

Influences of Divorce and Children's Child-Care (*Nafqah*)
Pengaruh Perceraian Dan Penjagaan Kanak-Kanak (*Nafqah*)

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Abstract

Divorce is one of the disliked permissible acts. It is only recommendable when there are no other solutions left to remedy the demolishing marriage. For some divorce loving husbands, divorce is a means to take revenge, or to express anger, or to replace wives. These disliked acts in Islam make it worse, when the divorcing husbands run away from their responsibility to pay the child-care for his children his own flesh and blood. This paper looks into the psychological and behavioral effects of divorce on children, children's child-care, its philosophy, its *sharī'ah* rulings, its amount, and cases of its exemption. This gives the foundation to discuss reasons behind children's deprivation of child-care and the resultant harms affecting both the children and the community. For solution, this research proposes obligatory salary deduction and imposing of punishment on the defaulting fathers, and formation of a special welfare fund to pay the child-care when the father defaults or delays the payment.

Keywords: Divorce, disliked permissible act, children's child-care, exemption of child-care, effects of divorce on children.

Abstrak

Perceraian adalah salah satu perbuatan halal yang tidak disukai. Ia hanya boleh dilakukan apabila tidak ada penyelesaian lain bagi perkahwinan yang semakin merosak. Bagi sesetengah orang, perceraian digunakan untuk membalas dendam, atau untuk menunjuk kemarahan atau untuk menggantikan isteri. Amalan ini yang tidak disukai Islam membuatnya kelihatan lebih buruk, apabila suami yang menceraikan melarikan diri dari tanggungjawab mereka untuk membayar penjagaan anak bagi darah dagingnya sendiri. Kajian ini melihat kepada kesan psikologi perceraian pada kanak-kanak, penjagaan kanak-kanak, falsafahnya, keputusan undang-undang, jumlahnya, dan kes pengecualiannya. Ini memberi asas untuk membincangkan sebab-sebab di sebalik kekurangan penjagaan bagi kanak-kanak dan bahaya yang menjejaskan kanak-kanak dan

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masyarakat. Untuk penyelesaian, penyelidikan ini mencadangkan potongan gaji wajib dan mengenakan hukuman terhadap ayah yang ingkar, dan mendirikan dana kebajikan khas untuk membayar penjagaan anak apabila bapanya ingkar atau menangguhkan pembayaran.

Kata Kunci: Cerai, perbuatan halal yang tidak disukai, penjagaan kanak-kanak, pengecualian penjagaan kanak-kanak, kesan perceraian atas kanak-kanak.

Introduction

In Islamic Legal System marriage intends to fortify lawful sexual relationship, continuance of human progeny by having offspring, bringing up children with good rearing, and protection of the rights and interests of the weak women and children. With these objectives, marriage contract is a solemn covenant between husband and wife. It is the marriage contract that Almighty Allah described as a solemn covenant. In Chapter al-Nisā' (4: 21) Almighty Allah while referring to marriage said: "*and they have taken from you a Solemn covenant*". Awarding marriage contract the status of "Solemn covenant" demands reverence and respect. That means it should not be taken lightly as Almighty Allah said to children of Israel:

And (once again) We commanded them: "Transgress not in the Matter of the Sabbath." And We took from them a solemn Covenant." (Al-Nisā' 4: 154).

This implicates that the marriage contract is contracted for continuation and perpetuation, so both of the spouses can achieve its meanings and enjoy its comfort within the shades of the marriage contract. Almighty Allah advised the husband to keep his wife even if he despised her. In this context Almighty Allah said:

"On the contrary live with them then on a footing Of kindness and equity. If you take a dislike to them It may be that ye dislike a thing, and Allah brings About through it a great deal of good" (Al-Nisā', 4: 19).

It is more appropriate for a Muslim to not to be an epicure and become a divorce loving person. Instead he must be patient towards his wife, even if he sees in her what he dislikes. The good can be found if patience is upheld, as the Messenger of Allah (s.a.w) said: "It is not to

the believer to dislike the female believer, because if he disliked an immoral character in her, he can be satisfied with another character in her.”¹

Resorting to divorce is considered something ugly and hateful in Islam. Ibn Abī Shaybah on behalf of Umm Saeed who was a mistress of Ali reported that once Ali the son in law of the Prophet said to her: “O, Umm Sa’id, I missed to be a bridegroom. She said (he was by then married to four wives) to divorce one of them, and replace with another. On this Ali said: Divorce is ugly, and I hate it.”²

Islam only permitted divorce as a necessary solution especially when the marital life became impossible to continue. This is because the evils of divorce are more than its benefits particularly when there are children in between the separated parents. The divorce causes pain and hardship to the children and as a solution to this, child-care for them becomes necessary in order to secure a quality life for them. Unfortunately, with regret, we find that fathers try to escape from this responsibility that the Sharī‘ah stipulated upon them to pay his children as a token of mercy for the children. This child-care will reinforce and stabilize the household ties even after divorce. Allah Almighty directed in His Book: “But he shall bear the cost of their food and clothing” (Al-Baqarah: 233). Through child-care Islam secures the wellbeing of the children after divorce.

Almighty Allah has honored the children of Adam as stated in the Quran (al-Isrā’: 70). Out of this human honor and dignity, the Sharī‘ah has set rules to maintain and strengthen relationship with the family members. Child-care is also one of the rules to maintain father’s bond with the children. Spending on the children is for the prosperity of the universe and the means of continuation of existence. The male children can enjoy the child-care till they become independent while the child-care for the girl will continue till she becomes able to earn, or after her husband takes her on his responsibility. In other words the father is supposed to pay her child-care until she gets married. Some fathers, irrespective of their great responsibilities deny paying child-care particularly after divorce, or they pay it late, whereas the needs of the children cannot be delayed. Amidst this, the mother is left confused between the needs of her children and the father’s failure to provide child-care who is indulged

¹ The hadith is reported by Abu Hurairah. See: *Ṣaḥīḥ Imām al-Muslim, Kitāb al-Ḥaqq, Bāb al-Waṣīyyah bi al-Nisā’*, hadith no. 1469.

² Muṣannaf ibn Abī Shaybāh, Chapter: *Min kurh al-Ṭalāq wa al-Khulu’*, Hadith No. (19256), 4/195.

in his personal needs forgetting his own flesh and blood. He forgets that his children are most important and more deserving for his care in the reign of a needy world where life is becoming materialistic more than ever. The situation of the children becomes worse when the mother also cannot provide especially when she is a housewife with no working experience.

In this paper, we unveiled the child-care right of the children after their mother is divorced and looked into situations where some fathers adopt divorce as a means of revenge and a sort of settlement while marginalizing the material and moral needs of the children. We also focused on the impacts resulting from those fathers who abandon their responsibilities. We started with the definition of divorce (*ṭalāq*), its legal arguments, classifications, effects of divorce before treading our way into the discussion of child-care.

Islamic Definition of Divorce and its Effects on Children

Divorce was legislated in Islam for specific conditions to get rid of the worldly and spiritual detestable matters arising in the marital life. It was legislated as a necessity or in other words to establish peace between the spouses, or to overcome moral difference or to solve the discordance of their natures, or to save them from the harm that might result if they did not separate.

Divorce is a word derived from the Arabic verb "*ṭallaqa*". Literally it denotes "release" and the released woman is expressed as "*ṭāliqah*" meaning that she had been divorced. The Arabic usage for releasing a she-camel in the open to graze without any limitations is "*aṭlaqtu al-nāqatah wa ṭallaqtuhā*." It means the she-camel is released of her shackles to graze. A man who has divorced many women is called "*muṭallāq* and *mutalliq*". The noun derived from the verb "*ṭallaqa*" is: *Ṭalāq* (divorce), which means the removal of marriage wedlock without compensation. However the usage of active participle "*tāliqah*" for a woman bears two meanings: One is to free her from the marriage wedlock, and the second is the abandonment and discharge. They say: "*ṭallaqtu al-qawma idha taraktuhum*" I divorced the people when I left them. This shows that the linguistic definition of the word divorce is to release or to abandon or to discharge.³

³ Ibn Manzūr, *Lisān al-ʿArab*, vol. 9, p. 136; Al-Fairūz Ābādī, *Al-Qāmus Al-Muḥīṭ*, p. 834, Ibn al-Athīr, *al-Nihāyah fī Gharīb al-Ḥadīth*, vol. 3, p. 135.

The technical meaning of Divorce is: Dissolution of marriage with a special expression suitable to its linguistic meaning.⁴ According to the Imam of the two Sanctuaries (*ḥaramayn*): “Divorce (*ṭalāq*) is a pre-Islamic expression confirmed by the *Shari‘ah*.” There is correlation between the literal and the technical meaning. The literal meaning “to release” or “to untie” or “to let go” is general in its implication whereas the technical meaning is limited to releasing wife from marriage, untying the wedlock, and letting the wife exit the marriage contract.

The legal bases for the legality of divorce are the Quran, Sunnah, Consensus and Rational reasoning. **As for the Qur’an**, the Almighty said:

“A divorce is only Permissible twice: after that, the parties should Either hold together on equitable terms or separate with Kindness” (Al-Baqarah: 229)

And also Almighty Allah Said:

“O Prophet, when ye do divorce women, divorce them At their prescribed period and count (accurately)” (al-Ṭalāq: 1)

These two noble verses are plain legal arguments for divorce. As for the Prophetic Sunnah among several traditions (*aḥadīth*), one is reported by Ibn Omar that he divorced his wife during her menstruation period and he asked the Messenger (s.a.w.) about it. The Prophet (s.a.w.) said: “Order him to get her back till she is pure and has another period of menstruation till she becomes pure and after that she could be divorced, or he must retain her in marriage.”⁵

The consensus of scholars had agreed upon the permissibility of divorce.⁶ The rational reasoning approves divorce because the marital relationship of the husband and wife can be abused. Continuation of marriage in that case will be an absolute evil. To force the husband and wife to live together in such situation will be of no benefit for any of the party.

⁴ Ibn al-Hummām, *Fath al-Qadīr*, vol. 3, p. 463. *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl*, vol. 4, p. 18; Al-Haytamī, *Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj*, vol. 8, p.2, Ibn Qudamah, *Al-Mughnī*, vol. 7, p. 277.

⁵ *Ṣaḥīḥ Imām al-Muslim, Kitāb al-Ṭalāq*, Chap., *Taḥrīm Ṭalāq al-Ḥā’id bi Ghayr raḍāhā wa annahu khālaḥa wa waqa‘a al-talaq wa yumar bi raj’atīha*, vol., 2, p. 1095.

⁶ Ibn Qudamah, *Al-Mughnī*, vol. 7, 277.

Looking at this, the mind finds it reasonable to abolish the marriage and the evil resulting from it.⁷

The Influence of Divorce on Children

One of the conceded issues agreed by the scholars is that the family is the main pillar of the community and the basis for the humanitarian life. Well established family supports religion, morals and mutual relationship. Family plays a strong role in nation construction, whereas its damage or dissolution destructs the community to its collapse. Due to this important role of the family in the community the *Shari'ah* has set forth the rules which guarantee the continuation of family institution, building it on values such as companionship in tranquility, cordiality and mercy. Almighty Allah said:

“And among his signs is this that He created for you mates from among Yourselves, that you may dwell in tranquility with them and He has put love and mercy between your (hearts) verify In that are signs for those who reflect.” (Al-Rūm: 21)

Without these values, Muslim family will face challenges leading to its collapse. Divorce is one of those challenges that can uproot the family entity. It is the most jeopardizing obstacle for the family's existence and stability particularly for the children the fragile component of the family building. Divorce can be disastrous for the children because they cannot grow up safe and naturally unless they grow up in an ambience of strong healthy family.

Psychological Influence of Divorce on Children

Divorce has negative pressures and influences on the psychology of the children because divorce tears them apart emotionally between the two parents. This is in addition to losing the sense of security, confusion and separation. The collapse of parents' marital relationship will negatively affect children's social upbringing, their personality, their sense of security and loss of their natural essentials such as the sense of relaxation, stability and confidence. These are the obstacles of the social and psychological upbringing of the child. These will lead the child to lose his ideal affecting his psychological stability, his scientific achievements, and his educational attainments.

⁷ Ibn Qudamah, *Al-Mughnī*, vol. 7, 277.

The Influence of Divorce on Children's Moral Behavior

Beside the psychological affects, divorce influences the behavior of the children. There are many behavioral problems found in children, but the most disastrous is the delinquent behavior such as narcotics addiction, moral decadence, and loss of confidence in marriage and family members. The children who grow up in a broken family with members stroked with alienation and hatred, their upbringing will never be natural. The feelings of hatred are deposited in the depths of their life that will resurface in forms of crime, disobedience to values, systems, and laws. The prevailing moral decadence will lead them to narcotic and liquor addiction. They will become more pruned to harming and eventually involve in criminal behaviors.

As a result of psychological and behavioral influences of divorce the children either become inoperative in society or become destructive in society. This is a great loss for the community and will hamper its development. The phenomenon of criminality, violence, terrorism, moral decline, straining relations between countries, the appearance of leaders who caused destructive wars, occurrence of disturbance, ruinous famines are the causes of the psychological connections of the lost families and grown up generations distant from the nourishment of love, friendship and mercy. The absence of these led to plunge into corruption, love of revenge, shedding blood, and disregarding the dignity of the human being.⁸ This shows that the danger divorce holds for the children is not confined to educational retardation, but extends to the fall of the whole community.

Children Child-Care, Its Philosophy and Provisions

The *Shari'ah* has taken care of the children rights in every stage of their growth. Protection of rights and solving the problems of the children are an eternal care established by the verses of the Noble Qur'an and the Sunnah. The rights of the children rise out of their natural needs such as food, clothing, shelter, security, confidence, love and kindness. There are other needs rising from the new and the changing world such as the need to modern sciences and technology which has become part of our contemporary life. It is the right of the children to study and master these new sciences.

⁸ Divorce Phenomenon, an essay, Amina Elgabir, Islam web.net/newlibrary.www. Family Breakup in Islamic communities, reasons, effects and cure, Dr. Nadia Mohamed Alsaed, Ministry of Endowments and Islamic. Affairs, Issue 523, 3/9/2010

Child-care definition, its philosophy and legislation

The Arabic word for child-care is “*nafaqah*”. Literally the word *nafaqah* denotes to two meanings. The first meaning is something became exhausted, something died, or something crept out of its hole or went into it. For this meaning the Arabs say “*nafaqa aw nafiqa al-shay'u*.” The other meaning connotes the merchandise sold well and quickly (*nafaqa al-bay'u*).⁹ There are various technical meanings for the term *nafaqah* presented by the Legal schools. The Hanafi Legal School defines it as: Bestowing upon someone provision lavishly to support his survival.¹⁰ The Maliki Legal School defined it as: A normal support given to a human-being without extravagance.¹¹ The Shāfi'ī School defined it as: allocation of an amount exclusively for good purpose.¹² The Ḥanbalī School stated that *nafaqah* is the sufficient supply of food, clothing, housing and other auxiliaries.¹³ All these definitions converge to a pinnacle connotation: The sufficiency of an independent person with his needs such as food, clothing, shelter and other auxiliaries.

Legislative philosophy of child-care for the children

No one can deny the profound importance of child child-care, and the significant role it plays to achieve benefits, defeat difficulties, and facilitate livelihood of the children. The *Shari'ah* has considered and encouraged child-care so as to achieve the security and stability of the community while fulfilling social responsibility. Children are the love and the ornament of the worldly life and the foundation for the Muslim community. For this, Islam had taken care of them with kindness and encouraged fathers to take care of their welfare. Islam made it obligatory on the father's part to spend on the children because of the childbirth as al-Kasani stated in his *al-Badai' al-Sanai'*:

“The reason of obligating child-care on the father is the child's birth; because through birth the child's blood relationship with the father is established. Spending on the needy is his recreation (*ihyā' lahu*). And it is necessary for the human being to recreate his entire self and the part

⁹ See, Ibn Fāris, *Mu'jam al-Maqāyīs al-Lughah*, vol. 5. p.554, and see also, *Lisan Al-Arab*, vol. 14, p. 326.

¹⁰ Rud Almuhtar Ala Addur Almuhtar, Ibn Abdeen, vol. 3, p. 572.

¹¹ Manh Algaleel, Ibn Elaish, vol. 4, P. 358.

¹² *Tuḥfat al-Muhtāj*, vol. 8, p. 302, al-Ramlī, *Nihāyat al-Muhtāj*, vol. 7, p. 187.

¹³ Al-Būī, *Kashf al-Ghinā*, vol. 5, p. 459, Ibn al-Mufliḥ, *al-Mubdi' fī Sharḥ al-Muqni'*, vol. 8, p. 185.

emanating from him (kullahu wa juz'ahu). This is because the relationship between the father and the son is sacred; breaking it is illegal and as well as anything leading to that."¹⁴

So, the human being's child is a part of the father. As he is required to spend on his parts, he is also required to spend on those parts that originated from him.

The Philosophy of Child-Care and its Terms and Conditions

The majority of scholars have deliberated that spending on their children is one of the obligations on the part of fathers.¹⁵ This is supported by the Qur'an, Sunnah and the Consensus. In the Qur'an (al-Baqarah: 233), Almighty Allah states:¹⁶ "The mothers shall give suck to their offspring for two whole years." The verse continues with: "And also Allah Said But he shall bear the cost of their food and clothing." (Al-Baqarah, 233.)

The noble verses are crystal clear obliging child-care on fathers for their children rather than the mothers who are committed to other aspects of upbringing of the children.¹⁷ So payment of the child-care is the father's responsibility. No one is supposed to associate with him in this responsibility just like in his responsibility to pay maintenance (*naḥqah*) to his wife. The husband is expressed as "borne to him (*al-mawlud lahu*)" in the verse which is the effective cause of obligation. Since spending on wife is obligatory on the husband because of childbirth, spending on the child will be more important than on her. Ibn al-Hummām in *Faḥ al-Qadir* said:

The father is expressed in the verse with the term "*al-mawlud lahu*". This is to emphasize the effective cause of obligating child-care which is child birth by the father....¹⁸

Almighty Allah in (Al-Isrā': 31) said: "Kill not your children For fear of want: we shall Provide sustenance for them As well as for you." One of the obstacles for fathers in avoiding payment of child-care is the

¹⁴ Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, (with simple adaptation), vol. 4, p. 31.

¹⁵ See, *Badā'i' al-Ṣanā'i'*, part 4, p. 31, Mālik bin Anas, *al-Mudawwanah*, vol. 2, p. 263, *Ḥāshiyat al-Dasūqī*, vol. 2, p. 523, al-Māwardī, *al-Ḥāwī*, vol. 11, P. 477, Ibn Qudāmāh, *Al-Mughnī*, vol. 8, p. 169, *al-Mubdī'*, vol. 8, p. 213.

¹⁶ Al-Baqarah, 233.

¹⁷ Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 31, AlHawī, vol. 11, p. 477, Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 169.

¹⁸ See, *Faḥ al-Qadir*, vol. 4, p. 411, and see also, Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 30.

fear of poverty. In this verse, Almighty Allah is giving assurance that providing sustenance is His forte alone.

The obligation of child-care on fathers is also supported by the Sunnah. Imam al-Shafi'i reported through Sufiyan, the latter through Abū Ajlān, the latter through Sa'īd bin Abī Sa'īd, the latter through Abū Hurayrah that:

A man came to the Messenger of Allah (Peace be upon him) and said: I have dinar. The Prophet said: Spend it on yourself. Then the man said: I have one more. The Prophet said: Spend it on your son. The man said: I have one more. The Prophet said: You know better [where to spend].¹⁹

Mother of the faithfuls, Aisha (r.d.) said that:

Hind bint 'Utbah, wife of Abū Sufiyān came to the Messenger of Allah (s.w.a) and said: O, Messenger of Allah, Abū Sufiyān is a miserly man, he did not provide child-care that can satisfy me and my children. I have to take from his money without notifying him, so am I guilty? The Messenger of Allah (s.a.w.) said: Take some of his money with grace what satisfy you and your children.²⁰

Both of these noble traditions are indicating that father is responsible to provide childcare to his children. As far as the Consensus is concerned, Ibn al-Mundhir said: All those amongst us who preserve knowledge, agree unanimously that it is for the man to spend on his needy children.²¹

Child-Care for Children

The obligation of providing child-care on the part of father is based on four options:

1) **If the child is poor, with no wealth and income to fulfil their needs other than dependence on others**

Child-care is not required for children who are wealthy, because the source of their expenditure can be born from their own money. If the children are rich or can maintain themselves financially, then they will not require payment of child-care for objective of child-care is to provide

¹⁹ Sunan al-Nasā'ī, *Kitāb al-Zakāt*, Chapter: *Al-Sadaqah 'ann zahr ghinā*, vol. 5, p. 62, Hadīth No. 2535; *Al-Sunan al-Kubrā li al-Bayhaqī*, *Kitāb al-Nafaqāt*, Chapter: *Wujūb Al-Nafaqah li al-zawjah*, vol. 7, p. 466, Hadīth No. 1521; *Al-Zayla'ī*, *Nashb al-Rāyah*, vol. 4, p. 417. (He said it was narrated and corrected by Al-Ḥākim in his *Mustadrak*).

²⁰ *Sahīh Muslim*, *Kitāb al-Aqḍiyah*, Chapter: *Qaḍiyat Hind*, vol. 3, p. 13338, Hadīth No. 1714.

²¹ *Al-Mughnī*, vol. 8, p. 169.

comfort to the desperate children whereas the rich children are already in comfort. This option is agreed upon by the majority of scholars.²² The child-care is compulsory because of the paternal relationship that connects the father with the child. However this relationship will only benefit the needy child provided that the child is insolvent and unable to find satisfy his personal needs. So child-care is not needed for those who can pay for their own needs. The child-care paid from child's wealth is more necessary compare to paying it from the wealth of someone else. This alludes that in the situation where the child is self-sufficient, the paying of the child-care by the father will no longer be obligatory.

2) Incapability of the child

The majority of scholars opine that it is not the poverty alone that obligates child-care for the children. Incapability that prevent the children from fending for themselves such as chronic disease, hemiplegia, blindness, insanity, paralysis, imputation of limbs, or any other medical condition arising naturally or out of accident also necessitates payment of child-care.²³ Child-care is also compulsory because of young age of the children that does not allow them to earn.²⁴ It is also compulsory when the child is a female. Her femininity is accepted as one of the incapability of the child to earn.²⁵ This is because women are not compelled to earn or work. Her guardian is compelled to spend on her. The *Shari'ah* has provided laws that compel her to work on her own expenditure only after becoming an adult.

3) Surplus Expenditure

The person responsible to pay child-care is supposed to pay from the surplus of his expenditure. If his income caters for his needs only and does not leave any surplus then he will not be asked to pay child-care. Jabir reported that the Messenger of Allah (s.a.w) said: "Start with your own self and spend it on yourself, and if anything is left, it should be spent on your family, and if anything is left (after meeting the needs of the family) it should be spent on relatives, and if anything is left from the family, it should be spent like this, like this. And he was saying: In front

²² Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 34-35; *Ḥashiyat al-Dasūqī*, vol. 2, p. 522 – 523; Ibn Qudāmah, *Al-Mughnī*, vol. 8, p. 170, al-Ḥāwī, vol. 11, p. 478.

²³ See, Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 35; *Al-Baḥr al-Rā'iq*, vol. 4, p. 229; al-Sarakhasī, *Al-Mabsūt*, , vol. 5, p. 223.

²⁴ *Fatḥ al-Qadīr*, vol. 4, p. 412.

²⁵ See *al-Baḥr al-Rā'iq*, vol. 4, p. 229, *Radd al-Muḥtār*, vol. 3, p. 604.

of you, on your right and on your left."²⁶ This is the condition set by the Mālikī and the Ḥanbalī legal School, and according to the one opinion of the Ḥanafī and the Shāfi'ī legal Schools. These jurists drop the obligation of child-care in case of insolvency.²⁷

4) Religion

Child-care is not compulsory if the religion is different in the vertical-lineage (father-son). This is because child-care is a mutual assistance given to the child out of kindness and relationship (*silah*). Hence child-care is not compulsory if the religion of the father-son is not same. This is similar to the case where one of the two is a slave. This is one of the two opinions attributed to the Ḥanbalī legal School.²⁸

Child-care and its amount

The amount compulsory for the child-care is calculated by sufficiency. The purpose of the child-care is to fulfill the needs of the child, so an amount that can satisfy those needs will be the basis of calculation. The father has to consider needs of the child such as food, drinking, clothing, housing, and etc. If the child is still in the stage of breast feeding then he have to consider an amount that can pay for the suckling of the baby. A wet-nurse or a maid will also be considered if required for the child in calculating a sufficient amount of the child-care.²⁹

Relinquishing the child-care

Child-care is relinquished because of reasons such as:

- **Time Lapse:** This is the opinion of the Hanafi legal School and the famous opinion of the Maliki, Shāfi'ī and the Ḥanbalī School. The basis of their opinion is that the child-care is for the survival of a human being, but if its time has elapsed with the continuity of life it drops, because the human soul is alive³⁰. And so child-care be-

²⁶ *Saḥīḥ Muslim, Kitāb Zakāh, Number 2183; Saḥīḥ Muslim, Kitāb al-Zakāt, Chap.: Al-Ibitada' fi al-nafqah bi-alnafis thuma Ahlihi thuma al-qarābah*, vol. 2, p. 693, Ḥadīth No. 997.

²⁷ See, Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 34-35, *Hāshiyat al-Dasūqī*, vol. 2, p. 522 – 523, al-Ḥāwī, vol. 11, p. 478, Ibn Qudāmah, *Al-Mughnī*, vol. 8, p. 170.

²⁸ See, Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 170.

²⁹ See, Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 38, Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 171.

³⁰ See, Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 4, p. 38, *Hāshiyat al-Dasūqī*, vol. 3, p. 524, *Mawāhib al-Jalīl*, vol. 4, p. 211 -212, al-Ḥāwī, vol. 11, p. 493-494, *Zād al-Ma'ād*, p. 451.

came necessary to push away the need which was pushed away in the past, that is some of those who dropped it said: due to time elapse according to the saying of Al-Mālikī, and some of al-Shāfi‘ī and Ḥanbalī: that if the governor had imposed it, it will not drop.³¹ But some of them said: the impositions of the governor don’t affect anything of its necessity if it dropped because of time lapse which is the thinking of some of Shāfi‘ī and Ḥanbalī.³²

- **Self-sufficiency:** If the children are rich and have their own money or sources of income that can cater for their expenditure, then expenses will be taken from their money. This is because the payment of the child-care is compulsory on the father for the children when they are in the state of destitution. The obligation relinquishes as the children become self-sufficient whether they are male or female.³³
- **Females Marriage:** The majority scholars of among the Hanafi, Maliki and the Ḥanbalī School opine that the child-care is relinquished upon female child’s marriage. An opinion is attributed to the Shāfi‘ī School that the child-care for the girls is until they get married. After marriage her maintenance is transferred to the husbands.³⁴

Deprivation of Child-Care, Its Reasons and Results

Previously we discussed that the responsibility of paying child-care is wholly obligatory on the father. Child-care includes food, clothing, housing and other necessities whether the mother is rich or not. She is not responsible for the child’s expenses. The spirit of marriage is companionship, love, mercy and intimacy between the man and the woman, so the family becomes an environment that can instill values and morals in the children. The marriage is supposed to provide a chance for the normal psychological, bodily and social growth, but when the marital life collapses through divorce, children become the fragmented part of the familial relationship. It will not be right, just, and humane to marginalize the material rights of the children in this situation. Some fathers deprive their children of this right that consequences harm. Generally there are

³¹ See, *Ḥāshiyat al-Dasūqī*, vol. 3, p. 524, *Mawāhib al-Jalīl*, vol. 4, p. 211 – 212, *al-Mubdi’*, vol. 8, p. 196-197.

³² See, al-Ḥāwī, vol. II, p. 493, *al-Mubdi’*, vol. 8, p. 196-197, *Zād al-Ma‘ād*, p. 451.

³³ See, Ibn Mawdūd, *Al-Ikhtiar*, , vol. 4, p. 247; *Al-Ḥāwī*, 11, p. 484, and see also p. 478; Al-Kāsānī, *Badā’i’ al-Ṣanā’i’* vol. 4, p. 34-35; *Hashiyat Al-Dusuqi* vol. 2, p. 522-523; Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 170.

³⁴ *Ḥāshiyat al-Dasūqī*, vol. 2, p. 526; Mālik bin Anas, *al-Mudawwanah*, vol. 2, p. 266; Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 171.

two types of reasons for depriving children of child-care. Reasons related to the husband and the reasons related to various circumstances.

Reasons related to the husband are normally three:

- a) **Greed and miserliness:** Some fathers pay less than the amount sufficient out of mere greed and miserliness. It is reported in Ṣaḥīḥ al-Bukhārī that Hind bint 'Utbah (Sufyān's wife) came and said, "O Allah's Apostle! Abū Sufyān is a miser, so is it sinful of me to feed our children from his property?" Allah's Apostle said, "No except if you take for your needs what is just and reasonable."³⁵

There are husbands whom Allah have gifted in abundance but they hoard their wealth depriving their children from the privilege to satisfy their needs.

- b) **Low income:** The low income might be a reason to refrain from paying child-care. Father's low or poor income put him into debt situation or into burden of paying loan installments preventing him from spending on his children.
- c) **Absorbed in the forbidden activities:** Some fathers do not pay child-care because they have preoccupied themselves with forbidden actions such as narcotics, alcohol consumption, gambling, etc. Sometimes these actions lead to crime and imprisonment.

Circumstantial reasons

Some fathers do not pay child-care because they face certain circumstances that compel them not to pay child-care such as death, illness or disability that prevents him to spend on his children.³⁶ We will not dwell on elaborating this reason for it does not concern our ongoing discussion.

The Hanafī and one of the Shāfi'ī opinions point that obligation to pay child-care on the fathers is tied with the financial stability and non-stability.³⁷ If the father is not paying despite being in a financially comfortable state then the Hanafī position is to imprison the father.³⁸

In an opinion according to the Maliki, Ḥanbalī and the Shāfi'ī School it suggests that the child-care is not obligatory on the father if he

³⁵ *Ṣaḥīḥ Muslim, Kitāb al-Aqḍiyah*, Chapter: *Qaḍiyat Hind*, vol. 3, p. 13338, Hadīth No. 1714.

³⁶ See *Radd al-Muhtār*, vol. 3, p. 634.

³⁷ *Al-Kāsānī, Badā'i' al-Ṣanā'i'*, vol. 4, p. 38.
Al-Kāsānī, Badā'i' al-Ṣanā'i', vol. 4, p. 35.

is in hardship.³⁹ So it seems to be a general agreement of the legal Schools that ascertain the obligation on the father to provide basic needs of the children in terms of food, clothing, and shelter.⁴⁰ Not supporting the children can lead to problems such as living in the over populated areas, and in an unhealthy environment causing diseases not mentioning the psychological problems such as tiredness, boredom, sadness, humiliation and frustration. There are various forms of harms inflicted on the children by depriving them of their welfare:

- 1) **Religious deviations:** No doubt that material poverty is one of the most dangerous evil when it comes to worldly life. Similarly for the religious life spiritual poverty such as doubting in the Divine existence Who created the universe and suspicion in the Divine justice in relation to Almighty Allah's distribution of sustenance is a dangerous evil.⁴¹ Abū Sa'īd al-Khudrī (r.d.) reports that the Messenger of Allah (s.a.w.) once made a supplication with the following words: "O Allah I seek refuge in You from disbelief and poverty." Someone enquired: "Are these two equal?" The Prophet (s.a.w.) replied: "Yes."⁴² Abandoning children without proper support can lead to poverty that tantamount to disbelief in Almighty Allah.
- 2) **Immorality:** Poverty and the poor economic condition play an influential role in the lives of young delinquent people. Be it male or female, once they experience that their needs are not fulfilled by the family members they start to resort to other means that can be illegal and dangerous such as stealing money, becoming victims of drug dealers, adultery, prostitution, etc. In some situations they are forced to beg in order to cater for their day to day needs, or fall into child-labor for inappropriate jobs and places such as selling at traffic lights and in industrial areas. All these lead to not only social deviation, but to deprivation from education. The sin-

³⁹ See: *Hāshiyat al-Dasūqī*, vol. 2, p. 522-523; Ibn Qudamah, *Al-Mughnī*, vol. 8, p. 170; *Al-Hāwi*, vol. 11, p. 478.

⁴⁰ See: Wikipedia.org/wiki.

⁴¹ See: Dr. Yusuf Al-Qaradawi, *Mushkilah al-Faqr wa Kayfa 'Ālajaha al-Islām*, p. 15-16.

⁴² Al-Ḥākim, *Al-Mustadrak 'ala al-Sahīḥayn, Kitāb al-du'ā wa al-takbīr wa al-Tahlil wa al-Taṣbīḥ wa al-Dhikr*, Chapter: *Al-Ta'awwudh min al-Jubn wa Ghayrihi*, vol. 2, p. 219, Hadeeth no. 1987.

gle mother finds herself obliged to beg or work far from home, leaving her children unattended vulnerable to misguidance.⁴³

- 3) **Family break up:** Poverty is a menace for the future of the family, its formation, continuation and coherence. We find that the gravest obstacle for formation of family is poverty. It hinders marriage of the youth with burdens such as dowry and economic crisis.⁴⁴ Not marrying on time can lead to illegal means to satisfy natural needs.
- 4) **Communal harms:** Poverty threatens the security, safety, socio-economic stability of the community. The poor distribution of the wealth and the absence of social justice lead to non-confidence in future, grudge, disturbance, hatred and conflicts in the community.

The children deprived of child-care by the fathers especially those who are resourceful and are capable to provide child-care to their children, push them in state of poverty. They expose the children to harm that come in different forms. These harms are not only material related, but also related to spiritual, moral, and communal life.

Conclusion

The important points that we can summarize from our detailed discussion on divorce, effects of divorce on children, child-care, and effects of depriving children of the latter are as follows:

- Islam is a complete and a comprehensive system organizing the human life in all its aspects especially when it comes to family institution among others.
- Islam has obliged on fathers to pay child-care in the light of Qur'an and Sunnah.
- This obligation is stipulated with conditions such as the fathers are financially stable themselves.
- The amount of the child-care is calculated according to the needs of the Children. An amount that can satisfy their needs.
- Child-care is relinquished due to time lapse, or when children become financially capable, and the daughters get married.

⁴³ Family Breakup a Cell for Revision, an easy, Prof. Shadia Eltull, Islamic Library, islam web, www.islamweb.net/newlibrary.

⁴⁴ Family Breakup a Cell for Revision, an easy, Prof. Shadia Eltull, Islamic Library, islam web, www.islamweb.net/newlibrary.

- Some of the important reasons of fathers' depriving their children of child-care are greed, miserliness, low income and involvement of the fathers in the forbidden activities.
- Harms resulting from depriving children of child-care are poverty that causes psychological, physical, religious, and moral debauchery to the family institution and threatens the security and the safety of the community.

Recommendations

In the light of the negative effects of divorce we discussed, and the problems facing women and her children after divorce arises out of non-obligatory status of paying child-care. In order to reinforce familial stability and to decrease the problems and negative effects resulting from this non-obligatory status of child-care payment we recommend the following:

- Necessity of deducting a compulsory nominal amount of money from the salary of the divorcing father for the child-care provided that the monthly deduction must be harmonious with his capabilities and the income. The deduction should be supervised by the legal authority to guarantee its execution and continuation.
- Impose penalty such as fine or imprisonment for the defaulting in payment of the child-care and persuade them legally by stopping all their banking services or the governmental transactions till they comply.
- Pooling a fund to provide the needs of the children and wives who suffer from the delay of child-care provided that one of the contributions is deducted from the father's account. This fund can be supported by social security, Zakat, and charities to guarantee the continuation of the support for the children in times of default or delay from the father. A bank or a corporation can be authorized to carry out this responsibility both to distribute and to collect the money.

Finally, all Praise and Gratitude are due to Allah, Most High.

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