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An Analysis of the Causes of Divorce among Muslims in Mombasa County in the Sharia Law Perspective

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ABSTRACT

Divorce is the most hateful action permitted in Islamic law. Islam puts some measures to ensure that the separation of two spouses will not occur. However, on some occasions, dissolution will become necessary because two parties cannot live together in an atmosphere of hatred and disaffection. Recently, cases about the repeal have been increasing rapidly among Muslim society in Mombasa County. This study explores the issues causing divorce among spouses in Mombasa County. The result shows that some of the reasons for divorce are poverty and unemployment, seeking a job overseas, psychological problems, drug addiction, family interference, early and forced marriage, cultural issues, and domestic violence. Questionnaire and Open-ended questions were used involving divorcees as respondents. In addition to that, the researcher reviewed references and studied dissertations relating to divorce.

Keywords

Divorce; Islamic law; Mombasa County

INTRODUCTION

Divorce (*Talāq*) is among the detested of legal actions permitted by Islam. Moreover, Islam considers divorce as evil. Any means must prevent it, but marital relations become bitter in some situations, and two spouses cannot stay together in an atmosphere of hatred and disaffection. Under Islamic Sharia, the divorce may occur by the act of the spouses themselves or by a decree of the *kadhis* court. Therefore, it is essential to understand the meaning of *Talāq*. The word *Talāq* is an Arabic name which means to untie or to set free (al-Fayumi, n.d). Technically, there are different variations statements from Muslim jurists in using the term *Talāq*. Hanafi jurists explain *Talāq* as breaking the marital relation immediately or eventually with a specific word (‘Abidin, 1998). While the school of Malik defines *Talāq* as a kind of act that will prevent husband enjoyment to his wife, and if it occurs twice, it will forbid him to have sexual intercourse unless he formulates marriage again (al-Qurṭubi, 2003). Shafi’i interprets *Talāq* as the dissolution of a spousal relationship by pronouncing *Talāq* or similar to it (al-Shirbini, 2006). Lastly, Hanbali Jurists illustrate that *Talāq* is breaking marital relations (Ibn Qudama, 1997).

According to these definitions, Muslim jurists agreed that the dissolution of marriage or annulment of its legality occurs by pronouncing certain words such as *Talāq* or the equivalent to it. It also approved legislation whereby the marital relationship can no longer continue and achieve its objectives. The trend of divorce cases recorded in Mombasa in the last five years between 2015 –2019 stood at 1371 topics. The consequences of divorce cases have dire effects on socio-economic, political, and cultural instability within Mombasa County and the coast region. Several grounds lead to a rise in divorces such as misunderstandings between couples, poverty, unemployment, seeking a job overseas, drug addiction, family interference, early and forced marriage, cultural issues, domestic violence, distress, and depression, extramarital affairs, and others.

The purpose of this paper is to discuss the factors causing the increment of divorce in Mombasa County. This discussion is expected to re-visit the modes and rules of divorce in Islamic law to analyze the factors mentioned above. Structurally, this paper is divided into two sections. Firstly is the discussion of divorce’s legitimacy from

the Quran and hadith's perspectives and description of divorce mode from Muslim jurists' view. The second section is an illustration of the cause and implications of divorce in Mombasa County.

There are so many legal verses from the Quran and hadith on divorce's legality. Quran (Q.S. Al-Baqarah, 229) mentions 'the Divorce is twice, after that either you retain her on reasonable terms or release her with kindness.' This verse revealed that due to Jāhiliyā (Pre-Islam Arab) era, a person could divorce his wife hundreds of times or even more and take them back while they are in the *iddah* period. One day a man swore to his wife, "I will neither divorce you irrevocably nor give you residence ever." The woman complained about this issue to Aisha, and she mentioned it to the Prophet Mohammad S.A.W, Messenger of Allah kept silent until the verse from Quran revealed. In other verses from Quran, Allah said: "O Prophet, when you (Muslims) divorce women, divorce them for (the commencement of their waiting period and keep count of the waiting period, and fear Allah, your Lord" (Al-Talaq: 1). Imam Māwārdī commented that "even though the verse mentioned the name of Prophet Mohammad, but the rules will be applicable to his followers" (Al-Mawardi, 1994).

The verse also mentioned issues pertaining waiting period (*iddah*), which refers to a legally specified period after divorce or death of a husband. The waiting period for divorced women is three menstrual periods. And for those who no longer have menstruation periods, their waiting period is three lunar months, and for the pregnant women, their waiting period is until they deliver their pregnancy. Allah said, "and divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allāh has created in their wombs if they believe in Allāh and the last day. And their husbands have the better right to take them back in that period, if they wish for reconciliation" (Al-Baqarah: 228).

On the other hand, Ibn Omar narrated, "I divorced my wife during the lifetime of Allah's Messenger PBUH when she was in the state of menstruation. Umar R.A mentioned it to the Prophet PBUH, at which point he said: Command him to take her back and leave her (in that state) until she purified. Then (let her) enter the second menstruation period, and when she is purified, then divorce her (finally) before having sexual intercourse with her. Or retain her (finally). That is the idea which Allah commanded (to be kept in view) while divorcing the women. Ubaidullah reported: I said to Nafi: what became of that divorce (pronounced with Idda) he said: it was as one which she counted" (Al-Bukhari, 2002). The waiting period is considered as probation, reconsideration, and transition period. The waiting period allows one a gradual release from the marital bond and a relatively smooth transition from one status to another new one without much disruption. Keeping spouses close to one another during the waiting period allows the husband to return his wife if the divorce was revocable. The waiting period's wisdom is also to establish whether or not the wife has conceived to safeguard the child's paternity.

After the revocable divorce (*Talāq Rajī*) has taken place, there are rights associated with a wife, such as maintenance, accommodation, and sustenance. Allah SWT said: "And for divorced women maintenance (should be provided) on a reasonable scale. This is a duty on al Muttaqeen (the pious)" (Q.S. Al-Baqara: 229). Another verse says, "Lodge them (in a section) of where you dwell out of your means and do not harm them to oppress them, and if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and acceptably confer among yourselves. Still, if you are in discord, then there may breastfeed for the father another woman" (Q.S. at-Talaq: 6). Another wife's right is a matrimonial gift granted to the wife upon divorce to console her and reduce the harm resulting from the divorce, as said in Q.S. al-Azhab: 28. Imām Al-Ṭabarī commented that the verse implied an order to Prophet PBUH to present a gift to his wives in the case of separation through a divorce (Al-Ṭabarī, 2000:20).

Muslim jurists have classified *Talāq* in terms of its pronunciation, namely explicitly and ambiguous. Explicitly means that there is an explicit declaration of divorce that may be performed orally or written, e.g., the husband says to his wife: "you are divorced." This statement is known as explicit because the listener understands its meaning (Zaidan, 2000:443). The ruling on this type of divorce occurs immediately after uttering it (Al-Kassani, 1998:161). Meanwhile, the ambiguous means unclear or indirect statement of divorce using phrases that are not exclusively prescribed for issuing divorce but alludes and hints to it, e.g., "You are a free woman" (Hamze, 2015: 138). This kind does not count if he did not intend to give *Talāq*. This opinion is the most popular of most jurists (Ibn 'Abd al-Barr, 2000:24).

In terms of effectiveness, there is revocable and irrevocable divorce. Revocable divorce is the kind of divorce where the husband has a right to return to his wife when she is in her waiting period without a new contract, dowry, and consent after divorcing her twice. Allah said, "and the husband has more right to take them back (in this period) if they court reconciliation" (Q.S. Al-Baqarah: 228). In this verse, there is clear evidence that the husband has a right to return his wife for those who have not depleted three *Talāqs* (Al-Qurtubi, 1964: 126). Whereas irrevocable means that the husband has no right to return to his wife.

Irrevocable is divided into two kinds; minor and major irrevocable divorce. Minor irrevocable is that the husband does not have the right to return his divorced wife except with a new contract, dowry, and consent. Minor irrevocable occurs where the waiting period has lapsed, but the husband has not exhausted the divorce in his possession concerning his wife (Al-Zuhaili, 2007: 6874). Major irrevocable divorce is that the husband does not have a right to return to his wife when the waiting period has lapsed or not lapsed unless she is married by another person and divorced or dies, as mentioned in Q.S. Al-Baqara: 230.

Lastly, there are two kinds of divorce in terms of Islamic law legitimacy: approved and disapproved divorce. The approved divorce follows Islamic law, which is to pronounce divorce once in the period of menstruation with no sexual intercourse within that time. Whereas the disapproved divorce contrast Islamic law, which is to pronounce once or twice, is made in a period of purity with conjugal relation (Al-Bukhary, 2002:410). This type of divorce occurs immediately, but it is contrary to Allah's and the Prophet's command on divorce (Al-Qurtubi, 1996: 353).

Islamic law has laid down ways to minimize marital disputes as follows. Firstly, in selecting spouses, Islamic teaching outlined the best method of choosing compatible women based on criteria, such as righteousness, attraction, uprightness in character, fertility, and supposes' competence. This guideline helps in obtaining their marriage life's happiness that is in line with Islamic sharia. Next, in marriage life, the husband is responsible for teaching his wife of her duties and responsibilities of marital rights and duties as per the command of Islamic law. In any case, a husband or wife must have wisdom, patience, constancy, modesty, empathy when delivering the message. Therefore, verbal admonition and guidance are necessary for achieving the married's goal.

However, sometimes the disputes cannot be avoided, or the wife might act not according to Islamic law. To some extent, Islamic sharia permits the husband to do boycott, which means avoiding, cutting off, and not contacting his wife. This boycott should not exceed three days, and the wife is expected to return to the right path. However, when boycotting is not sufficient, and the wife does not change her character, it is clear that she has no interest in the material tie relation. When the wife continues her estrangement and disobedience to his husband, the husband is allowed to discipline her by symbolic beating without causing any physical harm or injury, as written in Q.S. An-Nisa: 34.

Al-Imām Qurṭubī, in his commentary, commented that: “Beat them lightly, a beating that leaves no mark on them and does not break the bone” (Al-Qurtubi, 2003: 172). In this stage, the couple's family could not intervene in a marital dispute until two spouses cannot solve it. The Prophet Muhammad said: “A sign man’s good observance of Islam is to keep away from that which does not concern him” (Al-Tirmidhi, 1975: 558). Lastly, the last stage in solving the marital disputes when the method mentioned above fails is to call an arbitrator from the wife's and husband's family seeking reconciliation and marital ties protection. It is regulated in the Quran, as mentioned in Q.S. An-Nisa: 35.

Based on the previous measures, Muslim clerics in collaboration with local authorities can organize programs to promote learning related to the factors and effects of divorce with individual and local communities using formal and informal methods, i.e., invite divorcees, couples, council elder, and stakeholder passing knowledge on causes and consequences of divorce. Also, raise community awareness and sensitize using tailored tools through social media and mosques.

This study employs a descriptive survey method. The researcher's primary data is obtained directly from the central resource, such as a questionnaire and open-ended questions, and the result's analysis. At the same time, secondary data is the data that has already been collected and available for researchers that are used on literature review, i.e., Quran, hadith, Islamic jurisprudence books, thesis, article, websites, and reports from *Kadhis* court. The research also applies statistical software, namely SPSS version 22.0, which is involved in descriptive analysis.

This study is conducted in Mombasa County, Kenya's second capital city (John Mbatia, 2019). This location is selected based on the divorce prevalence and geographical location as an Islamic city. The sampling is 200 respondents that were chosen from Swahili Communities. Supplementary information is collected from leaders and council elders to provide additional information based on their experience in dealing with divorce. The data was generated by distributing the number of questionnaires to the respondents who are divorced couples. The researcher uses the 5-point Likert scale indicates: “very low,” “low,” “middle,” “high,” and “very high.” The mean score of the respondents’ opinions was calculated for analysis. The research data was from 200 responses from Mombasa County.

This study's objective was to explore the causes of divorce among the Muslim community in Mombasa County. The findings show that “interference of family” is the most prominent factor of divorce. The primary reason behind this is that most parents believe that their authority and responsibilities do not end as long as they are alive. This thought leads them to intervene in their children's marital relations. Some parents provide advice, earning financial support, and plan for their futures. Other reasons for family involvement occur when the spouses try to impose their customs, traditions, and social norms that may differ from those that govern the family. Sometimes, the mother may interfere in her daughter's life because she desires to protect her from repeating her bitter experience in marriage, as the family passes through a failed or difficult marriage. This painful experience triggers them to protect their children from repeated experiences through continuous interference in their marriage life. However, interference may cause instability in children's marital lives.

DISCUSSION

In terms of the respondent's gender [Table 1](#), males were 61 (30.5%), while female respondents were 139 (69.5%). It shows that most of the participants in this study are female. The participants are categorized based on three categories, namely married, divorced, and widowed. The finding shows that married individuals were 106, representing 53%, and the divorced were 60, representing 30%; nevertheless, the widowed were 34, representing 17%. The present study shows the median duration of marriage was (26-39 years). The maximum period stayed together was (40 years and above) while the minimum period stayed was (6-15 years).

In terms of educational level, 82 respondents (42.0%) hold a university degree or college graduates, 48 (24.0%) graduated from Madrassa (formal Islamic education), 37 (18.5) participants obtained secondary school grade, and 33 (16.5) participants had primary school degree. This number reflects that most of the respondents were well educated and knew their rights and obligations as husbands or wives. Lastly, in terms of profession, 66 persons (34.5%) are having a permanent job, 66 respondents (33.0%) are unemployed, 57 persons (28.5%) relied on business, and 4 (4%) are labor workers.

TABLE I. DEMOGRAPHIC CHARACTERISTICS OF RESPONDENTS

	<i>Socio-Demographic Variable</i>	<i>Frequency</i>	<i>Percent</i>
<i>Gender</i>	Male	61	30.5%
	Female	139	69.5%
<i>Marital Status</i>	Married	106	53.0
	Divorced	60	30.0%
	Widowed	34	17.0%
<i>Marriage Duration</i>	1-5 years	40	20.0%
	6-15 years	48	24.0%
	16-25 years	43	21.5%
	26-39 years	42	21.0%
	40 and above	27	13.5%
<i>Education</i>	Madrassa	48	24.0%
	Primary	33	16.5%
	Secondary	37	18.5%
	university/college	82	41.0%
<i>Employment</i>	Unemployment	66	33.0%
	Business	57	28.5%
	permanent job	69	34.5%
	labor	8	4.0%

There was a great disparity opinion between respondents regarding the statement on the causes of divorce in Mombasa County. [Table two](#) highlights the causes of divorce according to their views. About 49% of respondents expressed that the "interference of family" is the main factor in divorce, and it is considered = (high) point as a cause of divorce in the Likert scale ([Table 2](#)). Another 46% of participants responded that "poverty and unemployment" is another leading cause of divorce and marked +4 (high) point on the Likert scale. Whereas 41.5% of respondents mentioned that domestic violence is one of the causes of divorce and followed by 41% of respondents who said that early marriage is one reason spouses ask for a divorce. Mean scores of "unethical behavior, drug addiction, cultural issues, and psychological problem were higher than other factors respondents (37.0%, 36.0%, 35.0%, and 31.5% respectively). Also mean score of adultery and infertility as the cause of divorce is lower than other factors (25.0% and 20.0%, respectively).

TABLE II. FREQUENCY AND PERCENTAGE OF RESPONSE TO CAUSES OF DIVORCE

<i>Variable</i>	<i>Very low (F/P)</i>		<i>Low (F/P)</i>		<i>Middle (F/P)</i>		<i>High (F/P)</i>		<i>Very high (F/P)</i>	
Interference of Family	4	2.0%	16	8.0%	48	24.0%	98	49.0%	34	17.0%
Poverty and unemployment	3	1.5%	33	16.5%	56	28.0%	92	46.0%	16	8.0%
Domestic violence	9	4.5%	17	8.5%	63	31.5%	83	41.5%	28	14.0%
Early marriage	16	8.0%	23	11.5%	59	29.5%	82	41.0%	20	10.0%
Unethical behavior	1	5%	10	5.0%	80	40.0%	74	37.0%	35	17.5%
Drug Addiction	11	5.5%	9	4.5%	57	28.5%	72	36.0%	51	25.5%
Cultural Issues	10	5.0%	30	15.0%	76	38.0%	70	35.0%	14	7.0%
Psychological problem	6	3.0%	34	17.0%	80	40.0%	63	31.5%	17	8.5%
Adultery	10	5.0%	18	9.0%	84	42.0%	50	25.0%	38	19.0%
Infertility	13	6.5%	48	24.0%	85	42.5%	40	20.0%	14	7.0%

Nevertheless, other reasons for the family's intervention in the marriage life may be due to the husband's cruelty and violence towards the wife. This intervention may also result from the intertwined financial relationships and sources of income between the husband and his family, and when there are extraordinary circumstances that the couple passes through. The parents try to intervene to settle the differences or bring views closer. They may

succeed or make matters worse! (Personal interview, May/2020). In this regard, the Prophet PBUH said, “A sign man’s good observance of Islam is to keep away from that which does not concern him” (Al-Tirmidhi, 1975: 558). Prophet PBUH forbids interfering with people’s life because it leads to discord between them.

From the findings of this study, the husband’s poverty and unemployment could lead to separation between spouses. Financial instability can cause quarreling for not providing the basic needs of a family. On this issue, Omoro state that “most marriages in Kenya fail due to poverty. Spouses who depend on their partner lose loved ones since they cannot provide a better life for them. When one partner gets someone who can support her financially and take care of her needs, they divorce or separate” (Omoro, 2018:54). Poverty is considered as being one of the terrible problems in society. The real solution for this problem is to establish Islamic financial institutions to deal with the collection and distribution of *zakat sadaqah* and *waqf*. This Islamic financial system could help eradicate poverty.

Domestic violence was also reported to be a cause of divorce among crucial informants and other respondents. Domestic violence may take the form of sexual abuse, psychological and emotional abuse, physical violence, and financial abuse. According to the research carried out by the HAK organization, between 2007 and 2017, 433 GBV cases were reported in Mombasa County (Baraka F.M viewed 1/6/2020). Abusive behavior towards a woman is in opposition to Quranic injunctions of righteousness and kind treatment. Allah said: “O believers treat women with kindness even if you dislike them; it is quite possible that you dislike something which Allah might yet make a source of abundant good” (Q.S. An Nisa 4:19). The Prophet PBUH said: “The best of you is the one who is best to his wife, and I am the best of you to my wives” (Al-Bazzar, 2009: 148).

Other findings of this study are that early marriage became one of the greatest causes of divorce, and it was experienced within the County. Early marriage is preferred by families who believe that marriage may prevent their daughter from early pregnancy. The other reason is poverty, cultural issues, customs and tradition, social pressure, illiteracy, and fear of remaining unmarried into adulthood (Personal interview, May/2020). In Kenya, the marriage act 2014 illustrates the minimum age of marriage. The Act states: “A person shall not marry unless that person has attained the age of eighteen years”. Early marriage is also categorized as a crime based on the clause 87 “Any person who marries a person who is below the minimum age commits an offense and shall on conviction be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both.” (Marriage Act, 2014:65).

This rule constitutes Hanafi’s puberty age, which is the completion of eighteen years (Ibn Qudāmah, 2004:204). However, some jurists agreed that a minor’s marriage by her father or her guardian is valid based on the Quranic verse (Q.S An-Nisa:4). Al-Tabari comments that Allah Swt has set a three-month waiting period for divorced females who are yet to menstruate and among them is a child who has not attained the age of puberty. The verse also refers to those who have been divorced after the marriage is consummated (Al-Tabari, 2000:158).

As indicated in table 2, the mean score of the causes of divorce experienced by respondents is “unethical behaviors,” i.e., disclosure of marital secrets, stealing money from his/her wallet, or lying to the partner. On this issue, the Prophet PBUH said about the virtues and character of a suitable and decent spouse: “When someone with whose morality and religion you are pleased comes to you (for marriage), conclude the marriage. If you do not do it, then a great commotion and disturbance and corruption would take place on earth” (al-Tirmidhi). “The best of you is the best to his wife, and I am the best of you to my wives” (Al-Qazwein, 2009:148).

Related to alcoholism and drug addiction, generally, drug addiction has a lot of effects on family, community, and country at large. These include dropping out of school and non-performance in bed (K24, Seen 2/6/2020). K24 Studies show that people who consume drugs have been affected by HIV, Hepatitis C, tuberculosis, and other infectious diseases (UNAIDS, 2016). Most drug abusers are running away from marital responsibilities. They spend their money on heroin, cocaine, and Miraa between Ksh 500 -1,000 per day, translated to about Ksh 15,000 - 30,000 per month, equivalent to 150 USD -300 USD (Personal Interview, May 2020).

From the findings of this study, “cultural issue” was recorded as the causes of divorce among respondents. Omoro said, “The level of education affects marriage stability because if the two couples have a different level of education—for example, I have a primary level and my wife is a degree—our level of reasoning will not be the same. One of the couples might view the other as inferior since there is no perfection as humankind; my spouse might think that it is because of the low education that I have a mistake” (Omoro, 2018:47). Muslim jurists have two different opinions regarding the issue of competence of spouses. First, it is said that the spouses’ competence is obligatory, and Hanafy, Maliki, and Shafi’i support this opinion. And they inferred with the following hadith, “choose the best for your sperm, and marry compatible women and propose marriage to them” (Ibnu Majah, 2009:142). Hadith taught us to choose the women based on her descent, lineage, and religion and run away from women who grow up in bed seedlings.

Secondly, the school said that the same level of competence between the spouses is not obligatory, and this opinion was seconded by Hassan Al-Kurakhy, Sufyan Thawry, Hamad bin Salman and Ibn Khazmy Dhawahiry (Ibn Khazmi, no year:10). They quoted evidence from Quran and Hadith. Allah said: “People, we have created you from a male and a female, and made you into nations and tribes that you might know one another. The noblest of you before Allah is the most righteous of you”. (Q.S Al-Hujurat:13) The verses stated that all believers are equal

in rights and duties, and there is no difference between them, and none was mentioned regarding the competence of spouses. Also, they inferred with Hadith, “*The Prophet PBUH Affirmed that all people are equal like the teeth of a comb and that no Arab is superior to a non-Arab, nor is a white person superior to a black person, unless under personal integrity and moral rectitude*” (Ahmad ibn Hanbal, 2001:473).

Imam Wahbatul Zukheil commented on the hadith by stating that rights and duties bound the equality mentioned from the hadith. There is no doubt that people differ in terms of knowledge, livelihood, and skills (Al-Zuhaili, 1985:230). After observing the two opinions, the author concurred with the majority of Muslim jurists because competence always affects marital stability. In addition to that, Muslim scholars forbid to abide by a contract that does not achieve its aim.

The finding shows that the “psychological problem” could cause the dissolution of marriage. Shaila Kessler discussed the stages of a psychological problem before the divorce takes place. The first stage is known as “disillusionment,” where the couples fall into emotions and tension when he/she is aware of their expectation of marriage not being achieved. The second stage is named “erosion,” whereby the spouses start to disappoint one another and start fighting and avoiding responsibilities. The third stage is “detachment.” At this level, couples continue isolating each other and not share personal things. The last stage is “physical separation,” where one of the parties moves into a new residence and starts a new life (Kaslow, 1980:31). In this way, appropriate action should be taken before the problem is passed to another level. The finding shows that “Adultery” was not the most important cause of divorce because Muslims understand that fornication is forbidden in the Quran, as stated in Q.S. an-Nur: 2. Infertility is also not an important factor in divorce; the study results were opposite compared to other Islamic countries where a woman is divorced if she is infertile (El-Saadani, 2006:24).

CONCLUSION

The study's finding shows that family interference is the main factor of divorce, followed by poverty and unemployment, domestic violence, early marriage, unethical behaviors, and others. Therefore, the research proposes a systematic process of educating the indigenous of Mombasa County using Qur'an methods starting from verbal admonition, boycotting, discipline the wife, and arbitration from two parties before a petition of divorce is filed into *Kadhis* court of Kenya. The result shows that some of the reasons for divorce are poverty and unemployment, seeking a job overseas, psychological problems, drug addiction, family interference, early and forced marriage, cultural issues, and domestic violence.

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