

DISSOLUTION OF MUSLIM MARRIAGE IN INDIA: AN ANALYTICAL STUDY

Shabnam Khan^{a,*} 

Dr. Seema Sharma^{b,**} 

^a Research Scholar (Law), MMH College, Ghaziabad, Chaudhary Charan Singh University, Meerut, U.P., (India)

^b Associate Professor, Department of Law, MMH College, Ghaziabad, Chaudhary Charan Singh University, Meerut, U.P., (India)

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ABSTRACT

The concept of marriage and divorce in Muslim law is based on ancient perspectives and a historical perspective among Muslims. Personal law, which contains the Quran (holy book of Muslims), Sunnat (traditions), Ijma (consensus), and Qiyas (analogical deductions). Quran is the most important source in Muslim Law. Marriage is seen as a civil contract in Muslim law. Nikah and muta marriages are two different types of Muslim marriages. Both the likely husband and wife must fulfil various significant conditions before entering into a Nikah marriage, such as the age of majority, the parties' permission, Mehr, and so on. Because Muslim marriage is a civil contract, one party makes an offer, which is accepted by the other. Divorce by husband, by wife, by mutual consent, and by judicial order are the four types of divorce in Muslim Law.

Introduction

In India, the Hanafi School followers of Sunni are discovered in big number. In Muslims, there are various forms of marriages and divorces that may be practised. This paper is an endeavour to have a look at divorce in Muslims critically.

Nature of Marriage under Muslim Law

In Muslim marriage law, Abdul Kadir v. Salima,^[1] is the most important case because in this case Justice Mahmood discussed the nature of Muslim marriage as a civil contract requiring Ijab (offer) from one party and Qubul (acceptance) from other party, both of which must be made freely, without coercion, undue influence, or fraud on both parties' parts and with consideration.

Dissolution of marriage under Muslim Law

Nikah marriage is dissolved either by the death of either party or by divorce. Divorce is the legal term through which a marriage is ended by a court order or by the parties. Prophet Muhammad had said divorce as the most detestable of all things and something he believed should be avoided.

(1) Non-Judicial Divorce

Though the husband has the unilateral ability to pronounce Talaq, he must employ it with caution. The Quran provides a set of roles that must be obeyed to the letter. He has been given this power with expectation that firstly he will not ordinarily exercise it and avoid it as much possible. Second, if he determines that it is unavoidable, he will act in a just and rational manner. In Islamic law, there is no provision for a husband to divorce his wife arbitrarily, irrationally, or in an unjust manner. The husband can give Talaq in one of the following ways:

- Talaq-e-Ahasan
- Talaq-e-Hasan
- Talaq-e-biddat

d) Ila

e) Zihar

Talaq-e-sunnat is considered to be in accordance by the commands of prophet Mohamad.

- Talaq-e-Ahasan** -It consists of a single declaration of divorce made during the period of Tuhr^[3] (purity, between two mensurations) or at any time if the wife is free of mensuration and refrains from sexual relations during the period of Iddat. It is an Arabic word 'Ahasan' means 'best' or as Wilson puts it, very proper.^[4] According to Hedaya, this method of divorce is most approved as the companions of Prophet approved of it.^[5] The best virtue of this type of Talaq is that it is reversible, preventing hasty divorce. Thus, if the husband resumes cohabitation with his wife before the end of Iddat or states I HAVE RETAIN THEE, the divorce is cancelled. The revocation of a divorce is also triggered by the resumption of sexual relations before the end of the Iddat period.
- Talaq-e-Hasan** - In Arabic 'Hasan' means good. This is also known as a type of Talaq-e-sunnat, but it is less approved than Talaq-e-Ahasan. In this case, the husband must say Talaq three times in three consecutive Tuhrs. The husband must repeat the Talaq three times in three Tuhrs. If the wife has reached menstrual age, the pronouncement may be made after a month or thirty days has passed between the previous announcements. The Talaq becomes final and irreversible after the last pronouncement is made. Each of the three announcements must be made at a time when no intercourse has been conducted.
- Talaq-e-biddat** - Sunnis recognise it, however it is disapproved type of Talaq. It's also recognised as triple Talaq. The Apex Court

* Corresponding author

E-mail: roshabnamkhan37@gmail.com (Shabnam Khan).


E-mail: seemasharma05@gmail.com (Dr. Seema Sharma).


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 <https://orcid.org/0000-0002-5406-8786>

 <https://orcid.org/0000-0003-1184-4789>



held it unconstitutional in the case of *Shayara Bano v. Union of India*.^[6] The Muslim Women (Protection of Rights on Marriage) Act, 2019, was passed shortly after this verdict, making any declaration of Triple Talaq by a Muslim husband void and illegal. In the event that any provision of the Act is violated, the Act stipulates the punishment with imprisonment for a period of up to three years and fine.^[7]

d) Ila-

The husband in Ila pledges that he will never have sexual relations with his wife. There is a four-month period of no consummation following this oath. At the end of the fourth month, the marriage is irreversibly dissolved. It can be cancelled, if the husband starts cohabiting during the period of four months. After this time period, the wife can go to the court for divorce.

e) Zihar

If the husband compares his wife to his mother or any other female in prohibited degrees, the wife has the right to refuse herself to him until he has performed penance.^[8]

(ii) Judicial Divorce

By the judicial decree under Muslim Dissolution of Marriage Act, 1939:

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When a wife is falsely charged with adultery by her husband, this type of divorce arises. Under the Muslim Dissolution of Marriage Act of 1939, she can go to court for divorce. The cause for divorce must be a false claim of adultery against the wife by her husband, who must be sane and over the age of 18. A marriage is not dissolved until the court grants dissolution decree.

Section 2 of The Dissolution of Muslim Marriage Act, 1939, states grounds on the basis of which the wife may sue for divorce.

Section 2 in the Dissolution of Muslim Marriages Act, 1939

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

- (i) If the whereabouts of the husband have not been known for a period of four years, she is entitled to obtain a decree for dissolution of her marriage.
- (ii) If her husband has neglected or has failed to provide for her maintenance for a period of two years, the wife is entitled to decree for dissolution of marriage.
- (iii) If the husband has been sentenced to imprisonment for a period of seven years or upwards, the wife is entitled to decree of dissolution, but no decree can be passed on this ground unless the sentence has become final.
- (iv) If the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years, the wife is entitled to the decree of dissolution of marriage. In *Veeran Sayvu Ravuthar v. Beevathamma*,^[10] the court held that where a wife is residing in her own family house away from her husband and the husband has never made any attempt to get conjugal company, moreover he did not take any action for restitution of conjugal rights, thus the husband failed to perform his marital obligations.
- (v) If the husband was impotent at the time of the marriage and continues

to be so, the wife is entitled to judicial divorce.

- (vi) If the husband has been insane for a period of two years or is suffering from leprosy or virulent venereal disease. The leprosy or virulent disease need not be for two years, it may be even recent.
- (vii) If the wife, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated. This ground of 'Option of puberty' known as *Khyar-ul-bulugh* was also available to Muslim woman before this Act.
- (viii) If the husband treats her with cruelty, such as imposing physical assault, making defamatory statements that affect her reputation, attempts to force her to lead an immoral life, etc., the wife is entitled to decree for dissolution of marriage. In *Itwari v. Asghari*,^[11] the Allahabad High Court held that Muslim law in India treats polygamy as an institution to be tolerated but not encouraged, and that the husband does not have a fundamental right to compel the first wife to share her consortium with another woman under any circumstances. As a result, Indian law does not recognise various types of cruelty, such as "Muslim" cruelty, "Christian" cruelty, "Hindu" cruelty, and so on, and the test of cruelty is based on universal and humanitarian standards.^[12] In *K. Muhamma Lateef v. Nishath*,^[13] the court observed that though under exceptional circumstances, bigamy is permitted under Muslim law. It is also necessary to consider the situations under which it is permissible. Such situations do not exist at this time. Not only that, but the husband must also meet specific requirements in order to have a second wife including financial capacity, physical capacity, and the ability to treat more than one wife without discrimination.^[14]

Conclusion

Little legislation is brought such as the Dissolution of Muslim Marriage Act, 1939, the Muslim Women (Protection of Rights on Marriage) Act, 2019 for divorce to Muslim women in addition to the ground available in personal law. The Act of 1939 empowered Muslim Women to take divorce on her own. The Act of 2019 indeed protects Muslim Women from the most sinful form of Talaq i.e. Triple Talaq, but implications of imprisonment of the husband are still to be seen. Solutions are desired on the issue of the subsistence allowance for her and dependent children during the period of imprisonment of her husband. We observe August 1 as Muslim Women Rights day as law prohibiting Triple Talaq was enacted on this day. The answers to the questions whether Muslim women are empowered by this legislation or not, whether flawed understanding of it is leading to misuse are yet to be found out in the near future.^[15]

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