

DIVORCE UNDER THE LAW REFORM {MARRIAGE AND DIVORCE}  
ACT 1976 - AN ANALYSIS OF ITS RATIONALS.

by

Ishak Mohd. Sharif

Submitted in partial fulfilment of the  
requirements for the Diploma In Law at  
Institute Technology Mara, Shah Alam.

May, 1983

## PREFACE

The Law Commission in England believes that a good divorce law should aim to achieve two objectives: "to buttress rather than to undermine the stability of marriage; and when, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation".

The divorce law under the Law Reform (Marriage and Divorce) Act 1976 in attempting to unify and simplify the law relating to divorce, had adopted the above principles as guiding factor. But the question is have they achieve their objectives. Is the 1976 Act really an improvement of the then existing law or is it just another product created at the insistence of the public, without any genuine efforts in attaining the objectives. It is the aim of this paper to probe into and analyse this legislation in the light of the above objectives.

The task of preparing this paper was indeed taxing. The greatest evil being time. Then there was this difficulties of looking for substantial local materials on the 1976 Act. The inadequacy of the library facility was one of the reasons. I would however like to express my gratitude to the Tun Abdul Razak Library librarian for their assistance in getting some of the materials for me.

No case have been decided since and much of the propositions laid in the paper are based on comparison with the English Divorce Reform

## ABSTRACTS

" The reform to the divorce law under the 1976 Act has not been that all innovative and revolutionary. There are some notable defects, some inevitable, others uncalled for. Like a new consumer product in the market, only the package has changed, the ingredients still remain except perhaps with a few additions here and there . What was recognised as a fault principle has been branded as 'irretrievable breakdown'. What was meant to be a simple law suffers a complex disease of legal interpretation. Nevertheless, the Royal Commission should be commended in its effort to unify the law." .....p. 32

" Take adultery as an example. It has been recognised as a grave matrimonial misconduct that goes to the root of the marriage. It has been accepted as a cause of marriage breakdown. To disregard it would be contrary to public policy, to adopt it would be contrary to the policy of the new divorce law. It thereby becomes a question of priority. It is no easier than to resolve the problem of the 'chicken and the egg', the cause of breakdown or the effects of breakdown? .....p. 33

TABLE OF CASES

Anderson v. Anderson ..... 11

Dennis v. Dennis ..... 9

Goodrich v. Goodrich ..... 11, 12

Gollins v. Gollins ..... 13, 14, 15

Hubajan Singh v. P.P. .... 3

Harnett v. Harnett ..... 6

Livingstone-Stallard v. Livingstone-Stallard ..... 13, 14, 16, 17

Montague v. Montague ..... 27

Pheasant v. Pheasant ..... 15

Roper v. Roper ..... 10, 12

Santos v. Santos ..... 18, 19, 20

Wachtel v. Wachtel ..... 5

## TABLE OF CONTENTS

		Page
CHAPTER I	Introduction	1
CHAPTER II	Changes In The Divorce Law	5
CHAPTER III	The Grounds For Divorce	9
	1. Adultery	9
	2. Unreasonable Behaviour	13
	3. Desertion	16
	4. Living Apart	18
	5. Conversion To Islam	21
	6. Mutual Consent	23
	7. Presumption of Death and Divorce	24
CHAPTER IV	Bars To A Decree	26
	{a} Jurisdiction of the court	26
	{b} Restriction period	27
	{c} 'Just and Reasonable' Provision	29
	{d} Reconciliation provision	30
CHAPTER V	Conclusion and Recommendations	32