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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)**Beyond Legality: Ethical Appraisal in Family Law****Alishba Shahlalay**

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Family law plays a crucial role in resolving disputes in every extent particularly in cases of divorce, Nikah, child custody and other domestic relationships. Our legal system provides a structured framework on the basis of which such cases are determined. These decisions are the result of following a strict procedure of law which might be morally or ethically inappropriate. To act in accordance with the law, Human values, dignity, fairness and justice must be considered. A pure legalistic approach might be legally correct but its outcomes can result into morally / ethically disturbance which should not be ignored because legal decisions in family law affect people's lives deeply. This study elaborates the ethical appraisal in family law beyond legality by arguing that a pure legalistic approach is deficient and unjust. It draws ethical theories highlighting that how legal decisions in family law can be ethically assessed. Formulating case studies, this paper enshrines that where ethical reasoning could have led to more just and morally judgments particularly in child custody and cultural sensitivity as well as it demonstrates that ethical appraisal can lead to rescue the disturbances emerging up from the strict legal procedure in family law. The paper concludes by emphasizing some of the recommendations which can play its role by keeping a balance between legal norms and ethical light in family law practices.

KEYWORDS: *Legality, ethical appraisal, family law, cultural sensitivity, legal decisions, critical analysis.*

INTRODUCTION

In many states, family law refers as domestic relations ^[1], which is a body of law covering up all the matters related to the Nikah, child custody, inheritance, divorce and other family relationships. ^[2] Family law is comprised of three main works: finance, child and matrimonial. It also files up domestic violence, guardianship, child abuse and other neglects. ^[3] By the term "ethical appraisal" we mean that it is just and efficient process that respects humans' dignity and rights ensuring that all humans are treated by keeping a balanced relation. ^[4] whereas the term "beyond law" means a broader view of certain issues and decisions that may not be explicitly

addressed by the law and may include social responsibilities, ethical implications, moral implications, cultural sensitivity and many more. Virtue ethics is basically a moral philosophy that highlights one's character, honesty, compassion and courage rather than following strict rules and its consequences and is now a well-established theory itself. The act of judging others and declaring a judgment after following a strict procedure of law is a complex matter. It includes knowing how to apply ethical structure and vice terms to other's people action as well as before declaring a legal decision, a manner of fair treatment, just and generous behavior should be considered.^[5] The issues arising out of the rigorous and brutal judgments related to the family can be avoided by noticing the ethical appraisal. This paper focuses on the understanding of the ethical appraisal in the cases of family law which goes beyond the law.

OVERVIEW OF FAMILY LAW BEYOND LEGALITY

Muslim Family Laws in Pakistan have been developed within different period of time while the Muslim Jurisprudence has been followed during British rule in the subcontinent. The situation of Family laws in Pakistan at the present time is a combination of codified laws and religious norms. When the Commission on Marriage and Family laws in 1955 was introduced, its guidance was accepted in a dilute form thus Muslim Family Law Ordinance was proclaimed in 1961 having a purpose of reducing divorce and to discourage polygamy.^[6] The complications and dissimilarity of family law matters elaborates the significance of legal specialization in this field. The sensitivity which is involved in the family law asks for more understanding than just legal method and knowledge. Meanwhile it calls for a fit progress regarding understanding of human emotions and skills for working out in the challenges of interactive change.^[7]

It is a well-known fact that every lawyer must obey the law and its administration which means he has a duty which belongs to court and is considered as higher duty rather than his duty to the client therefore if there is a case where there arises a dispute or a conflict between the duty of the court and the duty of the client then in such a case, the duty of the court prevails which itself causes disturbance in the ethical behavior of the case and thus it goes beyond the law.^[8]

The American Accounting Association represents two models written by Langenderfer and Rockness in 1990. They represented a report which took ethical issues into account by recommending a seven-step procedure before decision making. That report concludes by calling up for the decision-maker to look upon the ethical norms, principles and values. The two models presented in the case of AAA were to make sure that ethical considerations are involved while decision-making.^[9]

THEORIES OF ETHICAL APPRAISAL: ITS CRITICAL ANALYSIS WITH FAMILY LAWS

When a lawyer advocates a family case for his client or when a judge decides a family case, he often face obstacles in his way. To overcome those troubles, ethics play its major role by providing a skeleton for their decision-making process. For better understanding, ethics comes up with such frameworks or theories which may guide legal professionals while addressing those issues. Those includes virtue ethics, deontology, utilitarianism and many more according to different respects. Such theories provide unique perspective regarding what is right and what is wrong as well as many moral responsibilities.

DEONTOLOGY

It is a duty-based ethics that focuses on moral obligations. It plays its role to learn that a decision made by the court cannot be called as justified decision only on the basis that it had a good result nor on the basis to state that it had a bad outcome. However, this theory commits that the rightness of an action is set up by the faithfulness to its moral obligations.^[10]

VIRTUE ETHICS

The term "virtue" has been originated from the late Greek and that of Latin, both referring to something or someone's capability to achieve a goal. This kind of theory approaches to the person in question rather than his actions or the consequences. In short, this theory elaborates the norms which having its relevancy to the moral responsibilities and qualities of the person.^[11]

UTILITARIAN ETHICS

This theory is the evaluation of the concept "*the greatest good for the greatest number*". Secondly, this theory focuses on the majority rather than the minority and is applied in the case when the decision will be beneficial to majority. The main objective of this theory is that Professionals must rely on concrete ethical guidelines to evaluate decisions and choices, rather than relying on chance or uncertain outcomes. This approach ensures that decisions are grounded in a clear understanding of what is right and wrong, rather than being guided by intuition or speculation. By adhering to established ethical principles, professionals can make informed choices that prioritize integrity, responsibility, and respect for all stakeholders involved. This not only fosters a culture of accountability but also promotes trust, credibility, and long-term sustainability in their work.^[12]

The ethics of divorce can be critically analyzed using the theory of deontology in the light of Machiavellian point of view who mentions that in the case of marriage decisions, ethical behavior requires influence and manipulation. A stable marriage is promoted by compliance with the external rules and regulations not completely with the moral commitments. Immanuel Kant (who introduced this theory) elaborates that this theory prioritizes adherence to moral principles and along with this, he states that actions are deemed right or wrong based on their adherence rather than their consequences. Therefore, by considering both these perspectives, one can gain more understanding of ethical appraisal in divorce cases.^[13]

*Utilitarianism is basically a theory of determining the right actions judged by its outcomes and can be better understood by analyzing the action of domestic violence. It includes physically, emotionally and psychologically hurt in a marriage by one party to another which is both legally and ethically wrong but a question arises is that whether the divorce is ethically right in the result of domestic violence? To answer this, theory of utilitarianism can be implemented. According to its perspective, such actions are said to be morally right if it results into abolishment of suffering and enhance pleasures. Thus, in the case of divorce, if it is a bilateral decision and both the parties consider it well course of action then under the utilitarianism, it would be considered as ethical. The utilitarian approach will consider the decision based on its potential for both the parties.^[14]

INTERSECTION OF LAW AND ETHICS: EMERGING ISSUES

Advocates when advocating a case for their clients, they are obliged with the ethical duties as well along with the legal duties while carrying on with the family cases including divorce, child custody, marriage, adoption and many more. If the attorney does not represent their client in

accordance with their ethical obligations, then it may result a conflict of interest between them. This may include conflict in interest of one client with other client or with the interest of the attorney and can also force the client to decline or withdraw the case from representing it. This is one of the most burning issues which can be seen if the lawyer representing a family case ignores to bring up the ethical obligations on the face of the judge and thus results in troubles and disturbance in people's lives. The scenario relating to the conflict of interest clearly highlights the ethical problems in legal proceedings. For instance, in a child custody case, attorney prior's representation of a party in different case or their spouse professional relationship with the opposite party can prospectively impact their judgment.^[15] Such conflicts upbrings the biased decisions directly effecting the fairness and outcomes of the case. This highlights the significance to carefully evaluates the conflicts and to ensure fairness, unbiased and unjust process.

Secondly, if a situation arises when there is a case presented in the court regarding the custody of child who has been declared psychologically unfit and the psychologist has provided with some parenting plans and other legal advices to avoid the unauthorized use of law. In such a scenario, if a court grants a decision by going through the strict procedure of law, then it must be noted that the basics of the case that weather is it ethically right or not? As it is the duty of the advocate to look behind the facts and circumstances of the case presented before him. If he fails to do so, then it is a major issue grown up because a psychologist lacks the authority to draft any legal arguments or provide legal advices even though he carries law degree. The reason behind this is that it is not his role where he is engaged rather the alternative way is that he can make a document of joint parental decisions for the purpose to assist the lawyer.^[16]

Lastly, in family matters ethical issues emerges out of legal proceedings because sensitive issues and personal relationships are involved there. In this context, consent from parties is mandatory in case of divorce. For instance, Rule 1.9 by the NHBA Ethical Committee restricts the lawyers from representing one spouse in case of divorce. If recently he had represented that party or both the parties in a joint manner without obtaining their consent because it may give rise to risks or impartiality. To overcome this issue, attorneys are guided to carefully evaluate the case keeping a view on their moral obligations to ensure just treatment with the client as well as to maintain integrity.^[17]

APPLICATION OF ETHICAL APPRAISAL IN FAMILY LAW: A WAY TO LEGAL DECISION-MAKING BEST INTEREST OF CHILD Vs. PARENTAL RIGHTS

Parental authority embraces statutory rights and obligations which aims of a better well-being of the child. The responsibility of the decision-making belongs to both parents in case where parents exercise joint authority of the child. However, whenever a dispute arises between both the parents then typically, father enjoys the authority of decision-making. Though on the other side, the mother cannot contest this in the court. When the case is presented into the court, it looks upon the fact that who can do this job in the better way taking into account the best interest of the child. "TENDER AGE RULE " is applied by the court according to which the child is under the custody of mother when he/she is under the age of seven. The court give priority to the better well-being of child going through the principle of " best interest of child ". This principle was then reinforced by the UN Convention on the Rights of the Child elaborating the child's wellbeing as the cardinal consideration in all decisions affecting them. ^[18] The ethical

appraisal of the parental authority and the best interest of the child includes to estimate the moral obligations and keep a balance between two.

When it comes to the custody of child, the Pakistani laws are marked by several deficiencies such as Guardian and Wards Act 1890^[19] where it lacks a proper distinction between a guardian and custodian and thus there arises many of the controversies in relevant judgments. In case of child custody, the courts when relying on this act, declares the case within the contradiction of best interest of child and decides the case in the definition of 'guardianship. Thus, gives rise to burning issues within the community.^[20]

Welfare of a child and his better well-being is given the major priority. In Section 17 of the Guardian and Wards Act 1890, the welfare of the child is said to be the supreme contemplation. The courts interpret this term as the child's health, education, physical, emotional, psychological and the moral well-being of the child and that will be considered according to the best interest of child. The duty of the court is to apply this principle in the light of Personal Muslim Law 1937^[21] and if a situation arises where there is a contradiction between best interest of child and any of the provision of law, the latter will prevail. In case of Muhammad Bashir Vs. Ghulam Fatima,^[22] the LHC decided the case in the favour of mother who got remarried and awarded custody to her. When the case went to appeal, the court declared that this decision is in contradiction with Islamic laws and that of ethical obligations wherein the welfare of the child has given the superior authority. Along with this, the court determined that when there is a contradiction between welfare and rules of personal law, the latter will prevail.

The Supreme Court of Philippines recently gave a judgment which clearly rules down that when it comes to the wellbeing of child in a child's custody case, then parental agreements or the strict procedure of law shall not be given the priority rather the main thing upon which the case shall be decided is the best interest of child which highlights that the moral obligations and ethical appraisal shall be taken into account. In the recent case in 2025, the Supreme court after having an eye to the facts of the case, emphasized that the trial courts must consider the overall circumstances and shall grant custody on the basis of child's welfare rather than relying on the parental agreements. Hence, highlighting the importance of ethical appraisal for the purpose of best interest of child and that his/her needs are protected.^[23]

LEGAL UNIFORMITY Vs. ETHICAL NEED FOR CULTURAL UNDERSTANDING

Ethical appraisal is a mediative process that evaluates legal decisions and norms within the ethical principles such as human dignity, justice, fairness, unbiased as well as cultural diversity and its understanding. In the cases of family law, ethical appraisal shall be kept as a mandatory task because all the family matters such as marriage, divorce etc. are tied with the cultural norms. All the legal systems which have ignored this matter are facing many risks such as unfairness and unjust treatment, therefore it is important to have a better understanding of these matters in the light of culture and its ethical obligations. Under the Family Courts Act 1964 ^[24] It is a well-settled principle of law that a separation is always a mutual decision of spouses whether through courts or not. Denying a child from having access to his/her parental relatives can be proven unamicable to the proper well-being of the child and will be similar to as if penalizing him/her for their parent's separation though it is his/her inherited right and no one has the authority to retain it from him/her under the Family Courts Act 1964. It is particularly observed that pursuant

to our traditions and culture, children are not denied to live with their grandparents and are also allowed to be involved in their family functions or festivals. This is done for the purpose that the children get able to understand the basic ethics, culture and traditional backgrounds that are induced in the community irrespective of any differences. This also aims that the children get a broader point of view which will also be proven as a very beneficial steps for the wellbeing of the child.^[25]

Lahore High Court recently ruled out in a judgment that the grandparents enjoy the right to visit and meet their grandchildren elaborating the word " parent " has a broad meaning in the Family Courts Act 1964. LHC explains that if someone deprives the child from meeting their grandparents will ultimately results into affecting their welfare.^[26] This judgment highlights that it is also culturally and ethically significant as well as it should be understood in a proper way.

EVALUATING ETHICAL APPRAISAL TO IMPROVE LEGAL OUTCOMES

When recognizing ethics, one must know that ethics is not same as that of religion, science, feelings, custom accepted norms nor it is same as what law says rather ethics are some of the standards which states that humans shall act in some specified ways in number of situations attached with the character. In lieu of such thing, a main question arises that how can one distinguish between the right or wrong, good or bad if ethics is not same as that of religion, science or law? Therefore, to answer this, many theologists, ethicists and philosophers derived some theories upon which humans can get the idea and thus facilitates with a framework which play its role to improve the results of the cases based on those theories.

The first step is to determine the ethical issue and then go through that whether is more about legality or ethics? Second step is to have command on the facts of the case, try to have more knowledge about the case, what individuals are involved therein? Along, with this, try to find out all the relevant details and option of the case. Thirdly, figure out the alternative solutions that will go best for the community not just for the parties. Fourthly, evaluate that what will be the impact of the solution that have been concluded and lastly, when the decision has been determined then contemplate its outcomes.^[27] This should be kept noted that before following these steps, one should perform it in the light of those theories i.e.: utilitarianism, virtue, care ethics etc.

A paper pen down by the Abibu Obadan in 2024 emphasizes the need to develop the legal research by including the establishment of proper ethical norms and standards as well as it examines the ethical issues arriving out of legal decisions. He focuses that ethical norms are almost being ignored in such issues which give rises to many harms and damages its integrity. Therefore, he concluded that during the legal research going on by any legal researcher, he must signify the ethical obligations for the purpose to have e better impact on the humans.^[28]

RECOMMENDATIONS

ADVANCMENT OF CULTURAL MORALS IN LEGALITY

To train family lawyers, judges and mediators to respect the human's culture within the context of law in order to bring stability in the legal competency.

TO STIMULATE THE ETHICAL USE WITHIN JUDICIARY

As one follows the strict procedure of law, it results into many imbalances therefore it is the urgent need for judges to be empowered with the ethical norms and obligations while

performing their judicial duty for the purpose to avoid complexities in family cases such as prioritizing child's stability over parental agreements.

EQUILIBRIUM NATURE OF LAW WITH SOCIAL JUSTICE

Advocates when representing the family matter, he shall maintain the balance between the laws and the values of women, children, minorities and all the humans involved in the cases in order to prevent biased results in the community and to maintain stability.

INCORPORATE THE PSYCHOLOGICAL EXPERTS IN FAMILY PROCEEDINGS

As the psychologists have a better understanding of human behavior, therefore these experts can assist the courts with the deeper knowledge of ethics majorly in family issues. For this purpose, they should be allowed when needed.

ENHANCMENT OF ETHICAL GUIDLINES IN FAMILY CASES

There are many clients who are vulnerable and asks for neutrality for the reason that in many situations, ethical dilemmas often go beyond law in family cases therefore, it is the urgent need to boost up the legal professionals of family law with the ethical guidelines in a broader way.

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