



**EFFECTS OF DIVORCE ON WOMEN AND CHILDREN:  
A CASE STUDY OF DISTRICTS ALIGARH, LUCKNOW,  
SAMBHAL, MORADABAD AND BAREILLY OF U.P.**

**THESIS**

**SUBMITTED FOR THE AWARD OF THE DEGREE OF**

**Doctor of Philosophy  
in  
Law**

**BY  
HINA KAUSAR**

**UNDER THE SUPERVISION OF  
PROF. (Dr.) MOHD. WASIM ALI**

**DEPARTMENT OF LAW  
ALIGARH MUSLIM UNIVERSITY  
ALIGARH U.P. (INDIA)  
2020**

## **CONCLUSION AND SUGGESTIONS**

Maulana Azad Library, Aligarh Muslim University

## CONCLUSION AND SUGGESTIONS

Home plays a very prominent role in the civilized life of man. It is a small world in itself. A human being is born, brought up and trained in homely environment and this naturally leaves an everlasting impression on him. His character and habits are developed at home and in the family, and these factors are responsible for his future prospects. This is the reason why the Quran has laid so much emphasis on family life and has for the purpose of guidance touched upon even the minute aspects of it in a detailed manner. A good family order serves a model for the society, and its people determine the future of a nation.<sup>1</sup> Family is a proper manifestation of any larger society. Establishing a flourishing, upright and piously inclined family is the core target, purpose and focal point of *Shari'ah* right from the time of its inception.

There can be no organized family without a marriage. The key objective of marital life is that the husband and the wife live together honourably and amicably with love and affection, and thereby make their home a place of peace and an abode of rest and pleasure. In other words, home should be treated as a paradise on earth. This sort of affiliation will afford an opportunity to both the spouses to make use of their potential and allow their capabilities to grow and nurture. The Muslim law of marriage is based on love and affection. The Holy Quran says, "He created mates for you on your own species, so that you may find peace of mind in them, and he put love and compassion between you". The Quran has so wonderfully described the form of their homogeneity when it says that the husband and wife are garments for each other.<sup>2</sup>

Husband and wife as father and mother are the two major pillars upon which the entire edifice of the family rests. It is therefore vital that their relationship should be cordial as well as harmonious to achieve happiness and prosperity of the family so that the home serves as a model for others in the society. When a man and a woman unite themselves together by tying the knot of marriage, they cherish the hope of living together for the rest of their lives. Nature demands that man and woman lead their lives together. When a man and woman live together as husband and wife, it is but natural that they have their differences, it being a biological and psychological fact that each man and each woman born into this world are by their very nature quite different from each other.

---

<sup>1</sup> Dr. Mir Mustafa Hussain, Family Life in Islam, available at: <http://themuslimworld.wordexpress.com/category/women-in-Islam>.

<sup>2</sup> *Ibid.*

The ill-fated marriage resulting in endless quarrel fails to realize the prime aim of union which brought the parties together. In such a state of affairs, it is futile to force them to continue to live together notwithstanding the fact that the couple find it difficult to be together. It is better to end a marital relationship than to continue it at the cost of happiness and peace among the family members. Marriage as an institution becomes meaningless if it were to be endured and not enjoyed. The right to opt out of an emotionally dead marriage is an incident of the right to life. Hence, if a marriage irreparably breaks, Muslim law allows the couples to part with each other maintaining the privacy and dignity of the family and without dragging the couple to a court room.

Divorce is the repercussion due to failure or fault of both the partners. Divorce is not only the cause of family disruption but it is also the effect of family disintegration which provides legal recognition of a broken marriage contract, terminates marital privileges and obligation, such as the custody of minors and alimony for the wife and children. All unsuccessful marriages do not necessarily end in divorce, nor do the best marriages always last until death. Marriage is a ritualized, socially sanctioned, formalized association between human males and females, and some form of marriage exists in almost every human civilization. In societies that practice marriage, there are usually provisions for its termination (divorce). Marriage and divorce are thus cross-cultural universals. The institution of divorce has been introduced to provide an alternative to mitigate hardships. It is one of the legally recognized form to facilitate marital and in turn familial disorganization. Keeping these facts into consideration, all the religions of the world have recognized this institution. Thus, divorce as an institution is the final milestone in the process of freeing the women from slavery of man in marital relationship. It is a natural law that the discontented couple should be detached from the marital tie for the well-being of the household as well as society.<sup>3</sup>

Civilized outlook has been inclined to the point that a system of divorce should not be such as to turn marriage itself into an oppressive bond. Nor should it make divorce so simple that one could get out of the marriage bond without a thought. The law should make it feasible for marriage stability to subsist, but at the same time it should provide

---

<sup>3</sup> M.A.Qureshi, *Muslim Law of Marriage, Divorce and Maintenance*, 56 (Deep and Deep Publications, New Delhi, 1995).

for termination of the marriage, where spouses reasonably believe that they cannot survive together for whatever reasons.<sup>4</sup>

Islam regards marriage as an extremely desirable institution, hence the conception of marriage as the rule of life and divorce only an exception to the rule. Islam does not compel any person to stay in an unhappy marriage and therefore, it allows divorce.<sup>5</sup> But divorce is considered as the most distressing step in the sight of the Creator- Almighty Allah. Therefore, it must be taken as the last resort and before that all attempts should be made to bring together the estranged couple by adopting the mode of reconciliation. For that rationale, Islam provides that two persons should be selected, one from each side, to try to re-unite the couple. And if they find that reconciliation is unattainable, only then they must recommend for separation between the two, otherwise not. But as it has already been pointed out that although Islamic Law permits divorce but it should be the last way out for any couple and they must try to keep their relationship intact because Islam favours stability in family life and does not like disintegration of this fundamental unit of the society i.e., family.

A deep analysis of the *Shari'ah* law would demonstrate that Islam has prescribed an easier, simpler and expeditious approach to the idea of dissolution of marriage without the intervention of courts and other authorities. The structure of the Muslim law of divorce is premised on the so called "breakdown theory" which is now being adopted by modern legal systems on matrimonial disputes. Without prescribing any specific "grounds" for divorce, it allows dissolving marriage at the instance of the husband (by *talaq*) or the wife (by *khula*) and by mutual consent (by *mubara'at*). The attributes of *khula* are *mutatis mutandis* the same as of a man's right of *talaq*.<sup>6</sup>

But, quite unfortunately, this simple, humanistic and non-cumbersome divorce law has been grossly misused. It is the form of divorce by *triple talaq* which is widely prevalent in the country in spite of the command of the messenger of Allah Prophet Mohammad (PBUH) that:

"Of all things permitted by Allah, the most hateful thing is divorce". It appears that there is a vast deal of misconception and myth about the system of divorce in Islam, not only

<sup>4</sup> Imtiaz Ahmad, Should the Muslim Practice of Triple Divorce be banned: Pros and Cons, in Asghar Ali Engineer (ed.), *Islam, Women and Gender Justice* 51 (Gyan Publishing House, New Delhi, 2001).

<sup>5</sup> Justice R Basanth, *Abdurrahiman v. Khairunnisa*, ILR 2010 (1) Ker 830.

<sup>6</sup> Warlaw, "The Concept of Divorce in Islam", *Kali'yug Women and Law journal* 94 (1997).

among the non-Muslims but also amongst the Muslims, who believe that men have the exclusive right to give divorce. But this is not the reality and under Islamic Law, women too have the right to initiate divorce if they find it hard to live with their husband. If they think that they would not be able to carry out their marital responsibilities aptly then, it is better for them to part their ways from their husband according to Islamic Law.

The stipulation for an out-of-court divorce is based on a firm expectation that the aggrieved spouse would behave in a God-fearing, responsible, and rational way. It is not aimed at giving unbridled, arbitrary, or unilateral powers to either the husband or the wife.<sup>7</sup> Esposito writes; “Divorce in Islam serves as a safety valve in cases where the spouses can no longer live in harmony and so the very purpose of marriage could be defeated.”<sup>8</sup> If we examine the tenet of divorce in Islam, it enshrines the stability of marriage or relation of husband and wife rather than the dissolution of marriage. Prophet Mohammad (PBUH) was against the practice of divorce unless it is unavoidable. He repetitively stated that:

*“Nothing pleased God more than the emancipation of slaves and nothing displeased Him than divorce.”*

The Prophet (PBUH) has said:

*'Divorce is most detestable in the sight of Allah of all permitted things'.*

Thus, the Quran evidently stated the conditions of divorce and also the possibility of reconciliation.

Divorce is one of the most agonizing experiences in life. It's not only the death of a marriage, but also the death of dreams and hopes. Thinking about the incident of divorce within the context of attachment generates a greater sense of empathy. Divorce is not just a matter of the heart but an experience that impacts the whole person on a multitude of levels. It triggers all kinds of emotional pain and disconcerting feelings. In all societies, divorcee's position is very complex as well as humiliating and the divorced women face lot of complications.

An important facet that has to be kept uppermost in mind is that when the marriage breaks up, a woman suffers from emotional fractures, disintegration of sentiments, loss of economic and social security and in certain cases, inadequate requisites for survival. A

---

<sup>7</sup> Tahir Mahmood, *The Muslim Law of India* (Lexis Nexis, New Delhi, 3<sup>rd</sup> ed, 2002).

<sup>8</sup> Jolin L. Esposito, *Women in Muslim Family Law*, (New York, 1982).

marriage is fundamentally a unique bond between two parties. When it perishes like a mushroom, the dignity of the female fame gets eroded. It is the law's duty to re-compensate, and the primary responsibility is that of the husband. Needless to highlight, the entitlements and the necessary provision have to be made in accordance with the parameters of law.

In general, the accumulated research suggests that marital dissolution has the potential to create substantial turmoil in people's lives. But people differ greatly in their reactions. Divorce benefits some individuals, leads others to experience temporary decrements in well-being, and forces others on a downward trajectory from which they might never recover fully.

Some scholars perceive the two-parent family as the fundamental institution of society—the surroundings in which adults attain a sense of importance, stability, and security and the setting in which children develop into healthy, competent, and dynamic citizens. According to this view, the spread of single-parent families contributes to many social problems, including poverty, crime, substance abuse, dwindling academic standards, and the erosion of neighbourhoods and communities. In comparison, other scholars argue that adults find fulfilment, and children develop successfully, in a multiplicity of family structures. According to this outlook, divorce, although temporarily stressful, represents a second chance for happiness for adults and an escape from a dysfunctional home environment for children.

In the state of Uttar Pradesh, it can be seen that divorce rate is much higher among Muslim community as compared to other religion. Furthermore, majority of the divorced cases has taken place when the females were in age group 25-34 in both the categories. This implies that most of the divorces have occurred when females are in their youth. Moreover, rate of divorce among divorced Muslim women is higher in rural U.P. as compared to urban U.P. but the position is quite different in the selected districts under study since the percentage of divorce among Muslim females of all the districts is higher in urban areas as compared to rural areas. Of all the four selected districts, the divorce rate is highest in Lucknow and lowest in Aligarh. Thus, it can be concluded that the number of divorces are increasing day -by -day particularly among the Muslim community despite of so many *Qur'anic* injunctions against this practice.

The results of the study indicate that the divorced women are deprived of their legitimate maintenance, *mahr* and child support even in the tenets of the existing Laws. The respondents of districts Lucknow and Aligarh were more aware of different matters pertaining to divorce and legal regime following the divorce. The rate of divorce is high in urban areas of these districts. Thus, it can be concluded that among the selected districts, only districts Lucknow and Aligarh seem to be in much better position. The main reason behind such awareness is a higher literacy rate among the respondents of Lucknow and Aligarh as compared to the respondents of the rest of the three districts. The results also point out that the status of divorced women in cities and towns of these districts is better than that of the divorced women living in rural areas. Thus, there is a need to educate Muslim women in rural areas about their rights and entitlements related divorce and related matters.

Divorce is hardest on the kids is not just an empty phrase. For children, the home and the daily presence of mother and father is their whole reality. That home is all they have known since birth and when it is unexpectedly torn apart by divorce that can turn into the biggest ordeal of that child's life. So it is a good thought for both parents to think through how they will help the kids come out of the divorce process with a little negative impact as possible. Communication is the key to help the kids deal with the effects on children after divorce. Those talks can also be used to assure the children that they did not cause the divorce and that they are still totally loved by both parents. There is a lot of insecurity children feel when parents split up because they need to know who is going to take care of them. Do not let the children experience any change in lifestyle due to the divorce.

Since the children will spend time with each parent individually, each parent must make it a top priority that the youngsters never hear about the tension that the divorce may be causing. Do not criticize the other parent or complain about them in the presence of the children. One of the best ways to make sure that kids experience positive effects of divorce on children is to keep them connected to treasured family members including aunts, uncles and their cousins.

The marriage counselling and family intervention techniques could be evolved to reduce marital discord so that the marriage could not result into divorce or separation. Parents need to be educated about the effects of family conflict on children. They need a range of



educational and mediational services to diminish rather than escalate conflicts, to focus on what is best for their children at various developmental stages, and to increase the chance for mutual agreement between parents about custody, visitation, and the financial arrangements for their children.

Since divorce affects children in a variety of ways, steps to reduce the negative impacts of divorce may need to be multi-faceted and explicitly tailored to the needs and life circumstances of the particular child. The more severely children are affected, the more intense the intervention which is required. The rehabilitative process in post-divorce is to lessen the socio-economic and psychological impact of divorce on divorcees and their children. It includes rendering appropriate and sustainable care and support to the divorcees and their children by creating easy access to all kinds of basic services through network with other helping organizations. Thus, the following suggestive measures can be taken to minimize the negative impact of divorce on women as well as children in the society in general and the State of Uttar Pradesh in particular:

### **1. Support Groups/Therapeutic Programs**

Once a divorce has happened, children want support in order to lessen the negative effects they may undergo. This can be in the form of informal help by family members, peers or the educational system, or more formal therapeutic programs which are run by specialized counsellors. In recent years, there has also been expansion in Internet divorce counselling services on the World Wide Web.

### **2. School related Interventions**

The school can considerably influence these students in the aftermath of their parents' divorce. For the school to be most useful with these students, school staff must first deal with their own misconceptions regarding children of divorced families. Such classroom experiences should be given that relate to the life situations of these students and make them feel part of the mainstream of student life. School policies should also be designed in such a manner so as to diminish stress related experiences for these children and their families. Indirect services can be extended by increasing the awareness of school personnel on how to spot and support children from divorced families.

### **3. Classroom Activities and Materials**

In addition to re-educating school personnel, the curriculum needs to be expanded to embrace class activities, homework assignments, audio-visual equipment, and books that

reflect the ordeal and needs of students from divorced families. This objective may, to some extent, be accomplished through “bibliotherapy”, the technique of assigning books about specific problems as a way of helping students to resolve similar problems in their own lives. In fact, books are now accessible in which young children and teenagers describe their own experiences and offer suggestions to other children whose parents are divorced or remarried.

#### **4. School Policies and Functions**

Schools need to minimize the chances for clash between former spouses or between parents and step parents. For instance, copies of report cards and other school information should be sent to both the father and the mother after their divorce. This strategy provides each parent, mainly the non-residential parent, with an equal opportunity to be involved in the child's academic life without requiring a divorced couple to interact with each other.

Similarly, schools should also give divorced parents the chance to attend school-sponsored meetings and programs independently, rather than expecting them to attend together as friends or as a couple. For example, schools can offer parents different appointment slots for parent-teacher meetings.

#### **5. Counselling Programs**

School counselling services also need to be receptive to the needs of students living in single-parent families. For instance, students require help in understanding that neither the divorce nor their parent's ongoing disagreements is their fault. Mostly in elementary school, students often feel guilty for their parents' divorce and their father's absence.

Furthermore, through teachers' and counsellors' choice of words, curriculum materials, assignments, and class activities, schools need to convey to students and parents that divorce is less detrimental to family members than is living in a conflict-ridden home. In this same vein, school personnel need to demonstrate to parents, step parents, and students that living in a blended family or in a single-parent household is not disgraceful or unusual.

#### **6. Need for Legal Awareness**

Campaigning and enlightening the masses with legal education are also indispensable strategies for initiating reform in the sphere of the personal law. It is essential to launch a

nation-wide programme to generate awareness among the Muslims about the correct method of divorce and also about the provisions that are provided in various legislations regarding economic support to the divorced women and children. This leads us to suggest that greater social awareness needs to be created among family members and the society to take care of the divorced women with respectability and lend a helping hand to them in securing their legal rights and entitlements.

## **7. Judicial Reforms**

Law is never static, it is always dynamic. It is a product of social evolution and it must change with time and circumstances. The law should provide “therapy,” judges should be parental and compassionate, and petitioners should have compulsory psychological counselling. The government should appoint “Divorce Proctors” to scrutinize facts, make recommendations to the court, and strive to discourage couples from taking divorce. Not only parents, but judges, lawyers, and mediators involved in determining the best interest of a child require a better appreciation of child development, including information about attachment, separation anxiety, the significance of stability and fostering relationships between children and adults, and the needs of children during and after divorce. Better scientific methods for reconciliation must be evolved by the court and other welfare agencies. Prolonged court proceedings and delaying relief measures such as alimony/maintenance should be avoided.

It is imperative that attorneys and judges educate parents about the negative impact of clashes upon their children. Providing education to parents during divorce on a range of issues is part of an attorney's and judge's responsibility. Lawyers can also assist their clients in settling cases rather than go to trial, as trials often result in escalating the level of conflict between the parents, often to an irreparable degree.

## **8. Role of Peer group**

Peers who are believed to be the adolescents' frame of references at the stage of development should desist from belittling their friends who are at risk of failing in schools or who are unhappy because of life stresses. Peers can play significant role in providing support, predominantly those who have undergone similar experiences. Besides this, intra-familial and extra-familial support networks can also play an important role in reducing a child's level of stress and assisting them in coping with the turmoil of matrimonial disruption.

## **9. Economic Support**

Of enormous significance is paying closer attention to finances. Undoubtedly, the changes in parents' monetary situations post-divorce impact both the parents' as well as the child's performance. This is probably most pertinent to the parent who is the chief caregiver for the child. Because of this, extra attention needs to be given in making sure that the parent who is the main caregiver has as much pecuniary stability as possible. This can help in lessening the parent's level of stress, which can have a direct effect on the parent's and child's functioning. The stigma of divorce and economic plight leaves divorced women at a greater loss. Therefore, education and qualified skills for gainful employment be imparted and promoted among girls. This will empower them in social and economic realms of life.

## **10. Role of Media**

Through parent education and mass media efforts it would be helpful to enlighten parents on how to take a marriage apart without destroying their children in the process. Parents should make efforts to resolve their personal conflicts with the least cost to the children. Moreover, they must work upon maintaining a caring and supportive affiliation with their children.

## **11. Community-based Programs**

A related approach involves community-based programs for children, often located in schools. Many courts in the United States refer children to these programs, even though attendance is usually voluntary. These programs aspire to provide children with social support, encourage children to have a discussion about their emotions, reduce feelings of loneliness, develop coping skills, and generally help children adjust to their new conditions. These sessions can vary in duration from a few hours to 10 weeks or longer. Researchers have conducted several evaluations of these programs, and majority of them have found positive effects on children, including reductions in negative feelings about the divorce, reductions in school-related problems, and better feelings of confidence.

## **12. Pre-marital Counselling & Marriage Enrichment Programs**

The pre-marital counselling program will enrich the partners with basic marital skills and adjustment mechanism. Marriage enrichment programs at any stage will facilitate the couples to resolve the problems of marital life and hence, to strengthen marital

relationships. Family therapy should be popularized in the society which will help the couples who had broken relationships.

### **13. Role of Mediation**

Another approach is reflected in the growing fame of divorce mediation. Mediation is a conflict resolution method that helps parents resolve disagreements over issues such as child custody, access arrangements, property division, and child support. Parents meet with trained mediators for several hour-long sessions, generally lasting from six to nine hours. Mediators may have training in psychotherapy, counselling, law, or conflict resolution. Sometimes mediators also meet with children. Unlike divorce education classes, mediation is independently tailored for the needs and concerns of specific couples. The key assumption underlying mediation is that if both parents are contented with the final agreement, then they will be more likely to cooperate following divorce. For couples with disputes, mediation is now mandatory – or can be made mandatory at the discretion of the judge – in the majority of American states. So, this technique can be implemented in India also.

### **14. Role of Govt. Agencies and NGO's**

Divorce has negative impact and consequences on the lives of divorced women and their children therefore, it require due attention from government, non-governmental organization and helping professionals including social workers. To prevent and reduce divorce, and to help the divorcees and their children in the post-divorce processes, the attention and effort of the state, religious institutions and helping professionals is important. Govt. NGO's should launch policies for the welfare of divorced women and organize programs for creating awareness in the society.

### **15. Social Security Measures**

Monetary assistance and guidance are necessary for the divorced women for engaging in income generating programmes. Programmes for their economic security and provisions of adequate educational grants will help their children. There is a need for creating awareness among the society about their vulnerability and build a platform to discuss their problems. Those women who had discontinued their studies should be give proper support for continuing their education.