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DIVORCE AMONG THE KANDYAN MUSLIMS IN SRI LANKA

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Abstract

Divorce is the legal dissolution of marriage. The occurrence of divorce has been increased among Muslims in Sri Lanka. This study was conducted to find out the divorce trend, causes of divorce, and its impacts on divorced women and men among the Muslim community in Uduuwara Divisional Secretariat region in Kandy, Sri Lanka. A mixed method research design approach was used. Interview and observation were applied for collecting data. Finding of this study revealed many important factors related to divorce. Within last ten year period, highest number of divorce were registered as Faskh by women and Talak my men in this region. Such trend becomes a serious social issue among them and negative impacts are severe than positive impacts among effected women. Immediate actions are compulsory to address this social issue to reduce the divorce rate and preserve the sanctity of the family institutions and society for next generation.

Keywords: Divorce, Muslim, Sri Lanka, Quazi

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Introduction

Marriage is socially and legally acceptable merger between a man and a woman regulated by laws, rules, customs, beliefs, and attitudes of the society. Pimentel (2000)¹ highlighted marriage is one of the most intense human relationships. The quality of this relationship is continually redefined by spouses and is potentially crucial to their overall experience of family life. Though, the marriage

is not considered as a sacred obligation. Few decades ago, divorce was a shameful act, but it has become a common thing. There are should be reasons behind this trend, which impact on family institutions and society as well. Divorce which is defined as dissolution or cancelling the legal duties and responsibilities of marriage under the rule of law of the particular country or state. In the past the divorce was considered as shame, but today it has become an issue among the societies. The divorce between husband and wife highly impact on every aspects of family and social life where it has a profound effect on the spouses, their children, and also the society at large. It results in psychological, social and economic well-being of family and society in general. Divorce not only has negative effects, but also consist positive outcomes too. Sometime it can be the best thing for some couples. There are different types of divorce laws practiced in countries, to regulate the divorce; every country in the world allows its citizens to divorce under its rules and regulations of the legal process (Lumun, N. &Yandev, M. 2014)². The South Asian countries such as Bangladesh, India and Sri Lanka in the last decade reported an increase in the proportion of divorce (Lumun, N. and Yandev, M. 2014)². When compare with other South Asian countries, it seems that the cultural and religious norms are highly influence the divorce tends in Sri Lanka (Canada: 2000)³. The divorce rate in Sri Lanka is low when compare it with western countries. There were more than 175,000 marriages in Sri Lanka in 2015. It has been found that more than 50% of the marriages ended in divorce. Some marriages break down sometimes within a brief period from marriage, some others after several years. There are over 400 divorces every day in Sri Lanka (FR. Augustine Fernando, 2017)⁴. However, there are lacking study on divorce trends in Sri Lankan Muslim community and properly did not address the issues what they faced in their daily life. Even though Islam allows divorce in an unavoidable circumstance, it hate it very much and encourage to preserve the family life, but fare number of breakdowns of family bonds are happening among Muslims in Sri Lanka. Hence, this study focused on to identify the divorce trend, causes of divorce, and its impacts on divorced women and men among the Muslim community in Udunuwara Divisional Secretariat region in Kandy, Sri Lanka

Literature review

Unconditional and unrestrained divorce was allowed among the ancient Greeks when their civilization was ascendant. Under Roman law a judge was empowered to annul a marriage even if the two parties had included a provision against divorce in their marriage contract, since the possibility of divorce was regarded as a part of the marriage contract. During the earlier period of Roman civilization, the religious marriage made no provision for divorce, but at the same time the husband was given absolute power over his wife; for example, under certain circumstances it was lawful for him to kill her. As time passed, the religious law was brought into conformity with the civil law, which permitted divorce (Yusuf al-Qaradawi, no date, p. 107)⁵. Hence, Divorce is not a recent phenomenon, it has long way of history. In early history of divorce, before Christianization, divorce was an informal, private process and personal decision determined by individuals, not by the law or religion. After the rise of Christianity, the churches began to control marriage and divorce. The grounds for divorce become more and more liberal after the Second World War. Divorce reforms from time to time and distinctive grounds of divorce were led path to more divorces. The improvement in the economy and women self-sufficiency also increases the divorce rate (Clark, 1999)⁶. in addition to that Raschke, (1987)⁷ Prior to the nineteenth century, the history of marital separation and divorce is sketchy; it is probable, however, that marital separation and divorce are as old as the institution of marriage itself and are two of several mechanisms that

evolved over the centuries to relieve the strains of marriage (Goode, 1963)⁸ The family is the most important primary group in society, all known that society has some form of family institution. M.F. Nimkoff (1965)⁹ defined family is a more or less durable association of husband and wife with or without child, or of a man or woman alone, with children (Rao, 1998)¹⁰. Social institutions are interrelated and interconnected, cannot be separated. Every institution performs its own functions to balance the society in the neutral level. Mainly there are five different institutions as family, political, educational, economic and religious (Johnson, 1996)¹¹. Meanwhile, divorce is considered by in both microsociology and macro sociology in sociological imagination. Micro sociologists view that divorce affects the family immediately and severely. Macro sociologists view divorce as a problem and it affects the whole country in long term, they argue that divorce is not a personal problem (Schaefer, 2003)¹². Meanwhile Lumun and Yandev, (2014)² the Functionalist's perspective was considered appropriate to guide investigation into this study. Functionalism is theory of society that viewed the society as a living organism in which each part contributes to its survival and if there is malfunction or disequilibrium the whole system will be affected. Functionalist perspective on divorce stems largely from the fact that marriage is increasingly valued. People expect and demand more from marriage and are likely to end a relationship. Children also benefits from divorce because it lessons their exposure to conflict since in about 70% of divorce parents engaged in conflict (Scheafer, 2003)¹². Children find it difficult to bear than living with marital unhappy couples (Lumun and Yandev, 2014)². According to conflict perspective marriage reflects basic inequalities between man and women and higher divorce rate is a sign that women are making headway in their struggle with men. It describes divorce in micro perspective as the competition between husband and wife for resources and power within the marriage (Johnson, 1996)¹¹. Feminists say that they didn't make good marriages go bad, their reforms gave women the opportunity to get out of unhappy or unfair marriages. Feminists reforms increased women access to better jobs, hiring, and promotions, women who were unhappy in their marriages no longer had to stay married out of terrible financial requirement (Brooke, 2011)¹³.

Islam is not alone among religions in permitting divorce. Prior to its advent, apart from a very few societies, divorce was allowed everywhere in the world. It was a common occurrence that when a man became angry with his wife, he would turn her out of the house, with or without a just cause, and the wife had no legal recourse against him nor any claim on his property, nor even a right to support money or compensation (Yusuf al-Qaradawi, no date, p. 107)⁵. A dissolution of a Muslim marriage can occur in one of the following customs: by the act of the husband, referred to as talaaq; by mutual agreement, known as khula or mubarat; and by a judicial decree of separation at the request of the wife or the husband. In Islamic perspective divorce is the last option of husband and wife while all other are not successful (Akram, 2011)¹⁴. A husband must be patient with his wife if he sees something in her which he disapproves and dislikes. He should recognize that he is dealing with a human being with natural imperfections, and he should balance her good qualities with her failings. The Prophet (peace be upon him) said, let a believing man not dislike a believing woman. If something in her is displeasing to him, another trait may be pleasing. And Quran says...And consort with them in kindness, for if you dislike them, it may be that you dislike something in which Allâh has placed much good (Holy Quran, 4:19). While on the one hand Islam requires the men to be tolerant and patient with what he dislikes in his wife, on the other it command the wife to try to please her husband as far as her ability and charm I allow, and warns her not to let a night pass during which her husband remains angry with her. A hadith states: There are three (persons) whose salat does not rise even a single span above their heads: a man leading

a congregational salat while the people hate him, a woman passing the night while her husband is angry with her, and two quarreling brothers (Hadeeth, Reported by Ibn Mâjah and by Ibn Hibban in his book of “*Sahih*”) (Yusuf al-Qaradawi, no date, p. 106)⁵ Provisions were made for legal action to protect the rights of each partner if the terms of the contract were not met (Akram, 2011)¹⁴. Should marital disputes arise, the Qur’an encourages couples to resolve them privately in a spirit of fairness and probity. Under no circumstances does the Qur’an encourage, allow, or condone family violence or physical abuse. In extreme cases, and whenever greater harm, such as divorce, is a likely option, it allows for a husband to administer a gentle pat to his wife that causes no physical harm to the body nor leaves any sort of mark. It may serve, in some cases, to bring to the wife’s attention to the seriousness of her continued unreasonable behavior (refraction), and may be resorted to only after exhausting other steps (Badawi, p. 17)¹⁵. If that mild measure is not likely to prevent a marriage from collapsing, as a last measure, it should not be resorted to. Indeed, the Qur’an outlines an enlightened step and a wise approach for the husband and wife to resolve persistent conflict in their marital life: In the event that disputes cannot be resolved equitably between husband and wife, the Qur’an prescribes mediation between the parties through family intervention on behalf of both spouses (Badawi, no date, p. 18)¹⁵

Muslims as the minority of community in Sri Lanka, The Muslim Marriage and Divorce Act 1951 constitutes the main body of legislation relating to the application of Muslim family law, and also regulates the functions, qualifications and powers of the Quazi Courts applying that law. Quazi Courts are staffed by judges (quazis) appointed by the Judicial Services Commission. Male Muslims of good character and position and suitable attainments are eligible for appointment as Quazis. Presently there are 65 Quazi courts operating island-wide. However, studies on divorce among the Muslims in Sri Lanka and their issues are not highlighted scientifically in largely. very few study conducted on this borderline according to that, Wazeema (2017)¹⁶ has analyzed the impact of divorce among Muslims in Sri Lanka among 40 couple of divorcees in Akkaraipattu Divisional Secretariat division of Ampara district in Sri Lanka. The study identified demographic, economic and social conditions of the study population and explored causes of divorce under specific factors. Also found negative and positive consequences of divorce.

This investigative study focused on to find out the divorce trend, causes of divorce, and its impacts on divorced women and men among the Muslim community in Udunuwara Divisional Secretariat region in Kandy, Sri Lanka in order to fulfil the objective of the particular study.

Research Methodology

This study was conducted among Muslim community in Udunuwara Divisional Secretariat region in Kandy, Sri Lanka which comprises 124 *Gramasevaka* Divisions (Z.A. Mohamed Haniffa, 2014)¹⁷. Muslims are living densely in 18 villages within the Divisional Secretariat region of Udunuwara. The total number of Muslims are living in these villages is 27033 persons. The study primarily employed a Qualitative data collection technique. Primary data was collected through observations and interviews. Secondary data was collected through Quazi courts records, reports, related books, and journals. The study employed purposive sampling technique. Five divorcees including three female and two male divorcees, two families were selected for interviews. Former and incumbent Quazi judges of the study area, chief trustee of Masjid in the village of “Batupitiya” were selected for interviewing as key informants for the study purpose. The collected data was

analyzed for this study based on the objective of the study and presented to get the descriptive outcome in an appropriate and attractive manner.

Finding

a. Divorce trend

As the demographic, economic and social conditions of Muslim population of the study area are very important to get their background, this study focused on gender, age, education level, occupation, income level, housing condition, number of children, type of marriage, kind of divorce, duration of marriage life, mediation by family members before divorce, attitude towards divorce, family impacts on divorce of the divorcees. The study identified that the divorce trend in the study area is moderate, the income level of the families was below LKR 35, 000. Most of them are living in their ancestral homes because of the cultural practice of family system of “patrilineal” in the area, almost, all of the divorcee’s marriages were arranged by their parents and have one or two children and both male and female have equal rights to initiate divorce process according to the law in practice in the study area. Divorce happened within a short period of time ranging from one to ten years from marriages, when disputes and misunderstanding arise between husband and wife, parents and relatives interfere and mediate between them to solve it, when they find it impossible, they resort to Quazi court to solve it either settlement or divorce, the study find that more than 95% of the men remarried within a short period from the divorce, while almost less than 10% of the divorced women remarried after the divorce. The study has found out the divorce trend in the study area during last ten year as follow:

Table 1
Divorce among Muslim Community in Udunuwara

No	Year	Talak (Divorce by man)			Fasakh (Divorce by female)		
		No. cases registered	No. cases settled	No. cases ended in Talak	No. cases registered	No. cases settled	No. cases ended in Fasakh
1	2009	9	2	7	18	-	18
2	2010	25	-	25	37	-	37
3	2011	19	1	18	24	-	24
4	2012	10	-	10	38	2	36
5	2013	13	-	13	34	1	33
6	2014	21	-	21	35	1	34
7	2015	21	-	21	50	1	49
8	2016	16	-	16	30	-	30
9	2017	9	1	8	25	2	23
10	2018	5	-	5	20	1	19
		148	4	144	311	8	303

(Source: Quazi Judge office – Udunuwara DS)

According to the statistics given by the two Quazi Judges of Udunuwara DS Division, the total number of Talak cases registered during the period from 2009 to 2018 were 148 out of the 144 cased ended in Talak Divorce while fives cases were settled amicably between the two parties, as far as the Fasah Divorce concern, the total number of Fasah cases registered during this period were 311 cases. The total number of cased ended in Fasah Divorce were 303 cases while eight cases settled amicable between the two parties.

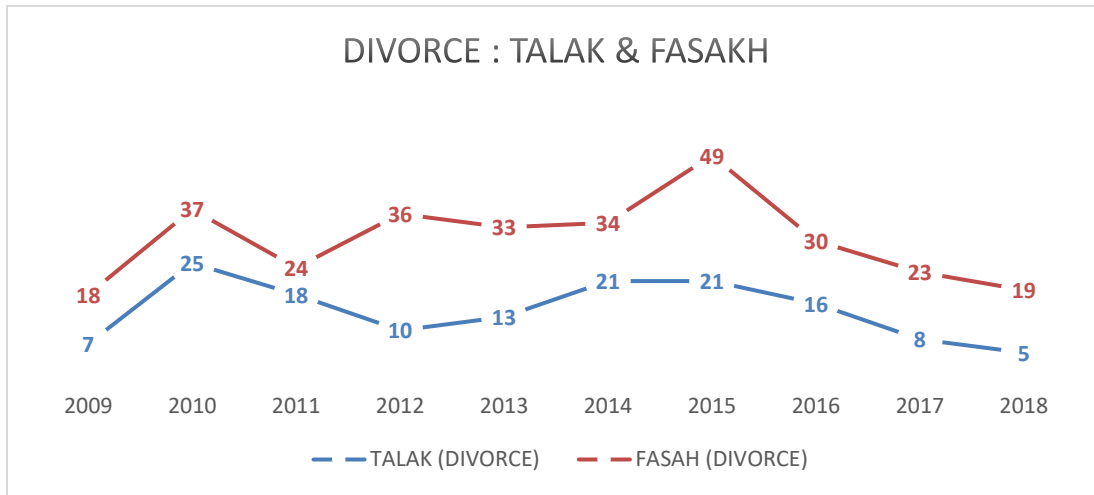


Figure1 Talak and Fasakh (2009-2018)

It seems in figure 1, that the divorce trend in the study area during the last ten years was on the rise until year 2015, but it became lower after 2015 compared to the previous years, however, the overall trend seems moderate. Even though the trend is moderate, the number of occurrences of divorce is considered as high when it’s come to a community that follow a divine religion very strictly, as well as the impacts left behind this phenomenon is very severe and now marriage is no longer considered a life-long commitment by many. Divorce becomes a serious social issue; need to find out ways and means to reduce the divorce rate before it gets serious and transmitted to next generation.

b. Causes of divorce

The causes of divorce differ from case to case among the couples. The study mainly identified reasons behind the divorce under specific factors; demographic, economic, behavioral, psychological, cultural and legal factors. violence, low income and poverty, men and female labor migration to middle east, Japan or United Kingdom, drug or alcohol addiction, young age marriage, unemployment, distressed and depression, sexual weakness, adamant behavior, lack of equality in education, cheatings in dowry, quarrel between mother in law and daughter in law and extramarital affairs are the reasons behind the divorce among them. The Quazi Judge Alhaj Two quazi judges and chief trustee of Masjid are pointed out the following causes for divorce by men as “Talak” and divorce by women as “Fash” in Udunuwara Ds in Kandy:

1. The very first cause was short coming in Sri Lankan Muslim Personal laws with regard to divorce, are very simple, for example, for getting marriage two witness are essential, but for divorce the wife no need any witness, but husband has to express it before two witness in the Quazi Court. Making the laws a bit hard will help reduce the number of divorces. Meanwhile, women's rights are not guaranteed by the laws, like *mataa* (compensation for ladies). on the other hand, lack of pre-marriage counselling strategy for ladies and gents in rural level is highlighted as the crucial issues for the divorces.
2. The different views or dispute on cultural events such as *kandoori* feast and the religious practices of Sufi Muslims and failure to cope with each other in this regard. Cultural differences between regions. Adamant behavior and not willing to cope with husband.
3. Unlawful attitudes of husband, drinking alcohol or drug abuse or extra marital relationships were also, cited by the Quazi Judges as cause for the divorce. Drug abuse, this become more controversial issue among youngsters, as the drug abusers are weak in sexual activities ladies don't like to continue with them and eventually end up in separation. During a short period since he appointed as *Quazi* Judge last year he given permission of divorce for 6 or 7 females who filed cases of this nature.
4. Job and livelihood activities are affecting on marriage life for example: migrating to abroad for work without obtaining permission from Husband, or going with permission but not returning as promised after completion of two-year work contract. Migrating to European countries or Japan for work and not returning to Sri Lanka for a long time. Economical reason, husband doesn't have proper work or business to cover up the family expenses.
5. Lack of equality in Educational qualification, false information on educational qualification. Inadequacy or inequality between husband and wife, most of the ladies are well educated, their qualifications are very higher than gents, while ladies work in government sectors for reasonable salaries most of the gents are doing odd jobs or working as three wheeler drivers, their incomes are very low, they mostly depend on the incomes their wives to cover up the family expenses, also, they are vulnerable to bad behaviors such as drug abuse, whenever differences or clashes arise between them, this become on top of all and lead them to separation.
6. Failure to provide wife with basic needs like love and affection or proper housing facility.
7. Misunderstandings between husband and wife. Revealing about the life before marriage by wife to husband or husband to wife.
8. No compromise between husband and wife in taking care of children, not helping each other and not sharing the works.
9. Sexual weakness or no proper knowledge in sex matter. Doubts, abuses of bad words and violence against wife.
10. Clashes between mother-law and daughter in-law. Failure to respect the family members of husband by wife or wise versa.
11. Cheating in dowry or giving imitation jewelries to wife by her parents.
12. Polygamy, when husband wants to marry more than one.
13. Trends of secularization, lack of religiosity, liberalization of norms, individualism, availability of loop wholes in divorce laws, and qualifications of Quazi (Islamic Judge) are the common cultural and legal factors which also support the rise of number of divorces among Muslims.

c. Impacts of Divorce

The impact of divorces were identified through the interview observation and records of Quazi court as negatively impact on individuals and society as well. The following key impacts are highlighted as;

1. Divorce immediately impact negatively on the future life of the children of divorcees. The children often disturb psychologically, they suffer from depression and anxiety, demonstrate behavioral problems including aggressiveness and poor performance in their studies and maintains lower educational levels as well as they are vulnerable to bad behaviors.
2. In Compression with men, women often suffer more than men after divorce and experience greater deterioration in living standard. The women are more likely to take the responsibility of child custody than men. The divorce may bring more negative effects, financial burdens, time restrains and family responsibilities for divorced women. The second marriage or remarriage become a challenge among the women.
3. Most of the separated fathers are reluctant to pay the child support for their children which will be between (1500 to 4000) per child per month, thus the divorced ladies were compelled to seek the assistance of the magistrate courts to get that amount. Received many complaints from many sources about bad conducts of some divorced ladies.
4. Divorced impacts men as well, psychologically and socially. The divorced men face problems as lack of happiness; remain at home, depression, health problems, and drug abuse. Finding another partner for second marriage is not so difficult for them in the study area.
5. Divorced men and women face difficulties to find partners for remarriage, only very few of the women are remarrying, but men are remarrying as quick as possible. Almost 80% or 90% of the men get marry quickly after their divorce.
6. The divorce creates financial burden to the parents, because they may have other children as well, especially the parents of divorced women are highly vulnerable, because of their worries about their daughter's future life which may make them suffer from ailments, such as depression and humiliation which may impact on the societal respect towards them.
7. The society never welcomes the destruction of family. Now others label the society as the people of divorce. As a social problem divorce disorganize the society, it impact on other social institution too. This situation leads to crime and other deviant behaviors. Divorce associates with other problems, the divorced individuals become more addicted to drugs and impact on the employment and poor performance in their working place, loss of child care and education, illegal sexual relationship, and people become more mentally disturbed and leads to the physical problems like diseases, it increases the medical cost, and poverty will occur. People in the society becomes passive than active.
8. Divorce is the second stressful condition for men and women. Regardless of gender, both of them likely to experience a mix of emotional reactions, like grief, anxiety, guilt, and depression, anger and frustration.
9. Divorce impacts on the income and livelihood of divorced women. After the divorce the women become responsible for the child rearing; however, the husband pays child support for that, but the amount that fixes by the court is inadequate and there are irregularities in payments of that amount also.

Conclusion

Though, the religion of Islam allows the divorce, it can be avoided. Multiple factors and reasons contributed to the divorce among the Muslim couples in Udunuwara Division. Divorce becomes a serious social issue in this region among the Muslims. Low income and poverty, drug addiction, unemployment, extramarital affairs, male or female migration, dispute between spouses are the major reasons behind this issue. Secularization trends, low religiosity among the people, liberalization of norms, liberal and shortcomings in the divorce laws, and individualism are the cultural and legal factors which also contributed the divorce among Muslims. Divorced women were impacted emotionally, financially and physically than divorced men. Majority of the women in the study area did not remarry and the responsibility of child rearing given to them and they often face poverty. Before it gets serious and transmitted to next generation, need to find out ways and means to reduce the divorce rate. Hence, the study recommends to conduct awareness programs on pre and post marriage life, how to face marital disputes, provide with guidance and counseling to those who faces marital problems, revising the shortcomings in divorce law, providing guidance and helps to engage in self-employment activities, appointing counsellors to Quazi court in this region and make awareness about women's rights which may help to reduce the divorce rate and to preserve the sanctity of the family institutions among Muslims.

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