

WOMEN'S DIVORCE CASES IN THE 17TH CENTURY IN ISTANBUL QADI REGISTERS

Melek Nuredini, page 139 - 147

ABSTRACT

Through registers we can see important information about family law from the Ottoman period. According to what we have learned from the data obtained, the amount of mahr (reward) given to women from the marriage contract is frequently seen in the sharia registers in case of divorce. Alimony is a woman's pursuit of her legal rights and the protection of these rights by the court in various matters. Economic structure was basically determined by the principles of Islamic law. In many areas of Ottoman and Middle Eastern studies, registers have been used extensively as primary historical sources. Women's studies, Muslim and non-Muslim relations, material culture of society, Ottoman law studies and other subjects have witnessed new readings and understandings through the use of registers. We see that subject such as the city, economy, family, law, biography of women, army, foundations, population, disease, slaves are emphasized. In this study, we focused mostly on the divorce of men and women, the emancipation of concubines, and the position of women and children in the society in social, cultural, legal and economic issues in the Ottoman society in the 17th century Istanbul registers.

Keywords: woman, child, divorce, registers, qadi.



Dr. Melek Nuredini

*Ministry of Education and
Science / Bureau for
Development of Education*

e-mail: mn_meleknuredin
@hotmail.com

UDK:
347.627.2(560)17”

Date of received:
28 October, 2020

Date of acceptance:
29 November, 2020

Declaration of interest:
The authors reported no
conflict of interest related
to this article.

Introduction

Şer'iyye (Sharia) Registers are important sources in terms of reflecting the social and economic status of the region where they were registered, the social and family structure, the townships and sub-districts, social institutions and foundations in this region, political, administrative, economic and military situation of the Ottoman Empire in general. Qadi Registers; Starting from the second half of the 15th century to the first quarter of the 20th century, the Ottoman Empire constitutes one of the main sources of Turkish culture and history (Nuredin, Dünden Bugüne Makedonya Türkleri, 2011) since it is closely related to social, economic and political life.

One of the most regular collections among the qadi registers that document the legal and administrative activities of the Ottoman State courts are the books belonging to the qadi of Istanbul, Üsküdar. It is an important field of study in terms of illuminating the social structure in the classical period when Ottoman state institutions were established and developed. In order to illuminate the disintegration process of the family, which is the basic structural unit of the Ottoman society, the sharia records, which include the records kept in the Ottoman courts, are among the most important sources. The inequalities experienced by women and their ability to exist in society only as wives and mothers are a common problem for all women. The people did not go to the courts only to settle the disputes between them. On the contrary, it was applied to the court for almost every daily events that take place in the society, from a simple appointment of a proxy to bail, from buying-selling to renting, from marriage to divorce. For this reason, the qad' registers are the mirror of the society at that time. The family has been the basic unit of all societies. For the establishment of this unit, men and women must demonstrate their desire to live together in a contract called marriage in the presence of witnesses.

In Ottoman society, (Nuredin, 2008) although continuity in marriage is essential for the protection of family unity, it was possible to terminate marriage contracts in various ways when it became impossible to maintain harmony in the family. According

to Islamic law, which is the basis of Ottoman family law, in principle, (Nuredin, 2011) the right to divorce belongs to the man. Even the man's unilateral declaration of his divorce from his wife, verbally, was considered sufficient. It is not legally required to register the situation with the court. However, many divorce documents that appear in court records show that divorces were recorded in Ottoman society.

The books belonging to the Istanbul court, which are in the 17th century Istanbul qadi registers, have been our subject because they are important for the socio-cultural history of the period, these books have been examined in detail and the cases in which women and children are directly or indirectly have been examined and these cases have been classified according to their subject. In this study, it was aimed to reach information about the general situation of the society in the specified period and region by analyzing some of the records we obtained in the 17th century, based on the Istanbul Court records, and analyzing the cases involving women and children. It will be tried to examine how the Ottoman State followed the cases involving women and children and to what extent it adhered to the principles of Islamic Law in practice.

1. Women in Ottoman Society (Marriage Status in Ottoman Law)

Throughout Turkish history, the position of women in society has been an undeniably important point. The fact that women are not ignored in the reception and hosting of ambassadors and in the administration of the state indicates the political and administrative position of women in Turkish society. (Hatun) who joined the expeditions with the Sultan, has a say in the administration as in the old Turks. Among them were those who directed the state policy, those who were the head of the state and those who administered the state as regents (Kafesoğlu, 2007, s. 207).

With the adoption of Islam in the former Turkish government has continued importance given to women. The common image of the Ottoman city woman is the housewife and it can be said that she has the most active role in the survival and

continuation of the family. The woman was the most active person in the large Ottoman family, where there were many individuals in child care and upbringing. (Doğan, 2009, s. 83).

One of the main titles of Islamic family law in fiqh books is marriage. Engagement before marriage is the man's offer to marry the woman and the woman's acceptance of this offer. However, engagement is not a binding contract. Since it is not accepted as a contract, one of the parties always has the right to abandon the engagement. In the applications of Ottoman law reflected in the documents, marriage is possible for minors with the permission of their parents or guardians.

The most important concept of the marriage contract is the mahr, as can be seen in the registry records. In the marriage permit documents consisting of eighty-six examples of the period examined, the status of the woman is defined as biker-i baliga (adult single girl), divorced woman, woman whose husband died, freed concubine, daughter close to puberty. The forms of marriage permission records are similar to each other.

1.1. Mahr -Reward

It is seen that the mahr is given in two ways according to the payment methods in the Ottoman society. The first one is given before the marriage and it's called the mahr muaccel. Secondly, after the marriage or in case of death, the mehri paid to the spouse before the distribution of the estate is majjal. It is seen that the mehri mueccel was recorded in the books during the marriage contract. It is seen that in some of the marriages that were held during the Ottoman Empire, a payment was made by the man, both under the name of mahr and a thick-headress.

Mahr continued to exist side by side in the Ottoman state as a legal institution and a thick title as a social institution. Due to the fact that the bold title is not legally binding, there are many records related to the subject of mahr in the examined books, but the name of the bold title was never mentioned (Ortaylı, 2000, s. 35).

In the Qadi registers Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667), Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667), vol: 17, page: 217, Registry No. 3 of the Bab

Court (H. 1077) / M. 1666 - 1667) volume: 17, page: 253, Judgment no: 270, Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667) volume: 17, page: 272 Judgment no: 295, Bab Court Registry No. 11 (H. 1081 / M. 1670-1671) volume: 53, page: 168 (<http://www.kadisicilleri.org/>, tarih yok) It is seen that there are lawsuits related to mahr. In the notebooks that are the subject of our study, there are more than one example of such cases. However, there is no information as to whether the money was paid as a result of the lawsuit.

The judges were accustomed to prevent any kind of interference with the women's rights, and the cases related to the mahr were generally decided in favor of the women. Female marriage It is seen that he has all kinds of right of disposition on the mahr during and after the marriage (Büyükaşahin, 2013, s. 30).

We see that in some cases, women give up the mahr received in marriage contracts as a divorce price. Such situations are encountered especially in cases where the woman demands divorce. It is known in court records that women consent to divorce their spouses in return for a certain price.

1.2. Family Relations Reflected in Legal Texts During Marriage

The separation of property, which is reflected in the legal texts between husband and wife, is an effort to legalize who belongs to the property and property of the family. Apart from the purchase and sale contracts, men and women discharge each other's embezzlement from their expenditures. In the legal relations between the husband and wife, it is seen that the women mostly sell all the belongings, other property and similar things in the house belonging to their husbands and do not get the price of them, and again, they acquit their husband's embezzlement by taking the full or partial price of the mahr-i-mueccel. Likewise, disputes between spouses with their relatives due to marriage with their mother-in-law and father-in-law are mostly encountered in debt-credit cases.

2. Divorce in Ottoman Law

In Islamic family law, divorce is divided into three parts. As can be seen in the registers, these are the judge's decision to separate the spouses in case the complaint of the woman who wants to divorce by filing an application to the court is valid and proven. In talaq type divorce, the husband can divorce the woman without justification. The most common dispute in the registry is a consensual divorce. In these divorces, the case is generally transferred from the mouth of the woman and the man consents.

In Islamic Law, spouses are given the right to divorce. Although the general opinion is that this right is granted only to men, women are also given the right to divorce under certain conditions. Although the man has been granted the right to divorce his wife, with the name of talak, of his own free will and without the intervention of a judge or a clergyman, every measure has been taken to prevent abuse of this right (Akgündüz, 1989, s. 122).

A woman's separation by mutual agreement by waving some of her rights takes place in three ways: hul or muhâla'a, and termination of marriage with a qadi's decision for certain reasons. As stated by Islamic scholars, the right to divorce is available to both parties, but since the concept of family is highly valued in Islam, the conditions of divorce are also aggravated.

2.1. Types of Divorce and Conditions of Divorce

It is seen that it was applied in Ottoman family law and types of divorce were formed. As in matters related to marriage and inheritance, non-Muslims in Istanbul also apply to Ottoman courts for divorce cases. Conditional talaq, which is seen in the records, is stipulated and if the condition is fulfilled, the woman is considered to be divorced even without being face to face with the man.

One of the conditions that men run for divorce is to state that his wife will divorce him if he does not return within a certain period of time, while going from his place of residence to another place. There is no need to be in the same place at the same time in a divorce with talaq. It is sufficient for the husband to send the news by saying that he is divorcing her in a parliament where his

wife is not present, or just stating that he is sweetening his wife in the presence of witnesses and proving the situation with witnesses is sufficient for divorce with talaq. The reasons for divorce in the qadı registers are; There are cases such as adultery, intent on life, ill-treatment and dishonorable behavior, committing a crime or leading a dishonorable life, abandonment, mental illness, dissolution of marital union, agreement of spouses in divorce, failure to establish a common life. Cases related to divorce in qadı registers Eyüb Court (Havass-ı Refia) Registry No. 74 (H. 1072 - 1073 / M. 1661 - 1662), volume: 28, page: 127, Judgment no: 102, Üsküdar Court Registry No. 84 (H.999-1000/ M.1590-1591) volume: 10, page: 126. It is cited as judgment no: 76. (<http://www.kadiscilleri.org/>, tarih yok)

2.3. Status of Women and Children After Divorce

After the divorce, the attitude of the woman during the lawsuit determines the situation of the woman, and different results emerge depending on the agreement on alimony, the right to shelter and the mahr. It is obligatory for the man to fulfill his alimony and residence rights as if he were married until his iddah ends. In fact, the woman can continue to live in her husband's house during her iddah, provided that they are in separate rooms. Mostly, after the divorce, he goes to a separate house, for example, to his father's house and almost completely cuts off the relationship. Again, in divorces, agreement is essential. Pregnant women can receive alimony. But there are many instances where the woman often gives up asking for her own maintenance, childcare expenses, to get out of marriage. It shows that if the woman remarries, there may be some exceptions for the removal of the child from her.

Conclusion

The concept of crime has emerged with the existence of human beings and has been seen in different ways in every society. It is seen that Islamic Law is applied as the basis for the punishment to be given to a crime committed in the Ottoman legal system. Penalties to be given to crimes are largely stated in the laws and the limits of the punishment are also drawn. In Ottoman Law, after a crime was committed, if there was no previous provision regarding the punishment of this crime, the punishment of the perpetrator was left to the discretion of the judges, but they were not given unlimited authority. Although the conditions change in every society where marriage exists, the concept of divorce exists. With the divorce, not only the spouses but also the society is affected. For this reason, the lives of the people who make up the society, and thus the societies, have been affected by it. This system, which also dates back to ancient times, has gradually become modernized over time.

Giving equal rights to everyone is the most important example of this. In Islamic Law, the right of divorce has been given to women, especially to men, but it has been considered as religiously forbidden. For this reason, very strict rules have not been determined. The man has the right to talak, the woman the right to muhala, and both the man and the woman have the right to separate. Although the decision of divorce has been given, there is a certain period of iddah. These are the concepts that form the basis of divorce. The basis of both laws is human. For this reason, no matter how much history has changed, how much people have developed, the problems have remained the same. The same is true for marriage and divorce. In both, it is the spouses and society that are affected. Their forms and conditions change with laws. However, if we consider our Civil Code, since Islamic Law comes from its origin, it has a lot in common. As a result, although the two legal systems have a lot of similarities, there have been differences with the change of many law articles arranged to pass from Islamic rules to European style.

BİBLİOGRAHY

- Akgündüz, A. (1989). İslam Hukukunda Kadının Boşanma Hakkı. *Sızıntı Dergisi*,, 122.
- Araştırmaları, T. İ. (Dü.). (tarih yok). <http://www.kadiscilleri.org/>. 2019 tarihinde Kadı Sicilleri: [http://www.kadiscilleri.org/madde.php?klme=bo%C5%9Fanma&trch=hkm&-find="+ARA+](http://www.kadiscilleri.org/madde.php?klme=bo%C5%9Fanma&trch=hkm&-find=) adresinden alındı
- Büyükşahin, Ş. (2013). Kayseri Şer'iyye Sicillerine Göre Kayseri'de Kadın. Hacı Bektaş Veli Üniversitesi Nevşehir: Basılmamış Yüksek Lisans Tezi.
- Doğan, İ. (2009). *Dünden Bugüne Türk Ailesi: Sosyolojik Bir Değerlendirme*. . Ankara: Atatürk Kültür Merkezi Yayınları.
- Gökyay, O. Ş. (1984, Eylül). Zübdet'üt-Tevarih (Tarihlerin Özeti),. *Tarih ve Toplum*(5), 210-215.
- Kafesoğlu, İ. (2007). *Türk Milli Kültürü*. Ankara: Ötüken Yayınları.
- Kurz, O. (2015). *Sultan İçin Bir Saat, Yakındoğu'da Avrupa Saat ve Saatçileri*. (A. Özdamar, Çev.) İstanbul: Kitap Yayınevi.
- Nuredin, A. (2008). *Osmanlı sonrası Makedonya*. Skopje: Divan.
- Nuredin, A. (2011). *Balkanlardan Türkiye" ye Göç ve Etkileri*. Ankara: Çağla Yayıncılık.
- Nuredin, A. (2011). Dünden Bugüne Makedonya Türkleri. *HİKMET Dergisi*, 172-195.
- Ortaylı, İ. (2000). *Osmanlı Toplumunda Aile*. İstanbul: Pan Yayıncılık.
- Özön, M. N.-N. (2004). *Seyahatname*. İstanbul: Kabalcı Yayınevi.
- Reyhanlı, T. (1983). *İngiliz Gezginlerine Göre XVI. Yüzyılda İstanbul'da Hayat 1582-1599*. Ankara: Kültür e Turizm Bakanlığı.
- Yıldız, N. (1987). İngiliz - Osmanlı Sanat Eseri Alış Verişi (1583-1914). 337-39. İstanbul Üniversitesi (Yayımlanmamış Doktora Tezi).
- Yıldız, N. (1990, Haziran). Anglo-Turkish Relations and Turkish Influences on die British Social Life and Art,. *New Cyprus*, 15-16.

Yıldız, N. (1992). Türk - İngiliz ilişkileri Sürecinde İngiliz Sanat ve Sosyal Yaşamındaki Türk Etkileri. *Sanat Tarihi Araştırmaları Dergisi*(11), 41-48.

<http://www.kadiscilleri.org/kullanim.php>

<http://www.kadiscilleri.org/goster.php?blm=eyp074&bsm=eyp074b127>

<http://www.kadiscilleri.org/goster.php?blm=usk084&bsm=usk084b126>

<http://www.kadiscilleri.org/goster.php?blm=ist003&bsm=ist003b291>

<http://www.kadiscilleri.org/gosterorj.php?blm=usk051&bsm=usk051o386>

<http://www.kadiscilleri.org/goster.php?blm=usk051&bsm=usk051b239>

<http://www.kadiscilleri.org/goster.php?blm=bab003&bsm=bab003b139>