

# THE CONCEPT OF MEDIATION IN A CONFLICTUAL FAMILY: NIGERIAN CUSTOMARY LAW AND SHARI'AH SYSTEM AS A CASE STUDY.

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## ABSTRACT<sup>1</sup>

This paper examines in a comparative way the principles and rules relating to the marriage dispute mediation under the Shari'ah and Nigerian Customary Law. Its legalities, conditions, and principles would discourse in this paper. The cause of marriage dispute would be slightly discourse in the finding while the premise that custodial right in Nigeria is only given to the father and not the mother will be analyzed. Classical works on the marriage dispute mediation would be studied in this finding in contrast with Nigerian Customary system. The research will be conducted through a qualitative method using the available materials gathered from library and internet. Material that are obtained include the primary sources like legislation, gazette, commentary of the *Qur'an* and *hadith*, and textbook by all respected schools of Islamic law. Secondary sources would be theses, journals, periodicals, and conferences proceedings are also consulted. The solution and suggestions would be made in this research.

## Introduction

Dispute arises from a default in a relationship between the husband and wife because of many reasons and causes of rift and rancor that tantamount to the misunderstanding between the couples. The goal in resolving such dispute through traditional system and methods is reconciliation in order to save the marriage and the biological children interest. Under the Nigerian customary system of mediation in a conflictual family disagreement, settling, healing, harmonizing making compatible, making friendly after estrangement between the concerned parties. It is abomination under the Nigerian culture to violate the judgment pronounced by the elder because their pronouncement is binding starting from settlement point. This paper will focus on the system of mediation practice in Nigerian customary way and Islam.

## Concept of Mediation under Islamic Law

Islam recognizes mediation between the husband and wife in a conflictual situation in order to restore peace, affection, harmony, and understanding between the couples.

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Parents or family are primarily required to firstly mediate between the loggerheads couple in order to avoid divorce.

### **Customary Law**

Nigeria is made up of different and several ethnic groups and cultures out of which each made its own varieties of customary law. Ethnic customary conceptualized as the indigenous law that applies to the number of different groups in a society or community. However, customary law is a system of law that reflects and reveals the culture, custom, value and habits of the people whose their activities are regulated by their custom. The subject matter is mainly dominant in the personal and family aspect such as marriage, divorce, guardianship and custody of children, conflict mediation within the family, and succession. In Nigeria, system of customary law is different and varies from one society to another society that is, Igbo culture is vary from Hausa culture while both are different from Yoruba culture and vis-versa. As a matter of fact, Nigerian customary law is unwritten, uncertain, and difficult to ascertain. Nevertheless, it is flexible and has the capacity to adapt the social and economic changes without loosing its character. It also has capacity to settle any rancor and conflict within the family without filing the case in the court of law. Customary law is usually enforced in customary courts where most cases are presided over by non-legal trained personnel.<sup>2</sup> Nigerian Customary Law may apply and adopted in some situation and conditions as it is provides that:

“ A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The burden of proving a custom shall lie upon the person alleging its existence”.<sup>3</sup>

### **Concept of Mediation under Nigerian Customary Law**

Customarily, Nigerian elders responsible for reconciliation and mediation of any loggerheads within the family, community, and society in order to be at peace and harmony at all time. It is a proverb in Yoruba custom that (*Agba kiwa loja, kile odaworo*) which simply means, in the presences of elders, there must not be any turbulent and catastrophic situation in the house. For that proverb, when there is any single misunderstanding, the elder always strive into mediation because the eldest of the family would be held responsible and blamed for negligence if he or she failed to settle the conflict quickly. If there is marital conflict, the elders of the family will come up for the mediation in order to reshape and restore affection and love within the two parties. It is unchallenged rights for the elders to express their disdain on the subject matter without

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<sup>2</sup> Obilade A, *The Nigerian Legal System*, (Nigeria: Spectrum Law Publishing, 1979), 83. See also, Yemisi Dian, John Akintayo & Funke Ekundayo, *Guide to Nigeria Legal Information*. [http:// www. Ayulawglobal.org/globalex/Nigeria.htm](http://www.Ayulawglobal.org/globalex/Nigeria.htm) (accessed 28 May, 2008). See also, Yusuff J.A , “Custody of Children after divorce under the Shari’ah, Customary and Civil Laws in Nigeria: A Comparative Analysis”, (MCL dissertation International Islamic University, Malaysia, 2007), 29-30.

<sup>3</sup> Evidence Law (Lagos Laws, 1973, Cap, 39); Evidence Ordinance (Nigeria Laws 1984, Cap.63) (in force in bendel, Ogun, Ondo, and Oyo); Evidence Law (N.N Laws 1963, Cap. 40); Evidence Law (E.N Laws 1963, Cap.49) .

any sign of partiality and injustice on the matter because they respect their dignity and personality. If there is elements of injustice into one party, it will be elder personal opinion not according norms and culture

### **Legalities of Mediation under Islamic Law**

There are numerous evidences from the Holy Qur'an and authentic Hadith on the arbitration responsibilities in conflict settlement which is also considered as devotional and rewardable in hereafter. The following verses and hadiths discuss the legalities and importance of reconciliation between the litigants justly.

“ And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better...”<sup>4</sup>

“If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and other from her's; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.”<sup>5</sup>

According to the above Quranic quotations, two representatives should be appointed from the each couples' family for mediation between the husband and wife. This is the best way that Allah laid down for creatures to settle their conflict instead of taking them to court. If the conflict could be mediated at the family level, the mediation would faster and quickly achieved than filing the case in the reconciliatory committee which may have many cases at hand to be mediated on.

“ And We task not any person except according to his capacity, and with Us is a record which speaks the truth, and they will not be wronged.”<sup>6</sup>

“And if two parties or groups among the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight you (all) against the one that which outrages till it complies with the Command of Allah. Then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are the equitable”

“ The believers are nothing else than brothers (in Islamic religion). So make reconciliation between your brothers, and fear Allah, that you may receive mercy.”<sup>7</sup>

“And those who, when an oppressive wrong is done to them, take revenge”

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<sup>4</sup> Surah An-Nisa, 128. See also, Muhammad Taqi-ud-Din Al-Hilali & Muhammad Muhsin Khan, The Noble Qur'an in the English Language. (Saudi Arabia: King Fahd Complex for the printing of the Holy Quran, 1417 A.H), 131.

<sup>5</sup> Surah Al-Nisa, 35. See also, The Noble Qur'an, 113.

<sup>6</sup> Surah Al-Mu'minun, 62. See also, The Noble Qur'an, 460-461.

<sup>7</sup> Surah Al-Hujurat, 9-10. See also, The Noble Qur'an, 699.

The above mentioned verses urged all human beings to play a role of mediator when there is conflict between two parties whether friend, couples, students, lecturers, marketers, sellers, leaders, and others promptly in order to avoid ugly consequences in delaying settlement between the two litigants.

“There is no good in most of their secret talks save (in) him who orders Sadaqah (charity in Allah’s Cause), or Ma’ruf (Islamic Monotheism and all the good and righteous deeds which Allah has ordained), or conciliation between mankind; and he who does this, seeking the good pleasure of Allah, We shall give him a great reward.”<sup>8</sup>

“The recompense for an evil is an evil like therefore; but whoever forgives and makes reconciliation, his reward is with Allah. Verily, He likes not the *Zalimun* (oppressors, polytheists, and wrong-doers).”<sup>9</sup>

It is clearly shown in the aforesaid verses that arbitrating between fighters is considered as an act of worship ( ibadah) that would be rewarded in the hereafter, so, is for Muslims to engage in settling the conflict between two loggerheads.

Hadith Narrated Sahl bin Sa’d (R.A.): There was a dispute amongst the people of the tribe of Bani ‘Amr bin ‘Auf. The Prophet (S.A.W) went to them along with some of his companions in order to make peace between them. The time for the prayer became due but the Prophet (S.A.W) did not turn up: Bilal pronounced Adhan (i.e. call) for the prayer but the Prophet (S.A.W) did not turn up, so Bilal went to Abu Bakr and said, “ The time for the prayer is due and the Prophet (S.A.W) is destined, would you lead the people in the prayer?” Abu Bakr replied, “Yes, if you wish.” So, Bilal pronounced the Iqama of the prayer and Abu Bakr went ahead (to lead the prayer), but the Prophet (S.A.W) came walking among the rows till he joined the first row. The people started clapping and they clapped to much, and Abu Bakr used not to look hither and thither in the prayer, but he turned round and saw the Prophet (S.A.W) standing behind him. The Prophet (S.A.W) beckoned him his hand to keep on praying where he was...”<sup>10</sup>

Narrated Anas (R.A.): It was said to the Prophet (S.A.W): would that you see Abdullah bin Ubai! So, the Prophet (S.A.W) went to him, riding a donkey, and the Muslims accompanied him, walking on salty barren land, When the Prophet (S.A.W) reached ‘Abdullah Ubai; the latter said, “ Keep away from me! By Allah, the bad smell of your donkey has harmed me.” On that an Ansari man said (to Abdullah), “ By Allah! The smell of the donkey of Allah’s Apostle (S.A.W) is better than your smell.” On that a man from ‘Abdullah’s sake, and two men abused each other which caused the friends of the two men to get angry, and the two groups started fighting with sticks, shoes and hands.

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<sup>8</sup> Surah An-Nisa, 114. See also, The Noble Qur’an, 129.

<sup>9</sup> Surah Ash-Shura, 39-45.

<sup>10</sup> Muhammad Mushin Khan, Sahih Al-Bukhari Arabic to English, Vol. 3, ( Turkey: Hilal Yayinlari, 1970), 531-532.

We were informed that the following Divine Verse was revealed (in this concern) “ And if two groups of Believers fall to fighting, then make peace between them”

Narrated Um Kulthum bint Uqba that she heard Allah’s Apostle (S.A.W) saying, “ He who makes peace between the people by inventing good information or saying good things, is not a liar.”<sup>11</sup>

It can be understood from the above stated hadiths that mediator is allowed and permitted to invent good words, information, and saying with intention of mediating and solving the conflicts between the parties. So, all the credible steps and actions should be invented and applied to mediate the conflict. This shows the important and gravity of living in peace and harmony.

### **Arbitrator should not be a liar**

Narrated Sahl bin Sa’d (R.A.): Once the people of Quba fought with each other till they threw stones on each other. When Allah’s Apostle (S.A.W.) was informed about it, he said, “ Let us go to bring about a reconciliation between them.”<sup>12</sup>

Arbitrator should not lie in such away that will escalate and worsen the situation due to his or her unjust character. The character of some mediators worsen the situation and adds to the turbulent conditions between the two parties, instead of mediating and find way to settle the conflict.

### **To make peace with pagans**

Narrated Ibn ‘Umar (R.A): Allah’s Apostle (S.A.W) set out for the ‘Umar but the pagans of Quraish prevented him from reaching the Ka’ba. So, he slaughtered his sacrifice and got his head shaved at al-Hudaibiyah, and agreed with them that he would perform ‘Umra the following year and would not carry weapons except swords and would not stay in Mecca except for the period they allowed. So, the Prophet (S.A.W) performed the ‘Umra in the following year and entered Mecca according to the treaty, and when he had stayed for three days, the pagans ordered him to depart, and he departed.<sup>13</sup>

Narrated Al-Hasan (Al-Basri): By Allah, Al-Hasan bin ‘Ali led large battalions like mountains against Mu’awiya. ‘Amr bin Al-As said (to Mu’awiya), “ I surely see battalions which will not turn back before killing their opponents.” Mu’awiya who was really the best of the two men said to him, “ O ‘Amr! If these and those and those killed these, who would be left with me for the jobs of the public, who would be left with me for their women, who would be left with me for their children?” Then Mu’awiya sent two Quraishi men from the tribe of ‘Abd-i-Shams called ‘Abdullah bin ‘Amir bin Kuraiz to Al-Hasan saying to them, “ Go to this man (i.e. Al-Hasan) and negotiate peace with

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<sup>11</sup> Sahih Al-Bukhar, vol. 3, 533.

<sup>12</sup> Sahih Al-Bukhar, vol.3, 534.

<sup>13</sup> Sahih Al-Bukhar, vol. 3, 539.

him and talk and appeal to him.” So, they went to Al-Hasan and talked and appealed to him to accept peace. Al-Hasan said, “ We, the offspring of ‘Abdul Muttalib, have got wealth and people have indulged in killing and corruption (and money only will appease them).” They said to Al-Hasan, “ Mu’awiya offers you so to accept peace.” Al-Hasan said to them, “ But who will be responsible for what you have said? They said, “ We will be responsible for it.” So, whatever Al-Hasan asked they said, “ We will be responsible for it for you.” So, Al-Hasan concluded a peace treaty with Mu’awiya. Al-Hasan (AL-Basri) said: I heard Abu Bakr saying , “ I saw Allah’s Apostle (S.A.W) on the pulpit and Al-Hasan bin ‘Ali was by his side. The Prophet (S.A.W) was looking once at the people and once at Al-Hasan bin ‘Ali saying. ‘This son of mine is a Saiyid (i.e a noble) and may Allah make peace between two big groups of Muslims through him.”<sup>14</sup>

Narrated ‘Aisha (R.A.): Once Allah’s Apostle (S.A.W) heard the loud voices of some opponents quarelling at the door. Once voices of some opponents quarrelling at the door. One of them was appealing to the other to deduct his debt and asking him to be lenient but the other was saying, “ By Allah I will not do so.” Allah’s Apostle (S.A.W) went out to them and said, “ Who is the one who was swearing by Allah that he would not do a favour?” That man said, “ I am that person, O Allah’s Apostle! I will give my opponent whatever he wishes.”<sup>15</sup>

There is noting wrong to mediate between the Muslim husband and non-Muslim wife since both they have married each other and whenever there is conflict, people surrounding them should mediate to restore peace, harmony, and passionate into the family. This will depict good name of Islam as religion of peace and its peaceful teaches all the time.

### **Imam to suggest the reconciliation**

Narrated Abu Hurairah (R.A.): Allha’s Apostle (S.A.W) said. “ There is a Sadaqa to be given for every joint of the human body; and for every day on which the sun rises there is a reward of a Sadaqa (i.e charitable gift) for the one who establishes justice among people<sup>16</sup>

It is duty of Imam or head of family of group to quickly raise motion to reconcile between quarreling people for the interest of the community because the enmity might extend into the community if it is allowed un-reconciled and unsettled. If Imam was informed formally informally, he should take fast steps to call the parties into normal so that they can correct their mistakes and weaknesses.

### **Justice between the litigants**

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<sup>14</sup> Sahih Al-Bukhar, vol.3, 541-542.

<sup>15</sup> Sahih Al-Bukhar, vol.3, 542.

<sup>16</sup> Sahihi Al-Bukhar, vol. 3, 543.

It is duty and responsibilities on the mediator to be just when mediating between the conflictual parties in order to avoid future abhorrent and similar case. Some mediator are weak and partial to say the truth frankly and openly in order to avoid the enmity with guilty party. Some are diplomatic in their judgment in away of avoiding misinterpretation and misunderstanding. All along, justice must be maintained when mediating between two parties. Failure to say the truth will tantamount to similar case in the nearest future due to mediator injustice.

### **Causes of Conflict**

Obviously, there is no perfect marriage without any sign of misunderstanding and conflicts between the couples since they are human being and even, teeth and tongue fights some time. In any conflict between the husband and wife, it is the duty of those around them to reconcile and mediate between them to save their marriage rather than separation. There are different kinds or causes of conflict between the Nigerian couples because one man's meat is another man's poison, so there must be differences but family intervention is very important and needed at the right time for the best interest of offspring. In Nigerian context, the causes of conflict may be direct between husband and wife or indirect from the outsiders. The following analysis may be considered as causes of conflict between the couples:

#### **1- Disobedience**

Many matrimonial homes have collapsed and scattered because of the wife's disobedience or disrespect to her husband. This immoral behaviour, which some so called career or modern wives engaging in dealing with their husband and his family, causes misunderstanding and rift between the husband and wife. Some wives' disobedience sprang up for being claiming gender equality and some European rights which are not their culture and custom. A wife is culturally and traditionally in Nigeria responsible for the maintenance of the house and care of the husband and children. Where the wife fails to carry out her duties and responsibilities, this may cause conflict between the both parties.<sup>17</sup>

#### **2- Lack of Maintenance**

According to the Nigerian tradition, it is husband responsibilities to maintain his wife or wives in providing adequate provision for his wife or wives accordingly. The maintenance covers shelter, accommodation, feeding, medical, and clothing, Some husband are irresponsible for their failure to provide adequate maintenance for their wives which is a slap at the face of husband and his family. This is because of havoc and fear that such wickedness will give bad identity to the husband family in community that such house is not capable in handling wife. So, other family will be afraid in marrying their daughter to such misery family in the future.

#### **3-Adultery**

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<sup>17</sup> Yusuff J.A, 53-54.

Committing adultery is another form of conflict in Nigeria especially if wife committed adultery which will cause serious rift between the husband and wife if not within the bride and groom families. It was very rare and uncommon to see a married woman to commit adultery because of the level and degree of morality and ethics in the community and society compared with the present and so called modern age.<sup>18</sup>

### **3- Lack of parents Intervention**

Nowadays, many marriages in Nigeria were solemnized without the parents' approval not to mention parents grace and prayer to the marriage. This is because of the belief of some children that they are matured enough to control their affair, as different from the past. Presently, some parents do not care about their son choice of wife because they want to avoid any accusation or putting blaming on them that they cause conflict between the couple especially groom's mother. As a matter of fact, some wives do not want to see their husband's mother not to mention his entire family in their surroundings. Obviously, some mothers are very acerbic, cannot tolerate their son's wife because of her immoral and her abysmal behaviour and attitude towards her husband and the family. If the misunderstanding blows out between the husband and wife, some parents will feel reluctant to put an end to the misunderstanding. In many cases while the couples are dwelling in a very distant abode to their family possibly because they do not want the family to intervene in their affairs, so, it is very easy to separate quickly in such situation. Similarly, some parents are very greedy, and because of their greediness, they will just hate the wife naturally and for no reason.<sup>19</sup>

### **Nigerian Custom system of Mediation.**

The system of conflictual family mediation in Nigeria is similar among all cultures because they shared the same objectives and goals in mediating between the husband and wife in order to restore passion between the two parties for the rest of their lives. There are unwritten method of mediation in Nigerian custom and the elders are well vast and experienced in settling the turbulent within the family. Although, some claimed that they are not trained mediator but they always achieved the concept of mediation which is very import while trained mediator may not achieved the purpose of their task in reconciling between the two litigants. The methods can be analyzed as follow:

#### **1-Preparation**

When the elder ascertained the conflict between the husband and wife directly from the both or indirectly from the family member, the elders will agreed on suitable and convenient day, date, and time for quick and fast mediation before the ugly situation get out of hands of elders of community. Elders intervention is to avoid future negative and bad consequences on the family reputation which might affects their descendants in the

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<sup>18</sup> Yusuff J.A, 57

<sup>19</sup>Yusuff J.A, 59.



future in terms of marriage. This is because low interest of other family to marry from a divorced mother family due to assumptions that her daughter might turn to her character in emulating her mother ways of life in divorcing husband. It will difficult for such family daughters to quickly find other family to marry them. In order to avoid abhorrent consequences, elders used to manage their differences and conflict within their domain for the best interest of the family at large.

## **2- Opening**

In Nigerian culture, both husband and wife and other mediators will assemble at eldest house for reconciliation between the husband and wife if condition required for it; and situation also might require the elders to mediate at couples' house for certain reasons and circumstances behind the settlement. The eldest on the assembly has the traditional right to start discussion the issue in a way of enlighten both parties on the importance of coming and their intervention in the distasteful condition that both are dwelling for certain periods and days. He or she will also stress on advantages and disadvantages of friendship and enmity. After t different and many useful immeasurable advices by the eldest, both litigants will be asked to express what is burning their mind and root cause of the rift.

## **3- Negotiation**

After the both parties' explanation, the elders in attendance will critically look and examine the case and comparing the case with previous cases if there is any similar or relevant case to the present one. The eldest in attendance will invite other elders one by one to address the grievances according to their age regardless of gender and status.

## **4-Settlement**

As a matter of fact, and after the elders contribution, the most senior on the seat will finalized the mediation in pointing out of each litigants weaknesses and mistake for immediate correction and amendment for the best interest of the family. If husband founded guilty, he will frankly informed to adjust his imbalances and maltreatment against his wife which is binding on him to adjust regardless of his status and personality in the society or community. On the other hands, if wife is the main cause of the misunderstanding, the elders will sketch out her mistakes and errors for immediate and future correction, otherwise, she will be reported to her family before any other action against her. Since no wife wants to be divorced because it is a shame and degradation to her family's reputation and it will count on her and her family in future. She will quickly take to the correction.

## **5-Advicement**

After the elders comments, the eldest will also advice both husband and wife on the consequences of enmity on their children and family, the stress would also be on the importance of affection, trust, affection, and peace which both should always imbibe in

their matrimonial house and relationship. The wife will be asked and urged to repent from her husband while husband will forgive his wife spontaneously.

## **6- Supplications**

After the mediation and before departure, the eldest will supplicate for both husband and wife and also for the entire family for peaceful and harmonious life.

## **Factors that leads to mediation failure**

It is uncommon under the Nigerian customary for mediators to be failed in their mediation task between the husband and the wife. But if the elders' intervention is fruitless, there are some certain reasons and causes behind their failure to reconcile between the both parties.

### **1- Bad Negotiation**

The objective mediation under the Nigerian customary system may not be achieved if the mediators in attendance are partial in their negotiation by supporting one side against other party. It is not in Nigerian culture to be partial in hearing and judgment but as a human being, they might overwhelm by their egos and hatred having against one of the parties or because the enmity between the mediators and concerned parties.

### **2-Lack of trust**

It is also discovered that mediation may fail in achieving its goal in arbitrating between the conflictual parties due to the unjust mediator handling the case because of assumption of their unjust judgment.

### **3- Lack of Information**

In the IT age, parents are kept silent and unaware of rift between the husband and wife simply because of a very far distance between the couples and parents. Some husbands and wives believe they can manage their crisis and problem by themselves without informing their parents and this worsens the situation. In some cases, before the parents' awareness of the case, both couples are already divorced or about to separate.

### **4- Failure to identify the real issues**

This is a serious case and situation where the litigants did not give the real story of their rancor, the elders will just try all their efforts to reconcile but the crisis will still remain unsettled and unresolved because the mediators are put in darkness. If the husband and wife give actual cause of their misunderstanding, mediation will be materialized and achieved.

## **5-Wrong people at negotiating table**

If the wrong people of little experience or unjust people handling the case, mediator would be successfully mediated because their inability to mediate between the concerned people.

## **6- Lack of authority to settle**

Traditionally, young people has no authority over those who are older than them in mediating their grievances unless the two parties give them priority and respect otherwise they themselves will fear of saying truth or point out their mistakes in their presence. Age is very important and play vital roles when mediating between two people because both conflictual parties are well acquainted that the mediator is older than them and they must give him or her respect.

## **Custody under the customary law of Nigeria**

The concept of custody under Nigeria customary law is to make appropriate provisions for the custody of children of the marriage. It is the paramount concern of the courts to see to the proper custody of the children of broken marriage<sup>20</sup>

It is also provided in the Customary Laws in the Northern and Western States of Nigeria that:

“ In any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration. Whenever is shall appear to an Area Court that an order made by such Court, should, in the interests of a child, be reviewed, the Court may, of its own motion, upon the application of any interest person, vary, or discharge such order.”<sup>21</sup>

If the family elders did all in their capacity and efforts to reconcile between the husband and wife and the head of the community efforts also unworkable to reunite both litigants together, both will be separated for the best interest of the children and their lives. In awarding custodial right between the biological father and mother, its traditional and culture in Nigeria, that biological father has full right than mother on the children. So, custodial rights used to favor father than mother especially if child is a boy. Obviously, some fathers do not deserve to be awarded the custody right but he got it because of his status or through other channel. Some tax drivers or meat sellers who has no time to stay at home for taking care of children or dwelling with another wife which is far away from where children are staying are not deserve to be given custody rights. But due to the

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<sup>20</sup> S. Ade Falade, *Marriages, divorces and Inheritances in Nigeria*, (Nigeria: Igbalaye printing machinery company Ltd, 1999), 102. See also, Yusuff J.A, 78.

<sup>21</sup> Customary Law of Western Region, 1959, section 23 of Area Court Edict 1967 and section 23 (CAP) vol ii.

range of bribery in the country, any undeserved person can buy the custody right by corrupting the judge and judge may award him custody right if judge is not a pious and descent judge. This research solely supports this application and custom of awarding custodial rights for biological father if the purpose is to protect the child religion but the right should be given to the mother to have free access to her child at any time. Because they jointly gave birth to the child and should be equally enjoy the custody right. Unless if otherwise is proved against the biological mother for her inability to have access to her child.<sup>22</sup>

## **Suggestions**

It is suggested that parents and family should quickly strives into the mediation between the husband and wife before the ugly situation get out of the control. Couple should imbibe in informing their parents immediately one of them noticed any strange character and behaviour from other after he or she has being trying his or her effort to resolve the rift. It is better for the husband to report his wife mistakes to her parents instead of husband parent to make thing easier and better likewise the wife. In order to avoid mediation failure under Nigerian customary system, husband and wife representative should be in attendance and all sorts of injustices and influences should b abolished for interest of the concerned parties, children, and family at large. Couple should have in minds that they cannot solely manage their crisis without others intervention as recommended by almighty Allah, so, they should allowed trusted person to sole their conflict amicably and harmoniously than remains in acrimonious and loggerheads all the times in the absence of their children. Parents should not far away from their children whatever the circumstances may be and couples also needs to visit their parents for guidance and advice that can not be studied in class nor in book.

## **Conclusion**

It can be concluded that Nigerian customary system of mediation between the husband and wife is slightly similar with Shari'ah system in terms of mediation conceptualization and achievement. Parents and family plays and contributes commendable and immeasurable efforts in saving many marriages from separation and divorce. Lack of parents' intervention reflects in rate of divorce in Nigeria and its consequences always fall on parents and concerned couples.

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<sup>22</sup> Yusuff J.A, 78-79.

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