

Legal Responses to Domestic Violence in Marriages and Their Implication for Marriage Sustainability in Nigeria

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Abstract: *Domestic violence is a phenomenon which has caused so much concern in society and generated intense debates among policymakers, civil society activists and scholars. It is, therefore, no surprise that it is attracting so much scholarly attention lately. Despite the wide interest it has generated, an appropriate response grounded in law to tackle the scourge has defied logic. The situation even gets more complicated when other societal values such as marriage are present between the parties. So many (legal) mechanisms have been put in place in response to domestic violence. These responses are primarily grounded in law, mainly involving the criminal justice or legal system. Specifically, the typical response has been the use of the law and criminal justice approach. Despite the many advantages of the common approach, questions arise regarding its suitability for married partners. Indeed, recent concerns have arisen, especially in family law jurisprudence, regarding the need to preserve the institution of marriages, especially for domestic violence cases which are 'resolvable'. This is because, in many cases, the common approach mainly results in the breakdown of marriages. Thus, the partial decriminalisation approach has begun to gain wide attention, especially in domestic violence cases between married partners. The objective of this paper is to analyse the various responses to domestic violence and their implication for the sustainability of marriages.*

Keywords: *Criminal justice, decriminalization, domestic violence, marriage, marriage sustainability.*

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I. Introduction

Domestic violence (DV) is one of the most pervasive menaces in society today and is undoubtedly an issue that has attracted wide attention worldwide.¹ In most cases, women are the worst victims and at the top of various statistics on domestic violence. It is reported that one out of every three women is a victim of domestic violence.² Indeed, domestic violence in marital relationships has been stated to be a scourge in Nigeria and is rapidly on the increase. The National Population Commission’s (NPC) demographic and health survey reported that 58% of women, who have ever been married, have experienced physical violence from their husbands in Nigeria.³ It was further stated that some women experience more than one form of violence, as 36% of married women were reported to have experienced emotional, sexual, or physical violence from their current or most recent husband, and 30%

¹ Ross L, *Domestic violence and criminal justice*, Routledge, New York & London, 2018, 3.

² ‘Domestic (Intimate Partner) Violence Fast Facts’, CNN Library Updated, 24 May 2023 — <http://edition-m.cnn.com/2013/12/06/us/domestic-intimate-partner-violence-fast-facts/index.html?rm=1> on 5 January 2023.

³ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 427.

experienced such violence in the 12 months preceding the survey.⁴ The pervasiveness of domestic violence against women who have been married in Nigeria is reflected in its trend, which has increased from 31% in 2008 to 36% in 2018.⁵

The above has led to the adoption of various approaches in response to the menace. These approaches are largely the law and criminal justice-based approach and the partial decriminalised approach. The law and criminal justice-based approach has been widely adopted in many jurisdictions. Despite its significant advantages in ending physical violence, the extent to which it can be reconciled with other values, such as the need to preserve the institution of marriage, has remained quite questionable. In other words, the approach is said to be ‘contradictory to developments which seek to place interventions (responses) within a family domain.’⁶ This is especially true for two main reasons. First, not all domestic violence cases are fatal or grievous enough to fall within the scope of the law and criminal justice approach. Second, in most cases, especially in cases that are not fatal or grievous enough, the law and criminal justice approach has led to a total breakdown of marriages considering its contentious and adversarial philosophy. It is as a result of these reasons that the debate regarding the need for an alternative approach which looks at the peculiarities of the parties and the need to preserve the institution of marriage has increasingly become prominent. Although this paper will strongly advocate for the partial decriminalisation approach as a viable mechanism for resolving domestic violence conflicts between married partners, it only supports its application in domestic violence cases which are *minor* in nature. Once domestic violence is grievous or fatal in nature (leading to death or grievous bodily harm), the full wrath of the criminal justice system must be unleashed on the perpetrator. Therefore, the article only focuses on domestic violence cases which are not brutal in nature.

The article proceeds in five parts. After the introduction, the second part analyses the two key concepts of the paper: the concepts of DV and

⁴ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 427.

⁵ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 429.

⁶ Hilder S and Bettinson V, ‘Introduction’ in Hilder S and Bettinson V (eds) *Domestic violence: Interdisciplinary perspective on protection, prevention and intervention*, Palgrave Macmillan, London, 2016, 5.

marriage, and then discusses prevalence of DV in marriages in Nigeria. The third part critically analyses approaches to handling DV cases, how practical these approaches are in resolving domestic violence issues arising from marital relationships/conflicts, and the implication of the approaches for the sustainability of marriages in Nigeria. The fourth part deals with the implication of the various approaches on the sustainability of marriages in Nigeria. This paper concludes in the fifth part with some reflections on reconciling the approaches with the principle of marriage sustainability.

II. Conceptual Overview and Intersection between Domestic Violence and Marriages

Over time, there seems to be an unconscious concentration of the debates/discussions on domestic violence within the context of marital relationships or marriages.⁷ This is due to the nature of the relationship between both concepts. In this regard, it is arguable that DV is prevalent where the parties are bound by some holy matrimony under statutory, customary, or religious law. Therefore, the prevalence of DV in a matrimonial relationship is one of the critical areas of linkage between the concept of DV and marriage.

i. The concept of domestic violence and matrimonial relationship

Ordinarily, domestic violence is a concept that is incapable of a precise definition.⁸ The definition is based on the perspective within which it is sought to be understood. Some of the reasons for the definitional challenge are: first the fact that the concept is both a social and a legal construct which makes context in usage vary. According to Hilder and Bettinson, domestic violence is a terminology with diverse use across disciplines.⁹

⁷ Nwabunike C and Tenkorang EY, 'Domestic and marital violence among three ethnic groups in Nigeria' 32(18) *Journal of Interpersonal Violence*, 2017, 2751-2776; Fareo DO, 'Domestic violence against women in Nigeria' 2(1) *European Journal of Psychological Research*, 2015; Goodmark L, *A troubled marriage domestic violence and the legal system*, New York University Press, New York, 2012, 54-58.

⁸ Omidoyin TJ, 'Violence against Persons (Prohibition) Act 2015: A positive step to the eradication of domestic violence in Nigeria' 9 *Nnamdi Azikiwe University Journal International Law & Jurisprudence*, 2018, 39. See also, Ross, *Domestic violence and criminal justice*, 21-22.

⁹ Hilder S and Bettinson V, 'Introduction', 4.

In common place, domestic violence as a concept, is associated with the physical assault perpetrated by one person over the other. However, its uniqueness lies in the fact that the parties must be connected by some sort of ‘intimate’ or ‘domestic’ relationship. The term domestic is generally taken to mean “concerning or relating to the home or household”¹⁰ or “pertaining, belonging or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction”.¹¹ Regardless of the wide usage, this definition is faulty on various fronts. For one, DV does not only involve physical assault and secondly, it is narrowly construed against the nature of the critical interests at stake and who deserves protections from abuse. In view of the context of this article, the definition to be adopted is that ‘domestic violence is an act of violence (whether physical, sexual or emotional) perpetrated by one party over another, in a marital relationship’.

Marriage is usually said to be a ‘union of a man and woman,’ that is two persons of opposite sex.¹² Even though, the Matrimonial Causes Act (MCA)¹³ and Marriage Act (MA)¹⁴ applicable to statutory marriage in Nigeria do not define marriage, the English Common Law definition¹⁵ where marriage is referred to as “the voluntary union for life of one man and one woman, to the exclusion of all others” is widely adopted. This definition may, however, introduce some difficulties when strictly applied in Nigeria. For one thing, marriage may involve the union between a man and more than one woman. This therefore means that the meaning of marriage under English law differs from that under native law and customs or even under the *Shariah* which is widely applicable in Northern Nigeria. Thus, marriage is conceptualised for the purpose of this article, as a ‘union of one man to one or more women.’ This definition accommodates the diversities of the Nigerian society and more specifically, the peculiarities of Muslim North area.

¹⁰ Webster’s Comprehensive Dictionary, Encyclopaedic Edition.

¹¹ Black’s Law Dictionary, 6th ed.

¹² Nwogugu E. I, *Family law in Nigeria*, Heinemann Educational Books Nigeria Plc, Ibadan, 2001, Ixxviii.

¹³ Chapter 220, Laws of the Federation of Nigeria (Nigeria).

¹⁴ Chapter 218, Laws of the Federation of Nigeria (Nigeria).

¹⁵ *Hyde v Hyde* (1866), English Court of Probate and Divorce.

ii. Intersections and causes of DV in marital relationships

As mentioned, there are various ways in which DV and marriage intersect. This is primarily based on the fact that there are more incentives for husbands to hit their wives in a marital relationship, especially in this part of the world which is deeply rooted in culture and traditions. In this regard, although DV as a concept is generally used within the context of intimate partner relationships, the existence and operation of DV in marriages introduces certain peculiarities that must be contextually understood and discussed. It is opposite to state that marriage presupposes a marital relationship and vice versa. Therefore, both concepts will be used interchangeably in this article.

DV in marriages has been stated to be a scourge in Nigeria and is rapidly on the increase. Although it has been difficult to ascertain the DV rate generally due to victims' reluctance to report, available statistics show that women suffer the most in marital relationships. For example, it has been reported in the National Population Commission's (NPC) demographic and health survey that 58% of ever-married women have experienced physical violence from their husbands. It is further reported that these women experience more than one form of violence, as 36% of married women were reported to have experienced emotional, sexual, or physical violence from their current or most recent husbands.¹⁶ The pervasiveness of DV against women who have been married in Nigeria is reflected in its trend, which has increased from 31% in 2008 to 36% in 2018.¹⁷

The connection between marriage and DV can be noticeable by tracing the historical development of the concept of marriage. Historically, marriage was said to be designed for various purposes, among which is the need to protect women against violence by men who are not their spouses.¹⁸ From this account, the weaker nature of women in comparison with men have long ago been recognised, and it was thought that there is a need for their protection, in this case from men other than their husbands. The institution of marriage was a convenient means to guarantee this form of protection for women in that

¹⁶ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 427.

¹⁷ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 429.

¹⁸ Other purposes include guaranteeing husbands their rights and identities as fathers.

wives were then considered to be the full responsibility of husbands not only for protection but for the provision of food, shelter, and sustenance. Therefore, it is ironic that an institution meant to protect women is now *mainly* used to abuse them. Similarly, this conception of the institution of marriage resulted in the overtly dependent status of wives legally, socially, and economically.¹⁹ The over-dependence has fuelled the prevalence of DV in marriages in various societies.

Apart from the over-dependent status of wives on their husbands, other factors still incentivise DV in marital relationships and therefore make it prevalent in Nigeria. The first incentive for DV in marriages is the sanctity and sacredness which is usually associated with marriages. In this perspective, and as shown above, marriage is taken to be a very sacred act. In fact, some religions even consider being married to imply a fulfilment of half of one's faith and evidence of further devotion to God.²⁰ This sacred obligation therefore implies a complete submission of a wife towards her husband with an unconscious understanding of such submissiveness. This submissiveness has always been exploited by husbands as will be shown. Apart from that, this sacredness means that the woman, in most cases, has no right to complain and must tolerate quietly whatever befalls her in the marriage. In essence, the sacredness of marriages means serious and complete tolerance towards the parties, even where one of the parties has acted obnoxiously towards the other. This obnoxious conduct may be sexual, physical or psychological.

Yet still, another factor that heightens DV in a marital relationship is the male-dominated nature of Nigeria or the African society.²¹ On this account, it can be noticed that patriarchy finds strong support in marital relationships. This is especially true for marriages conducted under religious law or customary marriages. Also, the conception or approach towards the payment of bride price in marriage as "buying" the woman implies some sort of ownership which has been channelled towards the abuse of the woman. It is

¹⁹ Benebo O, Schumann B and Vaezghasemi M, 'Intimate partner violence against women in Nigeria: A multilevel study investigating the effect of women's status and community norms' 18 *BMC Journal of Women's Health*, 2018, 3. Ojibara HB, Customary Law Approach as an Alternative Legal Response to Domestic Violence Against Women Towards Preserving Marriages in Kwara State, Ph.D. Thesis University of Ilorin 2023, 38.

²⁰ Doi A, *Shariah: The Islamic Law*, Taha Publishers, London, 1984, 119.

²¹ Wendt S and Zannettino L, *Domestic violence in diverse contexts: A re-examination of gender*, Routledge, London & New York, 2015, 209.

from this perspective (commodification of women) that the widespread customary practice of “levirate marriage” (widow inheritance) may incentivise domestic violence. Levirate marriage, according to Onokah, is “where a widow may be taken over in marriage by the brother or other male relative of her deceased husband or by a son of his whom the husband had by another wife.”²² As noble as the philosophy behind this practice is, it is a convenient means for the abuse of widows since the new bond is formed without any severe emotional attachment between the parties.²³ This means the requirement of consent in the marriage is lacking (or insufficient) even though it has been argued that it is not incumbent on the widow to consent to the marriage under most customary law.²⁴ Yet another perspective to the issue is the unconscious (and obviously, sometimes wrongful) validation of chastisement of wives, which finds strong support in religious and customary law.²⁵ All these further tilt the equilibrium in favour of the man, bringing about more incentive for DV in marriages. The point being made here is that there are more incentives for DV in marital relationships in Nigeria.

The changing dynamics of marriages in contemporary society have sometimes also created additional incentives toward DV. In this regard, the prevalence of child marriages is one such changing dynamic. Over time, research has linked child marriages with a greater propensity towards DV. For example, Ujam contends that “[v]ictims of child marriages are more susceptible to domestic violence including marital rape, an act not recognised as a crime in many patriarchal societies- perpetuated freely and without consequence.”²⁶ Indeed, DV is considered one among many of the other negative consequences of child marriages.

²² Onokah MC, *Family law*, Spectrum Books, Ibadan, 2003, 113. See also, Meek CK, *The Northern tribes of Nigeria: An ethnological account of the Northern provinces of Nigeria together with a Report on the 1921 Decennial Census*, Frank Cass & Co. Ltd., London, 1971, 191-192.

²³ Time VM, ‘Forced marriages, bride price, levirate, and domestic violence: Victimization of women and struggles for justice and equity in selected African Countries’ in Jaishankar K & Ronel N (eds), *Global criminology: Crime and victimization in a globalised era*, Taylor & Francis, London, 2013, 271-288.

²⁴ Onokah MC, *Family law*, 114.

²⁵ Ross, *Domestic Violence and Criminal Justice*, 120. See also, Umar MA, ‘The perspective of shari’ah on domestic violence’ *Nnamdi Azikwe University Journal of International Law Journal*, 2012, 175.

²⁶ Ujam NA, ‘Child marriage in Nigeria: Wedded to poverty’ Yale Global Online, 26 December 2019 <https://archive-yaleglobal.yale.edu/content/child-marriage-nigeria-wedded-poverty> on 13 January 2023.

From the preceding discussion, it is convenient for a conclusion to be reached that husbands in a marital relationship are mostly the perpetrators of DV in Nigeria. However, as recent events have shown, husbands are also victims and sometimes suffer the ultimate violence of death. Scholars are quick to argue in this regard that women are usually culprits as a reaction to the conduct of men or even DV by men. Regardless of whatever justification canvassed, men also suffer DV in Nigeria despite the obviously patriarchal nature of the society.²⁷ The case of Maryam Sanda, who was recently sentenced to death for killing her husband by fatally stabbing him is one of such reported incidents.²⁸ Apparently, the case on her behalf was that her action was a reaction to a suspected case of infidelity by her husband. The presiding judge considered the marital bond between the parties as a critical factor that cannot be easily overlooked. In delivering the judgement, the Justice was of the view that,

When I come to terms with the fact that the person involved here is the accused person's lawfully married husband and who has a baby with him at the time of his gruesome murder. This is not just sad and unfortunate but indeed wicked.

The facts of the case have also shown how the wife has perpetrated several forms of violence on the husband. For example, it was reported that there had been several scuffles between the couple where other people had to intervene to retrieve a knife from the wife. Similarly, it was given in evidence that she had threatened the deceased several times to cut off his private parts. There are also other reported cases of death of husbands caused by wives.²⁹ All these are indicative of the fact that women can also perpetrate the act of DV and this is not strange even in Nigeria. The above however is not to underestimate the prevalence of women or wives being victims in Nigeria and

²⁷ See for example, Cyriacus Izuekwe, 'Wife batters husband over inability to impregnate her' P.M. Express, 4 February 2020 — <https://pmexpressng.com/wife-batters-husband-over-inability-to-impregnate-her/> on 8 January 2023.

²⁸ Adesomoju A, 'Maryam Sanda sentenced to death for killing husband' The Punch, 28 January 2020 — <https://punchng.com/maryam-sanda-sentenced-to-death-for-killing-husband/> on 16 January 2023.

²⁹ For example, the case of Rabi Shamsudeen, a 19 year-old woman who stabbed her 25 year-old husband to death somewhere in Katsina State. See Danjuma M, Katsina and Richards O, 'Another woman stabs husband to death as Maryam Sanda to die by hanging' The Guardian, 28 January 2020 — <https://guardian.ng/news/another-woman-stabs-husband-to-death-as-maryam-sanda-to-die-by-hanging/> on 6 January 2023.

husbands as perpetrators. Indeed, current studies have shown that the percentage of women, since 2008, who have inflicted physical injury against their husbands remains under 2%.³⁰

Generally, in Nigeria (and across the world), there have been recent concerns about the rapid rise in spousal killings.³¹ These concerns are not restricted to a specific gender considering the prevalence of both categories. The rise in spousal killings is one of the emerging perspectives of DV in Nigeria, and it also points to the fact that DV may have a broader effect or implication on marriages.

III. Analysis of the Various Approaches to Tackling Domestic Violence

i. Law and Criminal Justice

All over the world, the law and criminal justice-based approach is arguably the most popular approach. Commonly known as the criminalisation approach, the approach involves the use of law and legal mechanisms as a response to incidences of domestic violence. The law and criminal justice-based approach do not only involve one single response. It involves various legal mechanisms situated in different aspects of the law and legal system. Using criminal law as a response to DV is seemingly the most convenient approach in responding to DV under most legal systems.³² In this regard, harmful or injurious conduct by one spouse over the other, which is considered criminal, is followed with the appropriate penal sanction based on the criminal justice system.³³ Therefore, all incidences of DV should be followed with sanction/punishment since criminal law is that aspect of law

³⁰ National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 435.

³¹ See Holson L M, 'Murders by Intimate Partners are on the Rise, Study Finds' *New York Times*, 12 April 2019 — <https://www.nytimes.com/2019/04/12/us/domestic-violence-victims.html> accessed on 6 January 2023. It was reported that in the US alone, the number of victims rose 19% from 1875 to 2237 just in 2017 alone with a majority of victims being women.

³² Buzawa E, Buzawa C and Stark E, *Responding to domestic violence: The integration of criminal justice and human services*, 5th ed, Sage Publications, 2017, 25.

³³ Fraser J, 'Making domestic violence a crime: Situating the criminal justice response in Canada' in Buzawa E, Buzawa C and Stark E, (eds), *Global responses to domestic violence*, Springer International Publishing AG, Switzerland, 2017, 41.

which has to do with punishment.³⁴ Beyond this simplistic way of viewing criminal law, some emphasis must be placed on criminal law itself as that aspect of law which defines a criminal conduct, outlines the ingredients and provides for the punishment or penalty for such a conduct.³⁵

Generally, criminalisation is an act or a process by which an activity is made a criminal offence by declaring it illegal and attaching a sanction.³⁶ With regards to DV, criminalisation is the incorporation of acts generally known to constitute DV between intimate partners in particular criminal legislations.³⁷ Criminalisation in relation to DV entails two things: first, a legislation which sanctions an act of domestic violence and second, legal proceedings or more specifically a prosecution based on such legislation on DV. The first requirement places the responsibility of enacting a statute on DV on the legislature alone.³⁸ Indeed, this is in line with the constitutional requirement that an act can only be an offence if it has been so recognised in a written law enacted by the legislature and the punishment for such act is also stipulated in the legislation.³⁹

From the foregoing, acts which constitute domestic violence can fall under two aspects of criminal law- the general and the specific. The general aspect refers to dealing with acts of domestic violence under the general criminal legislation, i.e., legislation that covers offences generally, such as the Criminal code and the Penal Code, which contains offences like murder, assault, false imprisonment, kidnapping, etc. Indeed, these DV acts must be such that amount to offences which are created in these laws. Where the violence against the spouse takes the form of killing, grievous bodily harm, assault, and false imprisonment, these are specific offences with defined punishment under the Criminal and Penal codes.⁴⁰ In Nigeria, domestic

³⁴ Okonkwo CO, *Criminal law in Nigeria*, Spectrum Books, Ibadan, 2002, 28.

³⁵ Chukkol KS, *The laws of crime in Nigeria*, Ahmadu Bello University Press, Zaria, 1988, 101.

³⁶ Goodmark L, *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence*, University of California Press, California, 2018, 26.

³⁷ Payne D and Wermeling L 'Domestic violence and the female victim: The real reason women stay?' 3 *Journal of Multicultural, Gender & Minority Studies*, 2009, 1.

³⁸ Okonkwo C. O, *Criminal law in Nigeria*, 28.

³⁹ See Section 36(12) of the Nigeria Constitution. See also *Aoko v. Fagbemi and Others* (1961), [Supreme Court Nigeria]. See also *Alhaji Abdullahi Aminu Tafidi v. FRN* (2014), [Supreme Court, Nigeria] and *Alhaji Zanna Maideribe v. FRN* (2013) Supreme Court of [Nigeria.]

⁴⁰ Chapter C38, Laws of the Federation of Nigeria, 2004 and CAP 89 of the Laws of Northern Nigeria, 1963 respectively.

violence, especially the physical type,⁴¹ could become offences such as murder or culpable homicide (punished by death);⁴² manslaughter or culpable homicide (liable to imprisonment for life);⁴³ assault or grievous harm;⁴⁴ rape or sexual assaults;⁴⁵ abduction and false imprisonment.⁴⁶

Most prosecutions for physical violence by a spouse over the other are therefore conducted under the provisions in the Criminal or Penal Code of the Criminal Laws and Procedure of states in the Federation. For example, in *Ibenacho Nkem v. The State of Lagos*,⁴⁷ the appellant was charged and prosecuted for manslaughter based on section 222 of the Lagos State Criminal Law for unlawfully causing the death of his wife. The appellant used a cable wire to flog his wife who defecated twice on herself as a result of the excessiveness of the beatings. After the wife sustained injuries, she pleaded with the appellant to take her to the hospital and he refused. She sustained severe injuries on her arms, abdomen, thigh and groin. He later took her to the bathroom to bath and massage her but she nevertheless died. The court found that the excessive flogging caused the deceased's death and sentenced the accused. The court was of the view that,

The event culminating in the trial of the appellant at the lower court is undoubtedly an unfortunate one. The facts on record shows the disheartening end of the life of the deceased, who was not only defrauded by fraudsters but was fatally punished by the Appellant, her husband, who callously battered and dastardly flogged her with cable wire. The law is well settled that any person who causes the death of another is guilty of involuntary manslaughter, as the evidence will show that the killing of the deceased is not pre-meditated but accidental. It presupposes the unintentional but unlawful killing of the deceased.

A similar case where the accused stabbed his wife to death and sought to claim the defence of provocation by the wife was aptly rejected by the court.

⁴¹ For example; assault, battery, murder.

⁴² Section 316 & 319 (1), *Criminal Code*(Nigeria) and Section 220 and 221, *Penal Code*(Nigeria).

⁴³ Section 317 & 325, *Criminal Code* (Nigeria) and Section 222, *Penal Code* (Nigeria).

⁴⁴ Section 264 and 265, *Penal Code* (Nigeria). See *Mrs Tolulope Oniyide v. Mr Taiye Ayotunde Oniyide* (2018), [Court of Appeal, Nigeria].

⁴⁵ Section 357, *Criminal Code* (Nigeria) and Section 282, *Penal Code* (Nigeria). See also Section 360, the *Criminal Code* (Nigeria) which provides that 'any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour and is liable to imprisonment for two years.'

⁴⁶ Section 272, *Penal Code* (Nigeria).

⁴⁷ (2018), [Court of Appeal, Nigeria].

In *Ganiyu Olatokumbo Oladiran v. The State*,⁴⁸ the spouse clearly had an unhappy marriage and their lordship was of the view that that is not enough to justify the killing of a spouse. According to Oputa JSC,

Many people have an unhappy married life but that does not give them a licence to stab their wives to death. Here the weapon used, the ferocity with which it was used and the resulting injury all bear eloquent testimony of an intention to kill or at least to cause grievous bodily harm.

Where an act of domestic violence is followed by a criminal proceeding, the State naturally has the duty to prosecute. This, however, does not mean that a private aggrieved spouse cannot initiate a criminal proceeding for herself. In fact, in *Mrs Tolulope Oniyide v. Mr Taiye Ayotunde Oniyide*⁴⁹ the Court of Appeal endorsed the right of a private person to institute a criminal proceeding for criminal acts which constitute domestic violence by a criminal complaint before a magistrate court.

From the above, domestic violence, which involve acts that constitute a crime by a spouse caused by the other spouse, is usually treated under the general criminal law provision of the state.⁵⁰ Regardless, applying the Criminal and Penal Codes for domestic violence has been generally criticised. Enemo, for instance, contends that although they provide punishment for assaults, they “still have discriminatory provisions, thereby giving the accused the window to escape punishment.”⁵¹ Eze-Anaba has a similar view that these laws encourage domestic violence rather than protect women.⁵² Similarly, Chibueze *et al.* contend that general criminal law does not entitle victims to any substantial relief.⁵³ Besides, their provisions were considered to be too broad. Hence, as the menace proliferated and society began to get more clarity on it, the general

⁴⁸ (1986) [Supreme Court, Nigeria].

⁴⁹ (2018) [Court of Appeal, Nigeria].

⁵⁰ See further examples in *Ganiyu Olatokumbo Oladiran v. The State*, where that accused killed his wife. It was in evidence that they had never had a happy marriage considering the frequency of their quarrels.

⁵¹ She made reference to the provisions like Section 55(1)(d), *Penal Code* (Nigeria); See Enemo P, 'Effectiveness of Nigeria's international obligations in curbing domestic violence' 9 *Nnamdi Azikwe University Journal International Law & Jurisprudence*, 2018, 4.

⁵² Eze-Anaba I, 'Domestic violence and legal reforms in Nigeria: Prospects and challenges' 14 *Cardozo Journal of Law and Gender*, 2007, 37.

⁵³ Chibueze N, Irehobhude I and Ebenezer TD, 'The Violence Against Persons Prohibition Act, the Maputo Protocol and the rights of women in Nigeria' *Statute Law Review*, 2017, 3.

criminal legislation became increasingly unfashionable. There was, therefore, the need to have a law that recognises domestic violence as a crime.

With time, specific domestic violence legislation began to evolve. These legislations exclusively recognise domestic violence as an independent offence and stipulate punishment for it. This is in fulfilment of the constitutional requirement that an act can only be punishable as an offence if it is contained in a written law enacted by the legislature and the punishment for such act is so stipulated.⁵⁴ In Nigeria, the federal and state governments have the powers to enact criminal legislation. With regard to domestic violence, after a very long and tortuous journey, the Violence Against Persons (Prohibition) (VAPP) Act⁵⁵ came into force in 2015 at the federal level to criminalise domestic violence.

The VAPP Act has quite innovative provisions. Although applicable only in Abuja, it is arguable that the VAPP Act's provisions are similar to what is obtainable in states with one.⁵⁶ The limitation of applicability of the Act to only the Federal Capital Territory (FCT) and federal institutions has provoked criticism, especially since the applicability of the doctrine covering the field remains doubtful in this respect.⁵⁷

The VAPP Act covers almost all the prevalent forms of violence in Nigeria, including physical, psychological, sexual, and even harmful traditional practices. Provisions were also made for all the common offences which constitute domestic violence regardless of the provisions under the Criminal and Penal Codes. The Act criminalises rape,⁵⁸ spousal battery,⁵⁹ forceful ejections from home,⁶⁰ wilfully placing a person in fear of physical injury,⁶¹ forced financial dependence or economic abuse,⁶² harmful widow practices,⁶³ female circumcision or genital mutilation⁶⁴ among others. Most

⁵⁴ Section 36(12), *Constitution of the Federal Republic of Nigeria*.

⁵⁵ *Violence Against Persons (Prohibition) Act* (Nigeria) enacted by the National Assembly of the Federal Republic of Nigeria.

⁵⁶ National Agency for the Prohibition of Trafficking in Persons, *Violence Against Persons (Prohibition) Act (Nigeria): Annual Report*, 2021.

⁵⁷ Onyemelukwe C, 'Legislating on violence against women: A critical analysis of Nigeria's recent Violence against Persons (Prohibition) Act, 2015' 5 *DePaul J Women Gender & Law*, 2015, 45.

⁵⁸ Section 1, *VAPP Act* (Nigeria).

⁵⁹ Section 19, *VAPP Act* (Nigeria).

⁶⁰ Section 9, *VAPP Act* (Nigeria).

⁶¹ Section 4, *VAPP Act* (Nigeria).

⁶² Section 12, *VAPP Act* (Nigeria).

⁶³ Section 15, *VAPP Act* (Nigeria).

creatively in terms of establishing offences is the provision for “harmful substance attack” such as acid baths as part of domestic violence.⁶⁵ This is indeed innovative considering the increase in such practice which may be difficult to bring under any particular offence under the hitherto criminal legislation.

The provision on spousal battery effectively contradicts the Penal Code, which tacitly allows wife beating.⁶⁶ As provided in the VAPP Act, a person who batters his/her spouse is liable to imprisonment for more than 3 years or to a fine of less than N200,000.⁶⁷ As a matter of fact, such conflicts are creatively anticipated and taken care of. According to section 45(2), where there is a conflict between any provision of the Act and any other provision on similar offences in the Criminal and Penal Code, the provisions of the Act supersede. However, ongoing proceedings or offences committed before the commencement of the Act remain under the regime of the codes. This effectively upholds the superiority of the Act and recognises it as providing a more updated sanction for acts of domestic violence.

The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) is the public agency responsible for administering the provisions of the Act.⁶⁸ The administration is however to be carried out in collaboration with relevant stakeholders and faith-based organisations. The availability of a specific institutional mechanism for the enforcement of the law is indeed laudable. This approach contrasts with a situation where countries establish special criminal courts and confer special jurisdiction over domestic violence matters such as Sierra Leone.⁶⁹

Despite the promises of the VAPP Act, it has some weaknesses. The often discussed is that fact that it does not include marital rape as a specific offence.⁷⁰ This is not surprising considering the controversies concerning the recognition of marital rape as an offence. Similarly, scholars are not really

⁶⁴ Section 6, *VAPP Act* (Nigeria).

⁶⁵ Section 21, *VAPP Act* (Nigeria).

⁶⁶ Section 55 (1) (d), *Penal Code* (Nigeria).

⁶⁷ Section 19, *VAPP Act* (Nigeria).

⁶⁸ Section 44, *VAPP Act* (Nigeria).

⁶⁹ For more on this, see Oosterveld V, ‘The special court for Sierra Leone’s consideration of gender-based violence: Contributing to transitional justice?’ 10 *Human Rights Review*, 2009, 73-98.

⁷⁰ Chibueze *et al*, ‘The Violence Against Persons Prohibition Act, the Maputo Protocol and the rights of women in Nigeria’, 10.

impressed with the enforcement regime of the Act which they see as inadequate.⁷¹

Criminalisation is generally almost the most convenient response to domestic violence, especially in cases that are extreme in nature involving cases such as murder, grievous assault, and acid baths. It is for this reason that many authors support it. Buzawa *et al* was unequivocal when they held forth that:

domestic violence, in its extreme form, clearly should be addressed by criminal statutes. After all, the victim knows she (or, on occasion, he) has been attacked, the crime if reported to the police is relatively straightforward, and no detective work is needed to determine the suspect.⁷²

Additionally, criminalisation has helped in no small way to provide a concerted and organised means of combating domestic violence in a coordinated manner by successive governments.⁷³

i. Partial Decriminalisation Approach

Many arguments have been proffered on the essence and value of decriminalising domestic violence in contemporary society. The leading voice in this discourse is Leigh Goodmark.⁷⁴ In her view, the decriminalisation debate can be better appreciated from two perspectives. First, based on the challenges of criminalisation generally and second, challenges of criminalization of domestic violence specifically.

This article asserts that partially decriminalising domestic violence has been argued to be necessary because of the general problems of the criminal justice system generally. One such problem is that over-criminalisation of DV offences leads to high incarceration rate which is particularly manifest in Nigeria with overcrowded prisons. It is important to state that the official capacity of the prison system is 50,153 making Nigeria's occupancy level to be

⁷¹ Chibueze *et al*, 'The Violence Against Persons Prohibition Act, the Maputo Protocol and the rights of women in Nigeria', 11.

⁷² Buzawa *et al*, *Responding to domestic violence: The integration of criminal justice and human services*, 301.

⁷³ Onyemelukwe C, 'Legislating on violence against women', 3.

⁷⁴ In a couple of her works like Goodmark L, *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence*. See also Goodmark L, 'Should domestic violence be decriminalized?' 40 *Harvard Journal of Law and Gender*, 2017, 54-113 and Goodmark L, *A Troubled marriage: Domestic violence and the legal system*.

136.7% percent.⁷⁵ These figures are indeed alarming and therefore mean that a more creative attitude should be taken towards decongestion of the prisons and partial decriminalisation of DV might just be one of other solutions. Another reason that necessitates partial decriminalisation is that it has been proved that “excessive criminalisation renders criminal penalties meaningless.”⁷⁶ Thirdly, criminalization (which has to do with penal sanctions or punishment) has been stated not to be sufficient to tackle the criminal justice system problem. In this respect, the point has been made that criminalisation makes policymakers believe that they are doing something to address a social phenomenon.

Criminalisation has been said to do more harm to women who are supposed to be the beneficiaries of the approach.⁷⁷ There are incidences of further abuse even after the perpetrators serve their sentences.⁷⁸ Similarly, criminalisation leads to increased state intervention in the private life of the couples. On the whole, the impact of criminalization on matrimonial relationships still remains obscure particularly in sustaining the marriage.

For the purpose of this paper, two common decriminalised approaches will be explained. They are the socio-economic protection and empowerment initiatives and the use of alternative dispute resolution and restorative justice mechanisms.

a) *Socio-economic protection and empowerment initiatives*

The socio-economic protection and empowerment initiative is a victim-oriented approach towards resolving disputes arising from domestic violence.⁷⁹ Unlike the criminalization approach, this approach bothers less about the perpetrator and focuses largely on empowering the victim.⁸⁰ Indeed, victims of DV will sometimes suffer severe physical and economic damage that other

⁷⁵ Currently, the World Prison Brief estimates Nigeria’s imprisonment population as at July 2023 as 77 684, with a prison population rate of 35 per 100 000 of the national population. See, — <https://www.prisonstudies.org/country/nigeria> on 10 July 2023.

⁷⁶ See Goodmark L, ‘Should domestic violence be decriminalized?’, 68.

⁷⁷ Eze-Anaba I, ‘Domestic violence and legal reforms in Nigeria: Prospects and challenges’, 53.

⁷⁸ Burton M, *Legal responses to domestic violence*, Routledge-Cavendish Oxon, 2008, 38-41.

⁷⁹ Brewster MP, ‘Domestic violence theories, research, and practice implications’ in Roberts A. R (ed), *Handbook of domestic violence intervention strategies: Policies, programs and legal remedies*, Oxford University Press, New York, 2002, 43.

⁸⁰ Brewster MP, ‘Domestic violence theories, research, and practice implications’, 43.

interventions appear necessary. The psychological impact of domestic violence also necessitates certain socio-economic interventions not only for the victim but also for her children.⁸¹ It is therefore in this regard that a lot of socio-economic initiatives have emerged for the purpose of helping victims of DV.⁸²

Generally, the socio-economic approach anticipates all the measures or programmes put in place by the government or private individuals to cushion the effect of the DV. It involves empowering a certain class of people toward the realisation of their socio-economic rights.⁸³ It is arguable that the socio-economic approach generally targets disadvantaged or weaker people in a particular community for the protection of their dignity, freedom and well-being.⁸⁴ According to Ahmed and Bulmer, this involves “guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods.”⁸⁵

Overtime, governments across the world have intervened to ease the pains and sufferings of victims of domestic violence. Some of these intervention programmes include provision of government aid and empowerment, and shelter for battered women.⁸⁶ For instance, the Lagos State Domestic and Sexual Violence Agency (DSVA) an organisation under the Lagos State Government is established to “provide sensitive services to victims of domestic and sexual violence while promoting healthy relationships”.⁸⁷ This organisation has intervened to help protect the physical health and mental well-being of thousands of victims. Similarly, there is also another government-run shelter in Lagos state.⁸⁸ This shelter is run with the assistance of the Minister of

⁸¹ Eze-Anaba I, ‘Domestic violence and legal reforms in Nigeria’, 39.

⁸² International Bank for Reconstruction and Development/ The World Bank, *Gender-based violence: An analysis of the implications for the Nigeria for women project*, 2019.

⁸³ Noah Y, ‘Incidence and dimension of violence against women in the Nigerian society: A case study of Ilorin township’, 1 *Centre point*, 2000/2001, 11.

⁸⁴ Noah Y, ‘Incidence and dimension of violence against women in the Nigerian society’, 11.

⁸⁵ Ahmed D and Bulmer E, *Social and economic rights*, International Institute for Democracy and Electoral Assistance (International IDEA), Sweden, 2017, 9.

⁸⁶ Subrata P, ‘Combating domestic violence through positive international action in the international community and in the United Kingdom, India, and Africa’ 7 *Cardozo Journal of International & Comparative Law*, 1999, 227.

⁸⁷ Lagos State Domestic and Sexual Violence Agency — <https://lagosdsva.org> on 13 July, 2023.

⁸⁸ See Canada: Immigration and Refugee Board of Canada, Nigeria: Domestic violence, including Lagos State; legislation, recourse, state protection and services available to victims (2011-October

Women Affairs and they provide several services to abused women among which are counsel services. It is based on this philosophy that scholars such as Lee Ross argue for a “public health model” which is aimed at reducing risks or threats to health caused by domestic violence as a viable alternative to criminalisation.⁸⁹

It is usually said of this approach that it is complementary to law and criminal justice-based approaches considering that in most cases, the wheels of the criminal justice system must have been activated against the perpetrator.⁹⁰ The victim of DV will therefore be in dire need of this support because the perpetrator may have been arrested, detained or imprisoned. This is natural considering that economic equilibrium is always tilted in favour of the man especially in marital relationships.⁹¹ His incarceration or imprisonment will certainly create a vacuum which must be filled to assist the victim and possibly the children from such marriage.

In most African countries, governments have not really done so much in putting in place socio-economic measures aimed at assisting victims of DV. It is noticeable that private organisations and NGOs have largely taken over this role. For instance, there are a lot of organisations working to provide support for women who are victims of domestic violence in Africa.⁹² Some of them with a continental-wide agenda include the Women at Risk International Foundation (WARIF)⁹³, Coalition on Violence Against Women (COVAW)⁹⁴, International Network to End Violence Against Women and Girls.⁹⁵ In Nigeria specifically, these NGOs have proliferated in the past few years. The common ones include Project Alert on Violence Against Women,⁹⁶ Women for Peace &

2014), 10 November 2014, NGA104980.E, — <https://www.refworld.org/docid/548168e14.html> on 28 January 2023.

⁸⁹ Ross L, *Domestic violence and criminal justice*, 152.

⁹⁰ Ross L, *Domestic violence and criminal justice*, 152.

⁹¹ Eze-Anaba I, ‘Domestic violence and legal reforms in Nigeria’, 39.

⁹² Ajadi KO, Adebisi JA & Alabi FM, ‘Assessment of the impact of women’s organisations on sustainable rural environment and livelihood in Nigeria’ 3(2) *Ethiopian Journal of Environmental Studies and Management*, 2010, 86.

⁹³ Women AT Risk International Foundation — <https://warifng.org/> on 15 January 2023.

⁹⁴ Coalition on Violence Against Women — <https://covaw.or.ke/> on 10 January 2023.

⁹⁵ Women Empowerment and Legal Aid - <https://welaonline.org> on 15 September 2023.

⁹⁶ Project Alert on Violence Against Women in Nigeria — <https://projectalertnig.org/> on 15 January 2023.

Gender Equality Initiative (formerly COWON)⁹⁷, Women Action Organisation, Women Justice Program, Stand to End Rape Initiative (STER) Nigeria.⁹⁸ While most of these organisations also provide legal services, especially to victims of domestic violence, their programs also broadly include socio-economic support for victims. The STER Initiative for example has flourishing survivor-centred programs.⁹⁹

The socio-economic approach has been quite useful as a response to domestic violence. However; it also has a number of challenges. Firstly, as mentioned, the government does not play a significant role in these initiatives as part of its grand scheme to avoid its socio-economic obligations to the people.¹⁰⁰ This therefore makes private initiatives inevitable. The private initiatives on the other hand are very limited. Besides, most of their work is largely concentrated in the cities. Secondly, most of these programs need a lot of funds to be impactful and this is in short supply. This is a huge challenge considering that the organisations are largely private driven. The NGOs' have also over time concentrated so much effort on providing legal support at the expense of assisting the victim socio-economically.¹⁰¹ While this is a noble course, it invariably takes away attention from the victim. Therefore, this

⁹⁷ Women for peace & Gender equality initiative (formerly COWON)-
<https://www.peaceinsight.org/conflicts/nigeria/peacebuilding-organisations/cowon/> on 15 January 2023.

⁹⁸ Stand to End Rape Initiative (STER)—<http://standtoendrape.org/about-us/> on 16 January 2023.

⁹⁹ Stand to End Rape Initiative (STER)— <http://standtoendrape.org/survivor-centered-programs/> on 16 January 2023.

¹⁰⁰ Durojaiye E, 'The relevance of health rights litigation in Africa' in Durojaiye E, (ed) *Litigating the right to health in Africa: Challenges and prospects*, Routledge, London, 2015, 1. The author was arguing with regard to socio-economic rights generally and the right to health specifically that "The recognition of human rights in national or international human rights documents may amount to mere paper promises if these rights are not effectively implemented by governments. This is often the case with socio-economic rights, including the right to health. More often than not, poor countries of the world, particularly those in Africa, are quick to raise the excuse of limited resources to justify their unwillingness or reluctance to realise their citizens' rights to health care services. Nowhere is this act of nonchalance more tellingly revealed than in the area of life-threatening diseases such as HIV/AIDS."

¹⁰¹ As will be noticed, most of these organisations merely concentrate on fighting for women's right. For examples, the works of organisations like Women's Consortium of Nigeria (WOCON), Women's Rights Advancement and Protection Alternative (WRAPA), International Federation of Women Lawyers (FIDA) Nigeria.

approach may not be particularly suitable for marriage sustainability where the parties are married.

b) *Alternative dispute resolution and restorative justice mechanisms*

The suitability of an approach toward the resolution of DV is an issue which must be carefully considered. This is especially true where the conflicting parties are bound by marriage. As a matter of fact, family law is not only concerned about responding to DV but responding in a way that will be true to the essence of the union.¹⁰² From this point of view, one can appreciate that the partial decriminalisation of DV does not only mean detaching (as much as possible) the conflict and the conflicting partners from the criminal justice system but also opening up a possibility towards resolution of such conflict in an amicable manner considering the interests at stake.¹⁰³ It is worth restating that this idea only finds relevance where the violence perpetrated against the wife (or the other partner) is not that which is severe enough to amount to a crime – in which case must be dealt with using the criminal justice mechanism.¹⁰⁴

The movement for adopting ADR and restorative justice as a response to domestic violence only began to grow recently.¹⁰⁵ Scholars have not started appreciating the importance of contextualization in responding to domestic violence and as earlier mentioned the approach when couples are married to be cautiously applied. This means that it is important to understand the jurisprudence behind ADRs and restorative justice for its suitability to be better appreciated. At two opposite ends of the spectrum are two kinds of justice- ‘alternative justice’ and ‘judicial justice’. Understanding these two kinds of justice will help provide insight into the essence of the application of ADR in domestic violence-induced conflict. In the end, all parties whether victims or perpetrators seek justice but the kind of justice varies. In this regard, Dafna

¹⁰² Lavi D, *Alternative dispute resolution and domestic violence: Women, divorce and alternative justice*, Routledge, London, 2018, 35.

¹⁰³ Abifarin O, ‘Resolving domestic violence through alternative dispute resolution in Nigeria’ 6 *University of Ilorin Journal of Law*, 2010.

¹⁰⁴ Where an act amounts to a crime, it must be followed by the necessary criminal procedure. See *Aderemi Aderounmu v. Federal Republic of Nigeria* (2019), [Court of Appeal, Nigeria] — <https://legalpediaonline.com/aderemi-aderounmu-vs-federal-republic-of-nigeria/> on 15 January 2023.

¹⁰⁵ Lavi D, *Alternative dispute resolution and domestic violence*, vi.

Lavi has carefully distinguished “alternative” and “judicial” justice.¹⁰⁶ Judicial justice is justice obtained from the courts after litigation.¹⁰⁷ Judicial justice in matrimonial conflicts has been said to be associated with key challenges which are often overlooked. With the evolution of the ADR movement, came alternative justice which challenges the essence and values of the hitherto legal and judicial justice and introduces a new perspective to justice administration.¹⁰⁸

In the first place, alternative justice focuses on the interest of the parties and the underlying reasons for the conflicts.¹⁰⁹ The independent third party called upon for the resolution of the crisis will seek to understand why the conflict exists in the first place. The parties decide how the proceeding should be conducted and what interests are central; this is in stark contrast with judicial justice which is strictly controlled by legal norms which were not created for particular individuals or circumstances. Therefore, according to Lavi, “[t]he general law is not always suitable to the special circumstances of the particular case, as expressed in the well-known saying, ‘hard cases make bad law.’¹¹⁰ Therefore, in interest-based negotiations which alternative justice postulates, there is a focus on the interest of the parties not on positions. The “judicial” or “implemented justice” largely concentrates on positions.

Another important value of alternative justice lies in the fact that it aids the autonomy of the parties. Basically, all ADRs are non-coercive processes which parties voluntarily enter into. Indeed, this principle is important for “the very availability of choice, granted to the parties to the dispute, of a mechanism alternative to the court in order to resolve their dispute, expresses this value of respect for their personal autonomy and the absence of ‘coercion from above’.¹¹¹ This goes to the root of an individual’s right to autonomy and self-determination which litigation deprives them. It helps them take control of not only the process but their future through a process that respects their personal wishes.¹¹² This means the chances of a breach are significantly reduced.

¹⁰⁶ Davis A, ‘Mediating cases involving domestic violence: Solution or setback?’ 8 *Cardozo Journal of Conflict Resolution*, 2006, 264.

¹⁰⁷ Lavi D, *Alternative dispute resolution and domestic violence*, vi.

¹⁰⁸ Lavi D, *Alternative dispute resolution and domestic violence*, vi.

¹⁰⁹ Lavi D, *Alternative dispute resolution and domestic violence*, 5.

¹¹⁰ Lavi D, *Alternative dispute resolution and domestic violence*, 8.

¹¹¹ Lavi D, *Alternative dispute resolution and domestic violence*, 17.

¹¹² Lavi D, *Alternative dispute resolution and domestic violence*, 17.

The final value of alternative justice focuses on the part perception of themselves as partners and not adversaries. Indeed, one of the incidences of “judicial justice” is that the parties always perceive themselves as adversaries since the law; procedure and proceeding pitch them against each other.¹¹³ In alternative justice however, the parties appreciate that a relationship exists and they understand the essence of it being preserved. Because of the complexities of matrimonial disputes and family law issues, there is now a gradual movement towards non-litigious means of dispute resolution. This is because of the general dissatisfaction with the law and criminal justice approach in the resolution of issues laced with domestic violence.¹¹⁴

In DV issues and related matrimonial conflicts under family law, four major categories of ADR mechanisms are established. The major mechanisms are arbitration, conciliation, mediation and med-arb.¹¹⁵ Arbitration is an ADR mechanism which is quasi-judicial in nature and which involves a neutral third party’s intervention. At the end of the process, an award is rendered by the arbitrator and such an award is final and binding. This means that the award can be enforced in the court like a typical court judgement.¹¹⁶ Arbitration can be of three kinds: that which originates from the agreement between the parties, by order of court and by an Act of parliament.¹¹⁷ Arbitration is usually contrasted with litigation as a means to highlight its strength and the general advantages are its simplicity, flexibility, cost-effectiveness and speed. Over time, arbitration has also been adopted as a response to domestic violence.¹¹⁸ However, there are sceptics who believe arbitration cannot be suitable for domestic violence and family law matters. For example, Argiroff argues that

While arbitration may work well in cases where the parties are interested in the process and have relatively equal bargaining power, a family law case that involves domestic violence and issues of power and control may be a different matter. An

¹¹³ Lavi D, *Alternative dispute resolution and domestic violence*, 26.

¹¹⁴ Albertstein M, ‘The jurisprudence of mediation: Between formalism, feminism and identity conversations’ 11(1) *Cardozo Journal of Conflict Resolution*, 2009, 1-28.

¹¹⁵ There are still other ADR processes such as Early Neutral Evaluation (ENE) and collaborative law. See Lavi D, *Alternative dispute resolution and domestic violence*, 3-4.

¹¹⁶ Mauro Rubino-Sammartano, *International arbitration law and practice*, 3rd ed, JurisNet LLC, New York, 2014, 2-7.

¹¹⁷ Mauro Rubino-Sammartano, *International arbitration law and practice*, 8.

¹¹⁸ Argiroff A, ‘Binding arbitration and the problem of protection the survivor of domestic abuse’ 31 *Clearinghouse Review*, 1997, 141.

abused party may wish to have an arbitrator who understands domestic violence, but the party may not be able to get the batterer to agree.¹¹⁹

The Nigerian legal system has a legislation regulating arbitration practice -The arbitration in Arbitration and Conciliation Act.¹²⁰ However, the Act is only restricted to “commercial disputes”. Obviously, family law issues and domestic violence falls outside the scope of the Act. While ADR is not too popular as a means of dispute resolution in Nigeria, customary arbitration appears to be well-entrenched especially in the traditional African communities.

IV. Implication of the Approaches for Marriage Sustainability

A particularly thorny issue about the approaches to handling DV issues is how they can be reconciled with the essence of marriage. Having established the intersection between DV and marriages, the next important question is how do these approaches impact on marriages in Nigeria? More specifically, in what way do these approaches impact the basic principle of sustainability, which is like the crux of marriages? This part therefore interrogates the effectiveness of these approaches from the point of view of the principle of marriage sustainability.

i. Meaning of marriage sustainability

In all cultures and legal systems, marriage is taken as a serious issue – that is why it is a formal and legal union.¹²¹ This means the union is usually preceded on the assumption that the marriage should last.¹²² This is the quintessence of the principle of sustainability of marriage. However, it is a principle that upholds the inviolability of the institution of marriage.¹²³ The union of the parties should be able to withstand certain challenges, even those

¹¹⁹ Argiroff A, ‘Binding arbitration and the problem of protection the survivor of domestic abuse’, 142.

¹²⁰ Arbitration and Conciliation Act (Nigeria) enacted by the National Assembly of the Federal Republic of Nigeria.

¹²¹ Adu IK, Tulasi V and Attakumah D, ‘Exploring factors that influence sustainable marriage in St. Francis College of Education and St. Francis Demonstration Basic School Community, Hohoe’, 4(13) *Mathematical Theory and Modelling*, 2014, 83.

¹²² Uzo ID, *Guide to Matrimonial Proceedings*, 2nd ed, Law Digest Publishing Co., Lagos, 2012, 65.

¹²³ Uzo ID, *Guide to Matrimonial Proceedings*, 65.

that arise as a result of the marriage relationship such as domestic violence.¹²⁴ Be that as it may, and for the purpose of this article, sustainability means that marriage should not break down leading to divorce or separation.

ii. Effects on marriage sustainability

Both the law and criminal justice approach as well as the partial decriminalisation approach have varying impacts on the sustainability of marriages in Nigeria. The effects would now be considered below.

a) Law and criminal justice approach

Without question, the law and criminal justice approach has dominated the domestic violence discourse considering that it is a convenient and fast means of dealing with issues or conflicts. Nonetheless, as mentioned, a careful examination of the approach shows that it is only suitable in cases which involve physical violence. In many cases, domestic violence may not necessarily be physical in nature or even if it is physical, it may be so negligible that invoking the full wrath of the law may be disproportionate. Understanding issues from this perspective will expose the flaws of this approach within the context of marriage sustainability.

In the first instance, this approach most often leads to a total breakdown of the marriage which has profound implications for family law.¹²⁵ This is so especially where the criminal justice system, which is largely adversarial, will have to be set off against the other spouse. In many instances such a spouse will end up being imprisoned or some sort of court injunction or order will be issued against him restraining him from the wife (and the immediate family). Imprisonment on its own comes with a lot of societal stigmas which also has its own physiological impact on the parties and the family.¹²⁶ At the end of it all, the marriage terminates automatically since it is doubtful that the parties will want to continue in the marriage in such circumstances.¹²⁷ As convenient as this may seem, questions still linger as to

¹²⁴ Adu IK, Tulasi V and Attakumah D, 'Exploring factors that influence sustainable marriage in St. Francis College of Education and St. Francis Demonstration Basic School Community, Hohoe', 83.

¹²⁵ Adeyemo OO & Bamidele I, 'The menace of domestic violence', 195.

¹²⁶ Goodmark L, *Decriminalizing domestic violence*, 36.

¹²⁷ Lavi D, *Alternative dispute resolution and domestic violence*, 96.

the long-term policy objective of this approach since the parties can no longer enjoy each other's company. The fact that this decade has witnessed a sharp increase in the rate of divorce says a lot about the leading response to DV cases.¹²⁸

Eze-Anaba also observed that the law and criminal justice mode is more adversarial than reconciliatory. The author argues that “the indirect outcome of most judicial proceedings is usually the termination or straining of the relationship of the litigants.”¹²⁹ She argues further that under the current legal framework in Nigeria, it is most likely that a victim who makes a complaint or pursues a legal remedy will break up her home or cause physical and economic insecurity for herself and her children.

Besides, while the law and criminal justice approach may be very suitable for incidences of domestic violence that are grievous in nature, the issue still remains, how this can be reconciled with cases of DV that are minor in nature. Similarly, activating the criminal justice method will mean that parties will have to go to court. This is also so even if civil remedies are sought. It is a common principle under customary law especially the Yoruba custom that “parties do not return from the court and remain friendly.” The implication is that if one of the parties decides to approach the court, it is indirectly assumed that they cannot remain friendly. Indeed, this has to do with the general effect of litigation which builds acrimony among otherwise friendly relationships.

Another implication of the law and criminal justice approach on marriage sustainability is that it leads to the active involvement of outsiders in marriages. While this on its own may not appear harmful, it creates certain challenges. With this approach, the state or other stakeholders like Civil Society Organisations and Non-Governmental Organisations become actively involved in the private affairs of the spouses. Sometimes, such interferences will ignore the best interest of children from the marriage which is certainly a huge challenge for the marriage as a whole.¹³⁰ The implication that comes with

¹²⁸ The pervasiveness of DV against women who have been married in Nigeria is reflected in its trend in which there has been an increase from 31% in 2008 to 36% in 2018. See, National Population Commission (NPC) (Nigeria) and ICF, *Nigeria Demographic and Health Survey*, 2018, 429.

¹²⁹ Eze-Anaba I, ‘Domestic violence and legal reforms in Nigeria’, 39.

¹³⁰ In many instances, custody of children from such marriage is granted to a third part. For example, see Court Dissolves 6-Year-Old Marriage over Child Abuse 04/09/2018 — <https://www.nta.ng/news/20180904-court-dissolves-6-year-old-marriage-over-child-abuse/> on 02 January, 2023.

exposing otherwise private matters for public scrutiny will definitely have negative consequences and put a strain on the marriage even if both parties eventually want to amicably resolve the conflict. The lack of confidentiality in the law and criminal justice process is not without consequences.

The law and criminal justice approach also create a situation where a victim is further victimised and remains unhappy in the marriage. Since it has been established that criminalisation does not necessarily have a deterrent effect, in the event that the parties still remain in the marriage, it could lead to further victimisation.¹³¹ In this case, because of the rigours, publicity and complications involved, the victim will prefer to suffer in silence. It is doubtful if a marriage can thrive under such circumstances and this is not without a serious implication for marriage sustainability.

Finally, and from the foregoing, it is easily noticeable that the law and criminal justice approach further forecloses the chances of reconciliation of spouses. The acrimony which has already built up between the parties is aggravated by an approach that imputes blame or fault on one spouse. Parties will therefore unconsciously lose interest in the marriage altogether and remain unhappy. All these make the number of domestic violence-induced divorces high. The fact that in most cases, termination of marriages come even after state intervention makes the effectiveness of the law and criminal justice approach in cases of married couples highly in doubt.

In summary, the law and criminal justice approach has paved the way for the dissolution of marriages for reasons that could have easily been resolved by the parties.

b) *Partial decriminalisation approach*

The partial decriminalised approach as well also has implications for marriage sustainability. However, not too many scholars have considered it in this regard. An approach which does not have to do with law and the criminal justice system, is more likely to be focused on the amicable resolution of the dispute of the parties and will certainly be reconciliatory.¹³² Oftentimes, the parties are brought together with the support of their families to understand the root cause of the domestic violence for the purpose of resolution. This

¹³¹ Lavi D, *Alternative dispute resolution and domestic violence*, 96.

¹³² Goodmark L, 'Should domestic violence be decriminalized?', 53.

approach indeed comes with a lot of advantages, the primary of which is that it fosters the sustainability of marriage.¹³³ In fact, the singular aim of the various models under the partial decriminalised approach is how to ensure that the marriage bond remains intact.¹³⁴ Other advantages include the fact that it preserves family ties and kinship and also promotes the best interest of children from the marriage.¹³⁵ If every possible effort is put in place to preserve the marriage, then the children's interest is most likely fostered.¹³⁶

It is important to state that the partial decriminalised approach also has its own weaknesses as an approach.¹³⁷ The principal weakness is that it may not be suitable where there is physical injury by one of the spouses on the other.¹³⁸ In this regard, the criminal justice process must take its due course.¹³⁹ Therefore, it is worth emphasising that the partial decriminalisation approach may not be particularly suitable where the acts which amounts to domestic violence could lead to death or grievous bodily harm.

V. Conclusion

The essence of this article is to examine the concept of DV and its implications where there is a marital relationship between the parties. It analyses the various approaches that have been adopted over time and their suitability for the lives and sustenance of marriage. Ordinarily, DV is by its nature capable of having a significant impact on marriages. However, the approaches that have been adopted over time have also been realised to further aggravate the conflicts between the parties. The law and criminal justice approach has been used as a conduit pipe to bring about the dissolution of the marriage or make the parties remain in the marriage unhappy. However, in many instances, because of the nature of the critical interest at stake, the parties may not be willing to have their marriage terminated or it will not be in the best

¹³³ Emiola A, *African customary law*, Emiola Publishers Limited, Ogbomosho, 2005, 110.

¹³⁴ Goodmark L, 'Should domestic violence be decriminalized?', 53.

¹³⁵ Emiola, *African customary law*, 110.

¹³⁶ Emiola, *African customary law*, 110.

¹³⁷ Youngs J, 'Domestic violence and the criminal law: Reconceptualising reform' 79(1) *The Journal of Criminal Law*, 2015, 55-70.

¹³⁸ Goodmark L, 'Should domestic violence be decriminalized?', 53

¹³⁹ Oseko A, 'The criminal justice system in Kenya: The role of alternative and traditional dispute resolution mechanism' 81(1) *The International Journal of Arbitration, Mediation and Dispute Management*, 2015, 38-47.

interest of the parties to have their marriage terminated. This article finds that the law and criminal justice approach is an approach which should be adopted with great caution and on a case-by-case basis, especially where the parties are married.

It is suggested that policymakers must be open to a dialogue on alternatives for marriage partners. As discussed earlier, marriage sustainability is a concept which is taken with much seriousness in this part of the world. It is not appropriate that an approach which is meant to tackle a particular phenomenon be used to destroy cherished community value, especially where the context does not so demand. It is therefore in this respect that the case is made to further reconsider and explore other approaches as much as practicable, especially approaches which are not rooted in the law and criminal justice system.