

## Understanding Void and Voidable Marriages in the Matrimonial Causes Act and the Holy Bible

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### Abstract

The importance of marriage to human existence cannot be overemphasised. Marriage was the first institution created by God for comfortability and procreation of men and women. Many marriages were full of complexities which resulted in divorce, incompatibilities, dishonesty, prostitution, inconsistencies, and unrest. Therefore, the study comparatively analysed void and voidable marriages in the Matrimonial Causes Act and the Holy Bible. Historical and case study designs were adopted. Doctrinal method was used in data collection. The primary sources of data were the Holy Bible, Constitution of Federal Republic of Nigeria 1999 (as amended), Matrimonial Act Cap M6; Matrimonial Causes Rules Cap 220, Laws of the Federation 2004; sources of secondary data were published textbooks, law reports, scholarly peer-reviewed journals, and articles. Data were content-analysed and presented thematically. Findings revealed that the Matrimonial Causes Act and Matrimonial Causes Rules being the laws and rules of marriages as constituted in usages and application are of biblical origin and founded on a Christian base. Many couples forced themselves into marriages without thinking of the consequences of being void or voidable marriages based on trying your luck. Matrimonial laws, rules, and the Holy Bible envisaged and prohibited void and voidable marriages. The study concluded that marriage was the first union God created. Intending couples should seek the face and God's guidance before marriage. The study recommended that void and voidable marriages be avoided. Christians should attend church seminars on marriages before proposing to marry. Pastors should preach sermons on marriages which will expose members of the church to the intricacies of marriages.

**Keywords:** Matrimonial Causes Act and Rules, Holy Bible, Void and Voidable Marriages, God.

### Introduction

Biblically, marriage is a sacred vow between a man and a woman to become one flesh. According to 1 Corinthians 7:2-11, "God's view of marriage is the divine plan for sexual relationships to secure stable families and committed parents and spouses." Ecclesiastes 4:9-12 states that "the Bible provides numerous verses that give guidance for married couples, husbands, wives, newlyweds, and engagement. Scripture offers valuable wisdom and advice whether you are considering a dating relationship, planning a wedding, or finding your marriage struggling."

Lord Green in the case of *De Reneville vs. De Reneville (1949) page 100,111 (C.A.)* held that "a void marriage will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any Decree

*annulling it; a voidable marriage will be regarded by every court as a valid subsisting marriage until a Decree annulling it has been pronounced by a Court of competent jurisdiction."*

In Genesis 2:24 and Matthew 19:4-5, "Christian marriage is a marriage that has been instituted and functions according to biblical principles. It is a marriage between one man and one woman. In a Christian marriage, there is no room for multiple wives or husbands. Neither is a 'marriage' between two men or women a marriage according to biblical principles. A Christian marriage is a lifelong covenant between one man and one woman." A Christian marriage has started with a commitment before God to be faithful to each other (Ephesians 5:22-33)

Malachi 2:14 says "...because the Lord was witness between you and the wife of your youth." Proverbs 2:17 speaks of the adulteress '*who forsakes the companion of her youth and forgets the covenant of her God.*' The word covenant here refers to her marriage. This verse shows that marriage is a covenant before God.

There is a commitment before other people so that society can treat the couple as a married couple. In this way, the couple can also be held accountable for their promises to each other before witnesses. In the book of John 4:18, when Jesus talked to the woman at the well in Samaria, he said: '*For you have had five husbands, and the one you now have is not your husband.*' This woman was living together with a man, but he was not her husband because there had never been a public commitment, so Jesus saw them as unmarried.

"A Christian marriage portrays the relationship between Christ and the church" (Ephesians 5:32). "Christ gave Himself up for the church; likewise, husbands should give themselves up for their wives and love them as their bodies. And as the church submits to Christ; likewise, wives should submit to their husbands and acknowledge him as the head of the family. There is no room for selfishness in the Christian marriage" (Ephesians 5:25-29)

The law concerning the annulment of marriages finds its roots in pre-Reformation Roman Catholic canon law, which came to rule all marriages following the adoption of Christianity as the state religion of the Roman Empire by the Edict of Thessalonica in 380. Before the Council of Trent in 1563 canon law essentially required only that the parties should have the capacity to marry and give their free consent. The capacity to marry depended on there being no diriment impediments, all of which had their origin in theology. These included the prohibited degrees of consanguinity or affinity as described in the book of Leviticus; non-age (then 12 for females and 14 for males); and impotence. Free consent could be vitiated by error, fraud, or duress as well as by unsoundness of mind. Canon law did not acknowledge the difference between a void and a voidable marriage. If an impediment existed, or if free consent was not given, the marriage was void *ab initio* and for all purposes.

Before the reformation, the ecclesiastical courts, applying canon law, and answerable ultimately to the canonical Court of Final Appeal - the Sacred Roman Rota - had the sole jurisdiction to grant a decree of nullity to a void marriage. However, issues as to the validity of a marriage could arise in the common law courts and the Court of Chancery. In *Ross-Smith v Ross-Smith (1963) AC 280, 330* Lord Hodson explained:

**Before the Reformation, the line drawn in the civil courts was between marriages that could be proved invalid only by a sentence of the ecclesiastical courts and those that could be impeached by other evidence.**

The rate at which persons including children of God are involved and practice void and voidable marriages in Nigeria which is not in the spirit of the Marriage Act, Matrimonial Causes Rules, and the Holy Bible is alarming. The same has resulted in a high rate of divorce cases being filed in the court hence this research exposes the immediate and remote causes of void and voidable marriages linking

it with the Holy Bible, the Marriage Act, and the Matrimonial Causes Rules. The study will make findings and recommendations at the end.

## Statement of the Problem

Many marriages are contracted and celebrated by couples globally and particularly in Nigeria without recourse to the provisions Matrimonial Causes Act/Rules and the Holy Bible in relation to void and voidable marriages. The developments do make some marriages to collapse. Cases are filed in the law court for the purposes of separation having not complied with the law and/or seek the face of God in line with the words of God in the Bible before contracting marriage. A void marriage is a marriage that is invalid as they are unlawful. Under these circumstances, the marriage is void from the outset. However, a voidable marriage is flawed in its validity but continues to exist until a nullity of marriage order is pronounced.

The processes for legally terminating a marriage which void or voidable is known as annulment. These proceedings are rare but may be appropriate where parties have cultural or religious reasons for opposing divorce or dissolution. Where a marriage celebrated by parties is within prohibited degrees of consanguinity or affinity the marriage will be void. Consanguinity is a marriage contracted between parties who are related by blood, while affinity is the marriage of a man with a person to whom he is related through marriage.

Not every church in Nigeria can validly celebrate a marriage. For such a celebration to be valid, the church must be a licensed place of worship. For a celebration of marriage in a church to be valid, the requirements under Section 21 of the Marriage Act must be followed.

## Types of Marriages in Nigeria

There are different types of marriage recognised under Nigerian law. These include statutory marriage, customary marriage, and Islamic marriage.

### Statutory Marriage

A statutory marriage people mistakenly call the registry/court marriage in Nigeria is a voluntary union for the life of one male and one female to the exclusion of all others in line with statutes. A statutory marriage in Nigeria is a monogamous marriage. Examples include marriages at the marriage registry or in a licensed place of worship (church marriage). The principal legislation regulating statutory marriages in Nigeria are the Marriage Act, Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria, 2004, and Matrimonial Causes Rules, 2004. Under the Act, the marriage must take place in a registered place of worship and must be conducted by a licensed minister or in the office of the registrar. Not all churches/mosques are licensed places for the celebration of marriages. It must be done with open doors. It must be done between the hours of 8 am and 6 pm.

#### i. Customary Marriage

Statutory marriage is different from customary marriage. Customary marriage is a union of a male and a female under customary law. It also involves two families. Nigeria has numerous types of customary marriages, different from the country's numerous cultures. The core features of customary marriage include parental consent, consent of the parties to the marriage and age, payment of bride price or perhaps dowry, prohibited degrees of consanguinity, and capacity and affinity to marry under customary law.

ii. **Islamic Marriage**

Islamic marriage, like customary marriage, is essentially polygamous, so if the male wants, he can marry up to four wives. It is most of the characteristics of customary marriages stated above. The principal requirements of a valid Islamic law marriage are consent of the parties, Parental consent, and payment of the Saduquat (i.e. bride price or perhaps dowry solemnisation). Marriage, is a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the rights and duties of the partners and accord status to their offspring

Most marriages in Nigeria are monogamous - a romantic commitment to only one mate. However, some follow polygamous marriages - a practice of being married to more than one person at a time. Men with multiple wives engage in polygamy and women with multiple husbands engage in polyandry.

Monogamy refers to the marriage of two people at a time - historically one husband and one wife. Polygamy is the marriage of either a husband to multiple wives or a wife to multiple husbands. Polygyny is the marriage of one man to multiple women, while polyandry is the marriage of multiple men to one woman.

iii. **Purposes of Marriage:**

Marriage is the union for life between a man and a woman, in the case of statutory marriage; and a woman or more than one woman in cases of customary and Islamic marriage. God designed marriage for three primary purposes: procreation, companionship, and redemption. These purposes are still relevant today and are essential for a healthy society.

**Parental Consent in Marriages**

If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he is dead or of unsound mind or absent from Nigeria, of the mother, or if both be dead or of unsound mind or absent from Nigeria, of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a license can be granted or a certificate issued. Section 19 of the Marriage Act provides further that:

**If there be no parent or guardian of such party residing in Nigeria and capable of consenting to the marriage, then any of the following persons may consent to such marriage, in writing, upon being satisfied after due inquiry that the marriage is a proper one-**

- (a) a Governor;**
- (b) a judge of the High Court of the State or the Federal Capital Territory, Abuja;**
- (c) any officer of or above the grade of assistant secretary.**

The absence of parental consent does not vitiate marriages under the Marriage Act. However, it is a punishable offence under Section 48 of the Act which provides thus:

**Whoever, knowing that the written consent required by this Act has not been obtained, shall marry or assist or procure any other person to marry a minor under the age of twenty-one years, not being a widow or widower, shall be liable to imprisonment for two years.**

In *Agbo vs Udo* (1947) 18 NLR 152 the plaintiff contracted a statutory marriage with his wife. After some time, he decided to get a divorce from her on the grounds of her adultery with a co-respondent. The co-respondent contended that the wife was a minor when the marriage was fine and consent as required by law was not obtained. As such, there was no valid marriage between the couple which the court might dissolve. The court held that notwithstanding the failure to get parental consent, the marriage was still valid under Section 33(3) of the Marriage Act.

## Legal Rights Under the Law in Nigeria to Contract Marriage

Every Nigerian possesses the fundamental human right to enter a marriage contract based on their free and full consent. The need for mutual consent is also recognised by Nigerian law, which ensures that neither party is forced or coerced into marriage. The institution of marriage is a fundamental aspect of Nigerian society, and it is crucial to make sure that the rights and obligations of both husbands and wives are effectively safeguarded. The rights and obligations of spouses are regulated by various laws and legal principles in Nigeria and to support women's equality and marital empowerment, Nigerian laws have undergone considerable changes.

These laws aim to protect the rights of both parties, promote equality, and provide a framework for the functionality of marriages and family units. The rights of Spouses as recognised under the Nigeria law include:

- a. **The Right to Enter into Marriage:** Article 12 of the Human Rights Act guarantees men and women of marriageable age the right to marry and establish a family. Every individual in Nigeria possesses the fundamental right to enter a marriage contract based on their free and full consent. The need for mutual consent is also recognized by Nigerian law, which ensures that neither party is forced or coerced into marriage. The Section 1(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended) forms the foundation of all laws in the country, including those relating to marriage and family. Under the Constitution, every individual, regardless of gender, is entitled to fundamental rights and freedoms, which include the right to life, dignity, personal liberty, and freedom from discrimination.
- b. **Equality in Marriage:** The principle of equality between spouses is a crucial aspect of Nigerian family law. The Matrimonial Causes Act and the Violence Against Persons (Prohibition) Act incorporate equality in marriage. Under the Marriage Act 2004, spouses are regarded as equal partners in marriage. This means that husbands and wives enjoy equal rights and responsibilities within the marital union, including decision-making, financial matters, and child-rearing. The Nigerian Constitution also guarantees equality before the law for both spouses. Neither spouse should be discriminated against based on gender. Spouses should have equal rights to property, assets, and resources acquired during the marriage. The Matrimonial Causes Act acknowledges the equal contributions of both spouses to the acquisition and management of marital property.
- c. **The Right to Personal Security and Safety:** Nigerian law recognises the rights of both husbands and wives to be free from violence and abuse within the marriage. Domestic violence, whether physical, emotional, or sexual, is a serious concern that affects many marriages and is strictly prohibited. The Violence Against Persons (Prohibition) Act of 2015

provides comprehensive legal protection against all forms of domestic violence, including physical, sexual, emotional, and economic abuse allowing victims to seek redress and obtain restraining orders against their perpetrators.

- d. **Inheritance Rights:** Nigerian law has made significant strides in ensuring gender equality in inheritance rights. Equal rights regarding inheritance are granted to husbands and wives under different states' succession laws in Nigeria, such as the Lagos State Law of Inheritance, 2004. This implies that upon the death of either spouse, both spouses, regardless of gender, are entitled to an inheritance from their spouse's estate.
- e. **Right to the Dissolution of Marriage:** Section 15 of the Matrimonial Causes Act 2004 provides for the ground for the grant of a decree of dissolution of marriage. This means that either spouse can file for divorce on various grounds such as adultery, cruelty, desertion, or irreconcilable differences. The law also allows for separation orders and judicial interventions to promote reconciliation.
- f. **Right, to own Property in Nigeria:** Property rights within a marriage depend on the type of marriage. Under statutory marriages, the Matrimonial Causes Act governs the distribution of property in the event of divorce or separation. Customary law, on the other hand, often reflects the patrilineal nature of inheritance, which may affect the property rights of wives. However, recent legal reforms have sought to address gender imbalances by promoting equal property rights for women. On equal property rights for women in Nigeria, the Supreme Court held in the case of *Mojekwu vs. Mojekwu* (1997) 7 NWLR 283 that women have a right to inherit property from their fathers. The court emphasised that the customary law that denied female children the right to inheritance was discriminatory and inconsistent with the principles of the Nigerian Constitution. This verdict upended long-standing practices and established a precedent for women's equal property rights. Section 44(1) of the Constitution of Nigeria, 1999 also recognises the right of citizens to own property in Nigeria.
- g. **Right to Maintenance and Support:** During the marriage, Spouses are legally obligated to provide financial maintenance and support to each other. The Marriage Act of 2004 acknowledges couples' obligation to contribute to each other's well-being, including financial assistance for necessities, healthcare, and education. This provision ensures the well-being and stability of the marital relationship.

### The Bible and Marriage

Genesis 1:27 states "So God created mankind in his image, in the image of God he created them; male and female he created them." The verse says a lot about God and us. The Lord created us in His image. We bear many of the characteristics of the Lord which include love, mercy, justice, self-awareness, others-centeredness, grace, honour, faithfulness, and a host of others. Only the Lord is perfect in all the above. Our capacity to reflect God's perfect character traits of love, justice, and compassion is tainted by sin.

Adam's sin caused the image of God to be broken beyond our ability to repair. Sin, in the Christian sense, is not just doing something wrong, it is an attack against the Lord God who is the sustainer of life in the cosmos.

Ephesians 5:22-33 states thus:

**Wives, submit yourselves to your husbands as you do to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything.**

**Husbands love your wives, just as Christ loved the church and gave himself up for her to make her holy, cleansing her by the washing with water through the word, and to present her to himself as a radiant church, without stain or wrinkle or any other blemish, but holy and blameless. In this same way, husbands ought to love their wives as their bodies.**

He who loves his wife loves himself. After all, no one ever hated their own body, but they feed and care for their body, just as Christ does the church - for we are members of his body. "For this reason, a man will leave his father and mother and be united to his wife, and the two will become one flesh." This is a profound mystery - but I am talking about Christ and the church. However, each one of you also must love his wife as he loves himself, and the wife must respect her husband

In the marital relationship, the husband is not a power-hungry dictator, but a person who is in a relationship with his wife for leadership and responsibility. He is to love his wife as Christ loved the church and even die for her if required just as Christ died for us. This relationship is akin to Christ and the Church as in a Lover and Beloved.

### **Void and Voidable Marriages in the Matrimonial Causes Act**

A void marriage is one that is void ab initio, i.e. there was no marriage created at all in the first place. A voidable marriage is one that was valid in the first place but for some reason or other is not valid later. A voidable marriage is only annulled after decree absolute of nullity and until then the marriage must be treated as existing. The classic statement of the distinction between a void and voidable marriage is that of Lord Greene MR in *De Reneville vs. De Reneville* (1948) 1 All ER 56 at 60:

A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it; a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction

With a void marriage, as Lord Greene MR says, it is not necessary to have a decree as there is no marriage to annul, so that a person can enter a valid second marriage without obtaining a decree. With a voidable marriage a decree of nullity must be sought, because until a decree is granted a person remains married and cannot legally remarry, and ancillary relief can only be sought if a decree is granted. With a void marriage, a decree can be sought not only by a party to the marriage, but by a third party and even after the death of one of the parties, e.g. a relative could seek a decree that a marriage is void to claim entitlement to the estate of the deceased, to which the deceased spouse would have been entitled under the laws of intestacy. A decree of nullity in respect of a voidable marriage can only be sought by a party to the marriage. The grounds which render a marriage void relate to more fundamental requirements of marriage than those which render a marriage voidable.



Section 3 of the Matrimonial Causes Act, Laws of the Federation of Nigeria (LFN) 2004, the grounds on which a marriage celebrated after the commencement of the Act may be void ab initio are set out as follows:

**Existing Lawful Marriage:** Where either of the parties to a marriage is at the time of the marriage lawfully married to another person such marriage will be null and void. See *Omotunde vs. Omotunde* (2000) 1 SMC 255 at 271. Even where a customary law marriage precedes a statutory marriage with a different person, the marriage will still be null and void. Section 33(1) Matrimonial Causes Act 2004 provides that:

**No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married by native law or custom to any person other than the person with whom such marriage is had.**

The marriage under this subsection must be proved with a high degree of certainty to invalidate the marriage on the grounds of a previous marriage under customary law.

It is noteworthy that where parties to a subsisting customary marriage contract a subsequent statutory marriage, the marriage shall not be void.

**Prohibited Degrees of Consanguinity or Affinity:** Where a marriage celebrated by parties is within prohibited degrees of consanguinity or affinity the marriage will be void. Consanguinity is a marriage contracted between parties who are related by blood, while affinity is the marriage of a man with a person to whom he is related through marriage. The prohibited degrees of marriage were dealt with in Section 3, First Schedule, and Section 115(1) of the Matrimonial Causes Act 1970. Nonetheless, by Section 4 Matrimonial Causes Act 2004, in some circumstances, it may be possible for a person within the prohibited degrees of affinity to marry each other with the consent of a High Court Judge. See *Sanders v Sanders* (1967) 116 CLR 366.

**Invalidity by the Lex Loci Celebrations (Law of the Place of Celebration):** An annulment of marriage in Nigeria under a void marriage can be because of failure with the form prescribed by the lex loci celebrations. This is provided for by Section 3(1)(c) of the Matrimonial Causes Act. By the provision of Section 33(2) Marriage Act LFN, 2004:

A marriage shall be null and void if both parties knowingly and willfully Acquiesce in its celebration' without compliance with some formalities prescribed by the Act.

A marriage is void under this provision if it is clearly shown that both parties to the marriage had knowledge of the defect in the formalities but willfully agreed to its celebration (*Akinbuwa vs. Akinbuwa* (2000) 1 SMC 1 at 12-13).

For a marriage to be void under this sub-heading the following must be considered:

**Place of Celebration:** According to the Act, a marriage contracted under the Marriage Act must be celebrated in a Registrar's office or a Licensed place of worship or a place prescribed in a Special Licence. Any marriage celebrated in any other place than this will be void ab initio.

- a. Celebration of Marriage under false name or names
- b. Celebration without a Certificate or a Special Licence
- c. Marriage not celebrated by a minister of a religion or a Registrar of marriage.

A marriage under the Act must be celebrated either by a recognised minister of some religious denomination or body or by a Registrar of Marriage. Failure to comply with the requirement makes the marriage void ab initio. See Section 33(2) Marriage Act LFN, 2004

**Lack of Consent:** Where neither of the parties to marriage consents freely to the union, the marriage is invalidated. The following factors negate a party's consent to a marriage:



- i. **Fraud:** this is where there is dishonest misrepresentation by a party to the marriage by which the consent of the other was obtained, while duress is when a party to the marriage is compelled to contract such marriage by creating a state of fear or apprehension, which prevented the party from freely consenting to the marriage. Where consent is proved to have been obtained by fraud or duress, the marriage is annulled not because of the presence of fraud or duress but because of the absence of consent. See *Smee vs. Smee (1965) 7 FLR 321*.
- ii. **Mistake:** By Section 3(1)(d) of the Matrimonial Causes Act, LFN 2004, where the consent of a party to the marriage is not a real consent because that party is mistaken as to the identity of the other party or as to the nature of the marriage performed. The mistake of that party will make the marriage void ab initio. It is not every type of mistake that will invalidate a marriage. If a party voluntarily marries the other party thinking that the marriage is full of fortune and it turns out after marriage that the other party is a debtor, the marriage will not be declared invalid simply because of that reason. The second part of the mistake contained in Section 3(1)(d)(ii) of the Matrimonial Causes Act 2004, is one as to the nature of the marriage ceremony performed between the parties. See *H vs. H (1975) 1 All ER 367 CA*.
- iii. **Insanity:** Where the consent of one of the parties is not real because that party is mentally incapable of understanding the nature of the marriage contracted, the marriage is null and void. See *Watchel vs. Watchel (1973) 1 All ER 829*.
- iv. **Marriageable Age:** Under section 3(1)(e) of the Matrimonial Causes Act 1970, if either of the parties is not of marriageable age the marriage is null and void. The Marriage Act of 1914, The Matrimonial Causes Act of 1970, and the Matrimonial Causes Act, of 2004 did not prescribe any marriage age.

Under the Child Rights Act and Child Rights Law of many states in Nigeria, a person up to 18 years of age is an adult and of marriageable age. What happens in the northern part of the country is an eye where less than 18-year-old girls are being forced into marriages.

### **Voidable Marriage**

Unlike a void marriage, which is void *ab initio*, a voidable marriage can only become void at the instance of one of the parties to the marriage. In a voidable marriage, only the court can pronounce that the marriage is void and subsequently nullify it. See *Akinboni v Akinboni (2002) 5 NWLR (Pt 761) 564*. While any interested party may bring a petition for a void marriage upon the death of one of the parties to the marriage, if a marriage is voidable, it cannot be questioned by any third party because the marriage was valid till the death of the other spouse and subsisting marriage. The other spouse is entitled to all the rights of a widow/widower.

**Grounds on which Marriage is Voidable:** The following are possible grounds for a marriage to be voidable:

**Incapacity to Consummate Marriage:** Where either of the parties to a marriage is incapable of consummating the marriage by Section 5(1)(a) of the Matrimonial Causes Act 2004, that is one of the parties is impotent the marriage is voidable. Impotence is different from sterility in that the latter refers to the incapacity to procreate children while the former is incapable of having normal sexual relations. Where sexual relations are partial or imperfect there will be no consummation. The use of contraception or the practice of *coitus interruptus* amounts to consummation.

It is noteworthy that to make a marriage voidable the incapacity to consummate must exist both at the time of the marriage and the hearing of the Petition. Before a marriage is declared voidable on the grounds of incapacity to consummate, the court must be satisfied that the defect is not curable; that is it cannot be cured by medical treatment.

**Unsoundness of Mind, Mental Disorder, and Epilepsy:** Under section 5(1)(b) of the Act, a marriage is voidable if at the time of its celebration one of the parties was of unsound mind or a mental defective, or subject to recurrent attacks of insanity or epilepsy. If any of this mental deficiency arose only after the marriage it would not void the marriage.

The unsoundness of the mind need not be absolute idiocy but could be a weakness of understanding. A spouse who is of unsound mind or mental defect is regarded by the law as being incapable of carrying on a normal marital life. The other party to the marriage is allowed to petition for the nullity of the marriage. Where a spouse is at the time of the marriage subject to recurrent attacks of insanity or epilepsy, the marriage will be voidable. The marriage will not be declared voidable at the petition of the party suffering from mental deficiency or epilepsy.

**Venereal Disease:** According to Section 5(1)(c) of the Matrimonial Causes Act 2004, the marriage is voidable where at the time of its celebration either party was suffering from a venereal disease in a communicable form. If it cannot be shown that the party in question was suffering from the disease at the time of the marriage, the disease would not constitute a ground for nullity.

The party alleging the venereal disease in communicable form may prove it in various ways including the calling of medical evidence.

**Pregnancy of the Wife by a Person other than the Husband:** By section 5(1)(d) of the Act, where at the time the marriage was celebrated the wife was pregnant by a person other than the husband, the marriage will be voidable at the instance of the husband. By Section 35(c) of the Act, the wife so pregnant cannot obtain a decree of nullity on the grounds of her pregnancy. But where the petitioner knew about the pregnancy at the time of the marriage this would amount to an approbation of that. The Court will refuse a decree where the petitioner with full knowledge of the fact and without just cause allows his right to lapse.

Restrictions in Respect of the Grounds in Sections 5(b) (c) or (d) of the Matrimonial Causes Act 2004: By Section 37 of the Matrimonial Causes Act, LFN 2004, three further restrictions are imposed on the granting of a decree of nullity in respect of marriages which are voidable because of insanity, venerable disease or pregnancy at the time of marriage.

- i. By Section 37(a) of the Matrimonial Causes Act, 2004, no decree of nullity can be made on any of the above grounds except if the Court is satisfied that the petitioner was at the time of the marriage ignorant of the fact constituting the ground.
- ii. Under Section 37 (b) of the Act, to obtain a decree of nullity, it must be shown that the petition was filed not later than 12 or twelve months from the date of marriage.

- iii. According to Section 37 (c) of the Act, for the decree of nullity to be granted, it must be proved that marital intercourse has not taken place with the consent of the petitioner since he discovered the existence of the facts constituting the ground.

Effect of Decree of Nullity of Voidable Marriage: By section 38 of the Act, a decree of nullity of a voidable marriage shall annul the marriage from and including the date on which the decree becomes absolute. However, a decree of nullity of a voidable marriage shall not render illegitimate a child of the parties born since or legitimated during the marriage.

In *Ray vs. Sherwood* (1836) 1 Curt 173, 188 Dr. Lushington in the Consistory Court explained how the concept came into being:

It was the interference of the Common Law Courts, which, in such cases, prohibited the spiritual courts from bastardising the issue after the death of one of the parties that created the distinction - the very unnatural distinction - of voidable and void: for voidable is void ab initio.

On appeal, this development was elaborated by Sir Herbert Jenner, Dean of Arches, in *Ray v Sherwood and Ray* (1836) 1 Curt 193, 199-200:

Originally, as now, these marriages were void ab initio, when the sentence was pronounced by the Ecclesiastical Court: and it appears that the Ecclesiastical Courts were in the habit of annulling these marriages, even after the death of the parties, after the death of both, or of one only. This seems to have been the practice antecedent to the Canon of 1603, as will be evident from a reference to the *Articuli Cleri* (2 Inst. 614), by Archbishop Bancroft, in the 3d James I (in the year 1606), whence it appears that the practice had existed for a long time before, and that the Ecclesiastical Courts complained of the interference of the Temporal Courts in cases of ecclesiastical cognizance ... The practice then clearly existed at that time of declaring these marriages void after the death of the parties, and the Temporal Courts interfered to protect the interest of the issue of such marriages, and not that of the guilty parties, for as it appears from the case of *Harris v. Hicks* (2 Salk. 548), in the 4th and 5th of William and Mary, where a man had married the sister of his deceased wife, and it was suggested that the second wife was dead, and a son, the issue of the second marriage, would be entitled to lands, the Temporal Court, in that case, issued a prohibition against these Courts proceeding to annul the marriage between the parties after the death of one of them, but it did not prohibit them from punishing the survivor for the incest committed during cohabitation.

If the cause of the non-consummation was impotence either quoad hanc or hunc such a marriage was void at canon law. If the marriage was not consummated for any other reason, then it was, and remains, exceptionally, dissoluble at canon law, although the power to do so has always been reserved to the Pontiff. The grounds for dissolution were, and remain, stringent.

Transgender and Homosexuality, the Bible and Matrimonial Causes Act: God created man in his image, in the image of God he created him; male and female he created them (Genesis 1:27). God made them male and female. That is their gender: male and female. He did not make them transgender or any other kind of gender. He made them male and female. He showed them how everything was supposed to work, and they figured it out well. And it is clear not only concerning the gender but also concerning the number. He did not make several Eves for Adam - a selection for him to choose from. He just made one. And He didn't make another Adam as an alternative for Eve. He just made one, pointing to the fact that at the very beginning of creation, you have the roots of heterosexual monogamy. Heterosexual monogamy - that marriage is about one man and one woman, and it is not about anything other than one man and one woman. And the redefining of that in terms of a confused culture does nothing to alter the facts, does nothing to alter the reality of what

God has done (Mark 10:6). It suffices to say that the Holy Bible and the Matrimonial Causes Act do not recognise transgender and homosexuality which are both void *ab initio*

Exceptions and where Divorce is Allowed in the Bible: Even though the Holy Bible goes against divorce, there are two clear biblical reasons why divorce is allowed. The first one is adultery/sexual immorality.

Matthew 5:31-32 states thus:

It has been said, 'Anyone who divorces his wife must give her a certificate of divorce.' But I tell you that anyone who divorces his wife, except for sexual immorality, makes her the victim of adultery, and anyone who marries a divorced woman commits adultery.

Malachi 2:16 states that 'the man who hates and divorces his wife,' says the Lord, the God of Israel, 'does violence to the one he should protect,' says the Lord Almighty. So be on your guard, and do not be unfaithful.' Moses' teaching on divorce in the book of Deuteronomy 24:1-4 was this:

If a man marries a woman who becomes displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce, gives it to her, and sends her from his house, and if after she leaves his house she becomes the wife of another man, and her second husband dislikes her and writes her a certificate of divorce, gives it to her and sends her from his house, or if he dies, then her first husband, who divorced her, is not allowed to marry her again after she has been defiled. That would be detestable in the eyes of the Lord. Do not bring sin upon the land the Lord your God is giving you as an inheritance.

The spirit of the law in the Deuteronomy passage is clearly to protect marriage and not to make divorce and remarriage a frivolous and casual affair. The Deuteronomy passage also clearly indicates the sinfulness of just focusing on the ability to divorce without thinking about the wicked consequences it has on the divorced wife but ultimately on families and Jewish society altogether.

Jesus brings back the true focus and context of this passage to bear upon his listeners who were there for His Sermon on the Mount. So, there we have it: adultery causes so many consequences that Jesus does say that it is an exception to honoring the marriage covenant. Adultery is such a deep breach of the marriage covenant that untold pain and rift are caused in the relationship (Matthew 19:9).

Further, the Bible says: that whoever divorces his wife, except for sexual immorality, and marries another, commits adultery. Divorce is permitted on account of sexual immorality. Why? Well, clearly because the one-flesh union has now been violated. That which God has said, let not man put asunder that which God has joined together let not man separate (Mark 10:9) that which God has said is to take place within a monogamous, heterosexual, lifelong companionship, has now been violated. It has been broken. It will never be the same again. And so, that marital unfaithfulness, that immorality, made divorce permissible. Permissible, but not prescribed. Something that is permitted is not necessarily prescribed. See *Kafi v Kafi* (1986) 3 NWLR (Pt 27) 175 at 187.

The principle of forgiveness and trust is also present and if couples are willing to work through a deep breach of the marriage covenant there is a very real possibility of repair and healing in the marriage. Desertion: The second biblical reason divorce is permitted is for desertion from the marriage where the spirit of return, repentance, and forgiveness is not present either from one partner or both partners. The Bible recognizes here the harsh reality of our capacity for depravity and sinfulness. This sinfulness leads to a break in the marital covenant that one or both partners refuse to repair. The Holy Book in 1 Corinthians 7:10-16 says as follows:

To the married, I give this command (not I, but the Lord): A wife must not separate from her husband. But if she does, she must remain unmarried or else be reconciled to her husband. And a husband must not divorce his wife.

To the rest, I say this (I, not the Lord): If any brother has a wife who is not a believer and she is willing to live with him, he must not divorce her. And if a woman has a husband who is not a believer and he is willing to live with her, she must not divorce him.

For the unbelieving husband has been sanctified through his wife, and the unbelieving wife has been sanctified through her believing husband. Otherwise, your children would be unclean, but as it is, they are holy.

But if the unbeliever leaves, let it be so. The brother or the sister is not bound in such circumstances; God has called us to live in peace. How do you know, wife, whether you will save your husband? Or, how do you know, husband, whether you will save your wife?

## Summary

Marriage is a creation of statute and established by God in the Holy Book. Some marriages are legal while others are illegal, and not in compliance with the law and the spirit of God. There are void and/or voidable marriages that are in the face of the scriptures and the law cannot be accommodated and human beings are not to fall prey to such.

## Conclusions

Marriage being the first union God created, there are no clear distinctions between the provisions of the Matrimonial Causes Act and the Bible in respect of void and voidable marriages. The Act takes a cue from the Scriptures in its provisions. There is the need to amend the Matrimonial Causes Act and the Rules, 2004 to accommodate marital future challenges of couples.

## Recommendations

1. The study recommends as follows:
2. Void and voidable marriages should be avoided.
3. Intending couples should seek the face and God's guidance before marriage.
4. Christians should attend church seminars on marriages before proposing to marry.
5. Pastors should preach sermons on marriages, exposing church members to the intricacies of marriage. This should be done at least once a month.
6. The obnoxious sections of the Matrimonial Causes Act and the Rules of 2004 should be amended.

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