AN EXAMINATION OF ISSUES IN INDEPENDENT ACTION FOR MAINTENANCE UNDER THE MATRIMONIAL AND HUMAN RIGHTS LAWS IN NIGERIA

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Abstract

This paper critically examines the issues surrounding independent actions for maintenance under the Matrimonial Causes Act 1970 (MCA 1970). The paper is motivated by the persistent ambiguity in section 70 of the Act, which empowers courts to make maintenance orders but fails to indicate whether such proceedings may be instituted independently of principal matrimonial causes such as divorce, nullity, or judicial separation. This legislative gap has generated conflicting judicial interpretations and inconsistent enforcement across Nigerian courts. The paper adopts a doctrinal legal methodology, relying on statutory analysis, case law, and comparative examination of other jurisdictions. It also draws on relevant international conventions, including The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to assess Nigeria's compliance with global standards. This paper reveals that the MCA 1970, though a landmark statute, is inadequate in addressing the realities of family maintenance in contemporary Nigeria. The absence of express statutory provision for independent maintenance actions has resulted in divergent judicial opinions, procedural confusion, and limited access to justice for vulnerable spouses and children. The Act further restricts its application to statutory marriages, thereby excluding those contracted under customary and Islamic law, contrary to the constitutional principle of equality. Comparative analysis shows that jurisdictions such as the United Kingdom, South Africa, Canada, and Australia expressly recognise and regulate independent maintenance proceedings as a distinct legal right. The paper recommends a comprehensive legislative reform of the MCA 1970 to expressly provide for independent maintenance proceedings.

Key-Words: Maintenance, Spousal Maintenance, Child Maintenance, Maintenance Order, Statutory Marriage

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1. **Introduction**

The concept of maintenance lies at the intersection of human rights, family law, and socio-economic justice. In Nigeria, the obligation to provide maintenance is not merely a moral duty but a legal responsibility that emanates from marriage and parenthood. Maintenance ensures that a spouse or child who is economically disadvantaged as a result of marriage breakdown or parental neglect is not left destitute. It is therefore an instrument of both social protection and equitable justice. In Nigeria, this can be traced to the received English law and equity, which recognized a husband's obligation to support his wife and legitimate children. However, with the evolution of gender equality and social justice principles, maintenance has become a reciprocal obligation between spouses, irrespective of gender. The Matrimonial Causes Act 1970 (MCA), as the principal statute governing matrimonial reliefs, codifies the law on maintenance, particularly under sections 70 and 73, which empower courts to make orders for maintenance either ancillary to a principal matrimonial cause or upon application.

This paper examines the framework governing maintenance under Nigerian law, with a focus on the MCA 1970 and the Child's Rights Act 2003 (CRA). This paper seeks to analyse the scope, adequacy, and limitations of these provisions in ensuring fair and equitable support to dependents. It also evaluates the human rights dimension of maintenance as guaranteed under the 1999 Constitution (as amended) and relevant international instruments.

2. **Definition of Key Terms**

2.1 Maintenance

"Maintenance" in the Nigerian legal context refers to court ordered financial assistance for the benefit of a spouse or children of a marriage. Under statutory marriage regimes, this replaces the older term "alimony" used at common law. The purpose of maintenance is not to unjustly enrich another, but rather to ensure that a dependent spouse or children continue to enjoy, as far as possible, a standard of living consistent with what they were used to during the marriage.[1]

[1] B. O. Alloh, "Application of the Law of Maintenance under Section 70 of the Matrimonial Causes Act, Cap M7, LFN 2004", *International Journal of Comparative Law & Legal Philosophy* 1(2) (2019) 1062.

2.2 Spousal Maintenance

Spousal maintenance means maintenance awarded to either spouse in a statutory marriage under the MCA. This relief may be ordered either pending the final dissolution of matrimonial proceedings which is interim maintenance or after final determination which is permanent maintenance. The grant of spousal maintenance takes into cognizance factors such as the respective means and earning capacities of the parties, their conduct, and other relevant considerations.[2]

2.3 Child Maintenance

Child maintenance means the financial support ordered for children of the marriage or certain dependents, to meet their basic needs such as food, shelter, education, healthcare, and general welfare especially in the event of parental separation, divorce, or other disruption of cohabitation. Under the MCA, the court may order maintenance for children of a statutory marriage.[3]

2.4 Maintenance Order

A maintenance order is a judicial decree directing one party to pay maintenance either periodic payments in any of the following modes – weekly, monthly, yearly – as the court orders, or a lump-sum payment to the other spouse or children. Under the MCA, such orders may be granted
either during the pendency of matrimonial proceedings (interim maintenance) or after final determination of the matter (permanent maintenance).[4]

2.5 Statutory Marriage

A statutory marriage refers to a marriage recognized under legislation in Nigeria, primarily under the MCA as opposed to marriages solely recognized under customary or religious law. The duties, rights, and ancillary reliefs including maintenance under statutory marriages are governed by statutory law, not by customary or religious law of any tribe or religion.[5]

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[2] *Ibid.*

[3] Okonkwo, C.O. *Family Law in Nigeria*, 2nd edn, (Ibadan: Spectrum Books, 2016) 145.

[4] C. N. Obi, "Judicial Enforcement of Maintenance Orders in Nigerian Family Law" (2021) 3(2) *NJFL* 45.

[5] J. O. Ezeanokwasa ; C. S. Oduh, "Statutory Marriage Dissolution in Nigeria: An Analysis of the Legal Framework" (2024) 1(1) *JOCARL* 4196.

3. The 1999 Constitution of The Federal Republic of Nigeria

Although the Constitution does not explicitly provide for maintenance, several provisions indirectly support the principle. Section 17(3)(f) mandates that children, young persons, and the aged shall be protected against exploitation and shall be provided with adequate care. Similarly, section 42 prohibits discrimination, while section 33 and section 34 guarantee the rights to life and dignity respectively.[6] These provisions create a constitutional backdrop that underpins the duty of spouses and parents to provide financial support. The courts have occasionally linked maintenance to constitutional values. For instance, in *A.G. Ondo v A.G. Federation*, the Supreme Court recognised that the Constitution places an obligation on the State to ensure social welfare objectives.[7] Although this case did not directly address maintenance, it reflects the judicial tendency to interpret family law obligations in light of constitutional principles of dignity and equality.

4. Historical Background and Enactment

4.1 The Matrimonial Causes Act 1970

The Matrimonial Causes Act 1970 (hereafter "MCA 1970" or simply "the Act") was promulgated as part of Nigeria's efforts to codify and unify matrimonial jurisdiction, rights, and remedies under statutory marriage. It replaced various piecemeal provisions and sought to bring standardisation to the law of divorce, separation, nullity, custody, maintenance, and property settlement for couples married under statutory (i.e., "Western/Christian") marriage rules.[8] The Act has remained largely unamended in substantive terms (though subject to incorporation into subsequent LFN editions) and continues to form the core statutory scheme regulating matrimonial causes in Nigeria.[9] By consolidating diverse jurisprudential and customary principles into a unified statutory regime, the MCA 1970 sought to give clarity, predictability, and fairness—particularly in the domain of ancillary reliefs (i.e., **DSMJLJ** maintenance, custody, property settlement) which accompany the principal reliefs (e.g., divorce, judicial separation).[10]

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[6] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 17(3)(f), 33, 34, 42.

[7] (2002) 9 NWLR (Pt 772) 222 (SC).

[8] See A. Aguda, "An Examination of the Matrimonial Causes Decree, 1970" (public lecture, University of Lagos, 5 June 1970), reprinted in Select Law Lectures and Papers by Justice Akinola Aguda (Associated Publishers, 1971) 89-125.

[9] See the current codification as Cap. M7 LFN (2004), and the lack of substantive amendments in later revisions.

[10] See e.g., policy commentary, An Overview of The Nigerian Matrimonial Causes Act, eLegal Advice (last visited) https://elegaladvise.com/an-overview-of-the-nigerian-matrimonial-causes-act/.

5. **Structure of the Act**

The MCA is divided into nine parts, encompassing preliminary provisions, jurisdictional matters, substantive matrimonial causes, and ancillary reliefs.[11] Part I deals with the jurisdiction of courts and institution of proceedings; Part II outlines grounds for dissolution; and Part V provides for ancillary reliefs such as maintenance, custody, and settlement of property. The ancillary provisions are of particular importance to this paper, as they form the statutory basis for maintenance orders in Nigeria. Sections 69–73 specifically empower the court to issue orders relating to maintenance. Section 70(1) authorizes the court, upon the making or refusal of a decree, to make such order as it considers proper for the maintenance of either party or of children.[12] Section 73, on the other hand, allows the variation, suspension, or discharge of maintenance orders where there has been a material change in circumstances.[13]

6. **Jurisdictional Provisions**

The jurisdictional provisions of the MCA are set out primarily in sections 2, 3, and 114, which define the courts competent to entertain matrimonial causes and the conditions under which jurisdiction may be exercised. Section 2 confers exclusive jurisdiction on the High Courts, thereby excluding magistrates and customary courts from matrimonial adjudication.[14] Section 3 further provides that a party must be domiciled in Nigeria at the time of instituting proceedings for the court to have jurisdiction.[15] While these provisions aim to ensure uniformity, they have been criticized for their restrictive domicile requirement and exclusive jurisdictional allocation, which may impede access to justice, particularly for indigent litigants and those in rural areas.

The decision in *Anyaegbunam v. Anyaegbunam* underscores the jurisdictional rigidity of the Act, where the court held that domicile, not residence, is the key determinant of jurisdiction.[16]Furthermore, the interaction between sections 70 and 73 raises interpretive tension concerning whether maintenance claims can exist independent of matrimonial causes. The Court of Appeal in *Manume v. Manume* adhered to a literal reading, while the Supreme Court in *Ugbah v. Ugbah* adopted a purposive and human rights–oriented interpretation, holding that denying access to maintenance relief independent of dissolution proceedings violates the constitutional right to human dignity and

[11]*Ibid.,* Part I–IX.
[12] Matrimonial Causes Act, s. 70(1).
[13]*Ibid*., s. 73(1).
[14] Matrimonial Causes Act, s. 2.
[15]*Ibid.,* s. 3.
[16]*Anyaegbunam* v. *Anyaegbunam* (1973) 3 ECSLR 243.

protection of the family.[17] This development represents a transformative judicial re-reading of the MCA's jurisdictional scope, aligning Nigeria with comparative trends in South Africa, Canada, and the United Kingdom, where maintenance is seen as a standalone right rather than merely an adjunct to divorce.[18]

7.The Purpose and Philosophy of The MCA'S Maintenance Scheme

Embedded in the MCA's design is a balancing function: to afford financial protection to vulnerable spouses or dependents (especially children), while ensuring that maintenance obligations are fairly apportioned with regard to conduct, means, and other circumstances.[19] The Act constitutes a departure from rigid common-law norms (e.g., that only wives may claim maintenance) and seeks to vest discretion in the court to make orders that are "just and equitable" in all the circumstances.[20] However, the Act does not lay out a linear formula, but rather leaves much to judicial discretion. This flexibility gives rise to interpretative tension, particularly on whether the discretion may give rise to a standalone maintenance claim
divorced from a matrimonial petition.

7.1 Analysis of Key Provisions Relating to Maintenance under the MCA 1970

Section 69 of the Matrimonial Causes Act 1970 (MCA) is one of the most pivotal provisions in understanding the legislative intent behind maintenance for children following matrimonial breakdown in Nigeria. The section defines the scope of persons considered as "children of the marriage" who may benefit from maintenance orders under the Act. It extends the reach of maintenance jurisdiction beyond biological offspring, thereby demonstrating the legislature's intention to protect the welfare of all children who are integrally linked to the marital relationship. Section 69(1) of the MCA defines "child of the marriage" to include "a child of both parties to the marriage, a child adopted since the marriage by both parties or by either party with the consent of the other, and any child of either party accepted by the other as one of the family."[21] This wide statutory definition introduces a welfare-based approach that transcends the rigid concept of biological parentage. By doing so, the provision ensures that a child's entitlement to maintenance

[17] *Ugbah* v. *Ugbah* (2024) SC.
[18] Van der Merwe v. Road Accident Fund (2006) ZACC 4; Miller v. Miller [2006] UKHL 24.
[19] See L. O. Nwauzi, G. A. Akolokwu, "Maintenance under the Matrimonial Causes Act: Examining the Realities and Illusion" (ResearchGate paper).
[20] *Ibid.*
[21] Matrimonial Causes Act, Cap. M7, Laws of the Federation of Nigeria 2004, s. 69(1).

is rooted in social and familial reality rather than mere genetics. The inclusion of children adopted by one or both spouses, and those accepted as members of the family, reflects an intention to prioritize the child's welfare in accordance with section 1 of the Child's Rights Act 2003 (CRA), which provides that "the best interest of the child shall be the primary consideration in every action concerning the child."[22]

7.2 Factors to be Considered

Judicial and academic consensus agrees that in exercising the discretion under Section 70, the court must consider, means of the parties assets, income, capital, Earning capacity with regards to what the parties can earn, now or prospectively, Conduct of either party in the matrimonial relationship including marital misconduct, waste, desertion, injuries other circumstances like health, children, special needs that requires consideration and attention.[23] The "other circumstances" clause is a catch-all designed to envelop equity, fairness, and context-specific variables. Secondly, the idea of punishing the wrongdoing as a yardstick for either granting the divorce or deciding its financial terms has been faulted. It is argued that alimony should be based mainly on the financial circumstances of the two parties, thus putting away the issues of guilt or innocence. This will be more equitable.[24]

7.3 Limitations and Exclusions

The scope of section 70 is limited to ancillary maintenance claims (i.e., those adjuncts to a matrimonial suit).[25] Critics argue that the Act's drafting lacks clarity and fails to expressly allow independent maintenance actions.[26] Also, the MCA's scheme assumes that maintenance is tied to amatrimonial cause; i.e., courts historically have declined to entertain maintenance applications unconnected to a petition for divorce or separation.[27] The following sections made provisions for the enforcement of maintenance orders. Section 93 and 94 MCA provides that there should be enforcement of maintenance by attaching of earnings and arrest or writ. While sections 95 made provision for the enforcement of existing decrees. These show that once a maintenance order is made under the MCA, the court's power is buttressed by enforcement apparatus. But those enforcement sections presuppose that a valid maintenance order under MCA has already been made.[28]

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[22] Child's Rights Act, Cap. C50, Laws of the Federation of Nigeria 2004, s. 1.
[23] *Ibid*; see also Sryahwa Publications commentary.
[24] M. Attah, family Welfare Law in Nigeria (Benin City: Ambik Press Ltd, 2016) 127.
[25] See Critical Analysis of Laws Relating to Maintenance (CUAB).
[26] See Judicial Provision for the Maintenance of Children in Nigeria (IJAAS).
[27] *Ibid*.
[28] MCA 1970, ss. 93–95.

Relationship with section 69 and section 73 section 69 is often called the interpretation section, defining "marriage," "court," and the reach of maintenance remedies under the Act. Some scholars argue that section 69 allows maintenance orders even for void marriages under certain conditions, thus broadening the reach of maintenance.[29] Section 73 grants the court general powers to make ancillary orders in maintenance, custody, or property settlement matters, as the court considers appropriate. This "residual" power arguably supports the notion that the court may fashion remedies even beyond strict confines.[30] The interplay among sections 69, 70, and 73 is fertile ground for debate about whether independent maintenance claims are tenable.

8. **The Child Rights Act 2003**

The Best Interest Principle in Nigerian Jurisprudence entails that the doctrine of the best interest of the child underpins all judicial determinations involving children. Nigerian courts have increasingly relied on this principle in interpreting maintenance obligations. In *Williams v Williams*, the Court of Appeal emphasised that "the guiding light in all matters affecting a child's welfare is the paramount interest of the child, not the convenience of the parents.[31] In *Ukeje v Ukeje*, the Supreme Court invoked this principle to strike down discriminatory Igbo customary practices that denied female children inheritance rights, declaring such customs unconstitutional and inconsistent with the CRA.[32] The case demonstrates the judiciary's willingness to employ the CRA as a tool for promoting equality and protecting children from socio-scultural discrimination.Similarly, in *Mojekwu v Mojekwu*, the Court of Appeal reiterated that any law or custom inconsistent with the welfare of a child or the principle of equality is void to the extent of its inconsistency.[33] These decisions reinforce the supremacy of the CRA in matters concerning children's rights, including maintenance.

9. **Enforcement Mechanisms and Judicial Remedies**

The CRA provides robust mechanisms for enforcing maintenance obligations. Sections 70–74 outline procedures for applying to court for maintenance orders. The court may compel payment through garnishee proceedings, wage deductions, or attachment of property. Non-compliance with a maintenance order attracts penalties, including

[29] See Judicial Provision for the Maintenance of Children in Nigeria (IJAAS).
[30] MCA 1970, s. 73.
[31] (2008) 10 NWLR (Pt 1095) 364 (CA).
[32] (2014) 11 NWLR (Pt 1418) 384 (SC).
[33] (1997) 7 NWLR (Pt 512) 283 (CA).

imprisonment or community service. In *Oluwole* v *Oluwole,* the Lagos State Family Court ordered the respondent to pay school fees and living expenses for his two children, even though the parents were merely separated and had not filed for divorce.[34] This demonstrates the operationalisation of the CRA's independent maintenance regime. Moreover, section 204 of the Act establishes Family Courts at the High Court and Magistrate levels to handle matters affecting children, including maintenance. The specialisation of these courts ensures speed, confidentiality, and sensitivity in dealing with child-related matters. Despite these innovations, enforcement remains problematic. Many states have failed to domesticate the Act, limiting its applicability to the Federal Capital Territory and a handful of progressive states like Lagos, Akwa Ibom, and Ekiti.[35]

10. **Conclusion**

This paper has examined the issues surrounding independent actions for maintenance under matrimonial law and human rights frameworks in Nigeria, with particular reference to the 1999 Constitution of the Federal Republic of Nigeria (CFRN), the Matrimonial Causes Act (MCA), jurisdictional provisions, and the key statutory frameworks governing maintenance claims. The analysis reveals that while the CFRN 1999 guarantees fundamental rights such as dignity of the human person, equality, and freedom from discrimination, these constitutional protections do not expressly provide a direct and independent right to maintenance. Instead, they operate as guiding principles that support access to justice and fair treatment in matrimonial disputes, including claims for maintenance, especially where economic vulnerability is evident.

The Matrimonial Causes Act remains the principal legislation regulating maintenance in matrimonial proceedings in Nigeria. However, its provisions largely tie claims for maintenance to the existence of a pending or concluded matrimonial cause, such as divorce, judicial separation, or nullity of marriage. This legal position limits the ability of spouses particularly women and children to institute independent maintenance actions without first invoking matrimonial reliefs. As a result, the law often fails to adequately respond to urgent or standalone maintenance needs where parties are unwilling or unable to commence full matrimonial

[34] *Mojekwu* v *Mojekwu* (1997) 7 NWLR (Pt 512) 283 (CA).

[35] UNICEF Nigeria, "Status of Domestication of the Child's Rights Act in Nigeria" (2023). https://www.unicef.org/nigeria.

proceedings.

Jurisdictional issues further complicate independent maintenance claims, as the MCA vests exclusive jurisdiction in the High Courts of the States and the Federal Capital Territory. While this ensures uniformity in matrimonial adjudication, it also creates barriers to access to justice due to cost, delay, and procedural complexity. In contrast, other legal frameworks, such as customary and statutory courts, which are more accessible, are generally excluded from entertaining maintenance claims under the MCA, thereby narrowing the options available to aggrieved parties. Overall, the examination of key statutory provisions highlights the need for reform in Nigeria's matrimonial law and human rights regime.

There is a compelling case for clearer legislative recognition of independent maintenance actions, grounded in constitutional values of human dignity, equality, and social justice. Strengthening the maintenance framework would not only enhance the protection of vulnerable spouses and children but also align Nigerian matrimonial law with contemporary human rights standards. Until such reforms are undertaken, the effectiveness of maintenance rights in Nigeria will remain constrained by procedural and jurisdictional limitations.