

A COMPARISON STUDY OF HUSBAND AND WIFE SEPARATION

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Abstract

A legal separation is a court-supervised arrangement that allows couples to live separate lives. This is usually by living apart. The court directs financial obligations, child visitation, and child support. Islamic countries, such as Brunei, prefer divorce to separation. Divorce is frowned upon by the religious system. Separation procedures are often similar to separation procedures. In Korea, the law focuses on separation. The law governing separation is a minor version of the separation law. In Japan, separation is not allowed. However, nullifying marriage is provided for in law. Couples who want to separate must navigate the law to establish grounds for separation. This paper compares some aspects of separation between husband and wife in Korea, Japan, and Brunei. It provides instances of how couples in the mentioned countries have been able to use the law to separate. In an Islamic country such as Brunei, separation is preferred to divorce because divorce is frowned upon by the religious system. Separation destroys the normal flow of finance and financial management among families and may tamper with the everyday life of the affected. Separation is mainly treated as a step before the divorce. Therefore, most legal procedures attached to separation involve property division, financial obligations, child visitation, and child support. Consequently, separation procedures are often similar to separation procedures. In Korea, the law focuses on divorce. However, couples should create an agreement that outlines how they will support their children and how they will access them. The complexities and dynamics of marital relationships and families established through institutional marriage pose a significant challenge to family law. Despite the reforms in Korean Family Law, there still exist legal limitations and controversies which the law has not been able to address effectively.

Keywords: Separation, husband and wife separation, separation policies, separation in Japan, Korea, and Brunei

1. Introduction.

Judicial separation is a legal separation whereby couples that do not want to divorce apply such that although they are seen as married, they are not legally recognized as a couple under Korean family law. According to Nestor (2004), judicial separations are, and most apply to, couples that cannot bear the cultural and religious stereotypes about separation. Still, their marital relationship is no longer working out. Judicial separation is sought when the couple cannot amicably agree on the terms of living apart in the same dwelling. A couple still married but want to divorce shortly may seek judicial separation records to fulfill legal separation requirements. Although the legal requirements for judicial separations are similar to divorce, Crowley & Harding (2015) reveals that a couple is not obliged to explore alternatives to save a breaking relationship. It is worth noting that judicial separation bars the applying partners from remarrying. Nestor (2004) says judicial separation is a complex and controversial decision. The couple should seek advice from a family therapist to lower the party's vulnerability to depressive experiences after a successful application. A free clinic offers family counseling, and people should take this opportunity.

To make a successful judicial separation application O'Sullivan (2016) points out that a partner must fail to uphold fidelity or behave in a manner that makes it unreasonable for the other to



continue living with them. The applicant must prove before the court that the couple has lived apart or one party deserted the other for one year before the date of application. Living apart is recognized by the Family Law Act 2019 as living without an intimate and committed relationship. Scherpe (2016) reveals that the successful application of a Judicial Separation decree means that the couple no longer lives together. The couple should shun intimate relationships if they are in the same dwelling. As McGowan (2016) argued, the absence of sexual intercourse does not necessarily mean the marriage ceases to be intimate. Under the Family Law Act 2019, judicial separation gives a court the jurisdiction to exercise its powers in dividing marital finances and property, mainly when the couple cannot cooperate in matrimonial wealth sharing. Similar to divorce, judicial separation means the succession rights become null and void unless the couple makes a fresh agreement to that effect.

Separation is mainly treated as a step before the divorce. Therefore, most legal procedures attached to separation involve property division, financial obligations, child visitation, and child support. Consequently, separation procedures are often similar to separation procedures. In Korea, the law focuses on divorce. However, couples should create an agreement that outlines how they will support their children and how they will access them. The decree of judicial separation was first introduced into English law in 1857 under the Matrimonial Causes Act of that year. It replaced the old ecclesiastical decree of divorce a mensa et thoro, which that Act abolished. Like the old decree, its prime purpose is to relieve the petitioner from the duty of cohabiting with the respondent. A spouse may opt for a decree of judicial separation - instead of divorce - for several reasons. Firstly, divorce may be objectionable on religious grounds. Such a scenario is actual for most Catholic believers who continue to believe in the indissolubility of marriage. Secondly, a spouse may still hope for reconciliation with the other spouse. Hence, judicial separation gives the spouses an immediate remedy of remaining apart while trying to solve their marital differences. Thirdly, there may be some technical difficulties associated with divorce proceedings. For instance, a petitioner may not obtain a divorce decree because the marriage is less than three years old. Under these circumstances, a decree of judicial separation will serve the immediate purpose of relieving the spouses of the duty to cohabit while at the same time leaving the way open for divorce on the ground on which they granted the decree in case there is no reconciliation within three years. Therefore although the number of cases involving judicial separation is negligible as compared with divorce, the decree is both relevant and essential in family law

2. Family Law and Separation

Separation is a plague in most marriages resulting in long durations of anxiety and emotional distress among all parties involved. The conflicting situations upon which separations lay foundations among separated tend to create vast sets of divisions both among parents and children. The resulting environment, also called triangulations, may fuel elements of mental health concerns resulting from depression and shock of responsibility demands. The struggles for power and other marital responsibilities significantly hinder the normal development of children. Further consideration of destructive separation may include that most separations take the children to live in a stressful and depressing environment because they feel abandoned and not wanted by either parent. Moreover, the consents often result in a blame game and exposure of these young ones to hostile environments, as often recognized in street families.

Separation destroys the normal flow of finance and financial management among families and may tamper with the everyday life of the affected. Meeting daily needs, for example, may become a problem for the ex-wife or ex-husband if the earnings are insufficient to cater to the expenses. The children become bothered by every encounter because they do not get enough pocket money and other daily demands, making them vulnerable to radicalization. Thus, they may become members of terror groups in their teenage periods to earn a decent living and disjoin the community which raised them. It is more harmful when families suffer domestic violence before separation levels.



2.1. Separation in Brunei

Separation in Brunei is governed under the dissolution of marriage act. According to the act, “*The High Court shall, notwithstanding the provisions of any other law, but subject to the provisions of this Act, have the same powers as those vested in the Family Division of the High Court in England on 1st January 1992, in relation to the matters specified in section 3 of this Act.*” Since Brunei is a Muslim majority country, the high court’s jurisdiction is only in non-muslim cases.

In 2010, the Sultan of Brunei, HassanalBolkiah, separated from his five-year-old wife, with whom he had two children. This was the second separation by the Sultan after separating Mariam Abdul Aziz, his stewardess wife. The Sultan is a respected individual in Brunei and can be emulated by citizens of Brunei, who feel that if their Sultan can separate, they can even make separation when they face marital difficulties. In some cases, the court directed the division of shared property between divorced couples. In *Hajah Amit v. Haji Bungsu*, the plaintiff filed a petition for the transferred property. The court awarded her the right to receive part of the property as payment because she assisted her spouse in the business dealings of acquiring the property. In *Massiah v. AwangKhamis*, the former wife petitioned for shared property. Also, she claimed to be the sole owner of parcels of land, arguing that her husband registered the fields in his name after purchase completion. The court granted the petition by the plaintiff, and all the parcels of land were returned to her.

Chief Kathi’s court directive sentenced the case according to syarak based on the plaintiff’s rights. These examples of points won by women will guide and motivate other women undergoing the same circumstances to file for separation, hence the rising separation cases in Brunei. Recent separation topics in Brunei include EngkuEmran and his wife, ErraFazira, a famous actress. ErraFazira commented that their marriage had experienced Irreconcilable differences. Another high-profile separation case is that of Mahmud Abu Bekir and his wife, Shahnaz. The wife is seeking RM400 million as a separation settlement, including muta ah, marital property, and half of all her husband owned. Therefore apart from ordinary citizens’ separation cases, high-profile separation cases have been experienced in Brunei.

Marriage in Brunei is highly valued, and siring children outside marriage isn’t appreciated. However, the separation rate is rising steadily, with over 30% of marriages ending in separation. Most of these are young couples in their 30s, and over 60% involve children under 20. When breaks occur, mothers are often preferred for child custody, unlike in the past, when men were chosen to preserve the family lineage. Unlike in the West, couples first agree on separation before involving lawyers and judges. Also, the separation process can be overseen by trained community members without necessarily going to court . Breakups can either be by mutual agreement, conciliation, adjustment, or judicial means. Divided houses are also a prevalent issue where couples are divided within the home. This is a positive and negative sign depending on the reason for the “separation in the house.”

Marriage and separation are both common occurrences in modern society. For instance, about 30% of marriages in Brunei end in separation. In Brunei, though divorcing couples divide their property, including their houses, houses remain important since household systems are literal and figurative contexts for marital engagements and problems. The patterns of child custody are also fast-changing. Mothers are preferred for the task compared to the past, where fathers were chosen for the same. Notably, traditional norms continue to shape the way Brunei families live together and come apart.

2.2. Judicial Separation under Korean Family Law

Separation was introduced in the Korean Family Law in 1996 under the Family Law (Separation) Act of 1996, following a successful referendum conducted on 24th November 1995. Separation is a legal decree that dissolves a marriage, allowing the couple in the dissolved marriage the right and freedom to remarry. A couple wishing to separate must make a legal application to the court,



which grants the application upon confirmation that the parties meet basic minimum legal requirements. According to Nestor (2004) , a couple seeking a court separation must have been living apart for 2 out of 3 previous years before the application. The Family Law Act 2019, which came into operation on December 1st, will require couples to have lived apart 4 out of the five previous years before making a separation application. The couple must ascertain that the court has explored all options. That there is no reasonable prospect for the couple to reconcile. Notably, the breaking couple must table before the court a proper arrangement for the care of children and family members that depended on the couple.

During the separation application, four critical documents must be submitted to the circuit court;

- Family Law Bill, which clearly describes the couple, place of work, and areas of residence.
- Form 37A sets out the financial status of the couple.
- The third document, form 37B, gives a detailed description of the welfare of children and how they will be taken care of.
- Finally, the parties must submit Form 37D to the circuit court detailing that the couple has exploited alternatives before seeking court separation.

A qualified registered solicitor swears in the document. In the Family Law Act 2019, civil partners in the same dwelling are considered apart if the court believes the couple does not engage in an intimate relationship. According to the provisions of The Family Law Act 2019, the absence of sexual activity does not make a relationship non-intimate. Separation decree extinguishes the couple's legal pension and succession rights provided for the virtue of being in a marital relationship.

2.3. Separation Agreements in Japan Family Law

Separation agreements are legally binding contracts documenting terms and conditions for civil partners and married couples wishing to live separately. The formation of the agreement may take mediators, solicitors, or amicable negotiation between the parties, and each party must consent to the terms of the separation agreements. According to Fahey (2012), marital breakdown is a complex and stressful process; hence, a separation agreement reduces stress and expense, lowering the chances of depressive outcomes. Unlike other marital breakdown pathways, the purpose of a mediator is not to restore the relationship but to promote amicable resolution of issues related to separation, such as children's custody, sharing, maintenance, and rights to co-owned property. The agreement signed is legally binding; therefore, the parties should seek legal advice to make an informed decision. The legal requires the mediator to demonstrate a high level of confidentiality and avoid any potential conflict of interest.

Couples may settle the marital breakdown issues at the family level through couple-lawyer collaboration. The purpose of collaborative lawyers is to act as witnesses to the agreement reached by the disputing couple. As noted by Tobin (2016), collaborative practice calls for honesty and good faith by parties for the understanding to be successful. In many instances, collaborative lawyers may advise ensuring the conflict resolution heads in the right direction. If the partners cannot amicably agree, the court solves the matter. When the court option is adopted, the couples are deprived of the control of issues under disputes such as children's custody and access, control and management of shared property, pension, and legal succession rights. According to O'Sullivan (2016), family courts embrace proper provisions in pursuit of justice and fairness, which may be mutually favorable to the couple; hence parties must strive as much as possible to agree.

2.4. Limitations and Controversial Areas in the Family Law

The complexities and dynamics of marital relationships and families established through institutional marriage pose a significant challenge to family law. Despite the reforms in Korean Family Law, there still exist legal limitations and controversies which the law has not been able to



address effectively. In Korea, the courts apply tolex in determining family cases but do not apply foreign law when resolving marital disputes, even between two foreigners. This approach makes the family law discriminative, particularly to foreigners. According to Scherpe (2016), the discrimination is intentional because Korea opted out of the Rome III, making it impossible to enforce Family laws throughout the EU states consistently. Notably, the uncertainty in Korea's pre-nuptial and post-nuptial agreements has been the primary barrier to the fast legal resolution of marital breakdown issues. Family law does not offer clear guidelines but emphasizes traditional, moral, and social considerations when setting self-determinations during marital breakdowns.

The changes in the recognition of children's rights pose challenges in Korean family law. The Children's Bill of 2012 is likely to change marital breakdown landscapes, especially in adopting children not born out of their parent's marital relationships. The current family law does not provide a guideline for the welfare of adopted children when the marriage breaks. The recognition of same-sex marriages and civil partnerships makes it challenging to address the welfare of children. The delay in signing the children's Bill of 2012 into law triggers more controversies, especially regarding surrogacy children. According to Sloan (2016), changes in the social and legal landscapes in which children are born and raised continue to elicit controversies. Previously, family law was focused on children raised in heterosexual marital relationships—the legal recognition of same-sex marriages. Civil partnerships and Cohabitants' relationships pose legal complications in family law.

As argued by Crowley & Harding (2015), the couple enters into a marriage agreement with the hope of living together forever. Still, along the way, issues arise, making it unbearable for partners to continue living together as a couple. O'Sullivan (2016)¹ says that marital breakdown is a complex process, mainly when the couple has lived together for a longer time. Therefore, it is prudent to execute the breakdown procedurally with strict adherence to legal provisions to avoid posttraumatic stress disorders, which may negatively impact a couple's ability to lead a quality life after the breakdown. According to Fahey (2012), issues that make marital breakdown difficult and stressful are shared finances and properties, child's custody and upkeep, and the desire to raise children with adequate parental care and love. Whereas the couple may amicably solve these problems, Donnacha (2014)² cautions that the relationship may turn abusive and stressful, calling for legal interventions. Korea Family Law provides three legal options for couples in a marital relationship that is no longer bearable; Judicial Separation, Separation Agreements, and Separation and Nullity decree granted by a court of law. The legal framework seeks to ensure marital breakdowns are legally and professionally addressed to help the couple cooperate and seek necessary support to promote post-breakdown resilience and mental wellness.

3. How family is affected by husband and wife separation

Destructive separation is evidenced in the numerous concerns about the burden of custody of the children in society. The stressful decision-making situations may torture both parents as they ponder how the wealth will be divided and who will be responsible for the children's upkeep. Such a position presents a gap in children's emotional and cognitive development. Psychologists consider successful parenting to be a combined responsibility of the two parents.

Therefore, single parenting tends to portray some of the most intriguing challenges, considering the role of parents in the custody of children. Ideally, control includes all responsibilities rendered upon both the mother and the father upon delivery of a child, including decision-making and essential need provision. Most separation cases end with concern about what will happen to the

¹O'Sullivan, K. (2016). Ancillary relief and private ordering: The vulnerability of financially weaker spouses.

²Donnacha O'Sullivan (2014). A critical analysis of the protection of families under the Korea Constitution of 1937. Online Law Journal article.



children after the separation³. Notably, most separation ruling ends in single motherhood or fatherhood, yet the decisions on a child's development are jointly made. The custody battles may consume a lot of money in courts and other platforms requiring legalized decisions. At the same time, the struggle becomes even more destructive when each parent wants to prove the other wrong by looking for external powers.

In most cases, separated parents tend to create a bad image of the family, making the children feel shy about where they come from because of such concerns. Likewise, the two in-law families may become enemies and have a negative image of one another. The normal flow of respect from both sects is hampered as each parent sets to disconnect from one other upon separation. Society will also perceive the separation as demeaning because there seem to be no moral standards embraced in such families. However, some separation segments are not keenly researched though they may benefit separated couples. It helps eliminate emotional, physical, and psychological abuse in a marriage. Seeking guidance and marital counseling may help avoid the extremities in weddings and children care among modern families.

3.1. Children Custody

In recent years the issue of parents who do not live together after separation or breakup but want to share time with their children has increased. Related time is separate from sharing legal obligations and in addition. In addition to this informal growth emerging from arrangements between different parents, legislation is now required to facilitate shared parenting in family court cases. This is primarily attributed to the rising pressure from the classes of fathers. Still, these parents may not care what is in the child's best interest⁴. They only think about what is best for their agenda; avoiding child support, healthcare, avoiding loneliness, getting government funds or the other parent, and even hurting their former partner by refusing to see their children. In custody struggles, children sometimes act as bargaining chips.

In July 2010, the Private Member's Bill was initiated to allow for shared parenting for litigating parents who cannot embrace parenting arrangements. This legislation enables legal presumptions that the default scheme can be joint parental directives unless such exceptions exist. A second bill for private members, the Children's Access to Parents bill, was addressed in the Chamber of Commons at the end of March 2011.

4. Recommendation

The defenses available to the respondent in a divorce petition are equally applicable to the respondent in a petition for judicial separation. Connivance, condonation, and collusion are absolute bars to relief. Once any one or more of these defenses is proved, a petition for judicial separation will be discussed.

Likewise, discretionary defenses apply to a petition for judicial separation. Where it is shown that the petitioner committed adultery during the marriage, that he has been cruel to the respondent, or that he has deserted the respondent without cause, the court will use its discretionary powers or not grant the decree.

The Ministry's Task Force on Childhood and the Family explores many approaches to promote co-parenting arrangements, and its preliminary report also examines the issue. The study, however, concluded that No legislation creating, or risking, the idea of a supposed parental right to a

³Crowley, L., & Harding, M. (2015). Contractualisation of Family Law in Korea. In *Contractualisation of Family Law-Global Perspectives* (pp. 217-239). Springer, Cham

⁴Lee, S. (2018). An overview of the researches on use of force by states in retrospect of the Korea international law review's 25 years of history. *Korea International Law Review*, 51, 5-17. <https://doi.org/10.25197/kilr.2018.51.5>



substantial shared or equal time for both parents should be introduced.” From the standpoint of proof, this dissertation thoroughly promotes children to have positive relationships with both parents upon their separation. The vast majority of splitting parents make plans without mention of courts or counsel for their children. A minority who do not recognize and seek legal advice are urged to discuss or mediate and reach a settlement. Suppose they cannot and petition the court to decide. In that case, this decision is followed in compliance with the 1989 Children’s Act and is the crucial criterion to make an order for any particular person . The court can perform any investigation, require any person to come before it, and order any party or one to pay investigation and attendance expenses so the court can determine the arrangements relating to children. This may result in any investigation it deems necessary. The court can appoint a lawyer to defend a child in separation and may compel either party to cover this representation’s costs.

In South Korea, today’s law stipulates that judges can assign custody in the better interest of the child. “Custody decisions must be based for the first time in history not on gender or the rights of the parent, but on the needs and interests of the child,” according to the Best Interest Standard (BIS). In general, the BIS is considered to be equivalent, fair, and straightforward. It is also regarded as versatile, Allowing courts to adjust their rulings in such a manner as to take into account the different facts in each case rather than to enforce an all-in-one procedure. The BIS was, however, highly criticized as well. Andrea Charlow claims that the judges have been granted unconfined authority to settle custody cases by applying the personal principles of their proper approach to child care. The author notes that these principles differ from judge to judge and even vary between parents. Judges and parents not only disagree about what future a child would desire, whether the target is a child who is religious or free-thinking, motivated or obedient, violent or modest, imaginative or traditional. Those decisions include as many or more than facts, principles, and convictions.

South Korea’s law is inherited from England. The current legal status in England and Wales is laid out in the Children Act (England and Wales) 1989. This requires that any decision taken by the court that affects child care and education takes the child’s welfare into account. The question of any expectation of communication concerning the Children and Adoption Act was debated by Parliament in 2006 . Following a thorough discussion of the research facts, the Government felt that the overriding presumption of child protection in the Children’s Act must be upheld. In other words, every case should be considered, and every action reached at that time is in the child’s best interests. The Children’s Act also requires that a judge make an ordinance only in the child’s best interest. Since separation, parents remain biologically liable to their parents. They will take their steps privately and not request an injunction from the courts on their plans with their children until they are in an uncompromising conflict.

4.1. Discharge of Decree of Judicial Separation

The discharge of the decree is provided for under s.18 of the Divorce Act, 1905. It is here provided as follows:-

A husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time after that present a petition praying for the reversal of such decree on the ground that it was obtained in his or her absence and that where desertion was the ground of such decree, there was a reasonable excuse for the desertion alleged.

On being satisfied with the truth of the petition’s allegations, the court may reverse the decree accordingly.

In Wilkinson Wilkinson [1962]1 ALLER 922



It was stated that the term ‘in his or her absence’ means physical absence from the court⁵.

Likewise, in *Phillips v Phillips* (1866)LRI P & D 169⁶, Lord Penzance said:-

“Where the petitioner has not appeared, he may present a petition... In his petition, he must state the reasons for (sic) his absence and the grounds on which he asks to be relieved from the results of it, and he must further state circumstances calculated to satisfy the court that the decree was wrong. The court... in coming to a decision will be at liberty to consider how far the petitioner’s absence was his fault or was excusable and whether he has taken reasonably prompt steps for his relief.”

The power to discharge the decree is purely discretionary on the part of the court. It is not limited to circumstances set out in s.18 of the Divorce Act, 1902; it may also be exercised where, for instance, the spouses have resumed cohabitation. Either spouse can apply to the court for the discharge of the decree under such circumstances.

The Japanese law is contained in s.15 of the Divorce Act of 1905. It provides as follows:“15- (1) A husband or a wife may apply by petition to the court for a judicial separation on the ground of cruelty, or adultery, or desertion without cause for two years or upwards, or on the bottom of failure to comply with a decree for restitution of conjugal rights, and the court, on being satisfied that the allegations of the petition are accurate and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Where the court, following the said provisions, grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.”

It will be noted that the grounds for judicial separation are the same as those for divorce under s.5 of the Act. However, under Japanese law, unsoundness of mind, as well as the husband’s rape, sodomy, or bestiality, are not grounds for judicial separation.

There are good reasons why the grounds should be the same for divorce and judicial separation. To those with a conscientious objection to divorce, a decree of judicial separation may mark the de facto end of the marriage. Hence, it is reasonably arguable that they should be able to obtain a decree only in similar circumstances as those who wish to bring their marriage to a de jure end by a decree of divorce. However, unlike a petition for divorce, a petition for judicial separation may be presented within the first three years of marriage without the leave of the court. Another related principle is that if one party petitions for divorce and the other for judicial separation, the court should not grant a decree of judicial separation if it pronounces a decree nisi of divorce.

4.2. Restituting Conjugal rights

This is one of the remedies that preserve marriage and the marriage institution. It is available to a spouse who satisfies the court that the other spouse has left them without cause and has refused to render conjugal rights. The law is enshrined under s.22 of the Divorce Act, 1905, which provides as follows:-

(1) If a husband or wife has, without reasonable excuse, withdrawn from the society of the other, the wife or husband may apply by petition to the court for restitution of conjugal rights

(2) The court, on being satisfied that the allegation of the petition is accurate and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

⁵Wilkinson Wilkinson [1962]1 ALLER 922

⁶Phillips v Phillips (1866)LRI P & D 169



(3) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or a decree of nullity of marriage.”

If granted, it will be noted that the decree enjoins only the resumption of cohabitation. It does not force the spouses to have sexual intercourse. To get the decree, the petitioner must show his sincerity in seeking the resumption of cohabitation. He must also be willing to perform married life's regular duties and rights.

The decree will not be issued if the petitioner is guilty of a matrimonial offense or when the respondent has a just excuse for the separation.

No compliance with the decree will afford the petitioner a ground for instituting a suit for judicial separation. It is also evidence of desertion on the part of the respondent.

5. Conclusion

The decree of judicial separation does not dissolve the marriage as such; it may, in some instances, be subsequently discharged. Hence, the decree is not made in two stages, like a decree of divorce or nullity, but takes effect immediately after it is pronounced. The principal effect of the decree is that it relieves the petitioner of the duty to cohabit with the respondent. Under Japanese law, a husband that has sexual intercourse with his wife against her will before the decree is discharged may be guilty of rape.

Likewise, for acquisition and ownership of property, as well as entering into contracts, a wife is regarded as an unmarried woman from the date of the decree. She may acquire any property in her name and dispose of it as if she were an unmarried woman.


In an Islamic country such as Brunei, separation is preferred to divorce because divorce is frowned upon by the religious system. Separation destroys the normal flow of finance and financial management among families and may tamper with the everyday life of the affected. Meeting daily needs, for example, may become a problem for the ex-wife or ex-husband if the earnings are insufficient to cater to the expenses. The children become bothered by every encounter because they do not get enough pocket money and other daily demands, making them vulnerable to radicalization. Thus, they may become members of terror groups in their teenage periods to earn a decent living and disjoin the community which raised them. It is more harmful when families suffer domestic violence before separation levels. Despite the varying policies in husband and wife separation, all three countries have a similar bias.

The separation of husband and wife is handled differently in Korea, Brunei, and Japan. According to the Syariah Law of Brunei, all separation cases should be handled through the courts, but separation cases outside the court's jurisdiction have been noticed widely by the public. The high mainstay evidence of public separations can be attributed to an intense argument among the spouses resulting in one partner deciding that the marriage can no longer survive the turbulence and also cannot wait for the legal separation proceedings to put the talaq into effect. Marriage in Japan is highly valued, and siring children outside marriage isn't appreciated. However, the separation rate is rising steadily, with over 30% of marriages ending in separation. Most of these are young couples in their 30s, and over 60% involve children under 20. When separations occur, mothers are often preferred for child custody, unlike in the past, when men were chosen to preserve the family lineage. At the same time, in Korea, the issue of parents who do not live together after separation or breakup but want to share time with their children has increased. Related time is separate from sharing legal obligations and in addition. In addition to this informal growth emerging from arrangements between different parents, legislation is now required to facilitate everyday parenting in family court cases.



References

- [1] Lawry v Lawry [1967]2 ALLER 1131
- [2] R v Clarke [1949]2 ALLER 448
- [3] 16, 16 of the Divorce Act, 1905
- [4] Synge v Synge [1900]p.180
- [5] See Dyson v Dyson [1954]p.198
- [6] Russell v Russell[1895]p.315
- [7] Oram v Oram (1923) 129 LT 159
- [8] Haddon v Haddon (1897) 18 QBD 778
- [9] s.21 of the Divorce Act, 1905
- [10]Andenæs, M. T., &Fairgrieve, D. (2015). *Courts and comparative law*. Oxford University Press, USA.
- [11]Ballard, Sharon M., Dawn Cassidy, Alan C. Taylor, and MihaelaRobila. "Family life education in the United States." In *Global perspectives on family life education*, pp. 195-215. Springer, Cham, 2018.
- [12]Banungwiiri, Moses Zinyobo. "Marriage and family life: the view of marriage, separation and remarriage among the Christian Dagaaba in the Upper West Region of Ghana-an ethical theological corrective." (2021).
- [13]Buckley, R. (2015). The Children First Bill 2014: A Step in the Right Direction? *Korea Journal of Family Law*, 15(2), 34-38.
- [14]Cahillane, L., &Cahillane, L. (2018). The Fifteenth Amendment of the Korea Constitution Act 1995.
- [15]Crowley, L., & Harding, M. (2015). Contractualisation of Family Law in Korea. In *Contractualisation of Family Law-Global Perspectives* (pp. 217-239). Springer, Cham.
- [16]Donnacha O'Sullivan (2014). A critical analysis of the protection of families under the Korea Constitution of 1937. Online Law Journal article.
- [17]Fahey, T. (2012). Small bang? The impact of separation legislation on marital breakdown in Korea. *International Journal of Law, Policy and the Family*, 26(2), 242-258.
- [18]Famulusi, OlumuyiwaOlusesan. "Till circumstances do us part: A socio-ethical analysis of separationamongChristians in Nigeria." *Global Journal of Human-Social Science: An Arts & Humanities Psychology* 19, no. 5 (2019).
- [19]Ganong, Lawrence H., Marilyn Coleman, and Caroline Sanner. "Separation and Remarried Parenting." *Handbook of Parenting*, 2019, 311-344. doi:10.4324/9780429433214-9.
- [20]Hunter, David G. "Did the Early Church Absolutely Forbid Remarriage afterSeparation." *Vergentis* 6 (2018):43.
- [21]Kimiti, Philip. "Marriage, Separation, And Remarriage: An Exegetical Examination Of The Themes With A Focus On 1 Corinthians 7: 10-16." *ShahidiHub International Journal of Theology &ReligiousStudies* 1, no. 1 (2021): 15-30.
- [22]Lee, S. (2018). An overview of the researches on use of force by states in retrospect of the Korea international law review's 25 years of history. *Korea International Law Review*, 51, 5-17. <https://doi.org/10.25197/kilr.2018.51.5>
- [23]Lee, Y. (2020). *Divorce in South Korea: Doing gender and the dynamics of relationship breakdown*. University of Hawaii Press.
- [24]Mesraini, .., Adam, S., &Imamah, A. I. (2018). Woman rights to refuse Rujuk: Gender equity on Islamic family law in Indonesia, Malaysia, and Brunei Darussalam. *Proceedings of the1st International Conference on Recent Innovations*.<https://doi.org/10.5220/0009919709050912>
- [25]Minamikata, S. (2022). *Family and Sucession law in Japan*. Kluwer Law International B.V.
- [26]Stark, P. B. (2013). *International family law: An introduction*. Ashgate Publishing.
- [27]Subarimaniam, N., Hassan, S. A., &Zakaria, N. S. (2017). The driving forces of marital dissolution in Asian countries. *The Family Journal*, 25(2), 123-129. <https://doi.org/10.1177/1066480717697301>
- [28]Welchman, L. (2017). A husband's authority: Emerging formulations in Muslim family laws. *Issues in Islamic Law*, 121-143. <https://doi.org/10.4324/9781315092386-10>
- [29]Lee, Jaerim, and Seohee Son. "Family life education in South Korea." In *Global perspectives on family life education*, pp. 17-31. Springer, Cham, 2018.
- [30]Leong, Rebecca. "Separation and remarriage after abuse: Conservative Protestant responses." *Theology* 121, no. 5 (2018): 323-331.

- 
- [31]Martens, John W. ““But from the beginning it was not so”: The Jewish Apocalyptic Context of Jesus’ Teaching on Marriage, Separation, and Remarriage.” *Journal of Moral Theology* 10, no. 2 (2021): 533.
- [32]McGowan, D. (2016). Governed by marriage law: An Korea genealogy. *Social & Legal Studies*, 25(3), 311-331.
- [33]Mikle, Krystallynne S., and Dorie J. Gilbert. “A systematic review of culturally relevant marriage and couple relationship education programs for African-American couples.” *Journal of Ethnic & Cultural Diversity in Social Work* 28, no. 1 (2019), 50-75. doi:10.1080/15313204.2019.1570892.
- [34]Naselli, Andrew David. “What the New Testament teaches about separation and remarriage.” *Detroit Baptist Seminary Journal* 24 (2019): 3-44.
- [35]Nestor, J. (2004). An introduction to Korea family law. Dublin: Gill & Macmillan
- [36]Peng, Dasong. “Personal resources, family factors, and remarriage: an analysis based on CFPS2010 data.” *The Journal of Chinese Sociology* 3, no. 1 (2016). doi:10.1186/s40711-015-0023-9.
- [37]Rachmat, Ronald, TjutjunSetiawan, Fries Waty, FitryRinyLasmaria, and Yanto Paulus Hermanto. “Is Premarital Guidance Important To Separation?.” *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 4, no. 4 (2021): 12188-12195.
- [38]O’Sullivan, K. (2016). Ancillary relief and private ordering: The vulnerability of financially weaker spouses.
- [39]Prendiville, P. (1988, January). Separation in Korea: An analysis of the referendum to amend the Constitution, June 1986. In *Women’s Studies International Forum* (Vol. 11, No. 4, pp. 355-363). Pergamon.
- [40]Sietman, Daniel R. “Messiah the Lawgiver: The Torah of the Messiah on Separation and Remarriage.” *Journal of Religious & Theological Information* 18, no. 4 (2019): 101-114.
- [41]Smyth, Bruce M., Cathryn Hunter, Michelle Macvean, Maggie Walter, and Daryl J. Higgins. “Education for family life in Australia.” In *Global perspectives on family life education*, pp. 93-113. Springer, Cham, 2018.
- [42]Scherpe, J. M. (Ed.). (2016). *European Family Law Volume II: The Changing Concept of ‘Family’ and Challenges for Domestic Family Law* (Vol. 2). Edward Elgar Publishing.
- [43]Sloan, B. (2016). The Changing Concept of ‘Family’ and Challenges for Family Law in Korea. *European Family Law*, 2.
- [44]Tobin, B. (2016). Marriage equality in Korea: The politico-legal context. *International Journal of Law, Policy and the Family*, 30(2), 115-130.
- [45]Umedjanova, M. L., Sh M. Salikhov, and T. M. Salikhov. “The Role of National Education in Preparing Young People for Family Life.” *EUROPEAN JOURNAL OF INNOVATION IN NONFORMAL EDUCATION* 2, no. 2 (2022): 271-276.