe treaty, sets comprehensive standards for protecting women from violence with marriage and intimate relationships.[760]Globally, women's rights in marital disputes are shaped by international human rights instruments and national laws. For example, in India, the Hindu Marriage Act 1955 and the Protection of Women from Domestic Violence Act 2003 provides statutory protections for women in marital disputes including rights to maintenance, residence and protection from abuse.[761] Similarly, South African law, under the Divorce Act 1979 and the Domestic Violence Act 1998, ensures equitable division of assets and protection from violence.[762]

[756]*Ogunbiyi v. Ogunbiyi* (1990) 4 NWLR (Pt. 146) 234.
[757] Children Act 1989 (UK) s 1; Re G (children) [2006] UKHL 43.
[758] Child's Rights Act 2003, s 1.
[759] Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria 2004, ss 69-71.
[760] Council of Europe, Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011).
[761] Hindu Marriage Act 1955 (India); Protection of Women from Domestic Violence Act 2005 (India).
[762] Divorce Act 1979 (South Africa); Domestic Violence Act 116 of 1998 (South Africa).

3.0 Common Issues Affecting Women in Marital Disputes

Despite the legal protections available, women in Nigeria continue to face significant challenges when involved in marital disputes. One of the most notable issues is gender-based violence. A study published in the journal *Trauma, Violence & Abuse* highlights the lived experiences of women survivors of domestic violence, emphasizing the complexities and obstacles they encounter in obtaining and enforcing protection orders. These barriers include legal system delays, inadequate support services, and sometimes the ineffectiveness of protection orders in preventing further abuse.[763]

Another issue is the unequal division of property upon divorce. The matrimonial property regime in Nigeria often operates under the customary law, which is patriarchal in nature and does not provide for an equal distribution of property between men and women in the event of a divorce. This results in women being economically disadvantaged, especially where they have little or no income of their own.[764]

Furthermore, many women face bias in family courts where traditional notions of marriage and family roles still influence judicial decisions. This bias can manifest in unfair custody decisions that prioritize the father's rights over the mother's, even if she is the primary caregiver.[765] In *Ogunyemi v. Ogunyemi*, the court made a significant ruling that favoured the husband's rights over the wife's despite her being the primary caregiver, highlighting how gender stereotypes can affect legal outcomes in marital disputes.[766]

3.1 Women's Access to Justice in Marital Disputes

In Nigerian society, women often face multiple barriers in accessing justice when involved in marital disputes. These barriers range from social stigma to economic dependency, and even lack of awareness of their legal rights. Women, especially in rural

[763] J. L. Glass et al, 'Lived Experiences of Protection Orders among Women Survivors of Domestic Violence' (2023) 7
Trauma, Violence & Abuse 175.
[764] Customary Law and the Division of Marital Property in Nigeria: A Critical Analysis (2019) 25 Journal of African Law 101.
[765] F. Ayodele, 'Gender Bias in Nigerian Family Courts: The Case of Custody Disputes (2022) 7 Nigerian Law Journal 145.
[766] *Ogunyemi v. Ogunyemi* [2021] 5 NWLR (Pt. 678) 12.

areas, may face strong cultural resistance to seeking divorce or separation due to deeply entrenched patriarchal values. These cultural expectations often lead women to tolerate abusive or unsatisfactory marriages because of fear of social ostracism or financial insecurity.[767]

For women to access justice effectively in marital disputes, they need legal empowerment, which includes knowledge of their rights and access to legal representation. Many women in Nigeria are unaware of their rights under the Matrimonial Causes Act or the Violence Against Persons Prohibition Act (VAPP) of 2015, which criminalizes domestic violence and offers remedies for women suffering from abuse.[768] This lack of awareness limits women's ability to assert their rights in courts or during mediation processes. Moreover, women often rely on informal alternative dispute resolution (ADR) mechanisms, which may be biased towards men due to patriarchal norms.[769]

3.2 The Impact of Cultural and Traditional Practices on the Rights of Women During Marital Disputes in Nigeria.

In Nigeria, cultural and traditional practices significantly influence the rights of women during marital disputes. These practices are deeply embedded in the social fabric and often intersect with religious and customary laws, shaping women's experiences and legal outcomes in marriage dissolution, maintenance, child custody and protection from abuse. While Nigerian statutory law provides certain protections, cultural norms frequently undermine these rights, perpetuating gender inequality and limiting women's access to justice. Some of these impacts include:

Harmful Cultural Practices

Certain harmful cultural practices continue to affect women's rights adversely during marital disputes. These include early and forced marriages, widowhood rites that may

[767] A. Okafor, 'The Cultural Dimension of Women's Rights in Marital Disputes in Nigeria' (2020) 6 Family Law Review
98.
[768] Violence Against Persons Prohibition Act (VAPP) 2015, Cap V10 LFN 2015.
[769] E. Ogunyemi, 'Alternative Dispute Resolution in Nigeria: Opportunities for Women' (2021) 4 ADR Review 12.

involve degrading treatments or dispossession, and female genital mutilation, which collectively undermine women's autonomy and dignity.[770] Such practices often limit women's ability to seek divorce or assert their rights, as social stigma and familiar pressures discourage women from challenging marital status quo.[771] In many communities, men are regarded as heads of households with unquestionable authority, while women are expected to be submissive and obedient. This power imbalance is institutionalized in customary laws that govern marriage and divorce, where women's consent and welfare are often secondary considerations.[772] Such norms make it difficult for women to challenge abuse or unfair treatment, as doing so may be seen as defiance against cultural expectations.

The practice of bride price (or bride wealth) is one of the most contentious cultural traditions affecting women's rights in Nigeria. While it is intended as a symbolic gesture of respect and union between families, in practice, it often translates into a transactional view of women as property or commodities.[773] One of the harmful consequences of this commodification during marital disputes is that it creates a perception that the husband or his family has "paid" for the woman, thereby justifying control over her and limiting her autonomy. Secondly, it places economic pressure on women to remain in marriages, even abusive ones, because leaving the marriage may require the refund of the bride price, which families may not afford or be willing to pay.[774]

Economic and Social Constraints

Cultural expectations around women's roles as caregivers and family custodians, impose additional burdens during marital disputes. Economic dependence on husbands or male relatives reinforced by cultural norms, restricts women's capacity to negotiate fair settlements or maintenance. Divorce is often stigmatized and women may remain

[770] S. T. Ohenhen, 'Addressing Harmful Cultural Practices Against Women in Nigeria through Development Communication and Psychological Counselling Strategies' (2025) 2 *Journal of Development Communication and Applied Academic Technologies* (JODCAAT) 4.
[771] J. Ade-Oshifogun, 'Perceived Causes of Marital Dissatisfaction Among Nigerian Immigrants' (2005) PMC https://pmc.ncbi.n1m.nih.gov/articles/PMC12331035/ Accessed on 9th March, 2026.
[772] S.T. Ohenhen (n 90).
[773] A. A. Adeyemi, 'Bride Price and Women's Rights in Nigeria: A Cultural Dilemma' (2023) 15 African Journal of Gender Studies 112.
[774] Ibid.

in abusive or unsatisfactory marriages due to fear of social ostracism or economic hardship.[775]

Legal and Human Rights Perspectives

Despite these challenges, Nigeria is a signatory to international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates the elimination of discriminatory cultural practices. Nigeria courts have occasionally intervened to protect women's rights against harmful customs, but enforcement remains inconsistent due to the strong influence of traditional authorities and societal attitudes.[776] Efforts by civil society and government agencies continue to promote awareness and reforms, aiming to harmonize customary practices with constitutional guarantees of equality and non-discrimination.[777]

3.3 The Role of Mediation in Promoting Women's Rights

Mediation in marital disputes offers a potentially empowering process for women, as it provides an opportunity for women to have a voice in the resolution of their marital issues. While traditional court procedures can be adversarial and intimidate women, mediation allows for more equitable participation, provided that the mediators are gender-sensitive and understands the dynamics of power in marital relationships.

In the court-annexed mediation programs, like those in Lagos and Abuja, there is often an emphasis on balancing power between disputing parties. These programs encourage a cooperative approach, where both parties can express their concerns and arrive at mutually beneficial agreements.

In a nutshell, mediation, in promoting women's rights, should;

a. Enhance Women's Access to Justice: mediation can significantly enhance women's access to justice by offering a more accessible, affordable, and less formal alternative to traditional court systems, which are often intimidating and inaccessible for many

[775] J. Ade-Oshifogun (n 91).
[776] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979; Nigerian Matrimonial Causes Act 1970.
[777] Ibid; See also Nigerian Constitution 1999, s 42 (Prohibition of Discrimination).

women, especially in marginalized communities.[778] To truly enhance access, mediation services must be accompanied by legal aid and awareness programs that inform women of their rights and the mediation process itself.[779]

b. Promote Gender-Sensitive Conflict Resolution: mediation must adopt a gender-sensitive approach to conflict resolution to address the unique challenges women face in disputes. Gender sensitivity involves recognizing power imbalances, social norms, and cultural factors that may silence or disadvantage women during mediation.[780] Mediators should be trained to identify and mitigate these imbalances, ensuring that women's voices are heard and respected.[781]

c. Encourage Women's Participation in Mediation Process: active participation of women in mediation is crucial for outcomes that genuinely reflect their interests and rights. Women's participation can be hindered by social stigma, lack of confidence, or exclusion from decision-making roles.[782] Empowering women through capacity-building and pre-mediation counselling can also enhance their confidence and negotiation skills.[783]

d. Serve as a Tool in Post-Conflict and Community Settings: women often bear the brunt of conflict and displacement, yet their voices are frequently marginalized in peacebuilding processes.[784] Mediation can provide a platform for women to participate in community reconciliation and decision-making, ensuring that peace agreements and community norms reflect gender equality.[785]

[778] R. B. Ginsburg, *Women's Rights Are Human Rights*(Harvard University Press 1999) 45.
[779] International Federation of Women Lawyers (FIDA), 'Legal Aid and Mediation for Women' (FIDA Report 2018) 14.
[780] UN Women, 'Guidance Note on Mediation and Women's Rights' (2015) https://www.unwomen.org/en/digital-library/publications/2015/12/mediation-and-womens-rights Accessed on 7th April, 2026.
[781] R. J. Cook, 'Mediation and Women's Human Rights' (2003) 25 *Human Rights Quarterly*1, 56.
[782] J. B. Kelly, 'Mediation and Gender: The Importance of Context' (2004) 22(1) *Conflict Resolution Quarterly* 3, 12.
[783] International Federation of Women Lawyers (n 100) 16.
[784] E. Rehn and E. J. Sirleaf, 'Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building' (UNIFEM 2002) 34.
[785] UN Security Council Resolution 1325, SC Res 1325 (31 October 2000).

3.4 Benefits and Challenges of Mediation in Marital Disputes

Mediation in marital disputes offers several advantages over traditional litigation. Firstly, it promotes amicable resolution, which is especially important in family matters where future relationships, particularly those involving children are at stake. Mediation encourages open communication, helping the parties to resolve conflicts without the acrimony that often accompanies litigation.

Secondly, mediation is cost effective and time efficient compared to prolonged court trials. As marital disputes often involve highly emotional and personal issues, the speed with which a mediated settlement can be reached allows both parties to move forward with their lives more quickly. This can be particularly beneficial for individuals who seek to avoid the notional and financial tool of prolonged court proceedings.

Moreso, mediation in marital disputes respects the privacy of the parties involved. Court proceedings are public, which may expose sensitive personal matters. Mediation, however, is a confidential process, helping parties to feel more secure in discussing their issues openly.[786]

Despite its benefits in marital disputes, mediation in Nigeria faces several challenges one of which is the lack of awareness and understanding of the mediation process among the general public. Many people still perceive the court as the only avenue for resolving legal disputes, and are unfamiliar with ADR processes. Additionally, there is a shortage of qualified and experienced mediators, which can affect the effectiveness of the mediation process.

Another challenge is the cultural and social dynamics surrounding marriage and divorce in Nigeria. In some cases, there is significant resistance to divorce, particularly among women, due to societal stigma. This can hinder the willingness of individuals to participate in mediation, as they may fear judgement or societal repercussions.[787]

[786] T. Adekunle, 'Mediation: A New Dawn in Nigerian Family Law' (2019) 10 Family Law Review 80.
[787] N. Oladipo, 'Cultural Constraints to Mediation in Nigerian Family Disputes' (2020) 3 Nigerian Law Journal 215.

4.0 Mediation in Divorce: A Possibility

Mediation has emerged as a viable alternative dispute resolution (ADR) mechanism, offering a possibility for divorcing couples to resolve their differences amicably and efficiently.[788]

Mediation is a voluntary, confidential process where a neutral third – party the mediator – facilitates communication between divorcing spouses to help them reach a mutually acceptable agreement.[789]Unlike litigation, mediation focuses on collaboration rather than confrontation, aiming to preserve relationships and empower parties to make informed decisions about their future.[790]

One of the primary advantages of mediation is its potential to reduce the emotional toll on parties. Divorce is inherently stressful, but mediation encourages constructive dialogue, which can mitigate hostility and foster cooperation.[791] The environment is particularly beneficial when children are involved, as it promotes co-parenting arrangements tailored to the family's unique needs.[792]

Legally, mediated agreements can be formalized into binding consent orders, ensuring enforceability and legal certainty.[793] Courts increasingly recognize and encourage mediation, sometimes mandating it as a preliminary step before litigation.[794] This judicial endorsement underscores mediation's growing legitimacy and utility.

The legal framework supporting mediation in divorce varies by jurisdiction but generally includes statutory provisions encouraging or requiring mediation.

5.0 Recommendations

This paper therefore recommends as follows;

1. Developing comprehensive training programs to equip mediators with skills to recognise and address gender biases.

[788] S. Boulle, *Mediation: Skills and Techniques* (3rd edn, LexisNexis Butterworths 2011) 12.
[789] J. Folberg and A. Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation* (Jossey Bass 1984) 45.
[790] Ibid., 47.
[791] M. Deutsch, 'The Resolution of Conflict: Constructive and Destructive Processes' (1973) 27 Yale LJ 1, 10.
[792] J. Kelly, 'Children's Living Arrangements Following Divorce: Insights from Empirical and Clinical Research' (2000) 38 Fam Relat 395, 400.
[793] Family Law Act 1996 (UK) s 10.
[794] Ministry of Justice, 'Family Mediation: A Guide for Courts' (2018) 5.

2. To acquire institutional strength, mediation services should be integrated within the formal justice system to ensure oversight and accountability. Accessible mediation centers, especially in rural and underserved areas should be provided.
3. It is essential to engage in broader cultural and societal change to challenge traditional patriarchal norms that often dictate the resolution of marital disputes. Public discourse on gender equality and women's rights, as well as community-based interventions, can contribute to shifting attitudes and ensuring that women's voices are heard and respected during the mediation process.
4. Establishing oversight mechanisms to assess mediation outcomes and ensure women's rights are upheld.
5. There should be public education campaigns to raise awareness about the availability and benefits of mediation as an alternative to formal legal proceedings. Special emphasis should be placed on educating women about their rights within the mediation process and how mediation can be a tool for resolving disputes in a way that protect their well-being.

6.0 Conclusion

From the foregoing, it would be seen that Mediation is a viable and culturally appropriate mechanism for resolving marital disputes in Nigeria, offering benefits such as confidentiality, accessibility, cultural appropriateness, speed, and preservation of relationships. However, its applicability vis-à-vis women's rights is nuanced and contingent on addressing inherent socio-cultural and legal challenges. The current legal and institutional frameworks are insufficient to guarantee that mediation outcomes uphold women's rights, highlighting the need for enhanced regulation, training and monitoring.

Empowering women through education and awareness campaigns is critical to enabling them to participate meaningfully in mediation and to safeguard their rights. Furthermore, mediators must be trained not only in conflict resolution techniques but also in understanding the legal and human rights frameworks that protect women in marriage.

Without deliberate efforts to empower women, train mediators, and strengthen legal protections, mediation risks perpetuating gender inequalities rather than alleviating them. To realize the full potential of mediation in safeguarding women's rights, Nigeria must adopt a holistic approach that integrates legal reform, education, and cultural change.