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MEDIATION – A BETTER WAY TO DIVORCE

by

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ABSTRACT

This dissertation queries the importance of mediation for couples who are divorcing and suggests that the advent of divorce had limited legal or behavioural impact in Ireland. It clarifies this limited impact as a matter of delayed timing: divorce became available so late that the de-institutionalisation of marriage and the growth of family unsteadiness related to it stood far advanced and were beyond being strongly influenced via a further change in the law. This dissertation points to some implications of this argument for research in other countries, particularly regarding the measurement of trends in mediation outcomes.

A substantial amount of academic literature has grown up on whether mediation has helped divorcing couples in Ireland. This research aims to fill some of the gaps in existing knowledge about those who decided to pursue mediation instead of court proceedings. Through the utilisation of data collected, this study explores the implication of divorce in Irish society.

This research has meaningful implications for future studies in the field of Irish social policy, as it highlights how the Irish social policy approach to formally divorced couples' dependence through the current legal apparatus of the State.

Keywords: Marriage, Marital Breakdown, Divorce, Conflict Resolution, Mediation

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TABLE OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
BCLC	Ballymun Community Law Centre
CSO	Central Statistical Office
Eurostat	European Statistics Agency
FDR	Family Dispute Resolution
FLAC	Free Legal Advice Centres
FMC	Family Mediation Council
FMCA	Family Council Accredited Mediators
FMS	Family Mediation Service Ireland
MIAM	Mediation Information & Assessment Meeting
MII	Mediators` Institute of Ireland
NCLC	Northside Community Law Centre

TABLE OF LEGISLATION

Constitution Provisions

Constitution of The Irish Free State (Saorstát Éireann) Act, 1922

Bunreacht na hÉireann

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Fifteenth Amendment of the Constitution Act, 1995

Thirty-Fourth Amendment of the Constitution (Marriage Equality) Act 2015

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Divorce Act (1985), Section 9

Directive 2008/52/EC of the European Parliament (Mediation Directive) Article 3(a)

European Code of Conduct for Mediators (2015)

Model Standards of Practice for Family and Divorce Mediation – American Bar Association
(2001)

TABLE OF CASES

B v. R [1995] 1 IRLM 491

D.T. v. C.T. [2003] 1 IRLM 321

Griffith v. Griffith [1944] IR 35

Hyde v. Hyde [1866] LR P&D 130

Hyland v. Minister for Social Welfare [1985] IR 624

K v. K [2018] IEHC 615

Murphy v. Attorney General [1982] 1 IR 241

Sinnott v. Minister for Education [2001] 3 IR 23

T.F. v. Ireland [1995] 1 IR 321

CHAPTER 1 – INTRODUCTION

This chapter purpose is to outline the proposed methodological approach to investigating both the experiences of Irish married couples who have faced marital breakdown and their perspectives on support services.

This research is an exploratory study into the experiences of couples who have undergone marriage breakdown. McAuslan and Nicholson state that divorce is extraordinary and widely recognised as one of the most stressful personal experiences anyone can ever go through (2011, p. 2).

The topic of this dissertation demonstrates how important mediation can be to help couples who are going through the divorce process. This study includes analyses of the literature from many resources, including academic articles, books, reports, and journals. The author based the literature review on works from renowned authors such as Wood, Fahey, Kovach, Cosgrove, Shannon and Moore. In addition to this literature review, analysis and discussions from the Family Mediation Service Ireland (hereinafter referred to as ‘FMS’) and organisation websites which are engaged in helping couples who want to divorce healthily.

The breakdown of a marriage or other types of relationships is a traumatic and challenging process (Breakdown of marriage and other relationship, 2019). Mediation can help couples decide how to move forward separately in a way that works for them and their children if they have any. It is desirable for people in family disputes to find their resolution through mediation, which raises benevolence¹ for the future, rather than conflict-based approaches which can

¹ The quality of being well meaning; kindness (Lexico 2019).

permanently destroy an already tense relationship. Wood (2014) defends the idea that no couple should put an end to their relationship without first trying to salvage the partnership. According to Gaffney (2019), when a long-term relationship fails, physical and mental health suffers enormously.

This study develops a theory which emphasises the service of mediators during the divorce process and how they can help couples who want to divorce to get achievement in a non-adversarial way. It also considers the excellent service provided by the FMS, an organisation which was funded by the Irish Government through the Department of Social, Community and Family Affairs. The FMS offers help by providing a facility for couples to engage in a process which aims to self-empower the parties to work out the terms of their separation in a way that best suits their needs (Family Mediation 2018).

The Family Mediation Service offers help for separating couples to deal with all characteristics of separation, which includes dealing with feelings of loss, anger and grief that many couples experience around the ending of their relationship (FMS 2010). There are also other specialised mediation services, such as

1. Northside Community Law Centre (NCLC)
2. Ballymun Community Law Centre (BCLC), and
3. Free Legal Advice Centres (FLAC)

Detailed information on the FMS is also available on the Legal Aid Board's website². There are also private mediators, including Friary Law, Mediation Forum - Ireland, Mediators`

² For further information, check the website at www.legalaidboard.ie

Institute Ireland (hereinafter referred to as 'MII'), the Bar Council, The Chartered Institute of Arbitrators Irish Branch, and the Law Society of Ireland.

Mediation enables couples to convey a consensual and knowledgeable agreement, but it can be challenging as a process. To maintain a clean and efficient public service and promote a more professional service, mediation organisations in the Irish Family Service put some restrictions to mediation: Mediation is not counselling or advice-giving, such as legal, tax or others; or adversarial. Mediation helps all the parties on one side of the table, trying to sort their issues out.

For this study, the following questions were addressed and will be answered along the process:

1. What is the mediator role in Divorce?
2. Is Mediation the best way to divorce?
3. How can Ireland Family Mediation Service help couples to deal with the marriage breakdown?

CHAPTER 2 – AIMS AND OBJECTIVES

To study new couples` experiences of marital breakdown and to consider how Irish social policy and services respond to their needs is the overall aim of this dissertation.

According to a 2019 report on divorce³, published by the Law Society in Ireland, divorce has now become an accepted part of life in Ireland. Married Irish couples may obtain a divorce more easily than ever, as guaranteed by the approval of ratified by the electorate in the May 2019 Referendum on divorce. Divorce has become a predictable life crisis for many people and for some, it is still a stain on social life (Gaffney, 2019).

The aims of this research focus on understanding Irish divorced couple experiences of marital dissolution in contemporary Ireland, as well as following social and cultural forces that shape those experiences and how social policy is situated to help these couples, as the main objectives of the family policy are to support and strengthen family relationship.

The objectives of the study are to

- Explore Irish couples` experiences of marital breakdown,
- Consider their perspectives on what their needs are during the process,
- Examine the Irish social policy response to divorced people going through a divorce,
- Assess whether these couple needs are met by the policy approach identified, and
- Examine if the Irish Mediation Family Service is accomplishing its purpose.

³ *Divorce in Ireland - The Case for Reform*,
<https://www.lawsociety.ie/globalassets/documents/submissions/divorce-in-ireland-april-2019.pdf>

CHAPTER 3 – LITERATURE REVIEW – INTRODUCTION

The literature review breaks down the title of the dissertation topic, *Mediation – a better way to Divorce*. Ever since the introduction of divorce in Ireland in 1996, many changes have been evident in the societal and personal landscape of Irish families (Law Society of Ireland 2019).

The purpose of this study is to analyse how the Family Law (Divorce) Act, 1996 (S.I. No. 33 of 1996) has changed for Irish couples who want to get divorced and how mediation has helped them to reach an agreement and avoid a lengthy and costly courts process.

According to Walls and Bergin (1997, p. 24), different problems presented to counselling services show lack of information, abuse and substance addiction, infidelity, sexual difficulties and family problems among the causes of marriage breakdown. The pressures and tensions of modern life do not benefit couples who find their relationship already strained. Fehily (2012) says that disagreements and disputes almost inevitably arise post-break-up, and it is essential to think carefully about how you intend to deal with them. In addition to dealing with all the difficulties associated with divorce, the issue of stigma has also been identified as difficulty in situations of marital breakdown (Crosse 2015).

Walls and Bergin (1997) believed that to minimise the effects of marital breakdown; it is essential that every support possible given to marriage and the family. Those couples whose marriages do fail, and who need to make an application to the courts to determine the issues relating to children and financial matters, are entitled to have their cases dealt with in the humane and civilised manner as it is possible, and the process and court facilities should reflect this.

The absolute prohibition on divorce before 1996 was a source of further hardship for many of those couples; however, they could apply for nullity in some circumstances. Many feared the consequences of divorce legislation and its effects on society. Many saw its introduction as a mark of our maturity and as an effort to create a pluralist inclusive society (Walls and Bergin 1997, p. 7).

This research will look at the positive things relating to divorce: the relationship after the divorce and how the couple can deal with their new life. It contemplates the problems around divorce and its possible solution. It also highlights the stigma left by divorce in the couple lives.

Moore citing Scrambler (2006) asserts that stigma relations need to be studied as part of a nexus of structures. This is predominantly applicable when looking at Ireland and stigma around divorce, as marriage remains a core institution and is maintained as such through both structural and attitudinal inherencies (Scrambler, 2006 cited in Moore, 2011).

This literature analysis emphasizes on the importance of protective factors, values, norms and social policy provisions all of them associated with positive and negative outcomes for individuals after divorce. Research methodologies and analysis techniques were used to try to understand the diversity of experiences and issues related to marriage breakdown.

The main themes in this section are:

Theme 1: Marriage and Divorce

Theme 2: Alternatives to Court

Theme 3: Family Mediation Service

3.1 Literature Theme One – Marriage and Divorce

3.1.1 Marriage

Marriage is an institution of great antiquity which, despite its widespread currency, challenges easy definition. Lord Justice Penzance delivered one of the earliest clarifications on marriage in *Hyde v. Hyde* (1866) wherein the Court sought to define marriage, as it was understood then, to be “*the voluntary union for life of one man and one woman to the exclusion of all others*” (Wood 2014, p. 20). This definition is now generally accepted in Irish law and cited with approval in *Griffith v. Griffith* (1944). More recently, in *B v. R* (1995), Costello P. observed that marriage was regarded as the voluntary and permanent union of a man and one woman to the exclusion of all others for life.

According to that definition, a marriage must be between persons of the opposite sex, it must be monogamous, intended to be for life and voluntarily contracted by parties having the capacity to contract (Nestor 2011 p. 24). Since the passing of the 2015 Referendum on same-sex marriage (Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015), those principles now apply to any marriage regardless of the orientation of the parties to the marriage.

Almond declared in 2006 (p. 22) that marriage was a highly contested concept and attempted to define it have a long history. Roman law referred to ‘the joining together of a man and a woman, which we call marriage’.

Marriage in Ireland was a contract governed by the laws of both Church and State. To the Church, marriage was the cornerstone of Catholic society, holy and indissoluble. The State was committed, through the Constitution, to protect marriage and the basis of family life. Many aspects of the law, and States services such as the social welfare scheme, reflected this adherence to the family (Beale 1986, p. 74-77).

As reported by Cosgrove et al. (1985 p. 5-30), the principal sources for the history of marriage in early Ireland are the law tracts in Irish and Latin, all the most important of which was probably written up within half a century of AD 700. The authors also stated that in Medieval Ireland, the Church law on marriage was defined and clarified during the twelfth and early thirteenth century. Based on Catholic teaching, the Church believed that ‘what God has united, man must not divide’ (Mark 10:10).

Many- perhaps the majority- of medieval Irish marriages were private affairs conducted by the parties themselves. The speaking of the words of marriage in either the present or the future tense followed by the consummation was enough, and these unions were regarded as valid if clandestine marriages for both religious and secular authorities (Ryan 2019, p. 28).

In relation to this, Wood (2014) says that before the Reformation⁴, marriage was regarded by the law as a sacrament and deemed indissoluble, and the duty of cohabitation – the primary function arising from the marriage contract - was enforced by the Church with spiritual punishments *pro salute animae* (for the health of the soul).

The family had such an important function that the 1937 Irish Constitution enshrined its role:

⁴ The 16th-century religious ideas and activity in Europe that were an attempt to change and improve the Catholic Church and resulted in the Protestant Churches being established.

Article 41.1.1 The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2. The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

As stated by Beale (1986, p. 7), this article reflected Catholic teaching. The pulpit frequently lauded the virtues of family life. They were sacred principles of Christian morality necessary for the excellent health of the family and the nation.

According to Wood and O`Shea (2003), marriage is one of the social institutions, which helps hold society together. In accordance to this, Nambi (2005) believes that marriage has been, since ancient times, one of the most important social institutions—perhaps the greatest and most important of all institutions in human society. It has always existed in one form or another in every culture, ensuring social sanction to a physical union between man and woman and laying the foundation for building up of the family—the basic unit of society.

Beale (1986) stated that marriage was primarily an economic contract which served the needs of farmers and fitted in with the political ideology of the independent state based on family units. However, the function of marriage changed with the decline in traditional rural life, the system of family life and marriage which had dominated the post-famine countryside was transformed by changes in the rural economy (Beale 1986, p. 63).

In *D.T. v. C.T. (2003)* Murray J, in the Supreme Court, referred to marriage as “a solemn contract between man and woman with a special status under the Irish Constitution” (cited by Nestor 2011, p. 24). When a man and a woman marry, their bond acquires a legal status, “the

law steps in and holds the parties to certain obligations and liabilities”. This constitutional provision is not just an empty formula; some decisions⁵ of the Supreme Court illustrate that the law can be successfully used to support the institution of marriage and thereby discourage other forms of cohabitation⁶.

Marriage is more than just a close personal relationship between a man and a woman; it is a legal contract which gives rise to a special status recognised as necessary by the State. Marriage also holds an important place in the law of Ireland. While the Constitution of The Irish Free State (Saorstát Eireann) Act, 1922 contained no provision related to family and marriage, in 1937 the new constitution of Ireland, Bunreacht nah Eireann, made provision for protecting the place of marriage within the Irish society. (Ryan 2019, p. 273).

According to Fahey (2011), marriage in Ireland has a unique and privileged position. It is accorded a special status by Article 41.3 of the Irish Constitution which states:

the States pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.

In *Sinnott v. The Minister for Education* (2001), Denham J described Article 41 as ‘an Article of our times’ which should be interpreted in the light of prevailing ideas and concepts. The family remains ‘the core unit of our society’. While the nature of the family is evolving in society, ‘as a constitutional unit, the family remains grounded on marriage’ (Nestor 2011, p. 3).

⁵ For further information, see *Murphy v. Attorney General* (1982); *Hyland v. Minister for Social Welfare* (1985) and *T.F. v. Ireland* (1995) (Nestor 2011, p. 25, 26).

⁶ The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Nestor 2011, p. 24)

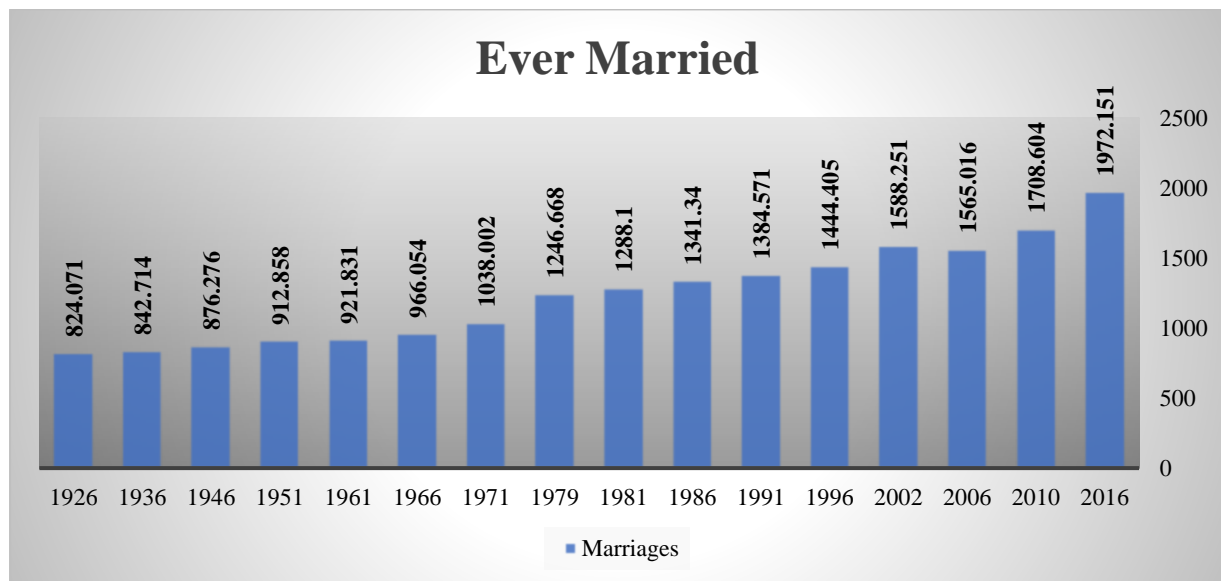
As stated by Nestor in 2011 (p. 3), despite numerous connotations given to the word ‘family’ in modern society, Irish family law is mostly concerned with the family unit of husband and wife and their children, if any. Family law holds the obligations and which flow from matrimonial. The vast amount of rules developed by the Courts and the legislature, to govern the formation, functioning and dissolution of marriage, illustrate the traditional importance attached to the institution of marriage.

Shannon (2003, p. 33), described marriage as a legally binding contract entered into by a man and a woman which, in general terms, attracts the same rules of law as any other type of contract. Hegel (cited by Almond 2006 p. 52) was among the first to argue against a narrow and legalistic interpretation of the marriage contract, and he set out to develop more fully a holistic and organic view of marriage. In his book *The Philosophy of Right*, Hegel commented that marriage is, in essence, an ethical tie. On this view, the parties are bound by a contract of mutual caprice, and marriage is degraded to the level of a contract for reciprocal use (cited by Almond 2006 p. 53).

However, unlike other contracts, the marriage contract can be terminated by the formation of a separation agreement or by the granting of a decree of judicial separation or decree of divorce. Once the contract has been entered into both parties acquire certain rights and responsibilities enshrined in the law, explained Shannon (2003, p. 33).

According to Ryan (2019, p. 273), “marriage has always been a popular institution in Irish society” and the figure below shows that the number of people getting married had steadily increased from the time of the first population census of the Irish Free State in 1926 to 2016, when the last population census was taken.

Figure 1 – Number of Persons Ever Married⁷ in Ireland, 1926 to 2016



Source: Central Statistics Office⁸

Back in the 1850s, the average length of marriage was less than ten years, and this was because people died in childbirth, wars, from the disease. In 2018 the length of a marriage can be fifty years. The reality is that our life expectancy has changed dramatically in the last 50 years and will probably have it changed even more in the next fifty years. Remaining marriage to the same person for fifty or one hundred years may become less of choice for more and more people (Collins 2014, p. 62).

3.1.2 Marital Breakdown and Divorce

Madigan states that in the early to mid-twentieth century Ireland, marriage breakdown was rarely discussed not to mind dealt with any legal framework. It was an uncertain and challenging time for spouses who were anxious to leave their troubled marriages (2012, p. 3).

⁷ Ever Married includes all married, remarried and separated persons and excludes widowed (Central Statistics Office - hereinafter referred to as 'CSO').

⁸ *Annual Reports on Marriages, Births and Deaths in Ireland from 1864 to 2000*, <https://www.cso.ie/en/statistics/birthsdeathsandmarriages/archive/annualreportsonmarriagesbirthsanddeathsinirelandfrom1864to2000/>

Moore (2011) observes that the structural context of divorce in Ireland is one in which there is a history of social and legal sanction against marital dissolution.

Segal et al. (2019) believe that breakup or divorce can be one of the most stressful and emotional experiences in life. Whatever the reason for the split, the breakup of a relationship can turn the entire world upside down and activate all sorts of painful and disturbing reactions. Marriage breakdown itself is traumatic for the persons involved, and every assistance should be given to marriages and families experiencing difficulties (Walls and Bergin 1997, p. 5).

According to Wood (2014), marriages go through a difficult period at one time or another, but that does not mean that couples should separate at the first setback. If they do so, concerning the civil contract, there are three possible avenues for couples who choose to split up: nullity, separation or divorce.

This section shows the divorce historic in Ireland and how it has been faced since its introduction in the Irish Constitution.

As stated by Wood (2014), divorce is purely a civil remedy. It has nothing whatever to do with a church marriage. Catholics who were validly married in church and subsequently obtain a divorce may not marry another partner in a catholic church while their first partner is still alive. According to the author, Christian rules have been increasingly ignored, and marital breakdown has become more widespread.

Divorce is a process of legal recognition that the marriage has ended. Once a divorce decree is obtained, the parties (the ex-spouses) to the marriage are no longer husband and wife and are free to re-marry.

Walls and Bergin (1997) explained that until the end of the Middle Ages, Irish couples in failed marriages could divorce by mutual consent under the Brehon Law⁹. Ireland gained independence, and the Irish Free State was formed in 1922. There was no specific prohibition on the grant of divorce decrees in Ireland from 1922 to 1937. The Constitution of The Irish Free State (Saorstát Eireann) Act, 1922, which remained in force until 1937, did not make any reference to divorce at all (Shannon 2003, p. 48).

Divorce in Ireland was not prohibited until the inception of the 1937 Irish Constitution, which was the culmination of the process of institutionalising Catholic doctrine in Ireland, said Beale in 1986 (p. 9). The family was one of the Constitution's central features parallels the importance of the family in Catholic social teaching (James 1997).

In 1937 an absolute ban on the dissolution of marriage, especially on divorce, was enshrined in the Irish constitution under the Article 41.3.2, as related by Sweeney and Lloyd (2011, p. 11). As divorce law required a referendum to change the constitution, two bitter campaigns were fought in 1986 and 1995 (Ryan 2019, p. 227).

Since 1937, an individual could not obtain a decree of divorce in Ireland which would permit either spouse to remarry after that. The 1937 Irish Constitution did not allow for divorce, and

⁹ This legal system dated from Celtic times and was passed down orally from generation to generation. It was written down for the first time in the seventh century and survived until the seventeenth century when it was finally replaced by the common law (Higgins 2011).

under Article 41.3.2 there was a ban on the dissolution of marriage: “No law shall be enacted providing for the grant of a dissolution of marriage” (Wood 2014, p.2).

This provision forbidding divorce was a natural consequence of the direct influence of the Roman Catholic faith in Ireland. As a member of the Dáil, Edmund Duggan remarked of his conversations with Archbishop Byrne of Dublin: I take it that the result of the absence of facilities for divorce in this country would be that persons desiring such facilities would leave Ireland and become domiciled in some other country in which they are available. The archbishop`s view is that Ireland would not lose anything by this (James 1997).

Catholicism had become for the colonially oppressed Irish a force with mythic impact and had created in the Irish mind a ‘Holy Ireland’. (James 1997). According to Wood (2014), the ban in Ireland reflected the Catholic views of the majority of the people- and the judiciary- of the new Irish Republic and even as late as the 1950s, there was strong public opposition to divorce.

It took some time to accept marriage breakdown as a social reality in the changing Ireland of the 1960s and 1970s. The influence of the Roman Catholic Church at the time meant that there were few remedies for unhappy couples outside of staying together in a frozen, sometimes abusive, relationship (Sweeney and Lloyd 2011). Gradually, Christian teaching on the dissolubility of marriage spread throughout Europe.

Wood and O`Shea (2003) mentioned that despite the ban on divorce, thousands of couples were separating by the early 1980s. The extent of marital breakdown in Irish society, such results served to highlight the unwillingness of the State to deal with consequent issues, and a

recommendation was made to remove the ban on divorce. Lack of legal access to divorce did not stop unhappy marriages or families from breaking down. (Ryan 2019, p. 139).

Through the late 1980s and the early 1990s, the Irish Law Reform Commission decided to review the grounds for divorce. It was felt that the consideration of the issue of ‘fault’ should be removed as far as possible from the legislation to reduce the bitterness between parties and consequently minimise the harm suffered by children.

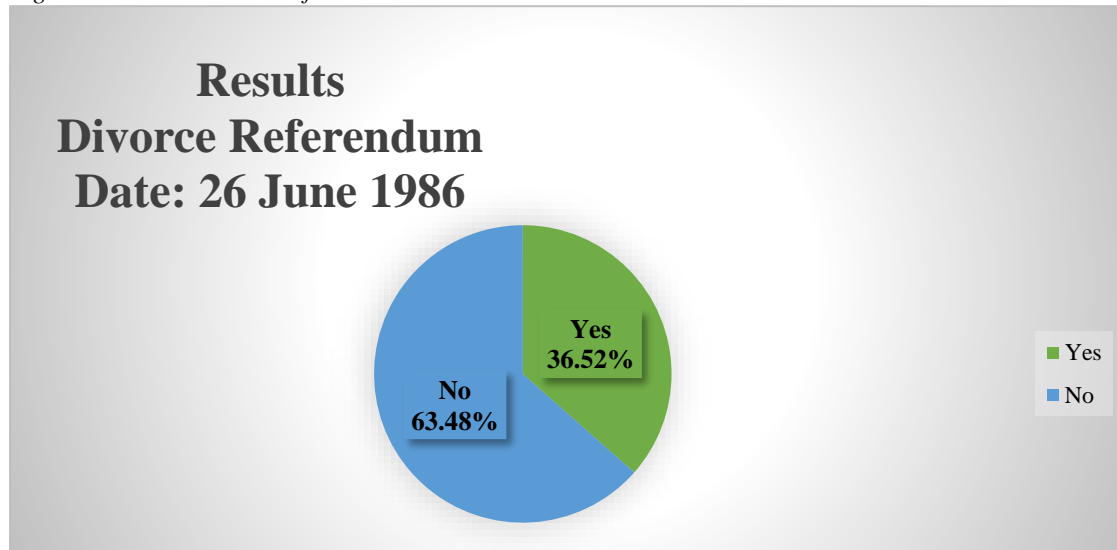
In 1986, the Irish government tried to remove the ban on divorce, but the electorate rejected the proposals. On 26th of June 1986, the proposed amendment to allow for divorce under certain circumstances set out in the Constitution resulted in 63% against 36.3%, turn out for 60.8%.

The amendment in the 1986 Divorce Referendum (Tenth Amendment of the Constitution Bill 1986 (Bill No. 15 of 1986) proposed to delete Article 41.3.2 of the Constitution (which prohibited the dissolution of marriage) and replace it with a new article allowing a court to grant a dissolution under certain, specified circumstances.

The amendment in the 1986 Divorce Referendum proposed to delete the above-cited Article 41.3.2 of the Constitution (which prohibited the dissolution of marriage) and replace it with a new article allowing a court to grant a dissolution under certain, specified circumstances. The proposal was defeated by 63.1% of voters (Oireachtas Library & Research Service 2019¹⁰).

¹⁰ *L&RS Note: Divorce in Ireland – Referendum 2019*, https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-04-02_1-rs-note-divorce-in-ireland-referendum-2019_en.pdf

Figure 2 - 1986 Divorce Referendum



Source: Referendums Contents – electionsireland.org¹¹

As stated by Fahey in 2011, the extraordinary characteristic of the referendum which was held to resolve this issue was the sharp shift in public opinion that protectors of the status quo succeeded in carrying about in the lead-up to the vote.

The defeat was put down to the influence of the Catholic Church and the fear of farmers and house owners that divorce would affect their property rights (Wood 2014). As reported by Sweeney and Lloyd (2011, p. 20), after the defeat of the 1986 referendum, the government was unable to introduce divorce.

The Judicial Separation and Family Law Reform Act, 1989 (S.I. No. 6 of 1989) created a path to court for a judge to determine the separation arrangements for those who could not arrive at a voluntary private legal separation. This Act abolished divorce *a mensa et thoro*¹² and widened

¹¹ *Summary of Referendums 1937-2018*, <https://electionsireland.org/results/referendum/index.cfm>

¹² Divorce *a mensa et thoro* decrees could be only obtained on the grounds of adultery, cruelty or ‘unnatural practices’ (Madigan 2012, p. 3).

the grounds for separation with better provision for financial relief for spouses and dependent children (Sweeney and Lloyd 2011, p. 21).

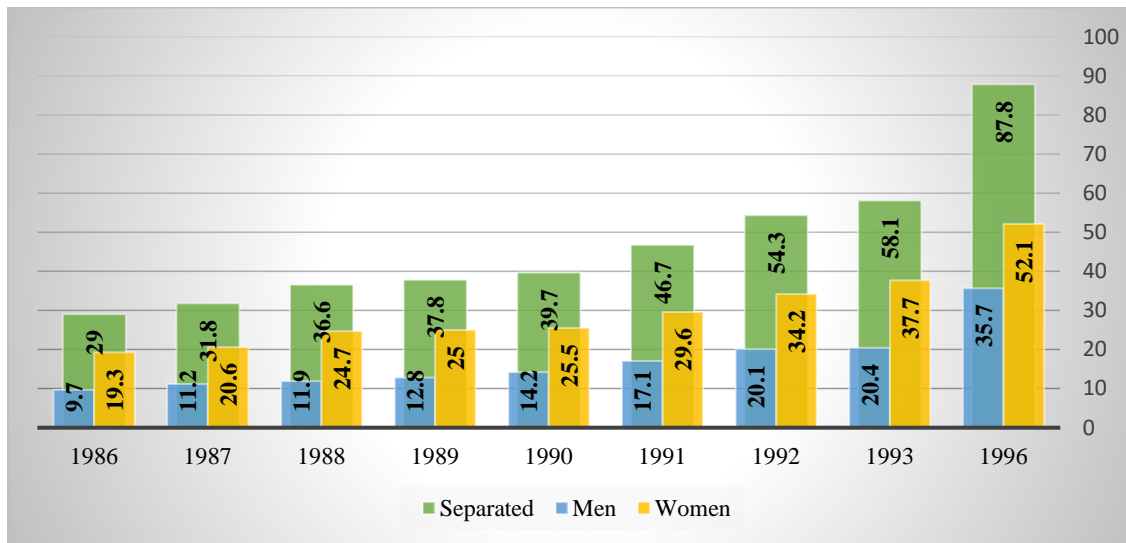
In 1985, estimates showed that seventy thousand married persons in Ireland were living in broken marriages, as the result of desertion and other forms of non-judicial separation. The most comprehensive stock measures of marital breakdown in Ireland are those provided by the Censuses of Population in 1986 and 1991 (Fahey and Lyons 1995, p. 100).

The 1986 census, which for the first time included a question designed to measure marriage breakdown, identified thousands of people who were separated, deserted, or remarried following divorce. Statistics made the phenomenon of 'marriage breakdown' visible, giving it a material reality and designating it as a social risk that could happen to anyone.

In 1986, the definition of `separated` was clearly stated to include those who were deserted, whose marriages were annulled, who were legally separated, who were divorced in another country, or was otherwise separated (Central Statistics Office 1986).

Fahey (2011) observes that the historical barrier impeding the legalisation of divorce in Ireland during the international movement of liberalisation of the 1970s and 1980s was a clause in the Irish constitution, which had been in place since 1937, barring the introduction of the dissolution of a marriage.

Figure 3 – Estimated Numbers of Separated Persons, 1986 to 1996



Source: Central Statistics Office¹³

In 1995, Ireland was the only country in the European Union to forbid civil-divorce. The ban reflected the Catholic views of most of the people of the Irish Republic (Wood and O’Shea, 2003). A series of scandals had rocked the Catholic Church, such as clerical abuse and paternity cases involving a well-known bishop and media priest, and trust in Church leaders was at an all-time low. As the campaign reached its peak, the late Mother Teresa of Calcutta and Pope John Paul II urged the Irish electorate to vote against divorce, but their voices were unheard (Wood 2014).

James (1997) stated that owing to the growing awareness of the lasting sociological problems associated with marital breakdown, and as a result of the continued lobbying by divorce proponents, by 1995 government officials believed the time was propitious to seek yet another divorce referendum. According to the author, this Referendum sought a legal remedy to address the consequences of a distressing phenomenon that the Irish had observed for many decades,

¹³ CSO Annual Reports from 1864 to 2000, <https://www.cso.ie/en/statistics/birthsdeathsandmarriages/archive/annualreportsonmarriagesbirthsanddeathsinirelandfrom1864to2000/>

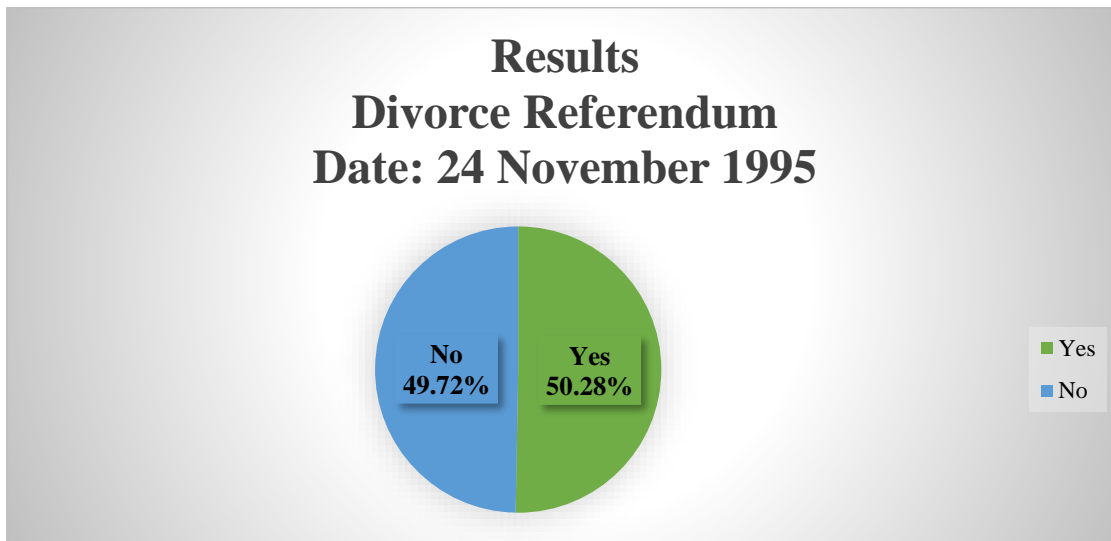
that marriages in Ireland were no more secure from breakdown-permanent abandonment, de facto separation, and the formation of other relationships-than were marriages in any other modern Western society.

Fahey and Lyons (1995, p. 97), pointed out that public debate about the introduction of divorce in Ireland had often focused on the question of how widespread marriage breakdown was. Opponents of divorce said that the incidence of the marital failure was still low and that therefore, the social need for divorce was not pressing enough to warrant lifting the present ban on divorce. As stated by the authors, those in favour of legislating for divorce argued that the incidence of the marital breakdown was rising rapidly and at that time affects a sufficiently large minority to justify a fundamental change in the law as far as divorce is concerned.

The second referendum on the removal of the constitutional ban on divorce occurred in November 1995, when the citizens of the Republic of Ireland voted in favour of legislation allowing divorce since 1922 when Ireland obtained independence from Great Britain.

The November 1996 Divorce referendum's success was the culmination of a decades-long series of attempts to liberalise the restrictive family law of the country. The victory for the supporters of divorce, by however thin a margin, is a significant indication of the extent to which the social role of the Roman Catholic Church is being redefined and diminished in Ireland. The legal introduction of divorce in 1997 initiated a new pathway, allowing couples who were in an unhappy marriage go for a divorce (James 1997; Fahey 2011).

Figure 4 – 1995 Divorce Referendum



Source: Referendums Contents, electionsireland.org¹⁴

After the referendum on November 1995, the Fifteenth Amendment of the Constitution Act, 1995 was passed and came into operation three months after that, on the 27 February 1997, then the constitutional bar on divorce in Ireland was finally removed. An earlier attempt to delete the ban on divorce by way of a referendum had failed in 1986. Even in 1995, the percentage of voters in favour of divorce was only slightly more significant than those against it.

In 1996 divorce was legalised and, contrary to the predictions of anti-divorce campaigners, the floodgates of marital breakdown did not open. In fact, ‘divorce Irish-style’ was a very common feature of Irish society from the foundation of the Irish State. (Ryan 2019, p. 227). According to Fahey (2011) scholars in this field usually, interpret the advent of divorce in 1997 as Ireland’s ‘big bang’ moment of change and have included Ireland in studies of the effects of divorce on that basis. Some consider that Ireland’s jump in 1997 from not having divorce at all to having

¹⁴ *Summary of Referendums 1937-2018*, <https://electionsireland.org/results/referendum/index.cfm>

no-fault divorce¹⁵ was especially dramatic and had an enormous impact on rates of marital breakdown.

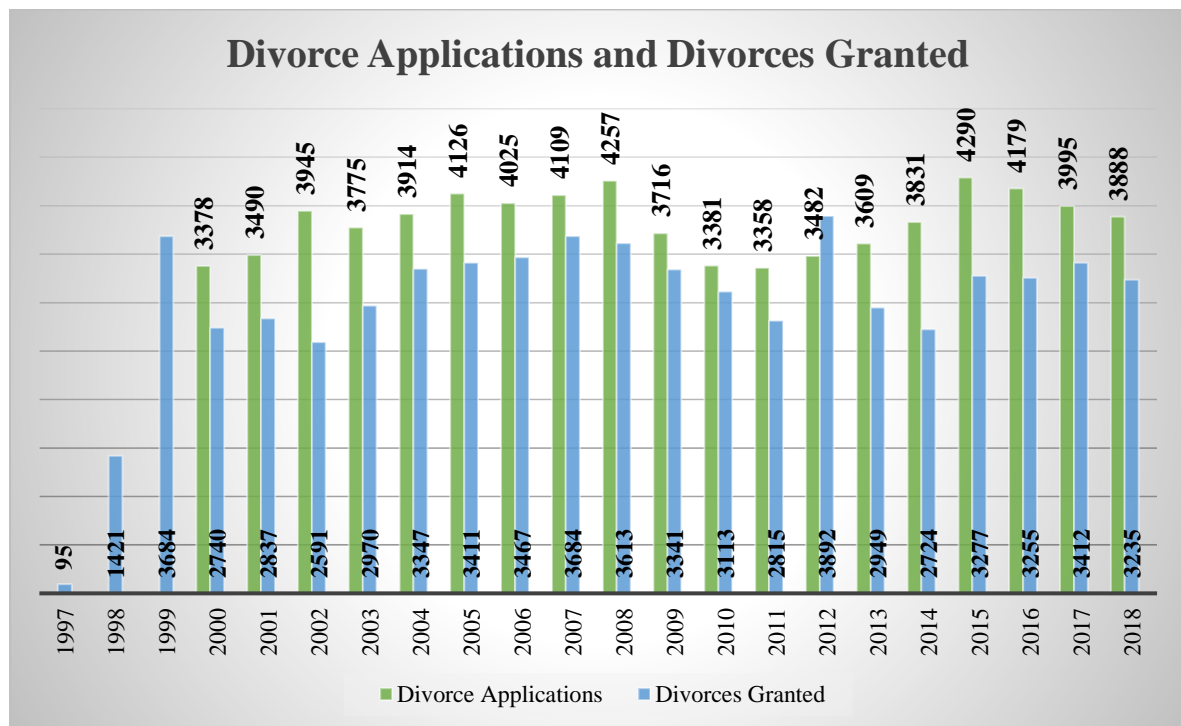
The Family Law (Divorce) Act, 1996 (S.I. No. 33 of 1996) provides a legal remedy both for those who seek a definite ending of marriage which has irretrievably broken down and for those who wish to remarry. Many of this second group are already involved in continuing other relationships. Under its provisions, when the courts grant a divorce, the valid, subsisting civil marriage is dissolved.

The Family Law (Divorce) Act, 1996 (S.I. No. 33 of 1996) made provisions for the exercise by the courts of the jurisdiction conferred by the Constitution, under the amendment, to grant decrees of divorce and to make various other related orders (Walls and Bergin 1997, p. 10).

In 1997, the first year in which the Irish constitution permitted divorce, 95 divorces were granted. The number rocketed to 1,421 in 1998, after the first flurry of divorces, the number rose to its and peaked at 3,684 in 2007. Since then, the number of divorce decrees has remained reasonable steadily for the following years (Wood 2014, p. 63). In the years since the number of divorces granted has mostly fallen and in 2018 were 3,235 granted. The marital breakdown rate has settled into a consistent pattern, with the number of divorces granted beginning to drop in recent years (Foxye 2016).

¹⁵ No-fault system: there does not have to be any misconduct on the part of one of the spouses for a divorce to be granted.

Figure 5 – Divorce Applications and Divorces Granted



Source: Courts Service of Ireland¹⁶

Figure 5 above illustrates that there has been a decrease in the number of divorce applications in Ireland since 2015 when couples applying for divorce had been on the rise since reaching their highest level in 2015 at 4,290 applications. The latest Courts Service of Ireland annual report, which gives an insight into the state of Irish marriages year-on-year, shows there has been decreasing in 2018 figures, down from 3,995 in 2017 to 3,888 last year (Courts Service of Ireland 2019).

The power to grant a dissolution of marriage is set out in section 5 of the Family Law (Divorce) Act, 1996 (S.I. No. 33 of 1996), which provides that the Court may grant a decree of divorce on the application of either spouse where the grounds are satisfied.

¹⁶ Courts Service Annual reports from 2000 to 2018, <https://beta.courts.ie/annual-report>

Once the grounds for divorce established by the Constitution are granted, the couple can apply for a divorce:

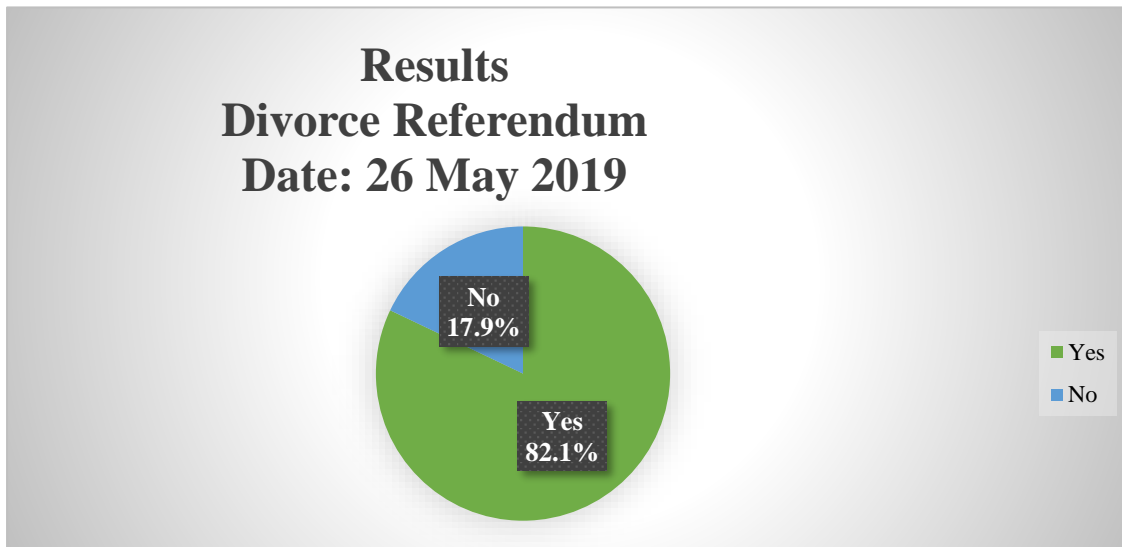
A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

- (i) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
- (ii) there is no reasonable prospect of a reconciliation between the spouses,
- (iii) such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- (iv) any further conditions prescribed by law are complied with.

On the 26 May 2019, Irish people were asked to vote the amendment in the Divorce Referendum to the Constitution to remove the four-year minimum living apart period from Article 41.3.2. The outstanding aspect of the referendum which was held to decide this issue was the sharp shift in public opinion that defenders of the status quo succeeded in bringing about in the lead-up to the vote (Fahey 2011).

Data shows that 1,384,192 people voted YES, which represents 82.07% of the votes and 302,319 people voted NO, 17.93%. The Thirty-eighth Amendment of the Constitution of Ireland (Dissolution of Marriage) Act 2019 (introduced as Bill No. 57 of 2016) was signed into law by the President as an Act to amend the Irish Constitution.

Figure 6 – 2019 Divorce Referendum



Source: Referendum Contents, electionsireland.org¹⁷

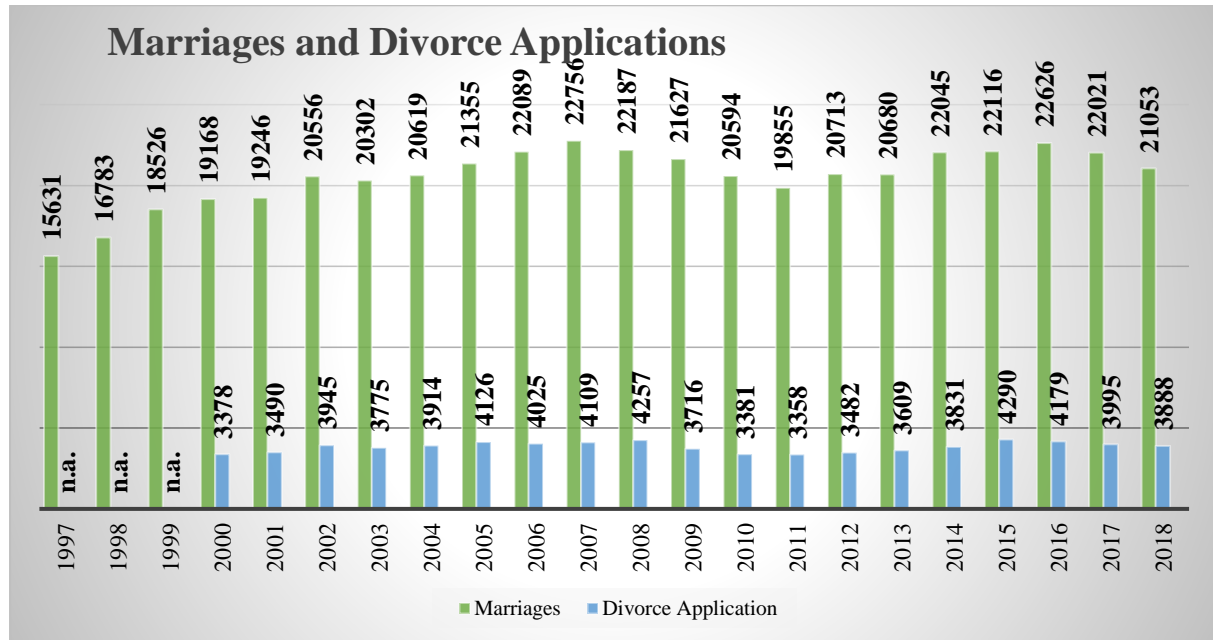
To date in the Dáil, there has been cross-party support for the Thirty-fifth Amendment of the Constitution (Divorce) Bill 2016 [Private Members Bill] in the Dáil. The Government amendments to be introduced at Report Stage in the Dáil go further than the original bill in that they propose to remove the ‘living apart’ provision from the Constitution altogether and deal with it in legislation (Oireachtas Library & Research Service 2019).

Figure 7 below illustrates the number of marriages registered, and the number of divorces for the period 1996 - 2018. The peak number of marriages in this period occurred in 2007 (22,756) with a dip during the recession until 2011. The 1997 Irish constitution introduced divorce in 1997, and the peak in the number of divorces granted to date was seen in 2007 (3,684) reflecting marriages that broke down in 2003 or before (Oireachtas Library & Research Service 2019).

¹⁷ *Summary of Referendums 1937-2018*, <https://electionsireland.org/results/referendum/index.cfm>

The 2018 census showed that the number of divorce applications had kept steadily over the years since the divorce's inception in the Irish Constitution.

Figure 7 – Marriages and Divorce Applications, 1997 to 2018



Source: Central Statistics Office data for marriages and The Courts Service of Ireland data for divorce

n.a. = not available

According to Wood (2014, p. 6), “the introduction of divorce does not appear to have contributed to the stability of marriage in Ireland”. The increasing incidence of relationship breakdown is reflected in the growing number of court applications in family law matters, even after more than a quarter of a century divorce became available.

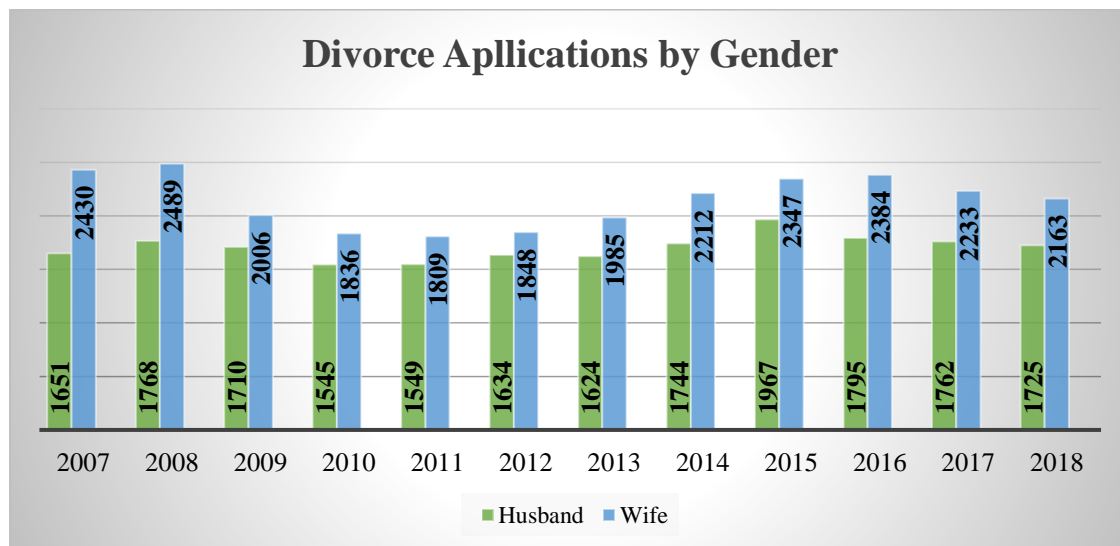
After the divorce was introduced in 1997, there was an expectation that the courts would be flooded with divorce applications. The Government had estimated that there were 75,400 separated people in Ireland. It did not happen, legal and sociological experts have suggested that this is because of the restrictive and complex nature of the divorce law, the lack of a ‘clean

break' divorce, as well as the existence of alternative remedies, particularly judicial separation (Oireachtas Library & Research Service 2019).

As stated by Wood (2014, p. 6), most of the applications were brought by women, reflecting a growing perception among men that the family law courts are biased against them. The female applicants only just outnumbered male applicants for divorce decrees. Leopold (2018) comments that women are more aware of marital problems and make higher investments in holding a marriage together; consequently, they are more likely to initiate divorce after they accept that their efforts are hopeless.

The figure below shows the numbers of divorce application by gender in the last ten years and the interesting fact that, in Ireland, women initiate divorce proceedings in the majority of cases.

Figure 8 – Divorce Applications by Gender



Source: Courts Service of Ireland¹⁸

¹⁸ Courts Service Annual reports from 2000 to 2018, <https://beta.courts.ie/annual-report>

Family policy¹⁹ and the provision of services has a significant effect on experiences of marital dissolution. Indeed, it could be argued that most negative consequences associated with a marital breakdown can be moderate in some form or other through the provision of policy and services. Levels of moderation or eradication of adverse effects are wholly dependent on nature, degree, and combination of provisions available. Consequently, an exploration of Irish family policy and service provisions that pertain to divorced/separated couples are necessary to establish its value in assisting this increasing subsection of society.

The situation concerning prior court orders has been clarified, insofar as applications for divorce are concerned, by section 26 of the Family Law (Divorce) Act, 1996 (S.I. No. 33 of 1996) where specific orders have been made according to the Family Law (Maintenance of Spouses and Children) Act 1976 (S.I. No. 11 of 1976) (Walls and Bergin 1997).

3.1.3 International comparison – Divorce Rate

Internationally the crude divorce rate²⁰ is used to report on marriage breakdown - the crude divorce rate measures divorce per 1,000 persons in the year. According to Eurostat in 2016, Ireland had one of the lowest crude divorce rates in the European Union (hereinafter referred to as 'EU') with a rate of 0.7%. The EU average is 1.9%, the Scandinavian countries have the highest rates.

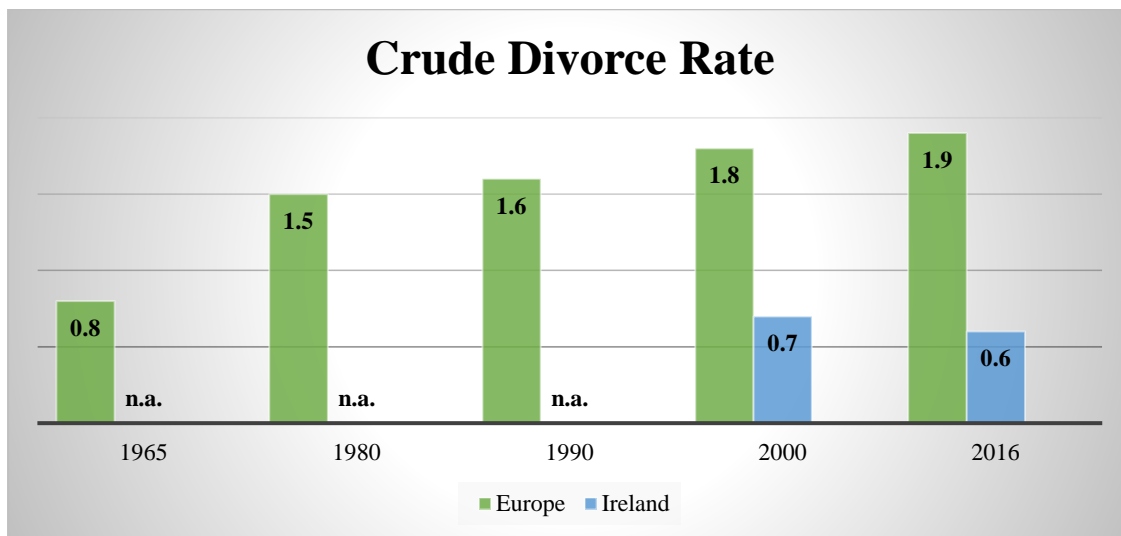
¹⁹ Family policy in Ireland is highly diffuse and difficult to define. It has tended to concentrate on economic well-being to the neglect of relational well-being (McKeown and Sweeney 2001).

²⁰ The crude divorce rate is the number of divorces occurring among the population of a given geographical area during a given year, per 1,000 mid-year total population of the given geographical area during the same year.

Figure 9 illustrates the crude divorce and marriage rates for a selection of EU countries and Ireland after the divorce introduction in 1997 (Eurostat 2019). The value for divorces in 1965, 1980 and 1990 is an estimate based on 27 countries since the figure for Ireland is not available. In 2010, three years after divorce had first become available, Irish crude divorce rate was the lowest among the EU states.

The figure below illustrates that since 1965, the crude divorce rate has more than doubled, increasing from 0.8 per 1000 persons in 1965 to 1.9 in 2016. Part of this increase may be because in several EU Member States²¹ divorce was legalised during the period (for example, in Italy, Spain, Ireland and Malta).

Figure 9 – Crude Divorce Rate in Europe and Ireland, 1965 to 2016



Source: Central Statistics Office for Irish data and Eurostat for European data
n.a.= not applicable

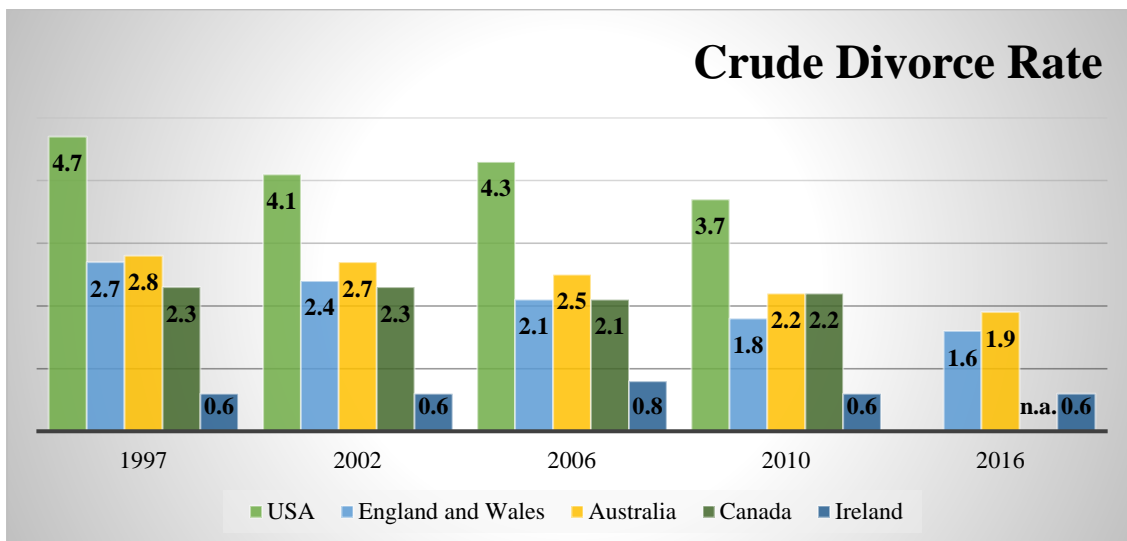
From 1997, when the divorce was introduced in Ireland, the crude divorce rate is still around 0.6 per 1,000 population. It is lower than the United States of America (4.7 per 1,000 in 1997)

²¹ For further information on European divorce rate, check https://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage_and_divorce_statistics#Fewer_marriages.2C_more_divorces

and England and Wales (2.7 in 1997) and Canada (2.3 in 1997). Data shows that, in general, the introduction of divorce in Ireland and the countries in comparison have not increased the number of applications.

The figure below shows the crude divorce rate for Ireland in comparison to the United States, England and Wales, Australia and Canada. Data shows what have already said that Ireland holds an incredibly low divorce rate.

Figure 10 – International Comparison - Crude Divorce Rate, 1997 to 2016



Source: United States Central Bureau, Office for National Statistics, Australian Bureau of Statistics, Statistics Canada and Central Statistics Office.
n.a. = data not available

3.1.4 The stigma associated with divorce

As stated by Gerstel in 1987, various processes, including the splitting of friends and the development of accounts, lead at least one party to a divorce to feel blameworthy. Individuals whom divorce see themselves as excluded from and devalued in informal social life. The author also said that the divorced participate in stigmatising divorce: they devalue others who are

divorced and sustain the idea that to be married is to be 'normal'. If we understand stigma as referring not merely to the realm of public sanctions but rather see it as emerging out of the everyday experience, it is clear that the divorced continue to be stigmatised.

According to McKeown and Sweeney (2001), marriage and its break-up affect the well-being of adults, without exception. Marriage is possibly the most significant single contributor to the well-being of adults while, correspondingly, its break-up tends to have a more significant negative impact on well-being than any other variable.

As highlighted by Harris (2014), there was a period in Ireland when couples got married for life regardless of how content they were together. They promised to stick with each other through thick and thin and separating or divorcing was seen as something shameful. This is particularly applicable when looking at Ireland and stigma around divorce, as marriage remains a core institution and is maintained as such through both structural and attitudinal inherencies (Crosse 2015).

Although times have changed and as shown in the figures Ireland currently has the lowest divorce rate in the EU and the figure 10 showed that Ireland still holds the lowest divorce rate in the international comparison, including the United States, England and Wales, Australia, and Canada.

According to Almond (2006, p. 158), rules designed to treat men and women 'equally' have in practice served to deprive divorced women. After divorce, those women experience a substantial decline in their standard of living.

In his study ‘Gender differences in the consequences of divorce’ (2018), Leopold states that the view of women bearing the highest burden of divorce and requiring more public and private support than their ex-partners is partly based on substantial evidence. Divorce effects and gender differences within extend into various spheres, including changes in economic status, health and well-being, domestic arrangements, and social relationships.

Crosse (2015) says that those who have divorced have experienced stigma across all types of social relations. Even though individuals develop ways of coping with stigma; disassociation, affiliation with similar groups and alignment of behaviour to ensure other cultural expectations are met; the consequences of stigma can be far-reaching. Feelings of shame, guilt, and a sense of failure (Moore 2011)

Moreover, far from the shame it once brought, many of today`s divorces are glad about their decision, some have made a new life, and some are even still friends with their ex-spouse (Harris 2014).

3.2 Literature Theme Two – Alternatives to Court

3.2.1 Alternative Dispute Resolution

This section focusses on how mediation, one type of Alternative Dispute Resolution (hereinafter referred to as ‘ADR’) can help during the divorce process. As observed by Fehily in 2012 (p. 69), there are three ways of dealing with your disagreements and disputes with your ex-partner post-break-up: you can ignore them, go to court or use an ADR process.

Conflict and disputes seem to be present in all human relationships and all societies. From the beginning of recorded history, we have evidence of disputes between spouses, children, parents and children, neighbours, ethnic and racial groups, citizens and governments, and nations (Moore 2003 p. 3).

Julie McAuliffe, of 'Conflict Positive', teaches in her 'conflicting coaching in mediation' that early use of an ADR mechanism is key to resolving conflict, this does not mean that the couple will reconcile but that the conflict between them if managed effectively, need not be destructive (cited by Madigan 2012, p. 43)

The Courts and the pertinent legislation demonstrate a robust predilection for situations where a resolution is reached cordially between the couple before any recourse required to the Court system. The Law Society of Ireland in its report called 'Divorce in Ireland, a case for reform' (2019), is of the view that any means of reducing the conflict and adversarial nature of family law proceedings are welcome. In this regard, it is recommended that ADRs should be actively promoted and facilitated, wherever possible, having regard to the facts and conditions of the case and the needs of clients.

Divorce mediation works as an alternative to old-style divorce litigation. In a divorce mediation session, a mediator enables the conversation between the two parties by supporting communication and contributing to information and suggestions to help resolve differences. Classically, at the end of the mediation process, parties have developed a personalised divorce agreement that can be submitted to the court.

The majority of cases couples reach an agreement rather than allowing to go to court proceedings to a full hearing before the Judge who determines the issues between them. Couples can use ADR to try and resolve their problems because it covers a broad range of dispute resolution processes. There are many forms of ADR which are employed for Family Law matters: Structured Negotiation, Collaborative Law and Mediation (Lynch 2013).

The benefit of ADR is that both parties can feel they have contributed to the eventually agreed solution, which can be 'ruled' by the court. In litigation, on the other hand, both parties may feel that the judge has failed to understand them and has imposed an unacceptable agreement on them. According to Collins (2014, p. 24), "you do not have to go to court, there are other tried and tested options that are available to you", including mediation. As stated by Madigan in 2012 (p. 74), the use of mediation is probably the fastest growing form of dispute resolution in Ireland.

Families change in predictable ways, even if they try to remain the same. Divorce can be a deliberate way to create change in a family, or it can be an unconscious response to a change that has already taken place (Folberg and Taylor 1984, p. 161).

3.2.2 Mediation

Mediation has an extended and diverse history in nearly all philosophies of the world. Jewish, Christian, Islamic, Hindu, Buddhist, Confucian, and many indigenous cultures all have great and useful traditions of mediation practice (Moore 2003, p. 20). According to Kovach (2003, p.21), it is clear that various forms of mediation are rooted in human interactions; the norm is harmony and interaction. Mediation has been used extensively to resolve conflict.

Mediation is one form of ADR, a process where a third party helps others manage their conflict. According to McCorkle and Reese (2015, p. 3), mediation is about empowering individuals to make their informed choices rather than taking a third-party decision (such as a judge). Mediation is grounded on the belief that conflict offers an opportunity to build stronger individuals, more satisfying relationships, and better communities.

Mediation is one of the oldest methods for dispute resolution used worldwide (Wall et al., cited by Kovach 2003, p. 21) and it is broadly defined as a process where an impartial person who assists others in resolving a conflict or dispute.

As explained by Sturrock in 2015, mediation encourages parties who have – or who anticipate having – differences, conflict or a dispute to sit down and talk, intending to find a mutually acceptable way forward. It is usually most appropriate when, for several reasons, people are unable to negotiate effectively for themselves or have reached some impasse or deadlock.

The 2008 EC Directive defines mediation in Article 3(a) as

a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

The European Code of Conduct for Mediators (2015) sets out several principles to which mediators might voluntarily decide to commit themselves, under their responsibility. They are independence, impartiality, and confidentiality.

In agreement with the European Code of Conduct for Mediators²², the MII Code of Ethics and Practice²³ defines mediation

as a process in which an impartial and neutral third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to prevent or resolve a dispute and to assist them to reach a mutually acceptable solution.

Fehily (2012) explains that mediation is a form of dispute resolution that takes place outside the courtroom where a neutral third party will assist parties in dispute to negotiate or help them to think creatively about how to resolve your issues after a relationship breakdown.

Mediation is generally defined as a private and confidential resolution process, as the interference in a conflict of an acceptable third party – the mediator - who has limited or no authoritative decision-making power, who seeks to assist the involved parties to freely reach a mutually satisfactory settlement of the issues in dispute (Picker 1998; Moore 2003; Kovach 2004; McCorkle and Reese 2015). It is an entirely confidential service and provides a safe environment for people to air their issues and can be an effective and immediate alternative to court proceedings (Collins 2014).

Mediation is a voluntary process, and parties attend in person with a mediator to discuss problems. The mediation environment promotes long-term agreement and reduces hostility between the parties (Sendall 2017).

²² *European Code of Conduct for Mediators*, https://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf

²³ The Mediators` Institute of Ireland, *Code of Ethics and Practice*, <http://www.themii.ie/code-of-ethics-and-practice>

Blake et al. (2014, p. 215) have defined mediation

as a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.

As stated by Bracken (2016, p. 23), mediation is a process aimed at effecting a peaceful settlement between disputing couples. The process is designed to assist couples who have decided to separate, to resolve any disputes they may have concerning the critical issues as custody and access or guardianship, maintenance, property rights and, succession rights.

Mediation is a service intended to assist couples in Ireland who have decided to separate or divorce, or who have already separated. It helps them to negotiate the terms of their agreement while addressing the needs and interests of all involved.

The fundamental principles of mediation, according to the MII, are voluntariness, confidentiality, impartiality, flexibility, and neutrality. The cited code also recognises the right of the parties of self-determination and decide on their solutions rather than having a resolution imposed on them. The parties have to treat each other and the process with respect (Picker 1998).

Mediation in Ireland is now regulated by the Mediation Act, 2017 (S.I. No. 27 of 2017) which became operable on 1st January 2018. The Act provides a statutory framework to promote the resolution of disputes through mediation as an alternative to court proceedings. The underlying objective of the Act is to endorse mediation as a viable, operative and effective alternative to

court proceedings, in that way reducing legal costs, speeding up the resolution of disputes and reducing the disadvantages of court proceedings (ADR Guide 2018).

According to Madigan (2017), the Act's defines mediation as a facilitative, confidential, and voluntary process in which disputant parties, attempt to reach a mutually acceptable agreement to resolve the issue, with the assistance of a mediator.

The courts favour mediation and judges will adjourn cases in some instances and suggest mediation before proceeding with the case in court. The law requires legal practitioners²⁴ to inform the couple of the possibilities of reconciliation, and also have to advise them that there is another option, less time- consuming and less expensive, it is mediation (FLAC – Divorce 2014).

3.2.3 Mediation Instead of Courts

Access to justice, in its fullest sense of the sufficient resolution of disputes whether through court-based litigation or ADR processes, is an essential aspect of ensuring the realisation of the fundamental rights recognised and given protection by the Constitution of Ireland.

As the initial intent of the process was to avoid the court system, early mediators would assist in resolving the terms of the divorce, as well as drafting the documents necessary to finalise the divorce (Kovach, 2003, p. 34). As observed by Carbonneau (1986), the various divorce mediation models have several advantages over judicial divorce proceedings. The time and cost of the mediation process are reasonably predictable and quantifiable.

²⁴ 'Legal practitioner' as defined in Section 2 of the Legal Services Regulation Act, 2015 (S.I. No. 65 of 2015).

The general advantages of mediation often drive the decision to mediate. Advantages and disadvantages of the mediation process are enlightened by Partridge (2009, p. 13-19): privacy, confidentiality, discovery, expertise, location, timing, reduced expense, finality, relationships, results, image. According to Picker (1998, p. 21), most of mediations disputes are successful because of the following: control by parties, higher efficiency, most effective communication, flexibility, privacy, and confidentiality. For Sturrock (2015), in addition to all the characteristics above-cited, advantages of mediation include as well, communications, control, closure, certainty, and creativity.

According to Sendall (2017), it is relevant that parties can communicate directly with each other, and any issue raised between them can be discussed. As stated by Fehily (2012), it is always worth trying mediation because if it works, it can save time and money, reduce trauma for all parties involved and break the cycle of conflict that can ensue after a relationship breaks down.

Divorce proceedings must be heard in the Circuit Court or the High Court, which are on the adversarial system, one side against the other, and the parties will need to engage separate solicitors and barristers. As stated by Collins (2014, p. 28), the court will decide matters of access, maintenance, property, pension division, and other issues.

As reported by Carbonneau (1986), adversarial proceedings, according to popular and some professional perceptions makes the process of divorce excessively expensive, painstaking, and challenging, as illustrated in the table above. According to Sturrock (2015), it is important to emphasise, however, that the benefits of mediation are far more extensive than merely saving public expenditure and that mediation is not just a way of reducing the cost of courts.

Madigan (2012) outlined the differences between the Irish Adversarial and ADR systems in Family Law Matters. According to the author, the adversarial system operates under the widely held belief that the truth is generally best discovered when two sides to the dispute adopt opposing positions concerning the evidence.

	Adversarial	ADR
1- Approach	Confrontational	Non-confrontational
2- Role of judge	Passive	None
3- Cross-examination	Conducted primarily by lawyers	adversarially None
4- Access to reports	Historically restrictive	Unrestrictive
5- Legal representation	The norm	Parallel to the process
6- Parties` stress	High	Relatively low
7- Level of conflict	Relatively high	Relatively low
8- Time	Historically length	Swift resolution
9- Costs	Expensive	Economical
10- Outcome	Escalates conflict	Promotes peace

On the other hand, mediation is a more viable alternative mechanism to divorce litigation. The non-adjudicatory character of mediation calls for a redistribution of decision-making authority and emphasises individual rationality and responsibility in matrimonial dispute resolution (Carbonneau 1986). Sweeney and Lloyd (2011) support the opinion that mediation is at its best when it can facilitate creative family circumstances at whatever stage they are. However, it can only work if both parties freely agree to try.

In *K v. K (2018)*, Mr Justice Denis McDonald delivered a judgment and explained the value of mediation in family matters:

it provides an opportunity for a member of a family to reach an amicable resolution of a dispute which, if it is in court, will involve discussion of deeply private matters, in a starkly adversarial way.

Contrasting to a judge, a mediator does not enforce a solution on the parties to a dispute. Instead, a mediator works with the parties to assist them in defining their objectives and achieving a resolution for their differences. Although mediation is a non-binding process, the result of this process in the vast majority of cases is an agreement that is both binding and enforceable (Picker 1998, p. 3).

Madigan commented in 2012 (p. 25) that the legal process looks to the past. One significant feature and advantage of mediation is that it looks forward, encouraging the parties to turn from history and look to the future. In contrast to litigation, mediation provides an opportunity for parties to control the outcome of their dispute, even when direct negotiations have failed.

As stated by Kovach (2003 p. 34),

with the advent of no-fault 'do-it-yourself' divorces, family law was ripe for mediation use. These factors, combined with the recognition that an adversarial approach to divorce was not always in the best interests of the parties, particularly children, led to the implementation of divorce mediation.

3.2.4 Family Mediation

According to 'The Model Standards'²⁵, family mediation is a complex and involving field, but it is not a substitute for the necessity for family members to acquire independent legal advice or counselling or therapy. Nor is it suitable for all families. Nevertheless, knowledge has established that family mediation is a respected option for several families for the reason that it can intensification the freedom of participants and their capability to communicate, endorse the best benefits of children, and diminish the economic and emotional expenses related to the resolution of family disputes (Schepard 2004).

Madigan (2017) related that family mediation is a confidential and free service in which a specialised mediator supports those involved in family law cases, in particular separating or divorcing couples, to negotiate the terms of their separation or divorce.

Mediators working with divorce or other family-related issues should have a solid background of knowledge about healthy family interaction, patterns, and systems and can be useful at many points in the divorce process (Folberg and Taylor 1984, p. 147).

Mediation is often confused with counselling and conciliation. Counselling and conciliation, in effect, mean the same thing, to assist a married couple to resolve their differences and save the marriage (Walls and Bergin 1997, p. 24). Mediation, on the other hand, assists a couple who have already made a firm and final decision to separate or divorce.

²⁵ *The Model Standards* were developed through a process begun by the Family Law Section of the American Bar Association and contain model consensus standards for good family and divorce mediation in the United States and Canada (Schepard 2004).

Divorce is a conflict situation that often highlights the issue of how mediators should deal with unequal power between participants (Folberg and Taylor 1984 p. 184). Inequalities of power brought about by lack of information regarding family finances, the legal process, typical post-divorce reactions can be countered by the educational function of the mediator (Folberg and Taylor 1984 p. 185).

As explained in literature theme one on page 17, divorce can be a very stressful part of life, and for many people involved in marriage breakdown, the thought of going to court may fill them with apprehension.

Most family disputes resolve within the family, and without third-party involvement, by negotiation, mediation. Goldberg et al. (2007) defend that however, in many situations, the family itself seeks outside help because family members are unable to resolve their disputes. Mediation's central attribute is its comprehensive response to the dispute resolution needs of divorcing couples.

As explained by Carbonneau (1986), when the breakdown of a marriage is at issue, traditional adjudicatory processes, whether judicial or arbitral, generally fail to address the emotional dimension of marital dissolution adequately.

Divorce mediation can function as an appendage to the legal system, providing divorcing couples with a structured opportunity to reach a consensual agreement on the financial and parenting consequences of their divorce. Mediation, however, provides a humane framework for resolving difficulties that attend the formal dissolution of marriage.

Disputants in divorce cases see the mediator's ability to provide guidance, empathise and foster a civil conversation, and focus on the facts as critical to success (Cohen 2009 cited by McCorkle and Reese 2015, p. 6).

At the same time, mediation addresses the practical and emotional dimensions of marital conflict. Although the mediator provides pace and guidance, the parties remain controlling the process. Through mediation, divorcing couples can gain control over the termination of their relationships and become the architects of their destiny. The result of the process is the proof of their involvement, largely self-determined, which facilitates initial and continuing compliance with the mediated agreement.

Mediation's fundamental attribute is its complete response to the dispute resolution needs of divorcing couples. The mediation process addresses the emotional element in a marriage breakdown. In mediation, the parties have the chance to reduce their feelings of uncontrolled emotional feeling and avoid an undesired outcome (Carbonneau 1986).

Family and divorce mediation help couples who have decided to separate to resolve any disputes. The goal of mediation in such cases is to encourage separating/separated couples to collaborate to work out jointly adequate arrangements that will be satisfied by both parties.

When mediation was first used in family law matters, the mediator served several roles, ranging from counsellor to mediator to legal advisor for the parties. Nevertheless, mediation is now universally accepted as the best way forward for resolving conflict in all areas where disputes exist, as defended by Sweeney and Lloyd (2011, p. 6).

A divorce mediator`s job is fundamentally important because it permits parties to acquire divorces without a pricey legal battle. As power comes with great responsibility, divorce mediators have to keep in secret the issues discussed in the process as they deal with family and their job is to help them to come to a mutual solution.

Applications of family mediation continue to increase, particularly in situations where families have been redefined. In some instances, mediators in divorce cases also took on the responsibility for drafting not only the memorandum of agreement at the close of the mediation but also the final court documents, including the decree of divorce.

Kearney (2014), explains that the family mediation practise started in Ireland in the 1980s and was initially informed by research from the United States of America and the findings of Judith Wallerstein and Joan Kelly`s longitudinal study on the effects on children of parental separation.

This shows that there is a strong emphasis on using mediation and how efficient it is helping couples to solve their problems.

According to Wall and Bergin (1997), the typical mediation process will involve approximately six to seven sessions with both parties attending and, if successful, heads of agreement will be drawn up by a mediator and signed by both spouses.

If the process of mediation is successful, it will minimise conflict, substantially reduce legal expenses, and lead to an agreement which will lead to a great extent be complied with by the

parties. The parties will have, in effect, resolved the issues themselves without having solutions imposed on them by the courts (Walls and Bergin 1997, p. 25).

3.3 Literature Theme Three – Family Mediation Service

As reported by Sweeney and Lloyd in 2011 (p. 11), the FMS in the Republic of Ireland was established on 16 July 1986 by Minister of State, Nuala Fennell as a three-year pilot under the auspices of the Department of Justice. It thus became the first publicly funded family mediation scheme in Europe. It continues to provide a free professional and confidential service to couples who want to negotiate together with the arrangements for living apart.

According to Collins (2014, p. 19-20) when a member of society or any organs of society face a family in crisis, they should ensure that this family gets all the appropriate support available to resolve the crisis within the original family structure. If the original family cannot be saved, then it is vital to provide the resources necessary to assist that family to experience a well-managed divorce. Society's investment in supporting the family is vital in the health of the nation.

According to the Legal Aid Board website (2018), these are the typical issues addressed in mediation family matters, such as: parenting the children, guardianship, custody, access; financial support; child or/and spouse/partner maintenance; provision of two homes for the future; division of assets and pensions; domestic violence, and stigma.

The Family Support Agency nominates family mediators accredited to the MII. In Ireland, the Legal Aid Board provides a free mediation service delivered by the FMS.

The MII is the specialised association for mediators in the Republic of Ireland and Northern Ireland. Established in 1992, it promotes the practice use of quality mediation as a process of dispute resolution.

Legal Aid Board is an independent, publicly funded organisation. In existence since 1979, it was set up as a statutory body on foot of the Civil Legal Aid Act 1995 (S.I. No. 32 of 1995) and the several regulations made under the Act. Since then, it has been amended to harmonise services, last amend was made in January 2019.

The FMS is a state-run service staffed by professionally trained and accredited mediators. It was set up in 1986 with 16 offices located around the country (Fehily 2011). The FMS provides a confidential service to help separating couples, married and non-married, whose relationships have broken down to negotiate their agreement and the arrangements for living apart. Parties contemplating proceedings about access, custody or guardianship matters are initially invited to attend mediation information sessions.

The FMS continued to work with the Legal Aid Board to increase the access to mediation services in family law offices of the District Court. A formal mediation process, which is available onsite via the Legal Aid Board, offers legal advice to parties willing to engage in separation (Courts Service of Ireland 2018). Since its inception, the FMS has assisted couples who together wanted to work out details of their separation outside the adversarial process (Sweeney and Lloyd 2011). The service provided by the FMS is not marriage counselling nor a legal advice centre.

Both parties work to reach an acceptable agreement. Each mediated agreement deals with the particular needs of the people involved. Parents are assisted in persisting as partners in parenting by developing childrearing plans that are personal to each family.

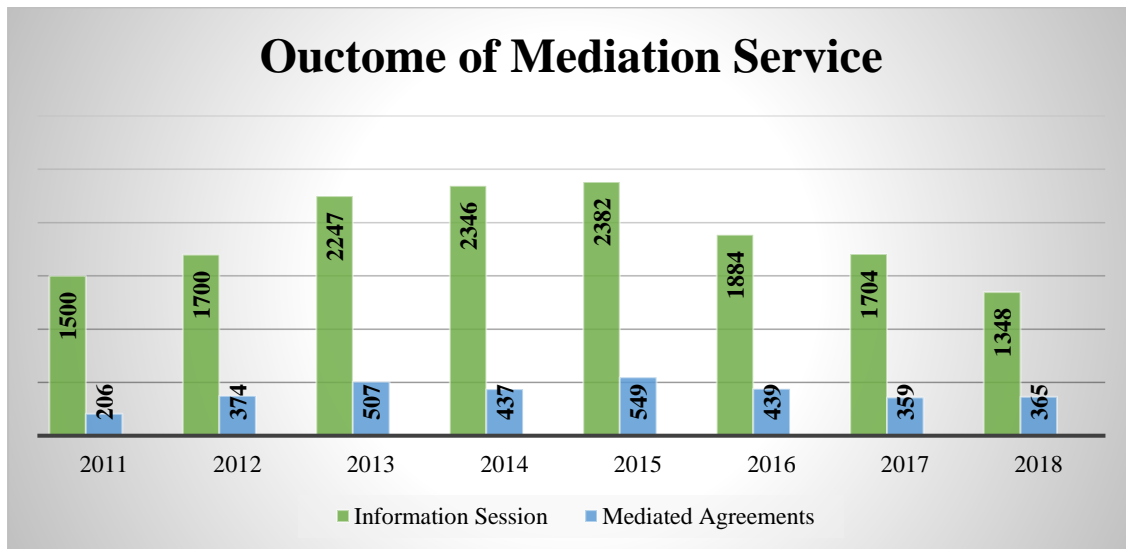
Wood and O`Shea (2003) elucidate the fact that the underlying principle is that couples solve their problems with the assistance of a professionally trained mediator, rather than have decisions made for them by someone else.

In 2011, the Chief of Justice launched a service to encourage people who would ordinarily seek court remedies in Dublin District Family Court in cases involving the welfare of children to resolve their dispute using mediation. The service, which comprises information sessions followed by mediation sessions, is provided by the Family Mediation Service of the Legal Aid Board (Courts Service of Ireland 2011).

The objective is to offer an alternative to a court`s, determines the outcome and a more appropriate means of resolving certain family disputes through, in the first instance, offering mediation information to persons who have made contact with the Service, with a view to issuing proceedings in relation to access, custody or guardianship matters.

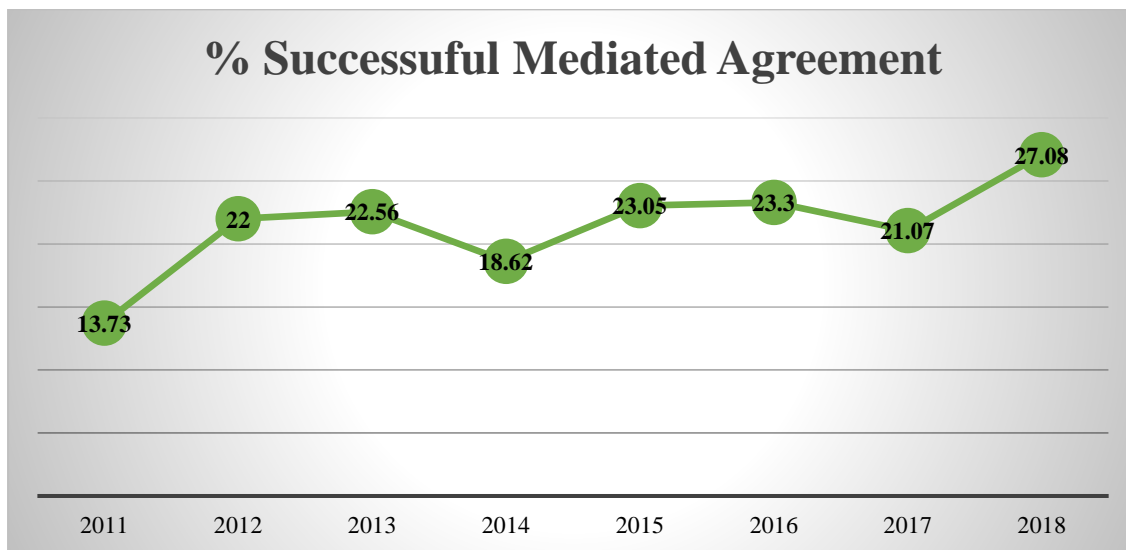
By the end of the first, almost 1,500 people had attended information sessions, and 206 couples had concluded mediated agreements. The number of information sessions kept steadily until 2015, since then, it has been a decrease, as shown in the figure below.

Figure 11 – Outcome of Mediation Service in Ireland



Source: Courts Service of Ireland²⁶

Figure 12 – Percentage (%) Success of Mediated Agreements by year



Source: Courts Service of Ireland

The figure above shows the percentage (%) of mediated agreements in Ireland from 2011, when the service started, to 2018. The outcome of the mediation service delivered by the FMS shows that there is a pattern which starts low and rises over two years. In 2014 there was more

²⁶ Courts Service Annual reports from 2000 to 2018, <https://beta.courts.ie/annual-report>

information sections but also a decrease in mediated agreements, which makes the percentage goes down. In the following years, the number of mediated agreements starts to rise again, which reflects the implementation on family services rendered by the Government and that mediation is becoming a popular option for couples who want to avoid the courts.

A project in Dublin District Family Court in Dolphin House increased the number of information sessions per mediator per week. The FMS in Clonmel, Cork, Dundalk, Ennis, Naas, Nenagh and Limerick provides a similar service. Efforts continued to extend the service to other court office locations around the country (Courts Service of Ireland 2018).

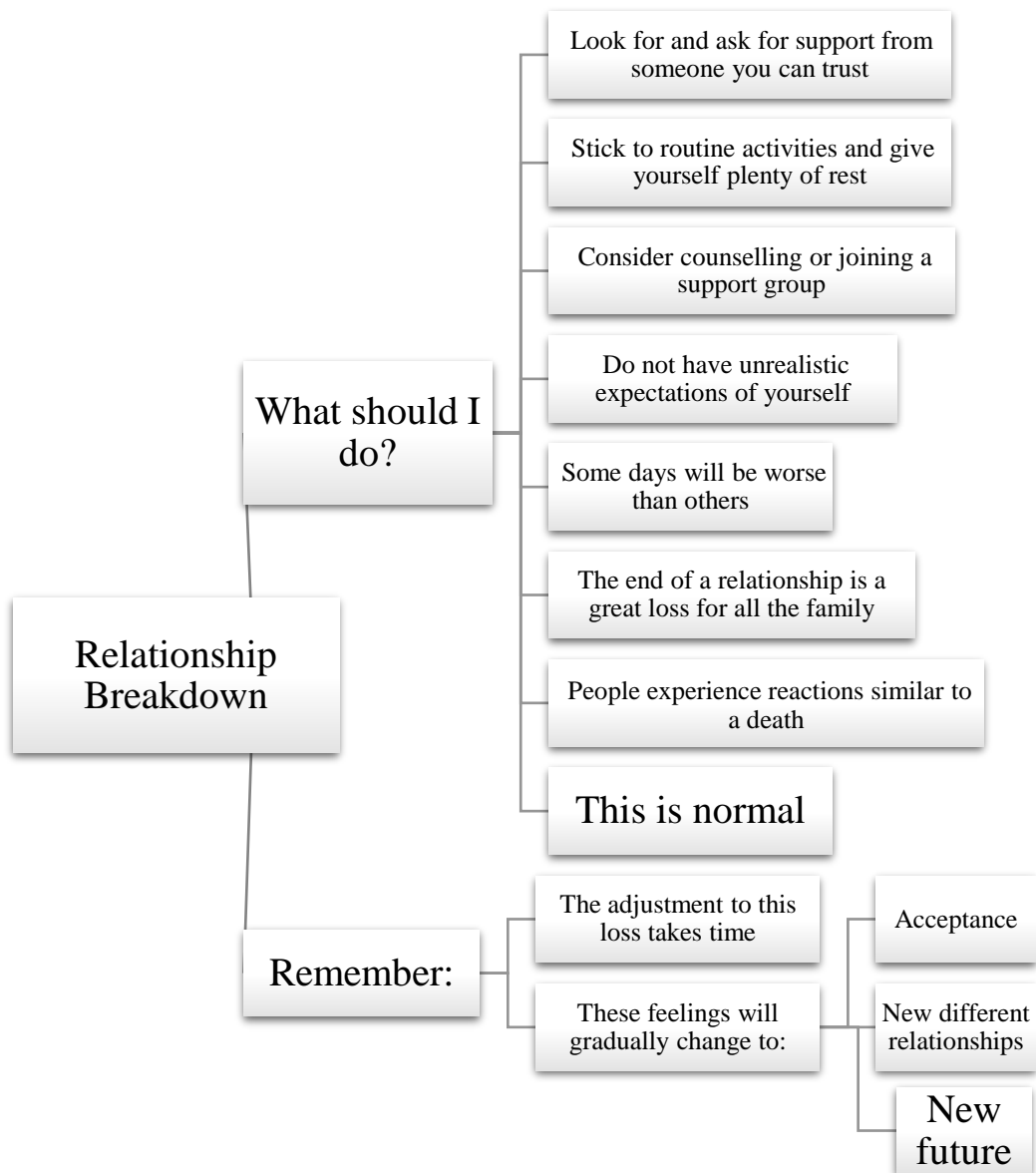
During 2015, the FMS provided information service to over 2,300 people. There were 549 agreements finalised by couples with the assistance of the FMS during the same period. With the aid of the FMS, brought to 3,236 the number of mediated agreements concluded since the initiative commenced in March 2011 (Courts Service of Ireland 2012).

In a 2013 speech to a Law Society seminar, Alan Shatter, then Minister for Justice, recognised that “family breakdown and parenting disputes are particularly sensitive and painful areas”. The minister said that Ireland should have a dedicated and integrated family court structure that is adequately resourced to meet the particular needs of people at a vulnerable time in their lives (Cited by Wood 2014).

The FMS encourages separating couples to co-operate with each other in working out mutually acceptable arrangements. In 2014, the FMS published a Family Mediation Booklet²⁷, which

²⁷ For further information on the Family Mediation Booklet, check it on <https://www.legalaidboard.ie/en/our-services/family-mediation/family-mediation-service-booklet.pdf>

aims to help couples deal with all aspects of separation. This booklet includes dealing with feelings of grief, loss, and anger that many couples experience around the ending of their relationship. It also highlights the reactions of children to the separation of their parents and the query of what separating couples ought to tell their children; it explains as well how to cope with grief and loss at the end of a marriage, the same advice is given by Segal et al. (2019).



According to the FMS, this should be how to cope with the end of a relationship:

According to the FMS booklet above cited, a divorce is an unexpected event, a great source of stress, often affecting a person`s self-esteem. Stress is an inevitable part of living which, if

managed well, can enhance the quality of life. Couples have to learn how to manage the stress of divorce because everyone experiences a crisis at different points in their life.

3.3.1 International Information on Family Mediation and Family Mediation Service

Many countries attempt to integrate ADR into their family justice system in a cohesive and highly effective manner. The key is on resolution, not litigation (Madigan 2012, p. 51).

In Europe, family mediation has developed rapidly over the last thirty years. The European Commission has undertaken a review and consultation process within the European Union to explore the viability of mediation. Many countries have introduced legislation on mediation, and international exchanges have multiplied.

The United States has been at the forefront of identifying the value of ADR and has encouraged its use over the years. Mediation in the United States is commonly implemented, legally recognised, and supported by the State, is generally not obligatory, but some jurisdictions do, in certain instances, require that specific category of matters be submitted to mediation (Brennan et al. 2017).

The Family Mediation Council (FMC) is made up of national family mediation organisations in England and Wales, which offers help for couples to reach decisions. Family mediators are there to help them to find a way to plan for the future and to agree on what will work best without having to go to court. The first meeting with a mediator is called a Mediation Information & Assessment Meeting (MIAM); in this first meeting, the mediator will explain

how mediation works. Only Family Council Accredited Mediators (FMCA) can conduct MIAMS (Family Mediation Council 2019).

In Australia, the Family Dispute Resolution (hereinafter referred to as 'FDR') is a particular type of mediation to help families to reach an agreement. During FDR, families will deliberate the problems in dispute and ponder different possibilities, while being stimulated to focus on the needs of their families. FDR uses an impartial and accredited Family Dispute Resolution practitioner. The main objective of FDR is to assist participants in making a childrearing plan setting out the agreed future parenting arrangements (Australian Government 2019).

FDR services are available at government-funded services including 'Family Relationship Centres, Legal Aid Commissions, and Other community-based family law services.' There are also accredited FDR practitioners who provide their services as a private business.

In Canada, Family Mediation is a way of helping people resolve issues relating to parenting, separation or divorce, as well as custody of or access to children, child or spousal support and property division. Section 9 of the Divorce Act (1985) provides that mediation must be offered in the case of divorce. A family mediator can help people recognise the issues that need to be fixed upon separation and work out solutions.

Government-funded family mediation services are available in all family courts in Ontario. These services can be accessed onsite for cases that are in court on that day, and appointments for off-site mediation services can also be made.

3.4 Literature Review - Conclusion

The literature review explains the different themes associated with the topic of the dissertation. Tying the themes of the marriage, marriage breakdown, divorce, and mediation to divorce and linking them with the data collected.

People stay in bad relationships for too long for many different reasons. Maybe it is because they are afraid to be on their own or maybe because they do not want to upset their children. It can be that they feel they have no choice because if they leave, they will have nowhere to live or their family will suffer financially (Fehily 2012, p. 2).

In conclusion, this dissertation has looked at the position of divorced people in Irish society; it has outlined how their lives have been defined by the stigma left by the divorce and how mediation can help in the process.

The traditional family figure perpetrated by the Catholic Church centred on a happy marriage, which was ingrained by the State and society. It is being extended with an imposed obligation on couples to pretend their unhappiness and keep living together. This Catholic view was evident in family law as it pertains to divorce (Wood, 2014).

The position of a married couple in Irish society is generated and maintained by a social milieu that is structurally and culturally supported, and the centrality of marriage is generated and maintained by cultural legacies. Religious traditions and such legacies and traditions shape consequent expectations; consequently, those who are divorced experience a significant amount of stigma in their daily lives (Moore 2011). Besides, it has also highlighted that stigma is particularly prevalent in cases of divorce couples. Standard features of divorced couples and

negative consequences for many were shame, humiliation, negative self-perception, fear, and social isolation (Engel 2002).

Collins (2014, p. 63) stated that Ireland is a tiny country, and we all know some member of some family who has suffered separation and divorce. Divorce is here to stay, and as a society, we need to find a way to manage the process of separation and divorce in a more family-focused and supportive manner. According to the author, “we cannot continue to hurt ourselves and our children in high-conflict divorces”.

CHAPTER 4 – RESEARCH METHODOLOGY AND METHODS

4.1 Methodology Introduction

According to Cambridge Dictionary (2019), research is a detailed study of a subject, especially to discover (new) information or reach a (new) understanding. Bhat (2018) defines research on his article ‘What is research- definition, methods, types & examples’, as a careful reflexion of study regarding a concern or a problem using scientific methods. The American sociologist Earl Robert Babbie (2007) stated that “research is a systematic inquiry to describe, explain, predict²⁸ and control the observed phenomenon”. Research involves inductive and deductive methods.

Morgan (2014), defined the research method as the tools or an instrument that is used to achieve the goals and attributes of conducting a research process. The methodology is the systematic development in which the tools or instruments employed. There is no use of an instrument if it is not used efficiently. The methodology is where assumptions about the nature of reality and knowledge, values, and theory and practice on a given topic come together. Methods are the means used for gathering data and are an essential part of the methodology (Johnson and Onwuegbuzie 2004).

The approach used in this dissertation is grounded in a qualitative, interpretive paradigm²⁹ which emphasises the importance of human interpretation of the world and is directed at the understanding phenomenon from an individual’s perspective, investigating the interaction

²⁸ To say that an event or action will happen in the future, especially as a result of knowledge or experience (Cambridge Dictionary 2019).

²⁹ A paradigm is a shared world view that represents the beliefs and values in a discipline, and that guides how problems are solved (Schwandt 2014).

among individuals, as well as the historical and cultural context which people inhabit (Creswell 2009).

According to Johnson and Onwuegbuzie (2004), particular paradigms is often associated with certain methodologies. A positivistic model typically assumes a quantitative methodology, while a constructivist or interpretative paradigm typically utilises a qualitative methodology.

Qualitative procedures will be performed to collect in-depth information. The concept of an individual`s perspectives and subjective reality is to the divorced couple standpoint position of the research. There is an emphasis on the need, to begin with, single lives, as they experience them, to accomplish a precise and reliable understanding of what life is like after a marriage breakdown in Ireland and how it has changed their lives.

4.1.1 Research Design and Methods

Initially, to achieve the objectives of the study consideration, the author focuses on the general research paradigm supporting this study, with attention given to the use of quantitative and qualitative methodologies, all addressed in this section. The purpose and procedure of each one of them and finally, the ethical practices used in this dissertation and the limitations of the study are examined.

Qualitative methodology bases on induction, which generates theory from observations; it is mainly investigative research. It is used to increase the understanding of original reasons, opinions, and motivations. It helps to develop ideas or hypotheses for potential quantitative research and provides perceptions into the problem. Qualitative Research is used as well to disclose predispositions in assumptions and thoughts and go deep into the problem.

This study combines inductive and deductive research. It begins with the development of the theory that 'Mediation is the best way to divorce'. This inductive study is followed up with deductive research to confirm the conclusion.

According to Morgan (2014), qualitative method "emphasises meanings, interpretation. Tries to understand other`s perspectives. The researcher is involved, close to the data". Denzin and Lincoln (2011) explained that qualitative researchers stress the socially built nature of reality, the intimate association between the researcher and what is studied, and the situational constraints that shape enquiry. Such researchers emphasise the value-laden nature of the inquiry. They pursue answers to questions that stress how social experience is created and given meaning.

As stated by Bell (2010),

Researchers adopting a qualitative perspective are more concerned to understand individuals' perceptions of the world. They doubt whether social 'facts' exist and question whether a 'scientific' approach can be used when dealing with human beings. Importantly, Punch draws our attention to one crucial distinction which is that 'qualitative research not only uses non-numerical and unstructured data but also, typically, has research questions and methods which are more general at the start, and become more focused as the study progresses'.

Bell (2010) also said that there are occasions when qualitative researchers draw on quantitative techniques and vice versa. It will all depend on what data the researcher requires.

The qualitative method was selected for this research, but it does not mean that the quantitative method cannot be used, because each approach is strength in some parts and weak in another,

this research used both approaches to explore better the data found. In the literature, this is called Mixed Methods. Creswell (2009), emphasises that

Mixed methods involve combining or integration of qualitative and quantitative research and data in a research study. Qualitative data tends to be open-ended without predetermined responses, while quantitative data usually includes closed-ended responses such as found on questionnaires or psychological instruments.

Johnson and Onwuegbuzie (2004), defined that mixed methods as the combined quantitative and qualitative research techniques, procedures, concepts, methods, or language into a single study.

CHAPTER 5 – PRESENTATION OF THE DATA

Appropriate to and in consideration of the research paradigm, statistical information analysis was selected as the most suitable method of data collection, as it is a methodology for exploring the data collected. The method of analysis utilised in this research needed to analyse the number of married and divorced people in Ireland after its permission in the 1937 Irish Constitution.

Contributing factors to the choice of statistical information analysis as the fact that they can be more reliable.

An overview of the study population and sampling method is provided, which includes justifications for decisions made. Descriptions on the process of analysis undertaken, issues around evaluating qualitative research and ethical considerations, complete the chapter.

There are two critical sources of information on the marriage, divorce and separation rates in Ireland, the statistical data used in this dissertation came primarily from the annual reports of the Courts Services of Ireland³⁰ and the Census of Population from the Central Statistics Office³¹. The Courts report on divorces and judicial separations granted in Ireland, whereas the Census records those living in Ireland who are currently divorced regardless of where or when that divorce/separation was obtained (Oireachtas Library & Research Service 2019).

³⁰ The first annual report published by the Courts Service of Ireland was in 2000.

³¹ The CSO Ireland has made available the series of Annual Reports on Marriages, Births and Deaths in Ireland from 1864 to 1886 and from 1922 to 2000 inclusive. The Annual Reports for the years 1887 to 1921 were scanned by the Northern Ireland Statistics and Research Agency (NISRA). Annual reports for the years 2001 to 2011 are already available in the Births, Deaths and Marriages Archive on the CSO website (Central Statistics Office 2019).

For this analysis, data from 1926 to 2018 are used — European data provided by Eurostat – European Statistics Agency.

This study includes data from four different sources (The United States of America, Canada, Australia and England and Wales) for international comparison. For this international comparison, data was provided, respectively by The United States Central Bureau, Statistics Canada, Australian Bureau of Statistics and from Office for National Statistics.

Insufficient data for divorce applications in Ireland for the years: 1997, 1998 and 1999 inclusive.

CHAPTER 6 – DATA ANALYSIS/FINDINGS

The initial intention of this dissertation was to disclose the benefits of mediation in the divorce process. The findings have achieved the aims and objectives reflected in the body of this study. These findings suggest that, if marital instability in Ireland were to reach a level comparable to that in the United States or the United Kingdom, it would become the most significant single factor undermining individual well-being, taking the place of unemployment, that Ireland is now content to leave behind.

Although this research focused mainly on divorced couples who decided to go for mediation instead of courts, comparison in European and non-Europeans countries, showed that Ireland is on the right path.

To summarise the key findings from this study: divorce is a sad reality for many families in Ireland. However, the incidence of divorce in Ireland is still low relative to many other countries, and the number of marriages is still increasing.

Gender role is included in the analysis to try to rule out some possible questioning about the women`s decision to go for divorce, might explain the relationship between culture and marital gender equality.

Literature theme three, Family Mediation Service (page 57), showed the efficiency of the mediation service provided by the Irish Government. The service has met its purpose, and the increase in the mediated agreements show that the divorcing couples in Ireland are trying to sort their problems out with mediation.

CHAPTER 7 – DISCUSSION

This dissertation aimed to examine the role of mediation in divorce in Ireland and examine how it can help couples who are divorcing and the relationship between a divorce culture at a national level.

In particular, the author looked across the information accessed to see if there is more support for the argument that mediation is the best way for the people who are experiencing a marriage breakdown. Overall, the results provide support for the enhanced theory: there is an influential mediation culture and mediation support in Ireland.

Despite recent changes to allow for limited reporting on family law cases in practice, there remain substantial gaps in the information available to researchers and the general public about the operation of divorce law in Ireland. As a result, it is challenging to encourage informed public debate on the actual implications of divorce without adequately collected and analysed data on issues such as mediation in family law. In addition to this, the lack of information and statistics on the mediation process and outcome represents a significant gap in the knowledge of the application of mediation in family law.

In an email to the author (Aug 2019) McAuslan³² observed that any research in this area is of benefit to the public service. However, access to the data from the Family Mediation Service needs to, first of, all go through an internal GDPR process. The same situation was faced on

³² Fiona McAuslan: Family mediation rep for the public sector - MII Council and Director of the Legal Aid Board's Family Mediation Services.

the Courts Service of Ireland because some of the information requested on divorce the years predate the Courts Service.

This research reaffirms that like many social and cultural changes, the correlates of a growing marriage and divorce culture are complex, including the advantages and disadvantages of mediation.

There is an agreement on how to define mediation among the authors cited, which enforces the fact that mediation is a well-known and recommended process.

The author is heavily thankful for the enormous support and commitment to all the information got, which motivated to complete the study.

CHAPTER 8 – CONCLUSION

The Family Law (Divorce) Act 1996 came into force on 27 February 1997 after two divisive referendums. Divorce rates in Ireland are rising, but they remain low by EU standards. For several reasons the anticipated flood of divorce applications never occurred, either because people were satisfied with alternative remedies for marital breakdown, particularly judicial separation, or they did not wish to remarry (Oireachtas Library & Research Service 2019). The delay in the legislation of divorce in Ireland until the mid-1990s could be read as an indication that Ireland was late in joining the traditional culture of divorce across Europe and internationally (Fahey 2011).

Based on the campaigns of previous divorce referendums and the marriage equality referendum it is likely that opposition will focus on the threat posed to the institution of marriage on the risk of increasing the rate of divorce and the easier way to obtain a divorce, and the negative impact of divorce on adults and children. (Oireachtas Library & Research Service 2019).

The study was conducted to show the process Ireland had to go through to have the divorce allowed on its constitution and to uncover the role of mediation in Family Law – Divorce and to understand its importance in the family sector. The author was able to validate her study by analysing her data with other studies done in the same field. Mediation was a milestone in the development of this study, as it has an essential role in assisting conflict. The author concludes that the service of mediation should be available to those who need it.

The research questions were answered in this study. In literature theme one – Mediation, the author showed the importance of the mediator within the mediation process; by analysing the

information got, the author concluded that use mediation is better than go to litigation and showed the advantages of the mediation process and concluded that yes, mediation is the best way to divorce. To answer question three, the author had to focus on the service provided by the FMS and concluded that the organisation accomplishes the proposed.

REFLECTION

The research cycle was indeed a learning experience for the author and looking back at the beginning of this process and re-reading her reflexive narrative on her life experiences and that which had shaped her resolution on direct this study on mediation and divorce.

The studies she had to go through for literature review in this study gave her a better understanding of how important and sensitive mediation is, especially in solving family conflicts.

The author faced limitations as well. Family law - divorce is a vast area to be studied within such a small-time frame and limited resources. The author faced some difficulty to get the information needed and relied this research on data provided by reliable sources, even though some data could not be found. The mediation outcome showed that a process is an excellent option for couples who had experience with disputes in divorce and the resolution in their extraordinary moment in life. The author could see that mediation has massive scope for advancement regarding family divorce in Ireland.

Going through other studies conducted in the field this study showed that mediation is not only a money saver but also of time and energy, and the productivity of those involved need not be compromised due to avoidance if an unnecessary issue that arises.

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