Victims of separated parents—Children and their rights with Special reference to Muslim personal law:

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The children of today are the future of tomorrow. Every child having a conductive and enacting environment can blossom and shine in all spheres of life. The journey of life cycle of a child survival, child development and child protection. Child survival entails the basic right of being born in safe and non-discriminatory environment. The worst victims of broken homes and unhappy marriages are children. Children suffer lot not only in terms of the immediate trauma of the breaking up their homes but also through subsequent divided loyalties and breaking up of parental concern. The tragic feature of this marital estrangement is that a child born to the couple has to share the mishap by being denied the healthy environment of a happy parental home. This paper proposes to examine the victims of separated parents—children and their rights with special reference to Muslim personal law.

Key words: Child, Muslim Personal Law, Separated Parents

A child who sells flowers or magazines at a traffic light every day is not just another salesperson, but someone who is deprived of a normal and secured family life, and denied his or her basic rights of nutrition, health, education, and development. Unfortunately, it is common to see children in vulnerable and difficult situation. At an age where they should be in school and learning, children are married off: engaged in work— in farms, households, restaurants, and in industries: trafficked for labour and sexual exploitation: and exposed to abuse and violence.

Tradition and belief can also be turned into positive ones which can contribute to protecting children. For instance, the value and importance of marriage can be used to ensure that marriage does not become a harmful event in a child’s life but that is instead destined to a person that has reached adulthood and therefore full maturity. Although child protection is often concerning invisible aspects of children’s lives, if not ensured, it may have an enormous impact on children’s lives and cause an endless loss for the Nation. Creating systems and strengthening structures to protect children will contribute to giving children a joyful and thriving life and will lead to advancing humanity.

The high rate of delinquency among children may fairly be ascribed with their broken homes. Broken homes too is said to constitute considerably to delinquency of juveniles\(^1\) the tragic feature of this marital estrangement is that a child a child born to the couple has to share the mishap by being denied the healthy environs of a happy parental home.

Children are the hopes and expectations of future. They must have the right to care, affection and intelligent guidance of their natural and understanding parents\(^2\). A birth of a child in Muslim law is a form of blessing bestowed by God sent to a married couple. Since according to guidelines in the Quran, a divorce, if unavoidable, should be conducted as amicably and equitably as possible, and if there are children as a result of the marriage, the parents should continue to co-operate in the interest of the children. Even parents who are divorced should still have ‘mutual consent and due consideration’ (Surah-Al-Baqrah II: 233) which other regarding the upbringing of their children\(^3\).

Parental separation and divorce are major life stress for all family members. For children, the experiences of separation and divorce may lead to short and longer terms adjustment reaction\(^4\). During

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\(^1\) P.D. Sharma, *Young Delinquents in India*, Pp.186 (Print Well, 1996).
the two year period immediately following divorce, most children show some adjustment problems. Boys tend to display conduct or externalizing behavior problems. Both – boys and girls may experience educational problems and relationship difficulties within the family, school and peer group. The mean level of maladjustment has consistently been found to be worse for children of divorce in comparison with parents. Certain characteristics of children and certain features of their social contexts mediate the effects of parental divorce on their adjustment. In terms of personal characteristics, males between the ages of three and eighteen are particularly at risk for post divorce adjustment problems, especially if they have biological or psychological vulnerabilities. Biological vulnerabilities may result from genetic factor, parental and pre-natal difficulties or a history of serious illness or injury. Psychological vulnerabilities may be entitly by low intelligence, a difficult temperament, low self-esteem or a history of previous psychological adjustment problems.

The stresses and strains of residential changes, economic hardship, role changes and consequent physical and psychological difficulties associated with the immediate aftermath of separation may compromise parent’s capacity to co-operate in meeting their children’s need for safety, care, control, education, and relationship with each parent. Couples vary in the ways in which they co-ordinate their efforts to present their children following divorce. Three distinct co-parenting styles have been identified in studies of divorced families. With co-operative parenting a unified and integrated set of rules and routines about maintaining the children both custodial and non-Custodial household is developed.

Children’s primary attachments are generally to one or both of their parents and the very role of parenting (to nurture and to teach) is impacted by high conflict with the consequence that:-.1. Children whose parents are emotionally unavailable to them suffer a loss of care and nurturing. 2. Children whose parents cannot problem solve, other than by resources to litigation, do not experience (or learn) a co-operative model of parenting. Children observe, adopt and reflect their parent’s relationship experiences and, irrespective of their stage of development, learn to associate anger, conflict, distrust and betrayal with relationships. The financial burden of conflict (through legal costs incurred through litigation and/or the economic impact of an inability to obtain or maintain employment or breakdown in child support arrangements) directly affects the day to day physical care of children.

In Muslim law maintenance (hafqah) is a birth right of children and an absolute liability of the father to maintain his children. The Kerala court ruling in the case of Pavitri v. Kathressna held that it is wrong to interpret this rule of Muslim law to mean that the putative father of such a child has no liability to a cannot be directed to maintain. The rule of Muslim law about the mother’s liability is in fact meant for illegitimate children of unknown parent’s needs consideration. As regards daughters it was held in pakrchi v. Kunnrcha that on marriage a daughter “passes over to her husband family under Mohammedan law and then these is no obligation on the member of her natural family to maintain her after marriage even if she is divorced. This ruling is not correct. Because of original rule of Muslim law is that

“Among those whom a person must provide maintenance are his daughter who have attained majority, whether they are unmarried (Bekric) or divorced or widowed (sayeh). In special

7 AIR 1959 Ker 319.
9 (1911) 36 mad 380.
circumstance the parents and other relatives of a divorced or widowed woman may be required by Muslim law to provide maintained to her.\textsuperscript{10}


The Muslim child aged alone two years is defiantly entitled to claim maintenance under sec 125 of the Code of Criminal Procedure provide from its father and the father is board to maintain his child. Rahmathullah vs Pyare\textsuperscript{11}

In Kadeeja vs. Aboobacker\textsuperscript{12}

Under Islamic Law father has to maintain his son till they attain puberty and daughter till they married. He cannot take the stand that he is in impecunious circumstance and so unable to maintain them. Father’s obligation to maintain his children cannot be denied on the ground of his pecuniary incapacity or Indigence so long as he has ability to earn. He is bound to maintain there even if he is indigent or children are in the custody of the mother. In Muzaffaruddin vs Hazira Begum\textsuperscript{13} the view which has been taken that the child is kept in custody by the mother and is prevented from returning to the father, it cannot be said that the child is at fault. Even sometimes the child prefers to live with the mother due to natural affection or attachment for her. That would not affect the liability of the father to maintain the child. But so long as the custody of the child remains with the mother, he cannot refuse to pay maintenance of the child.

Father’s duty to maintain the girl continues still she marries it is the father’s primary duty to provide residence and maintenance to the child. In Noor Ahmed v. Mohamad Ji aluddi\textsuperscript{14} it was held that the father’s duty to maintain the daughter ceases on marriage.

Section 125 of the Criminal Procedure Code was enacted with the object of enabling deserted wives, helpless and deserted children and destitute parents to secure the much needed relief & as to prevent pregnancy\textsuperscript{15}. Under section 125 of Criminal Procedure Code the maintenance of the children is obligatory on the father irrespective of his religion and as long as he is in a position to do so and the children has no independent means of their own, it remains his absolute obligation to provide for them. In so far as children born of Muslim parents are concerned there is nothing in section 125 of Criminal Procedure Code which exempts a Muslim father from his obligation to maintain his children\textsuperscript{16}.

This provisions are not affected by clause (b) of section 3 (1) of the 1986 Act and indeed it would be unreasonable, unfair, inequitable and even preposterous to deny the benefit of section 125 Criminal Procedure Code to the children only on the ground that they are born of Muslim parents.

Supreme Court held in Noor Saba Khatoon v. M. Quafri\textsuperscript{17} so, the children of Muslim parents are entitled to claim maintenance under section 125 Criminal Procedure Code for the period till they attain majority or to able to maintain themselves, whichever is earlier and in case of female till they got married. The right is not affected by divorced wife’s right to claim maintenance for maintaining the infant children in the custody for a period of two years from the date of birth child concerned under section 125 (1) of Criminal Procedure Code and clause (3) clearly gives definition to maintenance. If a divorce taken palace by mutual consent the divorced wife is not excluded from the purview of section 125. This is the duty of the father to maintain his minor children it means he has neglected or refused to maintain under the Muslim law and the section 125 of Criminal Procedure Code the obligation of a Muslim father having sufficient means to maintain them till they attain majority in the case of ferole till they get married. Is absolute notwithstanding the fact that the minor children are living with the

\textsuperscript{10} Dr. Tahir mohamod & Dr. Safmohamod, Universal Law Publishing co-Prt. Ltd. Delhi 2013. P.195

\textsuperscript{11} 1996 (2) H.Lir.735 at pp 745 (mad)

\textsuperscript{12} 1996 (1) WLR 149 at p 149

\textsuperscript{13} AIR 1943, Mad 768

\textsuperscript{14} AIR 1992 Mp 244 at pp 248

\textsuperscript{15} Bashirun Nathan. AIR 1960 Raj 255.


\textsuperscript{17} AIR 1997 SC 32
divorce wife, in the case of State of Haryana & Ors. Vs. Santra\textsuperscript{18}, the Muslim women protection on Divorce Act 1986 has not in any way affected the Criminal Procedure Code provisions relating to maintenance orders in father of the children. The Act 1986 has nothing to do with the maintenance of a divorced couple.

Conclusion:

The family consists of the husband, the wife, and their children. Muslim personal laws assign to man the responsibility for earning and providing the necessities of life for his wife and children and for protecting them from all the vicissitudes of life. On account of one’s idiosyncrasy or personal rancor or family dispute, man sometimes tends to ignore the prerogative of the relatives. The most rewarding deed is to spend on the wife and children. In Bukhari, Kitab Uz Zakat, explain in Fathul Bari 3/190. The prophet said you spend a dinar in God’s way, you spend a dinner in freeing a slave, you spend a dinner on a poor person and you spend a dinar on your wife and children. The highest reward is reserved for the dinar spent on your wife and children.

\textsuperscript{18} 2000 (5) SCC 182; AIR 2000 SC 1888