Chapter - I

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1.1 Introduction

Family is the first social group we encounter in our lives and with which we have the most enduring relationship. Burgess and Locke state that it is “a group of persons united by the ties of marriage, blood or adoption, constituting a single household, interacting and intercommunicating with each other, their respective social roles of husband and wife, mother and father, son and daughter, brother and sister and creating a common culture” (Qtd in Joseph, 2001). It is the most effective kinship group that has existed in the society. Family does not mean a few persons put together under one roof, but it implies an environment of love, belongingness, security and bliss prevailing among them. Family is a multifunctional group which satisfies basic physical, mental and spiritual needs of human beings. The very concept of a family means a blissful atmosphere which guaranties them marital peace, fulfillment and growth. The highest of human ideals, values, morals and positive attitude and qualities such as love, devotion, cooperation and sacrifice are found in family. “It is the universal and oldest institution in the society. The family may be defined or structured it always constitutes an area of diffuse and permanent solidarity between a limited number of individuals and this is probably its most important distinguishing characteristic” (Sillis, 1968). Family is the institution which forms the basis of every other institution in the human world. “It is an association supporting and supported by every civilization, sanctioned by law, esteemed by knowledge, blessed by religion and wisdom extolled in its highest achievement by literature, art and endowed with specific attributes by all form of economy” (Pothen, 1996). This important institution is well framed
on another institution namely, marriage. Family is an integrated and stable unit of transmission belt of traditional cultural values.

Unlike animals, human beings go through the procedure of marriage to establish a family. In most of the societies including Muslims marriage is considered as a permanent, lifelong and sacred union. This stable universal social institution is established by human society to control and regulate sexual life of human beings. According to Robert H. Lowie “Marriage is a relatively permanent bond between permissible mates”. *(Qtd in Joseph, 2001)*

Gillin and Gillin have said that “marriage is a socially approved way of establishing a family procreation. Whatever be the definition of marriage, the concrete idea is that marriage is the permanent union of two persons formed under a contract, for the purpose of synergizing a family and for mutual help and companionship” *(Qtd in Joseph, 2001)*.

In many societies marriage is a secular and not a religious contract. When religion plays a part in marriage, it increases the emotional bonds and serves to give more weight to the sanctions of the community. For a Hindu, marriage is sacrament and hence unbreakable. “It is a union not only for this birth, but for all the births to come, in other words, immortal, interminable and eternal *(Pothen, 1996)*. When we examine scriptures, we come across many passages to support the view that the marriage is a union blessed by God Himself and hence none should break it. In the Holy Bible, it is written, “Man must not separate, what God has joined together” *(St. Mathew’s Gospel 19:6, Good News Bible)*.

Like any other religion, Islam also lays emphasis on the first and foremost righteous act, and therefore it forbids all forms of sexual relationship outside marriages either premarital or extra marital. The marital relation between man and woman is not a temporary relationship, it is
permanent and enduring. Prophet Mohammed stressed the importance of marriage in the following words. “It is necessary for you to marry because marriage is the most powerful shield against the allurements of sight and the protection of your parts; if one of you could not afford it, let him fast because fasting weaken the sexual impulse” (Ahmed 198 : 32, Qtd  Quran).

Muslim marriage is known as ‘Nikah’. Nikah is defined to be a contract which has for its object the procreation and legalizing of children (Hidayatuallah, 1977). Therefore Muslim marriage is not a sacrament but a civil contract. The contract is between the groom and bride’s father. The contract takes place in the presence of a Muslim Priest Wali, often by his consent and attested by two witnesses. “All the rights and obligations it creates arise immediately and are not dependent on any condition precedent such as payment of dower by husband to wife” (Hidayatuallah, 1977).

Marriage is institutionalized in every society. There is no society where the incidence of marital contract is completely absent. Marriage generally constitutes living together till the end of their lives. However, in every society we come across breaking down of marital bonds. The married couple may seek separation for various reasons. In some communities separation is permissible by taking divorce and in some others either it is forbidden or permitted only in exceptional circumstances.

The general meaning of the term ‘divorce’ is the legal termination of a socially approved marital union. Divorce is the failure of a given marriage. The word divorce in English is derived from the Latin Word ‘divortium’ which is again derived from ‘dis’, which means ‘apart’ and ‘vertere’ means ‘to turn’ (William, 1910)

Prof. Kay (2012) says Divorce is the consequences of failure or fault of both spouses. Divorce is not the cause of family disruption. It is the effect of family disintegration which provides legal recognition of a broken
marriage contract, terminates marital privileges and obligation, such as the custody of minors and alimony for the wife and children. All unsuccessful marriages do not necessarily end in divorce, nor do the best marriages always last until death.

So divorce is a complete turn from the way of life of the couple had so far. In legal language it might appear as a simple phenomenon; but in practical life its implications are massive (Pothen, 1996). Divorce may be considered from different aspects besides its usual definition as the legal dissolution of marriage bonds. Hence divorce is more than a legal problem and often an acute personal experience.

“We can find an enormous increase in divorce rate among the people of Kerala in recent years. According to recent surveys within a decade, there is a hike of divorce rate of 350 cases of couples walking out of the wedlock in Kerala. Cochin, which is fast emerging as a metro-city tops in divorce cases, around 1200 couples are breaking marriage in the city every year, according to reports. It was followed by Trivandrum with 1000 divorces. The report said that the family courts in two cities were grappling more than 4000 cases related to marital disputes” (Devasia, 2007). The number of divorce shot up ever since a new provision for divorce by mutual consent was introduced in the Divorce Act in 1976 by an amendment. It has made divorce easier as a one year separation, is the only stipulation.

A Muslim husband may divorce his wife by repudiating the word ‘talaq’ without giving reason. Talaq is an Arabic word and its literal meaning is to release or untying a knot, being released from a covenant. “It is a derivative of itlaq, which means sending away or untying the knot of marriage. The latter is technical meaning. Thus essentially means coming out of the marital knot and becoming free. Italaq also means leaving, giving up” (Qtd in Engineer, 1992). As a mode of divorce, talaq is peculiar because
a Muslim husband has unrestricted right to divorce his wife without giving any reason. Muslim law does not require the existence of any matrimonial offence as an excuse for *talaq*, because in a society dominated by males, the conjugal happiness primarily depends upon the efforts of husband. Whenever a husband finds that the marriage can’t be continued happily (either because of the misconduct of the wife or because of his own fault) he is empowered to dissolve the marriage. But this absolute authority of pronouncing *talaq* should not be misused by the husband. Unfortunately the unrestricted right of *talaq* has been misunderstanding and Islamic guidelines for it has been ignored by the society and court of law. The result is that there is no legal control over the unrestricted freedom of Muslim husband to dissolve marriage by few words. Islam provides some check against divorce and enumerated rules for the support of divorced women and their children.

Instant divorce is alien to Islam’s spirit. Under present Muslim law the term *talaq* is exclusively used for divorce proceedings initiated by the husband, whereas divorce at the instance of wife is called *Khula*. A Muslim husband can render his wife a stranger “by one stroke of his tongue” as opposed to the deliberately lengthy procedure of *Khula*, woman has to undergo to liberate herself from a cruel husband. Moreover as marriages in Islam is a solemn contract both the parties have equal right to revoke in accordance with Quranic procedure if the other party breaches it. Also the Quran is based on principles of natural justice and there is no question of granting legal superiority to men on any issue, including divorce.

Kerala’s Muslim women have been especially affected by the ills of ‘*talaq*’ which in this wired world comes not only by post but also by mobile phone and internet *(Menon, 2009)*. In the northern part of Kerala especially in Malabar region divorce and polygamy creates a serious problem among Muslims. But in southern part of Kerala among Muslim community divorce
and polygamy are not a common problem. “It has been found out that people following Hindu religion are a majority who approach the court for a divorce. Muslims do not rather approach the court for terminating their marriage. Muslim woman mainly seek the judicial aid for the sake of acquiring alimony’ ” (Engineer, 1992).

In North Malabar region, woman compelled into marriage at adolescence are discarded soon after few years of menial domestic subjugation and stranded penniless. So often the man scamp off his wife’s jewels after setting up a small business with the dowry money she had paid. There are men who turn the Shariat into adventure of going from one marriage to another or luring adolescent girls with gulf dream. “In Malappuram district girls are not allowed to study beyond the age 12, considered the marriageable age” (Menon, 2009). “Child marriages, instant talaq and polygamy among Muslims ensure a greater distrust among Muslim women of North Malabar region” (Shah, 1955). Cases filed in the family court of Malappuram district of Kerala State revealed several evidences. Hence marital disharmony is a serious issue among the Muslims of Malappuram. And women folk are the sufferer from divorce and polygamy. The analysis of the several cases handled in the counseling unit of the family court of Malappuram, lead the investigator to study the impact of divorce among Muslim Women, in terms of their family life, economic aspects, psychological well being and quality of life.

1.2 Research Questions

1. What is the Attitude of Muslim Women towards Divorce?

2. What are the Causative factors leading to Divorce and its Consequences?

3. What are the problems associated with the Process of Divorce among Muslim Women?
4. What are the Problems associated with the Remarriage and Maintenance of Divorced Muslim Women?

5. What are the levels of Psychological Well-being and Quality of Life of the Divorced Muslim Women?

1.3 Significance of the Study

Family is very often defined as a monolithic altruistic institution. It is understood as a stable unit of society. There is now a widespread recognition of the fact that the institution of family is in crisis. “Now family is no more a unit of consensus and it is evolving into what can be called a site of cooperative conflict” (Sen, 1985). When we analyze various problems of women, most of them are linked with the context of family. The problem faced by women can be seen as erupting from the inequalities constituted by family itself.

By the end of the last century divorce or dissolution of marriage become a common phenomenon all over the world. With the passage of time a large number of Indians are flooding the divorce courts to escape from the unhappy marriages. In spite of the reconciliation bureaus, social organizations family courts, counseling centre etc. divorce cases are increasing at an alarming pace. Divorce rates are obviously not a direct index of marital unhappiness. The rates of divorce do not include people who are separated but not legally divorced. “Divorce is on the rise in Muslim community’’ said Imam Muhamed Magid (2000), Vice President of Islamic society of North America.

When no class is immune to spousal abuse, several studies indicate that it is more common among low income couples (Cherlin, 1999). Gelles and Cornell, (1990) found that unemployed men are nearly twice as likely as employed men to assault their wives. In his book fatherless America (1995) David Balankinhorn argues that society with high divorce rates are facing
not just the loss of fathers but the very erosion of the idea of fatherhood with lethal social consequences because many children are growing up now without an authority figure to turn into times of need.

The condition necessary to terminate a marriage in divorce vary widely from culture to culture and overtime. In certain societies, the rights of men and women in this respect are still highly unequal, but there appears to be more in western societies towards an acceptance of the ideas of irretrievable breakdown of a marriage as suitable grounds of divorce. It should be noted that definition of what constitute marriage and divorce also vary widely and that in western society divorce is increasingly preceded by extended period of separation between partners, which renders legal procedure increasingly less relevant. “In U.S and Britain over the past two decades concern over rising divorce rates has frequently reached the status of a moral panic, and if it is often stated that, given continuation of the current rates, over one in three marriages contracted will end in divorce” (Marshall, 1998).

Since Divorce is an important social institution and social problem all over the world, this study signifies the issues of divorce among Muslim women of a particular minority community of Kerala. Even though Holy Quran considered marriage as sacred institution, the situation is not coping with Quranic verses. Quran prefers that men and women marry (4:25) and within the marriage there should be harmony (4:128) mutually built with love and mercy (30:32). The marriage tie is considered a protection for both the male and female. They (feminine plural) are raiment for you (Masculine plural) and you are raiment for them (2:187)

“As the Muslims personal law stands today, a woman suffers from many serious disabilities which turn her into second rate citizen in the Indian society, not only in comparison with Muslim men but also with other Indian
women. The following are the legal provision which discriminate against the Muslim women in India. First of all, her legal rights in respect of marriage and divorce are not only inferior to those of men, but are completely out of harmony with demands of a modern society. A Muslim man can have up to four wives at a time, with no legal protects to the woman against the exercise of the privilege. The law does not admit polygamy as a cause for seeking divorce by a Muslim woman. The corresponding right of a woman to have more than one husband in any circumstance is inconceivable, much less granted under law” (Purthi et.al 1988).

A man can divorce at his will just by uttering the words “I divorce you” three times, anywhere, anytime, without any witnesses. He is also not required by law to give any maintenance to the divorced wife, those beyond the period of iddat, which is three months and a few days. If a man divorce his wife he is obliged to pay mehar a sum of money agreed up on at the time of marriage. This provision is also taken as a security for Muslim women against easy divorce. But so long as the right to have four wives continues to be enjoyed by a man, he need not divorce his wife; if he does not wish to pay the mehar, and he can simply discard her or ill- treat her, while taking in another wife. Another practice is that some husbands refuse to consummate marriage till the wife voluntarily forfeits the right of mehar which is recognized by law. Since Muslim marriage is not complete until it has been consummated such refusal understandably causes a great deal of embarrassment to the newly wed wife and results in her yielding to the husband’s wishes.

On the other hand, a woman can’t give a divorce to her husband; she must seek it and the husband must agree to give it. If he does not then she must go through a cumbersome process of enlisting the support of law. Another inhibiting factor attached to women seeking divorce is that in doing
so, they automatically forfeit the right to mehar as well as iddat. She may then secure divorce, but does not have any claim even a semblance of a claim to maintenance. Clearly the law aims at making it as easy as possible for men to give divorce and as difficult as possible for women to secure it.

In North Malabar region of Kerala even in this twenty first century polygamy is practicing among Muslim community. Mohammed Yasin, Muslim historian writes “Polygamy as the luxury of the rich and a liability thoughtlessly incurred even by the men of poorer means” (Qtd in Purthi et.al 1988). A saying goes “If you have only one wife walk confidently into your house after a period of absence, if two stop at the door and strain your ears for the noise inside, for more than two, better go first to the neighbours and be satisfied that nothing untoward has happened” (Purthi et.al 1988).

It may be pointed out in the Quran, while permitting polygamy lays down the strict condition that a man may take another wife only if he can treat all his wives equally. The fact that, this condition can almost never be met was recognized by Syed Ahmad Khan, who held the view that “polygamy must be absolutely and definitely restricted. Polygamy is based on justice and justice is not possible, it follows that monogamy should be the rule and polygamy should be allowed in exceptional cases” (Purthi et.al 1988).

A study conducted by Marks and Lambert (1993) revealed that the transition to divorce was associated with somewhat more negative effects for women. Mid life adults evidenced more psychological resilience than young adults did in facing the challenges of a marital transition or remaining single overtime.” According to Holmes and Rahe Stress Scale (1967) divorce is the second most stressful life event of all, behind only the death of a spouse.
“In North Malabar region, girls are married off at a tender age (i.e. before attaining legal maturity). Here, women are sharing a common agony, callously caste away by a Muslim male exercising his religious privileges to divorce (Shah, 1955)”. Divorced women usually face multitude of problems related to remarriage, maintenance and care and custody of children in addition to socio-economic and psychological problems. As a result, the quality of life is also considerably affected. Hence, a study on the psychological well being and resultant quality of life of the divorced Muslim women needs special emphasis.

1.4 Scope of the Study

In the contemporary context, a marriage faces many threats. It is facing pressures from diverse sources; particularly from inter spousal relationships themselves and the immediate environment. Divorce is one of the most striking and predominant themes of modern literature. It has attracted the attention of many social scientists during the past several decades.

“Both men and women suffer after divorce, but women are the biggest losers” (Wallerstein and Kelly, 1980). Normally women find to earn less income than men and usually retain custody of their children. “After divorce many women experience a dramatic decrease in their standard of living, while men usually seen improvement in theirs” (Holden and Smock, 1991).

Here an attempt has been made to present the scope of the study in terms of the following aspects viz. the causes of divorce, analysis of factors like adjustment in marriage before divorce, problems associated with divorce, a review on various issues related to instant thalq, child marriage, polygamy etc. practicing among Muslim community ,an account of social economic and psychological consequences confronted by divorced Muslim women, problems related to remarriage and maintenance, attitude of
divorced women towards divorce, psychological general well being and quality of life of divorced Muslim women etc.

Divorce in the present situation, though gets the full legal support, the social support is lacking somewhere. Hence, the study aimed at providing useful insight into the mental health professionals in planning suitable strategies for effective implementation of programmers for these groups of women.

It is anticipated that, the findings of the study would help the counsellors and social workers to create awareness among themselves and their role in providing help to such people. The revelations of the study would throw light on the need and importance of pre-marital and post marital counselling for both men and women.

The outcome would also help the policy makers and social legislators for planning and implementing programmes and policies in order to protect the rights of women in this special category. Lastly, the findings of the study would contribute to the data bank and subsequent direction for further research in this area.