STABILIZING MUSLIM MARRIAGES: SOME REFLECTIONS ON ETHICAL MANAGEMENT OF FAMILY LAW

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Abstract:
Marriage breakdowns and family instability with their debilitating after-effects on women and children are the hallmark of greatly mechanized global community at present time. To remedy the situation, social scientists have diagnosed a multitude of variables as the precursor for the upward trends in marriage breakdowns and family disintegration. In Malaysian context, women`s financial independence, easy access to multimedia and early marriage are among the factors which account for the rising phenomenon of divorce even during the early years of marriage among Muslims. To remedy the situation, marriage counseling, law reform and pre-marriage courses are mostly emphasized by both mainstream legal scholars and women right activists. It is my considered opinion that these formalistic approaches if not integrated with the emphasis on ethical side of Islamic law may cause more marriage breakups than enhancing families. The bigger issues in terms of ethical management of Muslim family, such as marriage fidelity, sense of commitment to care for women and children, and spousal mutual empathy and responsibility may help a great deal in acculturating our society from early childhood to adolescence and through adulthood. The paper, therefore, argues for the more concentrated ethical approach for addressing the underlying causes of marriage disability in order to give more effect and meaning to the existing formalistic social and legal measures by reforming Muslims` mindset and outlook towards family.

Keywords: family disability and marriage breakdowns in Malaysia, ethical management.

Abstrak:

Konflik pernikahan dan ketidakstabilan keluarga dengan efek samping yang melemahkan perempuan dan anak-anak merupakan ciri khas fenomena komunitas global yang sangat mekanis saat ini. Untuk mengatasi situasi ini, ilmuwan sosial telah mendiagnosa banyak variabel sebagai tanda dari tren peningkatan konflik pernikahan dan disintegrasi keluarga. Dalam konteks Malaysia, kemandirian keuangan perempuan, akses mudah ke multimedia dan pernikahan dini merupakan beberapa faktor yang menyebabkan meningkatnya fenomena perceraian bahkan selama tahun-tahun awal pernikahan di kalangan umat Islam. Untuk mengatasi situasi tersebut, konseling perkawinan, reformasi hukum dan kursus pendampingan pra-nikah sebagian besar ditekankan oleh mayoritas ilmuwan hukum dan aktivis hak asasi perempuan. Tulisan ini berpendapat bahwa pendekatan formalistik ini jika tidak terintegrasi dengan penekanan pada sisi etika hukum Islam dapat menyebabkan lebih banyak perceraian daripada meningkatkan stabilitas keluarga. Masalah yang lebih besar dalam hal pengelolaan etika keluarga Muslim, seperti kesetiaan pernikahan, komitmen untuk merawat perempuan dan anak-anak, dan saling berbagi empati dan tanggung jawab, dapat banyak membantu dalam membudayakan etika keluarga ini pada masyarakat kita dari masa kanak-kanak sampai remaja dan dewasa. Oleh karena itu, tulisan ini menekankan akan pentingnya pendekatan etis yang lebih terkonsentrasi untuk mengatasi penyebab yang mendasari masalah perkawinan agar lebih memberi efek dan makna pada tindakan sosial dan hukum formal yang ada dengan mereformasi pola pikir dan pandangan Muslim terhadap keluarga.

Kata Kunci: Konflik pernikahan dan ketidakstabilan keluarga di Malaysia, manajemen etika Muslim

A. Introduction

From the Islamic vantage point, family is an institution the stability of which is organically connected not only to individual happiness but also to that of the community (the *Ummah*). That is why jurists describe its pivotal importance as a *lubnah* (brick) essential for the establishment of society.[1] Beyond, our refutation of dismissing such a thesis as traditionalistic by the secularists/liberals and feminists, Muslims are unanimous on this. In practice, however, the stability of family is under threat of disintegrating forces, some of which are external and others internal. Unlike the common approach of singularly blaming others (global liberal cultural hegemony

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[1] Abdu al-Rahman Al-Shabuni, *Nizham Al-Usrah Wa Hilli Mushkilatuhā Fī Daw`i Al-Islām* (Beirut: Dār al-Fikr, 2001), 27.

and new millennial trends) for all our internal malaise, the Islamic approach views the self – inflicted damage to be the most destructive than that of the outside influences. The anecdote of a group of passengers in a double decker boat according to *hadith*[2] and the Qur`anic maxim of change from within[3] explicitly enunciate this point.

One of the most debilitating factors which destabilizes families is the staggering statistics of divorce in our time. For instance, *according to statistics provided by the Shariah Judiciary Department Malaysia (JKSM), the number of Muslim couples getting divorced rose by 2.3 times from 20,916 in 2004 to 47,740 in 2012, and to 49,311* in 2013. As to what are the underlying reasons which propel couples to separate, the studies in Malaysia attribute them to multiple variables. For instance, some lawyers like Rafie Mohd Shafie diagnoses it as one of the negative consequences of women`s economic independence, their better access to legal services and their increased awareness of their rights unlike the economically dependent and less informed women of their rights during the bygone days.[4] Malaysian Anthropologists like Datuk Dr Shamsul Amri Baharuddin identifies the stress of modern life in the cities as one of the reasons why marriages have become fragile. Industrialization/urbanization and greater acceptance of divorce among society are other anthropological factors behind the rising trends in divorce. Others like local Muslim feminist advocates, namely Sisters in Islam (SIS) sees early marriages to legalize sex among youth and easy process of divorce initiated by men as other propellers to cause the surge in divorce.[5]

Conversely, religious authorities like Datuk Daud Abdul Rahman, Assistant Minister in the Chief Minister's Office (Sarawak), emphasises other factors like financial difficulties and infidelity as other motivating factors to cause marriage breakdowns. To remedy the situation, Daud reveals that both JAIS (Jabatan Agama Islam/Islamic Religious Department) and JAKIM (Department of Islamic Development Malaysia) have established family and community service centers in the mosques to provide counselling and advice to the couples in cases of marital

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[2] "The parable of those who respect the limits of Allah and those who violate them is that of people who board a ship after casting lots, some of them residing in its upper deck and others in its lower desk. When those in the lower deck want water, they pass by the upper deck and say: If we tear a hole in the bottom of the ship, we will not harm those above us. If those in the upper deck let them do what they want, then they will all be destroyed together. If they restrain them, then they will all be saved together" Sahih al-Bukāhri, Number 2361.

[3] The Qur`an lucidly mentions that changing state of human society whether negative or positive depends on self-initiated measures…." Allah does not change a people's lot unless they change what is in their hearts"(al-Ra`d:11).

[4] Boo Su Lin, "One Divorce in Malaysia Every 10 Minutes," *Malaymail Online*, May 3, 2014, http://www.themalaymailonline.com (accessed 23 July 2017).

[5] Nor Fadzlina Nawi, "Family Mediation in Malaysian Muslim Society: Some Lessons for the Civil Family Law in Malaysia," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2011), https://papers.ssrn.com/abstract=1961940.

conflict. Ultimately, however, he urges Muslims to "*strengthen marriage and family institution to help reduce household conflicts and divorces.*"[6]

In view of the above, one may infer that in the final analysis what is the most effective way to stem the time of marriage breakdown is self-help and imbuing positive values, such as tolerance, harmony and peace in the family among the married couples. In other words, the bottom line is that contemporary problem of marriage disintegration is one of attitudinal. Accordingly, this paper hypothesizes that aside from existing formal measures, legal, administrative and educational in society, there is a need for activating the self-help measures in the form of orientating people at the family level with right values to enhance and foster family institution and marriage. Formalists approach to it, though useful at dealing with managing its effects is inadequate to address its root causes. For instance, modern pre-trial procedures dealing with marital dispute in the Malaysian case have their own limitations. First, it deals with symptoms and not nips the underlying causes of marriage breakdown in the bud. Ethical values, such as strong conviction that marital sex is not only unlawful but carries capital punishment, if instilled in the children can condition them not to commit marriage infidelity once grown as adults. Or being orientated that the overall wellbeing of the family and marital life are what most should matter can prepare the couples to strike a balance between work and family life. Similarly the Islamic conception that marriage is a solemn commitment rather than a mere formal contractual institution if upheld could be a powerful psychological tool with which the turbulence of disintegrating liberal lifestyles can be repelled. The Qur`an loudly pronounces this topmost ethics of marriage: "And how could ye take it when ye have gone in unto each other and they have taken from you a solemn covenant?"[7]

It is this premise in perspective that this paper, theorizes that aside from adult education about ethics of marriage managements, such as marriage courses, Usrah classes in the mosques and work places, there is a need that family ethics of Islam should be incorporated in the upbringing of the children in families so as to nurture our people from the very age of discernment about family and its establishment on a strong moral foundation as directed by Allah and His Prophet. It is with this concern in perspective that this paper intends to offer a reflective analysis of stressing the non-justiciable rules of the Shari`ah, namely the ethical dimension of marital life to stabilize marriages.

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[6] Sharon Ling, "Authorities Alarmed by High Rate of Divorce Cases among Muslims," *The Star Online*, September 24, 2013, http://www.thestar.com.my/news/ (accessed 23 July 2017).
[7] Al-Nisa:21.

B. Contextualization the Issue

With the intrusion of liberal ideas and "women right ideologies" into the Muslim societies since the era of colonization of Muslim world, the panacea for remedying family issues was seen to be one of the legalistic reform. This movement took off with the culture of codification of classical *fiqh* in the form of modern Islamic family laws. In consequence, in line with the idea of *tanzimat*, the Ottoman Law of Family Rights was proclaimed in 1917 providing a pattern for all other states to emulate. Although the initial idea of such exercise was to extract rules of classical *fiqh* from the jurists` treatises and codify them after the pattern of modern statutes, gradually gender ideology and its agenda for one-sided emphasis on women`s rights alone, shifted the emphasis from protection of family wellbeing to one of the battle for gender supremacy in the household. This is where the consideration for larger issues of moral duties and rights as essential ingredients for family integration and even reform was regarded as unimportant and secondary. In consequence, the Western model of applying Islamic family in the form of dry modern statutory codes instead of improving the condition of women practically has worked against their interest and partly has caused family instability.

Accordingly, to exaggerate the advantage of the legalistic solutions over informal ethical approach to family issues, pro-legal reform advocates, proffer some tangible proof of mechanical family law reforms, noted among which include: legislative changes to restrict polygamy, requiring divorce to be pronounced before the court, authorizing a wife to ask for judicial separation, compensating a wife who has been wantonly divorced, raising the minimum age for marriage, facilitating a divorcee`s right to child`s custody and limiting a husband`s right of obedience upon his wife.[8] Although well-intentioned as far as their *ratio legis* in terms of protecting women`s wellbeing is concerned, the critics believe that such reforms may backfire as it has brought to public domain intimate matters which could have been handled by improving the moral fiber of community and effectualizing family mediations and instilling God-consciousness among the masses.[9] Moreover, sociologically, sundering legal reform from the Islamic ethical framework at the application level would be ineffective due to male segment`s want of respect to the law, who would defy them either openly by using legal stratagems (*hiyal*). To top it all, basing legal reform on imaginary concept of women`s *maslahah* by ignoring scriptural evidences to the contrary (unimpeachable textual evidences from the Qur`an or the Sunnah) has forced modern legislatures to create exits (*makharij*) in the law. This result is that in real life such restrictions on men are ineffective. For instance, fixing a minimum age for marriage, 16 for a girl and 18 for a boy in most Muslim family laws, though threatened with unenforceability in terms of judicial relief, is waived with the parents'

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[8] Kristen Stilt and Swathi Gandhavadi, "Strategies of Muslim Family Law Reform," Faculty Working Papers, 2011, http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/11.

[9] Anis Ahmad, *Women and Social Justice: An Islamic Paradigm* (Institute of Policy Studies, 1996), p. 65.

consents. Or Polygamous marriages though illegal without the court`s permission, would be still legalized if they actually occur so long as they are valid according to classical Islamic law. [10]

From *ushūl al-fiqh* perspective, methodology of such legal reform has its own flaws, whether jurisprudential or extra-jurisprudential. The well-known juristic use of *takhayyur* (eclectic approach) and *talfīqh (*patching up) are disputed methods among the jurists. *Takhayyur* involves the process of choosing a legal view from among the plurality of views of the classical jurists on a point of Islamic law, which is thought to be favorable to women. For instance, as to whether triple pronouncement of divorce at one setting effactually repudiates marriage or not there are four divergent views among the jurists.[11] The Malaysian position to date represents that of the majority which upholds its finality whereas Arab countries makes it reversible based on the position adopted by Ibn Taymiyyah.[12] On the issue of a legal guardian`s authority to contract the marriage of his ward, Morrocan Mudawwanah 2004 diverged from Malik position in favour of Hanafi view by providing that:"…a woman of marriageable age may exercise her right to marry "according to her choice and interests".[13] Likewise, including stipulations in favour of women in the marriage contract for instance prohibiting a husband from taking another wife as allowed by Hanbali School has been adopted in many Muslim jurisdictions albeit of its unenforceability in real life. Ottomon judges were taking congnizance of such conditions during their reign of Egypt.[14] [15]

Talfīqh, on the other hand, though similar to *takhayyur* in terms of choosing from among the existing juristic views, is distinct from it as it purports to combine different views on related issues with the intention of laying down a general legal proposition. For instance, by looking at Maliki position on non-occurrence of divorce under duress, the Hanafi views its invalidity if pronounced in anger; and Ibn Taymiyah`s verdict is its ineffectiveness in the state of drunkenness. A patch-up legal statement based on the above would be: A divorce cannot be constituted if the husband does not intend it or there is a reason to believe that he is incapable of forming the intention to divorce his wife.[16] *Talfiq* again is a contested mechanism among the jurists to be considered as a sure method of reform.

More questionable is the use of extra –jurisprudential approach to family law reform. According to which the legislature uses a number of strategies, such as use of

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[10] Stilt and Gandhavadi, "Strategies of Muslim Family Law Reform," 14.

[11] Abu Muhamad Abdulah bin Ahmad Ibnu Qudamah, *Al-Mughni*, vol. 7 (Beirut: Dār Al-Fikr, 1404), 234.

[12] Wahbah Al-Zuhaily, *Juhud Al-Taqnīn Fiqh Al-Islāmi* (Beirut: Mu`assisah al-Risālah, 1987), 37–42.

[13] Preamble 2; Stilt and Gandhavadi, "Strategies of Muslim Family Law Reform," 18.

[14] Ibid,pp.26-27.

[15] Stilt and Gandhavadi, "Strategies of Muslim Family Law Reform," 26–27.

[16] Ibid, p.9.

public welfare (*maslahah*) to empower the court to interfere, or attempt to domesticate secular concepts such as notion of human rights, gender equality, International conventions on women rights, etc. to press for the reform. An example of such a judicial involvement to regulate family matters is empowering the judge to make polygamy subject to its permission in most personal law of the Muslim states, following its first legislative recognition by section 8 of the Iraqi Law 188 of 1959. Moroccan Family Code, *mudawwanah* 2004 also provides that "Polygamous marriages would be allowed only "under compelling circumstances and stringent restrictions and with the judge's authorization". Similarly, *mudawwanah* subjects the husband`s unilateral right to divorce to court authorization, its attempt at reconciliation which if failed, requires the husband to deposit maintenance for the divorcing wife and his children before granting him the divorce.[17] Nevertheless, on occasions, judges recourse to liberal reinterpretation of a particular textual evidence and overturn its classical construction to reform the law. One instance is Egyptian family law reform 2000 which authorizes the judge to arbiter the case of petition for *khulu* even if the husband does not consent to it on the basis of what the Prophet did in the case of Tsabit ibn Qays.[18]

In view of the above, the sufficiency of such legalistic approaches to reform has been criticized in the recent literature. For instance, it is held that restrictions against polygamy is not only impractical but also can be challenged on several Islamic legal grounds. For instance, the Egyptian attempt to restrict polygamy was rejected by Shaikh al-Azhar as being ultra vires of the Qur`anic injunction: "men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has [ordained to be] guarded.[19]Consequently, a call for rethinking, termed as "*reform of the reform*"[20] has emerged recently. For instance, in view of the prevalence of customary marriage (unregistered) among the University students in Egypt, the legislator eased the requirement of marriage registration before a marriage notary in 2000, which was mandatory under the old law since 1931.

In the Malaysia context, the above reforms of the law have not yielded much positive results either. For instance, restrictions on polygamy, among others, has given rise to cross-border polygamous weddings as when a man wanting to contract second marriage if cannot fulfill the conditions set by the law such as getting the

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[17] Stilt and Gandhavadi, "Strategies of Muslim Family Law Reform," 18–21.

[18] The wife of Thabit ibn Qais came to the Prophet and said, "O Allah's Messenger I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner (if I remain with him)." On that Allah's Messenger said (to her), "Will you give back the garden which your husband has given you (as Mahr)?" She said, "Yes." Then the Prophet said to Thabit, "O Thabit! Accept your garden, and divorce her once"(Sahih al-Bukhari, No. 5273). See also Ibid, p.23.

[19] al-Nisa: 34; Ibid,p. 29.

[20] Stilt and Gandhavadi, "Strategies of Muslim Family Law Reform," 32.

consent of the first wife, simply travels to Thailand or Singapore and gets his wish fulfilled; judicial divorce has created the problem of hanging marriages where a husband who has divorced his wife either does not attend the hearing to repeat the divorce before the judge or when attending lies by telling that still love his wife(*masih suka dia*); stipulation of divorce during marriage on account of failure to provide maintenance to one`s spouse has led men to accuse his wife for disobedience, restricting underage marriages has plummeted the index for pre-marital sex among young lovers, just to name a few.[21]

A question arises: Why the well-intentioned reforms do not bring about the adequate desired outcomes? The common answers in the Malaysian context are all legalistic, i.e. increase penalties, tighten the nails and restrictions, go beyond the conventional methods of *talfīq* (patching) and *takhayyur*(eclectic) and do it more liberally when approaching reform; look for Western models, the so called universal concepts, such as gender equality and justice. In this scenario, the Islamic ethical dimension of legal rules and moral values which in the Islamic view are crucial not only for the cohesion of marriage and family but for making formal legal rules to work have not been sufficiently articulated in the agenda on Family law reform. For instance, in Malaysia, the self-help mechanisms of dealing with marital discord (*nushūz*) has been overshadowed in favour of marriage counseling and mediation at the court and even the institution of *tahkīm* has been given formal shape rather than leaving it to family members to handle.

Accordingly, it can be observed that modern pre-trial procedures dealing with marital dispute in Malaysia have their own limitations. First, it deals with symptoms and not nips the underlying causes of marriage breakdown in bud. For instance, strong conviction that marital sex is not only unlawful but carries capital punishment can condition a Muslim couple`s mind not to commit marriage infidelity. Or being orientated that the overall wellbeing of the family and marital life are what most should matter can prepare the couples to strike a balance between work and family life. Similarly the Islamic conception that marriage is a solemn commitment rather than a mere formal contractual institution if upheld could be a powerful psychological tool with which the turbulence of disintegrating liberal lifestyles can be repelled. The Qur``an loudly pronounces this topmost ethics of marriage: "And how could ye take it when ye have gone in unto each other and they have taken from you a solemn covenant?"[22]

Second, resolution of marital dispute through *tahkīm* in Malaysia is inefficacious to remedy this human problem. The main reason is that it has become

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[21] For details see Sayed Sikandar Shah Haneef, "Women and Malaysian Islamic Family Law: Towards a Women-Affirming Jurisprudential Reform," *Journal of Social Welfare and Family Law* 33, no. 1 (March 2011): 47–60, doi:10.1080/09649069.2011.571470.

[22] Al-Nisa: 21.

formalized the form of mediation (*sulh*) by marriage female counselors in all cases of application for divorce to the Shari`ah courts since 1970s.[23] Moreover, it has modified the traditional concept of *tahkīm* as an independent informal institution by assigning it to a committee of three people rather than relatives of the spouses. For instance, Section 47 of the Family Law in Federal Territories 1984 stipulate that in the case of application for divorce filed by one of the spouses, of the other party does not agree the court will constitute a conciliation committee consisting of a Religious Officer as the chairman and two other persons whereby it is not mandatory that the the two perons should be relatives of the disputing parties. "the Court shall, where possible, give preference to closes relatives of the parties…". It is only in the case of constant quarrels (*syiqāq*) where the court may assign the task of reconciliation to the realitives to arbitrate.[24]

Accordingly, the *raison d`etre* of mediation via *tahkīm* has been not to thwart the motivation for marriage breakdown from the outset but to deal with the symptoms once the couples have made their minds to separate. From Shari`ah perspective, *tahkīm* being an informal procedure being negotiated outside the court room has become a formal procedure at court premises and the defaulting party can be charged for contempt of court.[25] This is contrary to what was practiced in Malaysia during pre-modern times where personal disputes between the married couple was jealously guarded as top family secrets by the families and were resolved by memebrs of both families to avoid publicity. On occasions, the headman or *imam* were involved if parties were confident that they will not expose their private affairs.[26]

To remedy the situation, what is needed is bringing the reform from within, a Qur`anic prescription, namely stressing the ethical aspect of martial bond which not only can glue the marital ties adhesively but acculturate both men and women to abide by the legal reforms, the premium of which they do not contest.

C. Moral Visions of Islamic Family

Unlike the hedonistic, secularist and Western notion of marriage being a mechanism for living together of a man and woman for gratification of carnal desire concomitant

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[23] Raihanah Azahari, "The Development of Family Mediation in Malaysian Muslim Society," *European Journal of Social Sciences* 18, no. 2 (2010): 220–230 The reason that is a part of formal court procedure for divorce is that the court would not grant a divorce unless a reconciliation by the counsellors is exhausted; See also Zainul Rijal Abu Bakar, "Sulh in the Malaysian Shari`ah Courts," in *Rediscovering Mediation in the 21st Century* (Asia Mediation Association Conference, Kuala Lumpur: Asia Mediation Association; Malaysia's Leading Law Publisher, 2011), 4, http://barcouncil.org.my/conference1/pdf/16.SULHINTHEMALAYSIANSYARIAHCOURTS.pdf.

[24] See 48, Islamic Family Law Act (Federal Territories) 1984.

[25] Ibid.

[26] Nawi, "Family Mediation in Malaysian Muslim Society."

but not necessarily for that of human`s desire for progeny, the Islamic vision is primarily moralistic and spiritual. Matrimonial bond is a spiritual vessel for permanent union between a man and a woman to jointly strive together to make themselves better Muslims and be the begetters of the next generations of Muslims who would not only be their spiritual assets after their demise but that of Muslim constituency and the Ummah. This moral-cum spiritual vision of Islam about marriage and family has not only been lucidly delineated in the Qur`an and Sunnah but also regulated by Islamic rules of Islamic familial relationship. The moral philosophy of marriage as envisioned by Islam includes: first, fulfilment of humans` natural urge for mating and intimacy in accordance with Shari`ah and a manner which is fitting to human untainted nature ( *fitrah al-salimah*)/*tab`u al-salim)*. Otherwise, sexual offending and other inhumane sexually deviant behaviors may add to the index of social ills in a given community. The Qur`an provides:" Marry the spouseless among you...if they are poor, God will enrich them of His bounty."[27] Some of the prophetic traditions also reinforce these purposes: "O young men, whoever among you can afford to get married, let him do so, and whoever cannot afford it, let him fast, for that will be a shield for him."[28]; "If a suitor approaches whose religion and character pleases you, the let his marry. Otherwise, there will be a lot of immorality and corruption in the world."[29]; "Marriage is my Sunnah (practice), those who do not follow my Sunnah (practice) are not from me.'[30]

Second is enhancing human psychological and emotional wellbeing. God ordains: "And among His wonders is this: He creates for you mates out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think!"[31] Underlining this mundane human need and the necessity of its fulfilment in a lawful way, al-Ghazli holds: "The [third benefit of marriage] is obtained by enjoying the company and sight of one's wife, and by shared amusement, whereby the heart is refreshed and strengthened in worship; for the lower self (*nafs)* is prone to boredom and inclined to shun duty as something unnatural to it. If constrained to persevere in something repugnant, it jibes and backs away, whereas if revived occasionally by pleasures it acquires new strength and vigor. In familiarity with women, one finds the relaxation to banish boredom and to refresh the heart."[32]

Third is facilitating one`s advancement to the path of spirituality and religiosity since it involves compliance with the Prophet`s Sunnah, protection against sexual deviancy and starting the journey towards building the foundation of Muslim

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[27] al-Nur:32.

[28] Sahih Bukhari,Number 4778; Sahih Muslim, Number 1400.

[29] al-Tirmidhi, Number 1084.

[30] Ibn Majah, Number 1256.

[31] al-Rum 31.

[32] Abu Hamid Muhammad ibn Muhammad Al-Ghazali, *Ihyā `Ulūm Al-Dīn*, vol. 2 (Cairo: Maktabah al-Tijāriyah al-Kabīr, n.d.), 30.

Ummah, through establishing a God-fearing family. " O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones, over which are [appointed] angels, harsh and severe; they do not disobey Allah in what He commands them but do what they are commanded."[33] The Prophet says: "Whoever gets married completes his Iman."[34] He also says: " Men! Verily the act of seeing [a beautiful woman] is from Satan, therefore whoever finds this inclination in him should go to his wife."[35] He also ordains: "… and surely! Every one of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is a guardian and is responsible for his subjects; a man is the guardian of his family (household) and is responsible for his subjects; a woman is the guardian of her husband's home and of his children and is responsible for them; and the slave of a man is a guardian of his master's property and is responsible for it. Surely, every one of you is a guardian and responsible for his charges."[36]

Fourth is increasing human capital and supplying the Ummah and the Prophet with righteous constituency. The Prophet declared: "Whoever chooses to follow my tradition must get married and produce offspring through marriage (and increase the population of Muslims) so that on the day of resurrection I shall confront other Ummah (nations) with the (great) numbers of my Ummah."[37] Some scholars of *maqasid* like al-Shatibi consider this as the topmost purpose in the hierarchy of Shariah purposes of marriage.[38]

Fifth is envisioning it to serve as the most conducive environment for nurturing the new generation, providing social placement for elderly, disabled and weak members; and functioning as a social security system for taking care of members` financial needs and equitable distribution of family wealth among them.[39]

Sixth is anticipating it to realize cohesive organization of family and connect families for establishing a larger morally and spiritually connected harmonious community. Ibn `Ashur philosophizes this aim as forging three-tier relations within the family, namely, harnessing marriage ties, harnessing in-laws relations and improving the methods of resolving marital conflict.[40]

Seventh is providing a unique mechanism for psycho- emotional bonding between married couples so much so that God eloquently describes it as *ifda* (al-Najjar,2014): "…And how could you take it while you have gone in unto each other…."[41] *Ifda* is

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[33] al-Tahrim:6.

[34] al-Mu'jam al-Awsaṭ , Number 992.

[35] Sahih Muslim, Number 1231.

[36] Sahih Bukahri, Number 6719.

[37] Ahmad Ibn Husain Al-Baihaqi, *Al-Sunan Al-Kubrā*, vol. 3 (Multan: Nashr al-Sunnah, 1985), 45.

[38] Ibrahim ibn Musa Al-Syatibi, *Muwāfaqāt Fī Ushūl Al-Sharī`a* (Beirut: (Beirut :Dār al-Ma`rifah, n.d.), 127.

[39] Jamal al-Din Atiyah, *Nahwa Taf`īl Maqāshid Al-Sharī`ah* (Beirut: Dār al-Fikr, 2001), 124.

[40] Muhammad al-Thāhir Ibn `Ashur, *Maqāshid Al-Sharī`ah Al-Islāmiyyah* (Tunisia: Al-Sharikah al-Tunisiyyah, 1978), 67.

[41] al-Nisa: 21.

such a divine purpose in term of adult- relationship through Islamic marriage as it it is symbolic of so an unparalleled bonding together of a man and a woman that no other human models the prime motivation behind which is squarely profane can bring about. Unveiling this metaphoric meaning of the verse, al-Najar maintains that Allah`s choice of the word *ifda* in describing the marital bond is of utmost significance. Literally, the word *ifda* means reaching to a place. In the context of the verse in question, it implies the highest degree of intimacy*(tamazzu*j) which an Islamic marriage aims to bring about between the spouse, both in term of spiritual interconnectedness and mutual psychological cum emotional merging together, comfort, harmony and physical intimacy. Accordingly, *ifda* as such describes the marital relationship to be so intimate, spiritually and physically, that the couples feel as if they are part of each other *(imtizaj)*. [42] Hence, if this Qur`anic ideal is realized in a marriage, its enduring spiritual and physical stability could not be shaken by the turbulence of disintegrating forces of changing mores about sex and marriage.

Last but not least is taking care of its structural organization. The Qur`an superbly elucidates it: "Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded."[43] This is an organizational necessity at various levels of social strata in terms of task distribution whereby Hammudah describes it as a sociological necessity.[44]

In view of the above, to me, if the above moral vision of Islam are internalized by Muslims, the result would be the reform of their attitude and perception about persona life and family issues , hence going along way not only to improve marriage durability but given effect to legalistic reform which legal pragmatists demand.

D. Ethical principles of Managing a Family

Indisputably, Islamic legislation contains adequate avenues by which a failed marriage or where it's continued *de jure* existence proves oppressive either to a husband or a wife can be dissolved. Nevertheless, divorce being a morally detestable behavior (*abghad al-halal*) is a blameworthy act from Islamic ethical outlook as the Prophet declared: The most hated of permissible things to Allah is divorce. "45 Accordingly, to prevent marriage break down and keep the stimuli for divorce to the minimum, Islam provides a set or moral guidance by which factors causing marriage breakdown can be thwarted, topmost among which are: first, mutual respect and kind treatment. A married couple from day one must uphold the principle of mutual kind

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[42] Abdu al-Majid al-Najjar, "Maqāshid Al-Sharī`ah Fī Ahkām Al-Usrah- Muwajjahāt Li Ahkām Al-Usrah Al-Muslimah Fi Al-Gharb," *Al-Majallah Al-`Ilmiyyah Li Al-Majlis Al-Urubbiyyah Li Al-Ifta Wa Al-Buhuth* 7 (2014): 12.

[43] al-Nisa: 34.

[44] Hammudah `Abdu Al-`Ati, *The Family Structure in Islam* (Indiana: American Trust Publications, 1995), 23.

[45] Ibn Majah, number 1018,

treatment of each other during their matrimonial life- *wa `ashiruhunn bi al-ma`ruf*. The Qur`an directs a husband: "And treat them kindly. Then if you hate them, it may be that you dislike a thing while Allah has placed abundant good in it."[46] Similarly, it directs a wife: "And due to the wives is similar to what is expected of them, according to what is reasonable."[47] Accordingly, kind treatment is a moral law which creates mutual duties between the spouses and perforce if upheld stamps out all avenues for misunderstanding to arise and ultimately rock the delicate marital bond. To live up to this moral ideal in day-today marital life, some of the Islamic ethical strategies include: 1)fulfilling both spousal moral and legal duties which arise out of the marriage contract; 2) for a husband to take note of her wife`s nature. A *hadith metaphorically* describes the women to be of tender nature/emotionally sensitive[48]; look at her positive characteristics(by virtue of a *hadith*)[49] and be considerate to her as she is under his *qiwamah*(under his authority.[50];.3) And finally, a wife has to reciprocate those good deeds with taking care of her husband`s needs in terms of coitus, guarding his honor, protecting his property and keeping the family as a vessel of serenity, comfort and love so as to forestall the possibility of marital breakdown on this account.[51]

Second, it is staying away from marriage infidelity. The Prophet prescribes Islamic marriage as a shield against immodesty and sexual promiscuity. "Whoever among you can afford it, let him get married, for it is more effective in lowering the gaze and guarding chastity, and whoever cannot, then fasting will be a restraint (*wija'*) for him."[52] The Qur`an also underlines the fundamental quality of a believing wife as: "Righteous women are (meant to be) devoted and to guard what God has (willed to be) guarded even though out of sight (of the husband)."[53] Accordingly, some of the ways to make this moral vision of marriage a reality in today's intensive culture of moral laxity towards sexual purity and stable marriages are: first, as a matter of principle, bearing with one`s spouse and being faithful to him/her for the sake of the overall wellbeing of the family, and exercising patience when one of the spouses temporarily is absent. Likewise, a wife should understand man`s excessive

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[46] al-Nisa:19.

[47] al-Baqarah:228.

[48] The Prophet has said: "*And I command you to take care of the women in a good manner for they are created from a rib and the most crooked portion of the rib is its upper part; if you try to straighten it, you will break it, and if you leave it, it will remain crooked, so I command you to take care of the women in a good manner*"(Sahih Bukhari, No. 5186).

[49] The Prophet has said: "*A believer must not hate (his wife) believing woman; if he dislikes one of her characteristics he will be pleased with another*" (Sahih Muslim, no.275)..

[50] al-Nisa: 34.

[51] Abdul Karim Zaidan, *Al-Mufassal Fi Ahkām Al-Mar`ah Wa Al-Bayt Al-Muslim Fi Al-Sharī`ah Al-Islāmiyyah*, vol. 3 (Beirut: Muassisah al-Risālah, 2000), 56.

[52] al-Nasa`I, p. 26.

[53] al-Nisa:34.

psychological needs to practice polygamy if that should be the case instead of having affairs out of marriage.

Third, it is guarding against any situations which can give rise to sexual arousal and stimulates sensuality. If it occurs, the Prophet directs one to go to one`s lawful spouse: *"Jabir reported that Allah's Messenger (may peace be upon him) saw a woman, and so he came to his wife, Zainab, as she was tanning a leather and had sexual intercourse with her. He then went to his Companions and told them: The woman advances and retires in the shape of a devil, so when one of you sees a woman, he should come to his wife, for that will repel what he feels in his heart."*[54] To top it all, both husband and wife should take measures which brings them the most intimacy satisfactions so as to prevent one`s partner seeking outlets outside the wedlock.

Finally, it is ethical management of marital conflict. Conflict, discord, disagreement and a decision to go one's own way at times are bound to arise in marriages either due to imperfect handling of the delicate balance in marital life or pressure from the outside. Islamic law prescribes its own internal mechanism for resolving marital conflict. The Qur`an calls it refraction *(nushūz)* more often taking the form of behavioral changes either on the part of a husband or a wife, or even can be mutual *(shiqāq)*. Beyond its legal/juristic management as detailed in Islamic law, there is a need to bring the ethical ways if we are desirous not only to facilitate amicable way of spousal separation but also stemming it from happening or achieving a reconciliation. In his analysis of legalistic treatment of marital conflict, Anis Ahmad observes that to cater for practical problems arising in the families, Islamic law in the sense of a holistic integrated system of ethics and law, has its own internal ethically enriched mechanism which much of the so called legal reforms of the modern time have downplayed. In this pursuit, the most disturbing methodology is one of extra-Qur`anic approach. For example, matters of marriage conflict which should have been resolved within the family with mediation from the family elders,[55] has been *scandalized in courts.*[56] It is scandalous in the sense that the information about intimate issues between a husband and wife (*asrār al-zawaj*) are first brought before a judge, who then refers them to a counsellor and then to the open court when a reconciliation is not reached. Accordingly, some ethical strategies to deal with marital discord include: first, proactive role of a wife in nipping the roots of marital discord

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[54] Sahih Muslim, Number 3240.

[55] al-Nisa: 34.

[56] Ahmad, *Women and Social Justice*, 44.

on the part of her husband in the bud. Some useful ethical tip are :1) never fail to fulfil her marital duties; 2) initiate dialogue when there is communication breakdown due to misunderstanding; third, allow the husband to contract another marriage if she cannot fulfill his conjugal expectations; 3) and lastly, to overcome her jealousy in the case of polygamy. When becoming older, Sawdah had forgone her right of intimacy partly with the Prophet in favour of Aisha. The Prophet also has stated *"If a woman prays her five (daily prayers), fasts her month (Ramadan), guards her chastity and obeys her husband, it will be said to her: 'Enter Paradise by whichever of the gates of Paradise you wise."*[57] Second, the husband must know his position vis-à-vis his wife, be understanding of her sensitive nature, be forgiving and compassionate to her, never expect the ideal as looking for a perfect match is an empirical impossibility, and earn her respect(Qur`anic *and ahadith* evidence we referred before) These are some of the ethical rules which if not observed, the legalistic Qur`anic solutions alone as anticipated by the Qur`an, *wa`z , hajr* and disciplining would not work. A wife who has no any respect for her husband (because not earned it) cannot be expected to reform just by hearing advice from the husband, or when the husband sleeps apart from her or even by receiving physical assault from him. Lastly, reinstate the role of mediation by the families from both sides as directed by the Qur`an in the event if moral guidance is not heeded and the couples have reached a deadlock. "If ye fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things."[58] This in turn necessitates restoring the role assigned to the family and giving full meaning to the authority of a legal guardian in the marriage decision of his ward as required by majority of the *fuqaha* so that he can be empowered to negotiate a settlement when there is a trouble in the marriage later on.

E. Conclusion

To treat the phenomenon of family disintegration mainly caused by the progressive increase in the divorce statistics is a worrying concern the word over. Since causes of family fractions in consequence of spousal separation can be multiple, it is natural that analyzing its underlying reasons requires a multidisciplinary approach. This paper, however, argues against the insufficiency of legalistic approach to marriage durability and stresses the significance of highlighting ethical approach to the problem not only to give life to legal reform but also to prevent family disintegration from happening by reforming people`s attitude towards

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[57] Musnad Imam Ahmad, Number 1664.
[58] al-Nisa:35.

seriousness of family issues. To this end, it outlined the ethical vision of Islam about marriage and family. Likewise, it summarized some of the ethical steps which can strengthen marriage bond and help resolve marital fractions if a conflict surfaces. To incorporate these ethical advises into strategies, it recommends the following: (1) sensitizing young generation about the seriousness of marriage and creation of happy family through interactive programs from the very nascent age; (2) restoring the role of God`s way of solving marital problems via adult education and legal reform; (3) intensifying campaign about the ill-effects of family disintegration not only upon society but on individual`s wellbeing; and (4) bringing together morality with law in any discourse on Islamic family law at the academic forums.

In the final analysis, however, the study being a theoretical discourse on the issue does not claim conclusiveness but only intends to serve as a moral precursor for incorporation of family ethical management within the social agenda of mitigating the problem of marriage instability by reforming the mind.

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