

# An Overview of the Celebration of Statutory Marriage in Nigeria

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## ABSTRACT

*Statutory marriage is one of the effects of Nigeria's colonisation. In recent times, it has become quite popular and one of the reasons for this may be because the party who seeks to dissolve it must prove to the court that the marriage has broken down irretrievably. In addition, parties to a statutory marriage feel safer, because in the event of a dissolution, the law makes provisions for custody of the children of the marriage, maintenance and even settlement of property, hence, there is always something to fall back on. A major problem with the celebration of statutory marriage in Nigeria is that most people do not know how it is celebrated properly; in effect there are quite a number of voidable marriages which become legal, upon ratification. Another problem is that a number of sections of the Marriage Act are out-dated, and do not address important issues like marriageable age, a precise definition of marriage in the Nigerian context, which includes polygamous and monogamous marriages. The ultimate objective of the paper is to critically examine the celebration of statutory marriage in Nigeria, in accordance with the provisions of the Marriage Act. In light of this, the paper seeks to analyse the following; the celebration of statutory marriage in Nigeria, formal and essential requirements for the validity of a statutory marriage and give recommendations on a reform of the out-dated Marriage Act.*

**Keywords:** Monogamous marriage, Statutory marriage, Consanguinity, Affinity, Formal requirements, Essential requirement,

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## Introduction

The institution of marriage is almost as old as mankind, God having established it, shortly after the creation of man.<sup>[1]</sup> It is a social institution which has existed from time immemorial and can be traced to the very creation of man as pronounced in the holy books of the two major religions.<sup>[2]</sup> In the Holy Bible, which is the recognised template for Christians, it is recorded that "and the LORD God said, It is not good that the man should be alone; I will make him an help meet for him".<sup>[3]</sup> Likewise, in the Holy Quran, it is recorded that "marry women of your choice, two or three or four of them".<sup>[4]</sup> It is an adjustment between the biological purposes of nature and the sociological designs of man.<sup>[5]</sup> Marriage is a sacred and permanent contract between a man and a woman who have consented to living a life of fidelity and caring for themselves, for the purpose of promoting their mutual growth and their welfare throughout their lives.<sup>[6]</sup> It is a universal institution which is respected all over the world.<sup>[7]</sup> Marriage is the root of the family and of society.<sup>[8]</sup>

Section 18 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act<sup>[9]</sup> provides for the protection of family life. Principally, this is achieved through sanctity of marriage. Every society promulgates laws, which regulate and promote the institution of marriage.<sup>[10]</sup> In Nigeria, a number of legal rules are aimed towards the promotion of marriage, and invalidating any act that may interfere with the institution of marriage.<sup>[11]</sup> Marriage is an institution in which interpersonal relationships, usually initiate and sexual, are acknowledged in a variety of ways, depending on the culture or subculture in which it is found.<sup>[12]</sup> This work will concentrate mainly on the statutory form of marriage, which is regulated by the *Marriage Act*.<sup>[13]</sup>

## Definition of Marriage

Westermarck has defined marriage as a relation of one or more men to one or more women which is a recognised custom or law, and involves certain rights and duties, both in the case of the parties entering the union and in the case of the children born of it.<sup>[14]</sup> A Marriage is said to be a voluntary union for life, of one man and one woman to the exclusion of all others, until divorce or death.<sup>[15]</sup> Four basic conditions are apparent, within this definition: the union is generally intended for life; the marriage reflects real consent; the union is intended to be monogamous, and that it is heterosexual. A Marriage is also the state of being united as spouses in a consensual and contractual relationship, recognised by law.<sup>[16]</sup> It is universally accepted that marriage, being a union of a man and a woman, involves two persons of the opposite sex.<sup>[17]</sup> The effect of this is that, sex is an essential determinant of the relationship of marriage. This means that to establish the existence of a valid marriage, it must be proved that the parties are a man and a woman. Ordinarily, one should think that this is straightforward. However, this issue has been complicated with the existence of hermaphrodites<sup>[18]</sup> and pseudo-hermaphrodites; including advances in medicine, which has made sex-change operation possible.

In Nigeria, marriages can be lawfully celebrated under statutory or customary law. This brings us to the types of marriage. Presently in Nigeria, are two types of marriages recognisable under Nigerian law. The first is marriage conducted under the Marriage Act, which is monogamous in nature. A Marriage under the Act is known as statutory marriage; in addition, it is one of the two forms of marriage under the Nigerian jurisdiction. The other is Customary marriage, which is divided into; Customary marriage, and Islamic Marriage.<sup>[19]</sup> These forms of marriage aforementioned are legally recognised, none can be said to be more important than the other; as each has its characteristics, it has its differences.

The celebration of marriage refers to the solemnisation or formalisation of a marriage.<sup>[20]</sup> Statutory marriage is also known as marriage under the Act. It is that, which is defined as "the voluntary union for life, of one man and one

woman, to the exclusion of others”<sup>™</sup>.[\[21\]](#) In other words, it is a form of marriage between a man and a woman which lasts till the death of either party to the marriage, or upon the dissolution of the marriage, whichever one occurs first.[\[22\]](#)

The Interpretation Act[\[23\]](#) defines a monogamous marriage as:

A marriage which is recognised by the law of the place where it is contracted as a voluntary union of one man and the woman to the exclusion of all others during the continuance of the marriage

## Celebration of Statutory Marriage

The marriage itself can take place in either of two places- in the Marriage Registry, or a licensed place of worship.[\[24\]](#)

### Marriage in a Marriage Registry( Registrar”s Office)

Parties who desire to contract their marriage in a registrar”s office may do so in the office of the registrar of marriages, between the hours of ten, before noon, and four in the afternoon with open doors.[\[25\]](#) A marriage, celebrated under such circumstances is valid, and can only be dissolved by a court of competent jurisdiction.

### Marriage in a licensed place of worship

If the marriage is to be celebrated in a place of worship, it must be conducted in a licensed place of worship[\[26\]](#) by a recognised minister of that religious denomination in the presence of at least two witnesses, apart from the officiating minister.[\[27\]](#) However, there is a proviso that the marriage must be celebrated with open doors, between the hours of 8am and 6pm.[\[28\]](#)

### Marriage under Special License

A special license may authorise the celebration of marriage at a place other than a licensed place of worship, or the office of the registrar of marriages; however, it has to be conducted by a minister of religion, or a registrar of marriages.[\[29\]](#)

### Marriage in Nigerian Diplomatic Missions

The Marriage Act (Amendment)[\[30\]](#) provides for the celebration of a valid marriage outside Nigeria, in a diplomat or consular office. It is important to know that one of the parties of the marriage must be a Nigerian, and the marriage must be contracted before a Nigerian diplomat or consular officer, who is either on the rank of a secretary, or above the rank of a secretary. This marriage has the valid and legal effect as that contracted in Nigeria.

## Formal Requirements

The failure to comply with most of the formal requirements, does not in any way, affect the validity of a marriage.[\[31\]](#) However, section 12 and 33(2) of the Marriage Act specifically state that where certain formal requirements are not complied with, the marriage shall be void.[\[32\]](#)

The formal requirements are discussed below:

### Notice of Marriage

The Marriage Act provides that the parties are to complete and sign a notice of marriage in the prescribed form, which may be done by either of the parties.[\[33\]](#) The registrar[\[34\]](#) shall supply forms of notice to whoever applies for them.[\[35\]](#) After this is done, the form is to be recorded in the marriage notice book, which may be inspected during official hours, without a fee. In addition, the registrar is to publish such notice by affixing it on the door of his office, either till his certificate is granted, or until a period of three months have elapsed.[\[36\]](#)

### Registrar”s Certificate

The Marriage Act provides that, the certificate in Form C of the First Schedule may only be issued after the expiration of twenty-one days, and before the expiration of three months from the day of the notice; in addition, there must be a payment of the prescribed fee.[\[37\]](#)

### Caveat

The Marriage Act provides that any person whose consent to the marriage is required by law, or anyone who knows any just cause why the marriage should not be celebrated may enter a caveat” against an issue of the registrar”s certificate.[\[38\]](#) The caveat stops the registrar from issuing a certificate, until the caveat is removed. When this happens, the matter must be referred to a Judge of the State High Court, who takes it up from there.[\[39\]](#)” The judge, if in his discretion, sees that the certificate should be issued, shall remove the caveat in the prescribed manner, and the certificate can then be issued by the registrar.[\[40\]](#) The” judge is empowered by the Marriage Act to award compensation and costs to the injured party, if it appears that there were no sufficient grounds when the caveat was entered.[\[41\]](#)

# Essential Requirements

The Marriage Act<sup>[42]</sup> has laid down certain requirements to be followed, before the solemnisation of a statutory marriage. Unlike the formal requirements, failure to comply with the essential requirements, or lack of capacity on the part of one of the parties, will render a marriage void.<sup>[43]</sup> The essential requirements are discussed below:

## Age

The Marriage Act does not, in its present form prescribe the minimum age of marriage.<sup>[44]</sup> This significant omission has to some extent, been alleviated by the provision of the Child's Right Act<sup>[45]</sup> which states that the minimum age of marriage applicable to the Marriage Act is eighteen years. <sup>[46]</sup> Before March 1970, when the Matrimonial Causes Act<sup>[47]</sup> became effective, one school of thought held the view that the lacunae in the marriage law should be filled by applying the law and practice for the time being, in force in England.<sup>[48]</sup> If this were to be accepted, the English age of marriage prescribed by the Marriage Act 1949, which is sixteen years, will be applicable in Nigeria.<sup>[49]</sup>

However, Section 3(1)(e) of the Matrimonial Causes Act, 2004<sup>[50]</sup> declares a marriage void where either of the parties is not of "marriageable age".<sup>[51]</sup> Any person who marries or promotes the marriage of a child may be punished, on conviction, with a fine or imprisonment.<sup>[52]</sup>

## Consent

Consent is necessary because there can be no valid marriage unless each party consents to marry the other. Parental consent is not necessary for a statutory marriage to be valid.<sup>[53]</sup> This is to the effect that the absence of parental consent does not invalidate a marriage.<sup>[54]</sup> However, both parties must give an express consent. It is necessary to know that the consent must not be tainted with or obtained by fraud, coercion or duress; as the marriage may be void. The marriage may also be void if either of the parties is mistaken as to identity, the nature of the ceremony, or is of an unsound mind.<sup>[55]</sup> In *Agbo v Udo*,<sup>[56]</sup> the court held that the lack of parental consent is not a violation of the provisions of Section 33(3) of the Marriage Act, which can make a marriage null and void after celebration. The only exception here is when a party is less than 21 years old.<sup>[57]</sup> In that case, he or she must obtain the written consent of the father, or the mother, if the father is dead.<sup>[58]</sup> In the case where both parents are dead, are of unsound mind, or are absent from Nigeria, the guardian of the party can give consent.<sup>[59]</sup>

## Prohibited degree of Consanguinity and Affinity

The general rule is that parties to a statutory marriage must not be within the prohibited degrees of consanguinity and affinity.<sup>[60]</sup> Consanguinity is relationship by blood, while affinity indicates relationship through marriage.<sup>[61]</sup> Consanguinity is used to denote close blood relationship. The law forbids the marriage of persons related by blood or by marriage. In addition, the *Matrimonial Causes Act*<sup>[62]</sup> lists the prohibited degree of consanguinity and affinity in the First Schedule. A marriage is prohibited if the woman is or has been the man's<sup>™</sup> ancestress, descendant, sister, father's<sup>™</sup> sister, mother's<sup>™</sup> sister, brother's<sup>™</sup> daughter, sister's<sup>™</sup> daughter.<sup>[63]</sup>

It is trite that to every general rule, there is an exception, this also applies to affinity. The *Matrimonial Causes Act* enables two persons within the prohibited degree of affinity who wish to marry each other to apply in writing to a High Court judge for permission to do so.<sup>[64]</sup> A judge may by order permit the applicants to marry each other if he is satisfied that the circumstances of the particular case are so exceptional to justify the granting of the permission sought.<sup>[65]</sup> Section 4 of the Matrimonial Causes Act enables two persons within the prohibited degree of affinity who wish to marry each other to apply, in writing, to a High Court Judge for permission to do so.<sup>[66]</sup> In *Re P. And P's Application*,<sup>[67]</sup> an application to marry was made by a father-in-law and his daughter-in-law, after the latter was divorced for adultery with the former. The father-in-law had seduced his son's<sup>™</sup> wife and had thereafter lived as a man and wife with her and the young children of the son's<sup>™</sup> marriage. However, the application was refused by the court on the ground that the circumstances could not be regarded as exceptional, to justify the exercise of the court's<sup>™</sup> discretion.

## Single Status

Any prior marriage by a party, whether customary or statutory with some other person, renders that party incapable of contracting a subsequent statutory marriage with any other person.<sup>[68]</sup> Consequently, a party to a subsisting customary or statutory marriage has no capacity to enter into another statutory marriage with another person.<sup>[69]</sup> Indeed, not only will a subsequent marriage be void, it will also constitute a criminal offence, punishable by 7 years imprisonment in one case, and 5 years imprisonment in another case.<sup>[70]</sup> The only exception to this is if the subsequent statutory marriage was to the same party of an earlier customary marriage.<sup>[71]</sup>

## Sanity

Both parties to a statutory marriage must be sane. If one of the parties to the marriage was insane at the time of the marriage, the marriage will be void.<sup>[72]</sup>

## Recommendation

As stated, one of the issues with the celebration of statutory marriage in Nigeria is that people who want to contract it do not know how to go about it. It is recommended that from time to time, there should be awareness programmes to sensitize citizens of this issue. In addition, the major law on the celebration of statutory marriage in Nigeria, should be reviewed and updated, as it is out-dated. For this, it is recommended that there should be an amendment of the

Marriage Act which will contain a precise definition of marriage and marriageable age. In addition, the amendment should enforce the offence of bigamy, as defined in the act.

## Conclusion

This article has examined critically, how statutory marriages are conducted in Nigeria. The writer has done this by defining marriage, using the opinions of erudite scholars authors, case law and even statutes. In addition, the article discussed the formal and essential requirements to be fulfilled by the parties of a marriage, before and during the conduct. The formal requirements include; Registrar's certificate, notice of marriage, and caveat. While the essential requirements are; age, sanity, consent, prohibited degree of consanguinity and affinity (with its exceptions). Furthermore, this paper has proffered possible solutions to some of the problems that the Marriage Act has.

## About the Author

**Olaoluwatomi Anthonia Kolawole** ACI Arb is a 500 Level Law Student, Afe Babalola University, Ado-Ekiti; Email: [\[email protected\]](mailto:[email protected])

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- [23] Section 18.
- [24] Tijani N. *Matrimonial Causes in Nigeria- Law and Practice* (Renaissance Law Publishers Limited, 2007)12.
- [25] Ibid.

[26] The Minister of Internal Affairs is empowered to license a place of worship, for the celebration of marriages, by virtue of Section 6 of the Marriage Act.

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[30] Decree 1971 No.14 of 1971.

[31] I. Sagay *Nigerian Family Law*, ( 1<sup>st</sup> Edition, Malthouse Law Books) 50.

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