

Separation of parents: Custody of children

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“Instead, I think over the years we have cut the strength of marriage and relationships by the law and weakened the institution. We have tried to deal with relationships with no-fault divorce, with child custody, with so many other avenues; and it has not helped”-Murphy Timothy

Parenting is a serious business that should not be taken casually. In our society, as soon as a couple gets married, the next thing everyone wants is news of a baby on the way. There are a number of theories in circulation with regard to bearing children as soon as possible. The elders believe that children, especially sons are means to strengthen the bond of marriage besides expanding the clan and carrying on the name of the family. They call them the link to the chain that binds a man and a woman. (God knows whatever happened to love and affection!) For the impoverished people, a rapid production of children is a means to increasing income of the family. Since women are generally fraught with maternal instincts, they want a living doll to cuddle and nurture. According to an old folk's weird tale, a smart way to tame an aggressive woman and force her to remain at home is to keep her pregnant; as if she would bear robots and not human beings.

Despite its encumbrances and accompanying pain, delivering a child is much easier than raising it what to talk of taking quality care of more than one. To make matters worse, when struggling immature young adults or even mature but destitute men and women are forced to or volunteer to become parents, the consequences are unimaginable. Again, this may still be tolerable to some extent if the marriage and household remain intact but when matters come to divorce/separation, the repercussions are enormous, particularly with respect to minor children. They are the principal/worst sufferers in such an event. They are dragged in courts over disputes related to custody or child maintenance. At a tender age when a warm, loving and secure home environment is necessary for their rearing, they are subjected to humiliation and uncertainty that can permanently impact their personalities adversely.

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In their enthusiasm to encourage couples in having babies, people often tend to ignore the dark sides of a broken marriage. For two human beings, living together under the same roof and sharing a life, involves first of all, love and respect followed by understanding and tolerating one another's imperfections along with the capability of dealing with various problems in an amenable manner. These factors may vary in different family set-ups but they all boil down to one thing-the determination to carry on with a relationship under all circumstances. This alone is essential in laying the ground for becoming parents and raising better human beings.

In the words of James E. Faust: “To be a good father and mother requires that the parents defer many of their own needs and desires in favor of the needs of their children. As a consequence of this sacrifice, conscientious parents develop a nobility of character and learn to put into practice the selfless truths taught by the Savior Himself.”

Unfortunately, certain events can lead to a complete turnaround of this idealistic situation. Not everyone is blessed with the comfort of a steady relationship and a safe home. People change and that is enough to change everything, either for good or for bad. As it is, these days the rate of divorce is going up. There is really nothing wrong in couples parting ways if they are unable to get along because after all, they are tied together in a contract which can be terminated any time but whether they like it or not, the common link between them constitutes the children-what would be their fate if the parents separate? The answer could be in probabilities of a number of eventualities depending upon manner of settlement, whether amicable or through nasty legal battles. Judges could decide stay with mother or father with visitation rights or alternative duration of stay with either, or custody is granted to a guardian other than the biological parent etc.

The problem in Pakistan’s context relates to clash of multiple legislative concepts. On the one hand, there exists laws promulgated by the British and on the other there is Muslim personal law, both having minimal rules to arrive at uniform decisions in the variety of cases that appear before a court of law. Consequently, the courts enjoy vast discretion therefore issues related to custody have many different outcomes. A detailed study might reveal that the underlying principle on which reliance is made appears to be “the best interest of the child.”

An eye-opening paper on several decisions made by Pakistani judges has been written by Dr. Mudrasa Sabreen ([law_on_the_custody.pdf](#)) where she concludes: “The dearth of statutory provisions relating to custody gives wide discretion to courts in matters relating to child custody. As a result, the courts often render inconsistent judgments, ensuing in ambiguity in custody disputes. The Guardian and Wards Act 1890 was promulgated during the colonial period, whereas courts in contemporary Pakistan rely on the principles of Islamic Family Law (Muslim Personal Law). It is, therefore, imperative to consolidate the myriad of laws relating to the rights of children and ensure that ‘the best interests’ of the minor are afforded precedence over personal law. Efforts have been made to reform the law related to custody in Pakistan but no consolidated statute has been made which gives detailed rules regarding custody of the child. Such a statute will stifle the wide discretion exercised by the courts, thus, resulting in consistent decision making which is the very objective of any legal system.”

In a patriarchal society where the male is supposed to be the bread-winner, it is natural for courts to prefer handing over custody to the father but now that women are economically more independent this should no longer be a valid consideration. Pakistan is signatory to The Convention on the Rights of the Child 1989 which presses upon the sole idea of a child’s best interest, whether this would be possible in the event of custody with the father or mother. Besides, there are many factors which have to be taken into account and which are bound to be ranging from case to case. A few examples would be character of the parents, financial disposition, intentions to re-marry, social mobility, religious beliefs, citizenship of a particular country and sometimes, even preference of the minor for one parent or the other.

As far as diversity of decisions is concerned, judges cannot be blamed for not observing some set patterns since there could occur judicial imbalance causing emotional trauma to affected parties. Therefore, it is important to lay down some guidelines to facilitate fair judgements on the basis of applying different checks to ensure a child's benefit, not just in terms of material tools but also its psychological health and emotional satisfaction, yet, simultaneously providing justice to either parent.

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