**ANALYSIS OF SHARI’AH COURT JUDGMENTS TO DISSOLUTION OF MARRIAGE AND ITS** **IMPACT ON MUSLIM STUDENTS IN TERTIARY INSTITUTIONS IN KADUNA STATE**

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**Abstract**

*In Islam marriage encompasses company and procreation. Within its confines, it provides the legitimate institution to uphold conjugal rights and duties of spouses towards each other. It attends to the sexual needs of the partners, as well as other psychological, social, and physical needs of its members.* *Even though family remains a microcosm of a society, and marriage is its institutional nucleus for survival and sustenance of human existence, the delicate balance of family arrangement is often upset by dissolution of marriages. The impact of dissolution of marriages (divorce) ranges in various degrees from children to the parents with various shades of implications. This work ‘analysis of Shari’ah Court Judgment to Dissolution of Marriage and Its Impact on Muslim Students in Tertiary Institution in Kaduna State’, is aimed to examine the negative effects of dissolution of marriage among the Muslim students; and analyses Shari’ah courts judgment in relation to dissolution of marriage. The method applies in this work is qualitative approach in which ten (10) Shari’ah courts were selected. The Study covers the period of ten (10) years, from 2010 to 2019. This enables the researchers to make comparative analysis on the court case and the impact among Muslim students in Tertiary institutions in Kaduna State. The work highlights the findings and finally, the research will suggest ways by which the institution of marriage would be safeguarded and marriage breakdown leading to widespread divorce be curbed among in Muslims*

Keywords: *Dissolution of Marriage, tertiary institutions*

**Introduction**

Marriage is a lawful union of a man and woman based on mutual consent. According to Imaillah (1996), both the Holy Qur’an and Hadith contains instructions regarding marriage as a basic unit of human society, and thus prescribed model foundation for a family. It is worthy of note that healthy families are basic requirement to sustaining and preserving humanity. Hence, Allah commands believers to marry for it moral, spiritual, social, and psychological benefits (Imaillah, 1996). According to Imaillah (1996), the purpose for a family thus include the following:

1. To enable a man and a woman live together and experience love and happiness, within Islamic law.

2. To produce children and provide enabling conditions for their stable and righteous upbringing.

3. To create an environment for legal union that safeguards society from moral and social degradation.

Summarily, in Islam marriage consist of a man and woman living with each other and supporting each other according to the dictates of the Holy Quran, and the Hadith in terms of rights and obligations (Ahmad Bello, 2009). To Abdulrahman (2020), it is a mutual contract that exist between a man and a woman for the purpose of enjoying one another, build a pious family and a robust society. As an institution with wide range possibilities and life sustaining structures, it makes an incomplete human person a complete individual, and provides spiritual, physical, emotional, and psychological companionship. The emphasis on togetherness and companionship rates high in interpersonal sustenance, and support for every other human correlation.

Although a social necessity, marriage is also a religious duty that Islam does not relegate to a license for unbridled sexual needs and gratification to the extent of becoming a slave to sexual desires. However, marriage remains the only legitimate way to indulge in intimacy between a man and a woman. Thus, a Muslim marriage is ordinarily a relationship for life based on mutual consent of the parties. It is not a temporary arrangement with a conscious and deliberate premeditated intention to dissolve it. In fact, according to Imaillah,(1996), the Holy Qur’an considered marriage contract (*nikah*) as *ihsan*, which means a fortress. Hence, the man who contracts marriage is a *muhsin*, which implies that he has built a fortress. Similarly, the woman who marries such a man is a *muhsinah*, that is, someone who sought protection in the *ihsan.* This understanding of the marriage contract insulates marriage from wishful dissolutions because the stakes are high. Nevertheless, discontinuity is permitted on genuine grounds.

On what grounds may a marriage contract be terminated? What is the role of the shari’ah courts in the dissolution of marriages? And what impact does Shari’ah court judgement have on stakeholders? In the context of this paper, what impact does such judgment have on Muslim students in tertiary institutions in Kaduna State?

**Understanding Dissolution of Marriage in Islam**

Dissolution of marriage simply means a separation of husband and wife who are hitherto engaged in legal social contract of marriage. It means divorce. While Islam does not outrightly encourage its adherents who are validly married to divorce, the religion permits a dissolution in two basic forms with three kinds of divorce, with separate rules. The two basic forms are dissolution by the act of the parties or a dissolution decree from the court of law. The various kinds are:

1. Talaaq, Illa, and Zihar (by Husband).
2. Talaaq-i-tafweed and Li‘an (by wife).
3. Khul’i (by mutual agreement)

These kinds of divorce are guided by attendant rules. For example, divorce could be initiated on ground of adultery, but if a husband accuses the wife of such allegation without a witness, and the wife denies the allegation, that process is *li’an*. A woman may also initiate a divorce, that is *khul’i*. While the former which is also a *Talaq* is more easily attained, the latter, *khul’i*, is more cumbersome to obtain. It is important to note however, that Bani & Pate (2015)explains that a husband may divorce his wife by repudiating the marriage without giving any reason. In this case, the husband’s pronouncement carries the weight of authority to automatically dissolve the marriage. This process is an aspect in *talaaq*. Other means could be by Ila and *Zihar* which differ from ‘*Talaaq* only in form, not in substance. Nevertheless, a wife cannot divorce her husband of her own accord, except by delegation of such a right or under an agreement referred to as *Khul‘i* or *Mubarat.*

**Grounds of justification for divorce in Islam**

The Holy Qur’an recognizes marriage a holy institution, in fact the Hadith of the Prophet states, "Marriage is my sunnah. Whosoever keeps away from it is not from me." Its purpose includes companionship, procreation, and modesty. According to *Islam’s Women* (n.d.), the benefits of marriage in Islam include “protecting oneself from Shaytan by satisfying one's desires and giving oneself rest and relief from the world by the two spouses enjoying each other's company.” In addition, it is a social contract that ensures division of labour, and blessings of Allah (SWT).

However, marriage can also become a burden or even an affliction. When a man become too impatient with his wife, the latter becomes his affliction from whom he seeks separation. Similarly, when a man fall short of his responsibilities, the woman no longer derives companionship, and would want a relief. Nevertheless, the injunctions of the Holy Quran 16:72 says:

وَٱللَّهُ جَعَلَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَٰجًۭا وَجَعَلَ لَكُم مِّنْ أَزْوَٰجِكُم بَنِينَ وَحَفَدَةًۭ وَرَزَقَكُم مِّنَ ٱلطَّيِّبَـٰتِ ۚ أَفَبِٱلْبَـٰطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ ٱللَّهِ هُمْ يَكْفُرُونَ ٧٢

And Allah has made for you spouses of your own kind, and given you through your spouses children and grandchildren. And He has granted you good, lawful provisions. Are they then faithful to falsehood and ungrateful for Allah’s favours?

A publication by the *Islam’s* *Women* (n.d.) on ‘Marriage’ stated that divorce is justified by the husband in an absence of sexual relation with her over a period, or if she has a defect or serious character deficit. When such deficit makes them "unequal" for each other, the ground for divorce is considered valid. Similarly, an *Al-li'an* is invokable when the man swears an oath of confirmation that the wife has committed adultery, *Adh-Dhihar.* A wife may also explore the path of divorce if the husband has a defect, or a serious character flaw that she considers as making them "unequal." The same also goes for a situation when a husband is missing and he is presumed dead, or if the husband is not supporting the wife or mistreats her, fails to perform marital obligations or if the husband commits inequality between multiple wives.

Generally, the ground for divorce must be considerate and in line with the All-Knowing Allah (SWT) who said in the Holy Quran (Q2:231) that,

وَإِذَا طَلَّقْتُمُ ٱلنِّسَآءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍۢ ۚ وَلَا تُمْسِكُوهُنَّ ضِرَارًۭا لِّتَعْتَدُوا۟ ۚ وَمَن يَفْعَلْ ذَٰلِكَ فَقَدْ ظَلَمَ نَفْسَهُۥ ۚ وَلَا تَتَّخِذُوٓا۟ ءَايَـٰتِ ٱللَّهِ هُزُوًۭا ۚ وَٱذْكُرُوا۟ نِعْمَتَ ٱللَّهِ عَلَيْكُمْ وَمَآ أَنزَلَ عَلَيْكُم مِّنَ ٱلْكِتَـٰبِ وَٱلْحِكْمَةِ يَعِظُكُم بِهِۦ ۚ وَٱتَّقُوا۟ ٱللَّهَ وَٱعْلَمُوٓا۟ أَنَّ ٱللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌۭ ٢٣١

*When you divorce women and they have ˹almost˺ reached the end of their waiting period, either retain them honourably or let them go honourably. But do not retain them ˹only˺ to harm them ˹or˺ to take advantage ˹of them˺. Whoever does that surely wrongs his own soul. Do not take Allah’s revelations lightly. Remember Allah’s favours upon you as well as the Book and wisdom He has sent down for your guidance. Be mindful of Allah, and know that Allah has ˹perfect˺ knowledge of all things.*

— Dr. Mustafa Khattab (transl), the *Clear Quran*

To reiterate, divorce is a necessity permitted to avoid greater evil that may be perpetuated if the marriage social contract continues. Despite the permissibility of divorce, it should be considered as a mater of last resort. Moves should be initiated for reconciliation by referring the matter to arbitration. This is in line with the Qur’anic injunction (Q4:35) that:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَٱبْعَثُوا۟ حَكَمًۭا مِّنْ أَهْلِهِۦ وَحَكَمًۭا مِّنْ أَهْلِهَآ إِن يُرِيدَآ إِصْلَـٰحًۭا يُوَفِّقِ ٱللَّهُ بَيْنَهُمَآ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا خَبِيرًۭا ٣٥

*If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware.*

— Dr. Mustafa Khattab (transl), the *Clear Quran*

According to the spirit of the law it is only when disagreement continues and efforts to bring about reconciliation prove unavailable that the parties may dissolve the marriage. The Muslim Jurists and Judges usually follow the Quranic injunction to ‘keep them (the wives) with kindness and or separate (from them) with humanity.’

**Conditions for valid *Talaq* and *khul’i***

For emphasis, Islam does not relish divorce but to free individual from undue burden. According to Bani & Pate (2015), in a well-researched work on divorce in Islam, Talaaq “is usually rendered as repudiation, its comes from the in roots ‘Talaaq’ which means to release (an animals) from the tether.” Thus, the woman is freed from the relationship that has become a bondage. Similarly, the right of a woman in Islam to seek a divorce or separation from her husband is also guaranteed in Islam. Under the *shari’a* law, a woman may seek divorce if her husband denies her conjugal rights, and of food and shelter. But often, her rights to initiate divorce are constrained by the attending implication of returning her dowry and marriages expenses, as well as possible custody forfeiture of her child/children above the age of seven.

There are conditions to effect either *Talaq* or *khul’i.* Although these cocategories divorce are covered by Islamic laws, they are guided by preconditions. To effect a *Talaq*, it is expected that in addition to having a good reason for the action, the man must be of sound mind, and must have attained the age of puberty. The act must also be voluntary, under the *Shari’a* law. That is, “a *Talaaq* pronounced under “compulsion, Coercion, undue influence, fraud, or voluntary intoxication is void and ineffective” (Bani & Pate, 2015).

Furthermore, there are also procedures to formalize a *Talaaq.* Although the formality differs between the Sunni laws and the Shia laws, the bottom line of the sufficiency of the husband’s pronouncement to break the marriage is sufficient for its validity. While the Sunni laws permits an oral or written *Talaaq* with no specific words or formula nor presence of witnesses, the Shia laws requires oral pronouncement in the presence of two witnesses.

The condition for validity on the part of the woman seeking divorce is skewed differently. Her options are categorized in two: *Talaaq-it-tafweed*, and *Li’an*. The former is a right of delegated divorce. The right to divorce a husband is usually stipulated in prenuptial agreements or post marriage agreement. Such stipulation may permit the woman to divorce the husband if he fails in his basic responsibilities or takes a second wife. According to Faizee in Bani & Pate (2015), “This form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now beginning to the fairly common in India.” The second category of the right of a woman to divorce, *Li’an*, is on character assassination resulting from false accusation of adultery. However, there are various terms and conditions under which *ii’an* may be invoked as basis for the woman’s right to divorce.

**Shari’ah Court Judgments on Dissolution of Marriages in Kaduna State**

There have been series of dissolution of marriages by the Shari’ah court in Kaduna State Nigeria (e.g. NAN, 2021; News Desk, 2022;). These instances range from disrespect for in-laws, to inability to provide shelter for spouse, and many other reasons considered valid in Islam for legal dissolution of marriages. Newspaper headings issuing from Kaduna State include the following: “Kaduna Sharia Court grants divorce to woman as husband cannot feed family” (Premium Times, 2012); Shari’a court dissolves seven-month marriage (Agency Report, 2019); Sharia court dissolves marriage over husband’s disobedience to in-laws (Vanguard Newspaper, 2021); and a particular recent case where ‘court confirms dissolution of marriage even as wife only ‘stumbles’ on divorce letter’ (News Desk, 2022).

The last instance cited in the preceding paragraph was the case between Abdullahi Musa and his wife, Bilkisu Yusuf. The dissolution was based on the evidence that she “stumbled” on a divorce letter (News Desk, 2022). In his ruling, the Judge, Salisu Abubakar-Tureta noted, “In Shari’a law, divorce is confirmed verbally, written or through sign language for those who are deaf.” He further explained that a divorce letter written by a husband to his wife without the intention of issuing it to her, does not carry any implication of effective divorce. However, if a man writes a divorce letter and kept it with the intention of a divorce, but has not personally served it to her, such letter is effective, should the wife discovers it. It was therefore on the basis that Musa confirmed that he wrote the divorce letter pronouncing divorce three times to Biikisu who stumbled on the divorced letter that the judge proclaimed that “the union between the two parties is hereby dissolved.” (News Desk, 2022).

Although due processes are followed in the dissolution of marriages by the Shari’ah court in Kaduna State, their impacts have continued to toll on the extant families of such separated individuals. In the case of Abdulrauf Musa and Jamila Yusuf whose marriage was dissolve for insulting his wife and disrespecting her parents, Abdulrauf was ordered to desist from visiting Jamila, and Jamila was to use her N10,000 naira t feed her children for the rest of the month. In the dissolution of the seven-month marriage between one Binta Abdullahi (18), and Isyaku Abdullahi (50), over irreconcilable differences, the judge ruled that Isyaku pay N7,000 monthly feeding allowance to Binta, his ex-wife. The allowance was meant to care for the pregnant Binta’s health until she delivers.

The impact of divorce on the separated parties has active effects on their dependents. Children of the divorced are often affected, so are other stakeholders in the dissolved marriage. Although, Islamically there are rights associated with the wife, such as maintenance and accommodation (cf. Al-Baqara: 229), the impacts often go beyond those necessities of life. It is the impact of such dissolutions on Muslim students in tertiary institutions in Kaduna State that this research focuses upon.

**Methodology**

This study employs a qualitative 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., the Glorious Qur’an, Hadith, Islamic jurisprudence books, Thesis, article, websites, and reports from *Kadhis* in courts.

This study is conducted in Kaduna State. The sampling is 200 respondents that were chosen from tertiary institutions. The data was generated by distributing the number of questionnaires to the respondents. The researcher uses the Likert scale items and chose forced choice method, since the neutral option was removed: Strongly agree, Agree, Disagree and Strongly Disagree.

This study's objective was to analyses Shari’ah Courts Judgment to Dissolution of marriage and its impact on Muslim students in tertiary institutions.

**Findings**

The findings show the impact of Dissolution of marriage on Muslim students in tertiary institutions in Kaduna State. Some of which include, impinges on academic performance; emotional heartache and stress at home that interfere concentration during school time; students lose confidence; range of feeling that the students may encounter, like depression, anxiety, and loneness; students have difficult time concentrating on school work from dissolution of marriage related stress; and students engage in risky behaviors

**Discussion**

In terms of the respondent's gender, 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%.

In terms of educational level, 182 respondents (91%) are undergoing degree programmes, 18 (9%) are undergoing postgraduate studies. This number reflects that most of the respondents were undergraduate.

**Table I: Demographic Characteristics of Respondents**

|  |  |  |
| --- | --- | --- |
| ***Variable***  | ***Frequency***  | ***Percent***  |
| ***Gender***  | Male Female  | 61 139  | 30.5% 69.5%  |
| ***Marital Status***  | Married Divorced Widowed  | 106 60 34  | 53% 30% 17%  |
| ***Education***  | Undergraduate Postgraduate  | 18218 | 91%9% |

There was a great disparity opinion between respondents regarding the statement on the impact of Dissolution of marriage on Muslim students in tertiary institutions in Kaduna State. About 35.5% and 41% strongly agree and Agree respectively of respondents expressed that dissolution of marriage have impact on the impinges academic performance of Muslim student. Another 42.5% and 44% of participants responded that emotional heartache and stress at home often have emotions that interfere with concentration during school time, is another leading impact to the Muslim students in tertiary institutions. Whereas 40.5% and 42.5% of respondents agreed that Students have difficult time concentrating on school work from divorce related stress. The details were provided in the Table II.

**Table II:** **Frequency and Percentage of Response to Dissolution of Marriage and Its Impacts on Muslim Students in Tertiary Institutions in Kaduna State**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Variable*** | **Strongly agree*****(F/P)*** | **Agree*****(F/P)*** | **Disagree*****(F/P)*** | **Strongly Disagree*****(F/P)*** |
| Impinges academic performance | 71  | 35.5%  | 82  | 41%  | 26  | 13%  | 21  | 10.5%  |
| Emotional heartache and stress at home often have emotions that interfere with concentration during school time.  | 85 | 42.5%  | 88  | 44%  | 12 | 6%  | 15 | 7.5%  |
| Students lose confidence | 76 | 38%  | 89 | 44.5%  | 22 | 11%  | 13  | 6.5%  |
| Range of feeling that the students may encounter, like depression, anxiety, and loneness.  |  70 | 35%  | 87 | 43.5%  | 25 | 12.5%  | 18 | 9%  |
| Students have difficult time concentrating on school work from divorce related stress  | 81 | 40.5%  | 85 | 42.5%  | 29 | 14.5%  | 5 | 2.5%  |
| Students engage in risky behaviors  | 73 | 36.5%  | 91 | 45.5%  | 25 | 12.5%  | 11 | 5.5%  |
| Poor education and socio-economic position | 68 | 34%  | 72 | 36%  | 42 | 21%  | 18 | 9%  |

**Recommendations**

To curtail the negative impact of dissolution of marriages on Muslim students in tertiary institutions in Kaduna State, a regular marriage counselling for married couples is encouraged. The parents should endeavor to stay with the ideals that brought them together *ab initio.* They should learn to stay peacefully together.

The psychological, emotional, and economic needs of children born within the wedlock should be of paramount consideration in determining whether the parents should divorce or find a way around the differences and find a mode for reconciliation.

In unavoidable instance of divorce, adequate arrangement should be made to prevent the Children from been dropped out of schools. Concerns for their continue education should be topmost in the calculation for divorce.

**Conclusion**

This paper recognizes the right of spouses to divorce when there is solid ground for such. Dissolution of marriages is Islamic, but the consciousness of divorce been a last resort should not be lost on couples. The impact on the individuals involved is much, but it tells more negatively on the education of the children from the union. The impact of such dissolution go a long way in creating disruption in the academic future of the children, and affects them negatively. It is therefore the opinion of this research that dissolution of marriages be curtailed to the barest minimum, as possible.

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