Impact of Triple Talaq and Psychological well-being of divorced women in India

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Abstract

Today families are facing unprecedented and varied challenges like urbanization, drug/alcohol abuse, breaking down of marriages, changing economic and social condition etc. With the changing concepts, values, added stress and challenging roles of Indian women, marriage in itself has become more of a challenge than ever. Marriage in Indian society is more a religious institution than a legal one. Lack of family unity due to divergent objectives, ambitions, thoughts and ideas; decrease in the family control due to competition; lack of control and unity; conflicts between parents and children due to undue expectation of authority and freedom, and all such precarious areas have become a challenge of modern family. In addition, laxity in marital bonds, availability of alternative satisfaction, misuse of economic freedom etc. yielded up the cause of divorce. It is understood as a relatively permanent union of two peoples implying a number of interlocking status and roles. Muslim marriage is a social contract. Family is never merely a personal matter, because society is so much affected by the quality of its families. In this Research Study, we studied about the adverse effect that Triple Talaq causes to women and the Psychological effects on them.

I. Introduction

Over the years, Muslim women in India have complained of living in perpetual fear of being thrown out of their matrimonial homes in a matter of seconds because a Muslim man, if he chooses, can end years of marriage just by saying the word “talaq” (divorce) three times. The whole triple talaq issue has become a battleground for the culture versus modernity debate. It is important to realize that women’s experiences cannot be understood in these reductive binaries as “she” is produced from the very power relations which subordinate them. In this paper the author deals with the question of triple talaq in the light of the recent petition filed in the Supreme Court for declaring such talaq invalid. Shayara Bano’s petition, filed in February 2016, said she was visiting her parents’ home in the northern state of Uttarakhand for medical treatment when she received her so-called talaqnama - a letter from her husband telling her that he was divorcing her. She also asked the court to outlaw halala (where a divorced woman has to marry another man and consummate her marriage in order to go back to her former husband) and polygamy (Muslims in India are allowed to take four wives).
II. Divorce and women in Islam

In Islam marriage can be dissolved either by mutual consent or by either party to the contract. A woman can repudiate her marriage under a form of divorce known as Khula. Divorce, ruins the relationship between two human beings and hence it is something to be avoided as far as possible. However, in certain circumstances it became absolutely necessary. While in most other societies marriage was a sacrament and a lifelong indissoluble bond, the Quran revolutionized the entire concept of marriage and made it a civil contract. Though divorce can often be issued by the stronger party or by men in a male-dominated society its total absence can also become problematic when the relationship between husband and wife get strained beyond any possibility of reconciliation. In Arabian society of pre-Islamic days, the women, did retain a degree of independence, the concept of marriage was contractual which Islam retained as it ensured a mere equitable partnership in the marital relationship. “It permitted divorces, but at the same time, it described it as most disliked of the permissible act”. “It should be noted that marriage or nikah has been described by the Quran as a strong covenant” The Quran says that when there is a rift between husband and wife, an attempt should be made to appoint a Hakam (arbitrator) “And if you fear a breach between the two, appoint an arbitrator from his people and an arbiter from her people, of they both desire an agreement, Allah will effect harmony between them.

Mohammedian Law permits the husband to divorce his wife without any misbehavior on her part and without assigning any cause. This result in conferring on women an inferior status compared to their counterparts in other communities. Though the prophet had given unlimited freedom to the man, he was not in favor of free divorce, as his aim was the stability of family. He pronounced talaq to be the most detestable of all the permitted things before God; for it prevented conjugal happiness and inferred with the proper bringing up of children. The basis of Islamic Law of Divorce is the inability of the spouses to live together rather than any specific cause (or guilt of a party) on account of which the parties cannot live together. In this respect the Islamic concept of divorce is near to the modern’ Breakdown ‘theory of divorce rather than the ‘Guilt’ principle. Islam does not specify any matrimonial offence (guilt) as an excuse for divorce. The underlying principle of Islamic law of divorce is that divorce is allowed in cases where the marriage is to be broken because of incompatibility between the spouses. However, the Dissolution of Muslim Marriage Act 1939 is based on the guilt principle because wife may get a decree of nullity on any of the grounds (guilt of the husband) enumerated in it.

2.1 Well-Being after Divorce

Divorce affects the well-being of women and men in different ways. For example, men have higher incomes after divorce, which would predict lower levels of distress. Women's lives are also changed in other ways that may affect their psychological well-being in a more negative way; they have the main custody of children, if any, and are more likely to experience task overload. It has also been argued that women invest more in the family, take larger responsibility for the marriage, and therefore perceive divorce as a greater failure than do men. In contrast, others argue that traditional gender roles (e.g., the unequal distribution of unpaid household work) would predict single women to be better off than single men. Women are also more likely to have access to social support outside the family, whereas men are more dependent on marriage for social support. Results from studies on gender differences in psychological health following
divorce are, hence, far from conclusive. Although some studies have found that women's psychological well-being is more negatively affected by a divorce, others have found the opposite, and yet others have found no gender differences.

However, despite gainful employment, women are still expected to contribute significantly to domestic work. The fact that gainful employment often does not imply a corresponding decrease in domestic obligations, however, has given rise to competing views, that is, the “role strain” or “role overload” perspectives. Here, it is assumed that employment has an injurious effect on women's psychological well-being because it demands time, energy and concentration in addition to what is already used for domestic tasks. It is reasonable to assume that the combination of market and household work is particularly difficult for single mothers. Following divorce, women more often receive custody of children, and they lose a resource (the partner) who previously contributed to the household maintenance. According to the “role accumulation” or “role expansion” perspectives, gainful employment improves women's psychological well-being. Work experience may be positively correlated to self-confidence, and fellowship with colleagues increases the social network and gives a broader anchoring in life. Employment is also assumed to be a source of personal identity and fulfilment.

III. Triple talaq impact on women

The Ordinance, though promulgated with the object of promoting the welfare of Muslim women in general, is plagued by hasty drafting that has watered down the purported good that it sought to do. The haste shown in promulgation of the Ordinance makes one question whether such an urgency in fact existed, which compelled the Executive to completely by-pass the regular procedure of enacting a legislation. It is relevant to note that no empirical data has been produced or even referred to, in order to establish that there was rampant pronouncement of Talaq (having the effect of instantaneous divorce) and that such incidents had steeply risen, justifying the Executive’s knee jerk reaction even though the Winter Session of Parliament was only about two months away. It is relevant to note that whenever the question of custody of children is being adjudicated upon by Family Courts, welfare and interest of the children is given paramount importance. Talaq is nothing but a repudiation of such a civil contract. The Ordinance creates a peculiar situation by not only criminalizing such form of repudiation but also by imposing a standard of strict liability, as no element of mensrea has been mandated in the provisions of the Ordinance and mere pronouncement has been made an offence.

Gender inequity has ripple effect on the rest of the community, preventing it from partaking in full, liberties guaranteed by a modern Constitution, Seeking to declare these practices as unconstitutional, the government has said reforms in Muslim personal law have not taken place for over six decades in the past and Muslim women, who comprises eight per cent of the population, have remained "extremely vulnerable" due to fear of instant divorce. Contrary to the impression one gets from the popular social media usage these days patriarchy is not simply a system of male-dominance over women. According to bell hooks, “Patriarchy has no gender”. Elsewhere she says, “Patriarchy is political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak.”
While many Muslim women may want and need internal reforms in their communities, they are uncomfortable in courts and also have reasons to distrust the state. There are cases of police abuses against Muslims, with rates of incarceration being higher compared to other communities. Often, women look for local solutions before approaching civil courts. In one low-income neighborhood, a group of activists worked with Islamic judges to help women in situations of marital crisis or domestic violence secure a divorce or claim their financial rights in the aftermath of divorce. Activists told me that developing supportive relationships with these judges resulted in faster, easier and less costly resolution of family conflicts than going through civil courts. Not only that, oral divorce is the easiest and most common method of taking a divorce among Muslims. Out of all divorced women, 65.9 per cent were divorced orally. Recently, this has been happening over text and email as well. Recently, two women living in Hyderabad were divorced over WhatsApp by their respective husbands.

When Pakistan, Bangladesh and many other Islamic countries could ban the practice of talaq-ul-bidat, then why not India, is the question. Talaq-ul-bidat or triple talaq is a Sharia law practice which gives men the power to end a marriage by simple uttering the word ‘talaq’ to their wives three times in succession. While legal advancement is important and ensuring fairness in divorce is something to celebrate, it is but one small step toward a greater vision of gender justice.

IV. Divorced women psychological well-being

Psychological well-being refers to both a theory and measurement scales designed and advocated primarily by Ryff (2005). In her seminal paper, "Happiness is everything, or is it? Explorations on the meaning of psychological well-being." she contrasts this with subjective well-being or hedonic well-being. Ryff attempted to combine different conceptions of well-being from the ancient Greek to the modern psychological such as theories of Individualization from Carl Jung, Self-actualization from Abraham Maslow and others. The components of psychological well-being are self-acceptance, personal growth, and purpose in life, environmental mastery, autonomy and positive relations with others. Despite advances in standard of living of the population, the condition of widows and divorced women remains deplorable in society. The situation is worse in developing nations with their unique social, cultural and economic milieu, which at times ignores the basic human rights of this vulnerable section of society. A gap exists in life expectancies of men and women in both developing and developed nations. This, coupled with greater remarriage rates in men, ensures that the number of widows continues to exceed that of widowers. Moreover, with women becoming more educated, economically independent and aware of their rights, divorce rates are increasing along with associated psychological ramifications. The fact that widowed/divorced women suffer from varying psychological stressors is often ignored. It has been concluded in various studies that such stressors could be harbingers of psychiatric illnesses (e.g., depression, anxiety, substance dependence), and hence should be taken into account by treating physicians, social workers and others who come to the aid of such women. A change in mindset of the society is required before these women get their rightful place, for which a strong will is needed in the minds of the people, and in law-governing bodies.

Divorcees have been shown to exhibit substantially higher admission rates in psychiatric clinics and hospitals than individuals in intact couples, and they more often suffer from anxiety, depression, and anger, feelings of incompetence, rejection and loneliness. The divorced also
exhibit a higher mortality risk, particularly behavior related mortality such as suicide, motor vehicle accidents and homicide; and they more often die from coronary disease and cirrhosis of the liver, a cause of death that is often a consequence of alcohol abuse. Mental illness is a question of fact. It has to be proved in court. It is not a matter of interpretation. The law presumes that sanity and insanity have to be proved. The standard of proof is the preponderance of probabilities. It means that the probability of insanity should be more than the improbability of sanity.

V. Conclusion

The social, psychological and cultural concomitance of being mentally ill and divorced/separated are particularly severe in the Indian culture. Divorce is the “legal dissolution of a socially and legally recognized marital relationship that alters the obligations and privileges of the two persons involved. It is also a major life transition that has far-reaching social, pathological, legal, personal, economic, and personal consequences”. Marriage is not only the principal building block of society but also it occupies a key place in human life. Although cultural, social, religious and familial barriers to divorce remain strong in India, the divorce is rising at alarming rate. The review of various studies of researchers and academicians reveals that when marriage end in divorce, women experiences more emotional distress than men, which is an indicator of poor psychological well-being. Women in India are less likely to receive mental health care because mental illness in the family, especially in a woman, is itself stigmatizing and an occasion for ridicule. Married mentally ill women are more likely to be sent back to their natal homes, abandoned, deserted or divorced. Clinical experience shows that the responsibility of care for the mentally ill woman is often left to her own family, than to her husband or his family.

References


