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DIVORCE AND WOMEN

SYED FAHAD SAGHIR

In dealing with divorce proceedings the legal system is inherently bent toward men. The law could make several important changes that might facilitate justice and equality in such cases.

Divorce is now a very prominent societal ill affecting millions of Americans and threatening to affect even more. Even though its adverse effects are now apparent, there has been tremendous growth in the number of divorces in the United States. Each year divorce terminates more than one million marriages. In fact, more than forty percent of marriages that took place during the 1980s are expected to end in divorce.¹ Divorce issues become important not only because they complicate the family system, but also because of their serious social and economic consequences in American life, particularly for women and children. Though divorce by nature is destructive, its detrimental effects are further aggravated by flaws in the judicial system. Certain divorce laws regarding division of property, alimony, and the system's limited definition of community assets have caused many women and children great and unnecessary hardships.

In 1969, California passed the first no-fault divorce statute in the United States. While the previous laws required some form of fault from a partner as grounds for seeking divorce, the new law only requires one partner to assert their incompatibility. Formerly, all financial and economic consequences were tied to fault, demonstrating bias against the victim of fault. The new law, however, seeks to distribute

wealth and income of divorcing parties on the basis of fairness and equity rather than moral history. Using mostly data collected close to the implementation of the new law, this article will demonstrate that, despite some positive developments, several changes are in order.

Research on marital property reveals that most divorcing couples have little or no property to divide. This is mainly because couples are relatively young when they divorce and, hence, are in the lower income groups. Therefore, sharing of community property has not been much of a source of disagreement. However, the family home has always been and continues to be divided property. Traditionally, since the woman was perceived as the innocent victim of divorce, and because she had decorated and maintained the house, she was awarded the family home. However, because of the equal division requirement of the Family Law Act,² the number of homes being divided equally has risen sharply, which generally means that the two parents maintain joint ownership or the house is sold and the proceeds shared equally. As a result of the new law, the percentage of women getting the greater part of home equity sharply declined from sixty-one percent in 1968, under the old system, to forty-six percent in 1977, under the new law.³ Since women normally gain custody of children, there has been a greater displacement of women and children since the new law was passed.

Generally, alimony is awarded more in initial years of divorce than in later years, probably because alimony and child support are lumped together in an unallocated award. However, the trend of women receiving alimony is decreasing. A survey done in Connecticut's New Haven County shows that in the 1970s, fifty-one percent of divorced women received alimony compared to thirty percent in the 1980s. A closer analysis reveals that women in the highest income group who had been married for fifteen years or more received the highest award.⁴ This probably means that women from lower income groups suffer the most and often live on the brink of poverty.

The equalization principle tends to even out the financial burden of one household becoming two, so that each member suffers a proportional reduction in standard of living. This law makes the father pay a certain amount to the mother for child support. However, this approach raises a debatable issue about how to evaluate costs of raising children. Should the costs be estimated using pre-divorce figures or the

expenses incurred after the divorce? The latter method can sometimes lead to a huge discrepancy, since costs often increase after divorce when the mother must look for employment and arrange for childcare.⁵ Even though there has been a rise in the number of fathers gaining custody of children, child support awards are granted mainly to women. However, a look at the data reveals a great deal of injustice to women. The cost estimated by the U.S. Department of Labor in 1984 of raising a child in a two-parent urban family with a moderate budget was \$5,951; for those with a low income budget the cost was \$3,968. By contrast, the average child support granted in the 1980s was \$2,657. This suggests that fathers paid less than half the expenses of raising their children.⁶ Nan D. Hunter notes the following:

Increasing rates of divorce will, over time, lead to a major transfer from men to women of the bulk of family care expenses. . . . The child support system thus contributes to the feminization of poverty, or the massive shift of women-headed households into the official zone of poverty.⁷

Even more poignant is the situation of the household incomes after divorce. A survey conducted in Los Angeles County in 1978 showed that the male post-divorce standard of living rose by forty-two percent, while that of women plummeted seventy-three percent.⁸ Judges have always been wary of awarding more than fifty percent of the husband's income to his wife and children. Hypothetically speaking, suppose a husband's income is \$1000. The judge awards \$450 a month to the wife for herself and her two children. Prior to divorce, four people shared \$1000, but now three people share \$450 and the husband has \$550 to himself. Additionally, he may save on taxes because of the support he provides, while the wife actually pays taxes on her support money. Such problems are further aggravated by factors such as inflation and non-compliance.

Another way divorce laws create injustice for women is by their refusal to recognize a professional educational degree as a community asset. Typically, such issues are raised when a spouse, usually a wife, supports the other spouse through school with hopes of a brighter financial future for the family. During this time, she often provides fi-

nancial support as well as some household services, which would otherwise have been provided by the husband. If divorce occurs once these tough days are over and the husband has acquired his professional education, the law refuses to recognize the role of the wife in the increased earning ability of her husband.

Another post-divorce problem facing women is entering the work force. A survey conducted in the early 1980s regarding divorced women showed that a mere thirty-two percent of women had worked full-time throughout their marriages. The rest had worked either part-time or full-time on an irregular basis, while the remaining sixteen percent had always been full-time homemakers.

The trauma is greatest for a woman when she enters the work force for the first time. Faced with the immediate pressure of finding a job, she is likely to accept the first job she is offered, which in most cases pays less than her skills should demand. This, coupled with the fact that jobs traditionally held by women are quite saturated, has caused wages in such occupations to be below average and has limited opportunities for professional growth.⁹

The increased rate of both divorce and participation of women in the labor market raises important issues regarding care and support of children. From 1970 to 1981 the number of children living with one parent increased by fifty-four percent.¹⁰ Considering that most mothers gain custody of children and that they are mostly left impoverished after divorce, reduced economic circumstances would be a likely characteristic of children with divorced parents.

Following divorce, families normally change their residences, forcing children to change schools, social circles, and neighborhoods. Even if the child's past teachers or friends do not provide much support, the familiar environment of the school proves to be a powerful source of stability for the child. This sudden disruption causes the mental trouble of coping with changes and has an adverse effect on the child's mental abilities.

Part of the cause of the mental anguish for children is the fact that the newly-divorced mother has to seek employment. A mother's decision to work outside the home is based on factors such as her own needs, the needs of her children, and the needs of the family unit.¹¹ For mothers lacking an alternative source of income, the financial factor is particularly important. Although employment can bring self-

sufficiency, she may feel overburdened; and it may be difficult for her to find enough time for the emotional and physical needs of her children. Often the children are left with baby-sitters in the morning and are picked up after work. Upon arriving home, the mother again gets busy with household chores such as preparing dinner and cleaning house. Thus, the children suffer not only from less attention from their fathers, but also from their mothers.¹² Many children suffer even more because they were accustomed to a mother who was a full-time homemaker. Since an average American family does not have grandparents or other extended family members available (because of the hectic American lifestyle), and since fathers typically refuse to baby-sit, mothers generally shoulder all childcare responsibilities.¹³

The sudden decline in the standard of living of the post-divorce family does not go unnoticed by the child. He compares his present lifestyle to the kind his family enjoyed previously. He also feels resentment and a sense of deprivation by looking at the considerably higher current standard of living of his father or his father's new family. This, coupled with the psychological inaccessibility he feels toward his mother, is a cause of great mental disturbance for him, more so because of the rapid and simultaneous occurrence of these events.¹⁴

A correlation exists between experiences early in life and educational outcomes.¹⁵ Children who experience divorce tend to perform poorly in their educational lives compared with contemporaries raised with both parents.¹⁶ A recent study by the British National Child Development Study shows that the educational performances of girls from divorced families are influenced by the working status of their mothers. Girls with nonworking lone mothers are less likely to have high level qualifications than young women from intact families or those with a working lone mother.¹⁷ There is a similar trend among boys, except that the likelihood of obtaining higher education is lower for boys with lone mothers, whether or not those mothers work.

Many surveys and studies provide evidence that the economic circumstances in adulthood differ significantly between children from disrupted backgrounds and those brought up in intact families. Maclean and Wadsworth, in their analysis of the British National Survey of Health and Development, found that adult men from disrupted family backgrounds were more likely to be unemployed and more likely to fall

in the lowest income bracket, when compared to men from intact families. A similar American survey shows that children of divorced parents were more likely to be “idle,” meaning neither employed nor pursuing an education. Women from nonworking lone mother families are expected to have lower household incomes when compared with women from intact families and with women from working, lone mother families. Women from employed lone mother families tend to have economic circumstances not much different from their peers from intact families. Hence, in a girl’s case, having an employed mother enhances prospects of high educational and economic achievement.

As young people grow they will marry and have children of their own. It is a well-established fact that people who marry early and bear children at a young age are at a greater risk of divorce. Research shows that young women from disrupted family backgrounds are more likely to cohabit and become pregnant at an earlier age than their contemporaries from intact families.¹⁸ However, this research also reveals that the differences in giving birth to children outside of wedlock between those with lone working mothers and those with lone nonworking mothers are not as high as their educational and economic differences.

In light of the difficult circumstances in which most divorced women and their children live, there are a few judicial changes to recommend. First, the law should expand its definition of “community asset” to include career assets such as professional education or job training that the other spouse directly or indirectly helped to acquire. Second, since economic security is vital to the upbringing of children, the law should work to ensure that child support is reflective of the actual costs of raising children. Total costs should be divided equitably between husband and wife and should take inflation into account. To prevent the child from feeling a sense of deprivation, the child must be allowed to live the lifestyle of the wealthier of the two parents, if they are not equally wealthy. Also, if the father does not have the economic ability to provide the support his child needs, the government should intervene with financial support. The United States government ran into a surplus last year. There would be no better use of the excess funds than investing them in the future of young Americans.

Finally, the law should provide adequate financial security to women at the time of divorce, especially to those who have spent their

entire marriages as homemakers. Alimony assistance should cover a period long enough to allow women to obtain some sort of job training to enhance their employment opportunities. Older women who have remained housewives all their lives and who do not have a bright prospect of finding a respectable job, should receive enough spousal support to equalize the standard of living of both the spouses. According to the data, it is evident that having a lone working mother brings positive effects on the daughter's educational and professional prospects. Thus, the law should encourage divorced mothers to find employment. One way to accomplish this might be to further reduce taxes for divorced, working mothers.

Despite many needs for improvement, there is evidence that progress is occurring in at least one area of the law. A 1978 survey conducted by the U.S. Bureau of the Census revealed that only fifty percent of divorced women received funds for child support or alimony on time and that a quarter of them received less than the stipulated amount. Not surprisingly, there was little judicial interference with any noncompliance, mostly because people viewed it unwise to bring suit unless the amount due exceeded the cost of hiring a lawyer. To correct this problem, laws such as the one passed by the Utah legislature in 1997 have allowed courts to suspend the drivers licenses, professional or occupational licenses, and recreational licenses of a financially responsible parent if he or she has neither made timely payments nor has in good faith made any effort to do so.

It takes little more than a glance to discover that the law is bent toward men. Although the judicial system has come a long way toward providing greater justice for both members of divorce, there are still a number of changes that need to be implemented before our system can rightfully claim to be just.

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Notes

¹Preston, "Estimating the Proportion of American Marriages That End in Divorce," *Methods and Research* (1975), 435, 457.

²*California Civil Code 4000–5174* (West 1970 & Supp. 1981).

³Lenore J. Weitzman, "The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards," *UCLA Law Review* 28 (1981): 1181–268.

⁴James McLindon, "Separate but Unequal: The Economic Disaster of Divorce for Women," *Family Law Quarterly* 21 (fall 1987): 351–405.

⁵Nan Hunter, "Child Support Law and Policy: The Systematic Imposition of Cost on Women," *Harvard Women's Law Journal* 6 (March 1983): 1–27.

⁶McLindon, "Separate but Unequal, 351–405.

⁷Hunter, "Child Support," 21.

⁸Hunter, "Child Support," 3.

⁹Weitzman, "The Economics of Divorce," 1251.

¹⁰U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Marital Status and Living Arrangements* Series P-20:372 (March 1981–82), 1, 5 (Table D).

¹¹Kathleen Kiernan, "Lone Motherhood, Employment and Outcomes for Children," *International Journal of Law, Policy and the Family* 10 (1996): 233–49.

¹²Weitzman, "The Economics of Divorce," 1181–268.

¹³Weitzman, "The Economics of Divorce," supra note 276, at 1262.

¹⁴Weitzman, "The Economics of Divorce," supra note 278, at 1262.

¹⁵Weitzman, "The Economics of Divorce," supra note 278, at 1262.

¹⁶Weitzman, "The Economics of Divorce," 1262.

¹⁷Weitzman, "The Economics of Divorce," 1263.

¹⁸K. E. Kiernan, "The Impact of Family Disruption in Childhood on Transitions Made in Young Life," *Population Studies* 46 (1992): 213–34.