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Why more woman are petitioning for divorce

IKIM Views with PROF DATUK DR ZALEHA KAMARUDDIN

IN order to understand the concept of divorce, one must appreciate the different nature of marriage from the Islamic perspective. The difference in the concept of marriage is reflected in the approach adopted for divorce.

In Western society, marriage is viewed from the perspective of individual happiness. If the notion of romantic love and individual happiness are not realised in a marriage, divorce is seen as an easy option.

In Islam, however, the welfare of the family as a unit is given greater emphasis than individual happiness. In modern Malaysian Muslim society, though the marriage institution still plays an important role, its stability has been challenged.

Various studies have shown that the trend towards individual happiness is more pronounced now due to many factors. These challenges must be addressed seriously by policy makers to ensure that the family, which is the foundation of society, remains stable on all fronts.

Despite the fact that the aim of the Shari'ah is to establish a healthy family unit through marriage, Islam does recognise divorce. Divorce is, however, couched in the context of important moral and human principles. Islam commands husbands and wives to consort with each other with kindness or to part from each other with kindness.

Notwithstanding Qur'anic affirmations of equality and justice, rationality and strong moral exhortation, studies show that women were not given adequate access to the divorce process. Despite reforms in legislation which have been passed in a majority of Muslim countries to correct abuses in Muslim society, there is widespread exploitation of divorce laws, and Malaysia is said to be no exception. It is therefore pertinent to see whether there is empirical evidence to support this contention especially in relation to access to the divorce process.

A national study on divorce conducted by the Department of Shariah Judiciary in 2005 shows that females made up the majority of applications presented in the Shariah courts of all states in Malaysia.

Zaleha in her 2008 research indicated that although the husband may not wish to institute divorce proceedings, neither does he have much interest in the marriage itself. This indifference on the part of the husband may motivate the wife to petition for divorce.

Where women are economically dependent on their husbands, this in many cases acts as a deterrent to divorce in Malaysia. However, since there has been an increase in female participation in the labour market of Malaysia (46.7%), women have gained more economic power. The options open to them also increased with divorce being one such option.

Another factor which may explain why more women are petitioning for divorce in some states of Malaysia is the changing role of women in the family. Besides being economically independent, there is an awakened consciousness of equality and non-discrimination. Women are increasingly becoming more vocal about inadequacies in their marriage. They are choosing to pursue their careers and higher education, thus giving themselves more opportunities to participate in activities outside traditional stereotypes, which confine them to roles as home-makers and mothers.

Legal aid, which was introduced to Malaysia in 1971 with the prime objective of assisting litigants with limited means to initiate legal proceedings, including divorce, has also assisted women to petition for divorce.

Although there are some states with higher incidence of male petitioners, possible explanations for this must be explored. One study (Kuchiba et.al., 1979) which tends to support the trend for males being more likely to institute divorce proceeding in Malaysia shows that in most cases in Malay society, the wife is the one who instigates the divorce by persuading the husband to expedite matters through divorce via talaq. It would appear on paper that the men are petitioning, but, in reality, both parties agree to divorce. Due to the process being expedited via divorce through talaq, the husband seems to be initiating the divorce.

The discrepancy in the percentages of female plaintiffs between states directly correlates with legal provisions, implementation of these provisions, education levels, exposure on marital rights and responsibilities and the socio-economic status as well as the local culture. With the increase in the number of women gaining more financial independence, the percentages of female divorce plaintiffs are expected to increase in the future.

Another factor which cannot be ignored when considering the low number of women petitioning for divorce is linked to economic dependency. Although there are many women currently in the work force, one study on Americans (Weitzman, 1985) reveals that compared to men, there are more unemployed women. Upon divorce, these women are faced with a higher chance of being plunged into poverty. So whilst economic dependency may remain hidden during marriage, it becomes a public problem when women are confronted with poverty.

The financial loss suffered by women upon divorce is more often than not far greater than that suffered by men. Women will be more concerned about division of property, settlement of maintenance, and arrangements regarding children. Since women are more likely to retain the care of children, these matters are of more concern to them.

All the above empirical evidence shows that generally Muslim women in Malaysia do have equal access to divorce. The next important question would be where they would go from there. The future seems so bleak.

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