



*Journal of Advances and  
Scholarly Researches in  
Allied Education*

*Vol. IX, Issue No. XVII,  
Jan-2015, ISSN 2230-7540*

**A STUDY ABOUT ISLAMIC LAW OF MARRIAGE  
AND DIVORCE**

AN  
INTERNATIONALLY  
INDEXED PEER  
REVIEWED &  
REFEREED JOURNAL

# A Study about Islamic Law of Marriage and Divorce

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**Abstract – The problem of inequality for women is more social than legal. As regards to the law, except for personal matters, inequalities in the provisions of law are hardly found. Personal matters, however, are regulated by religious laws or customs. In the legal system though these laws or customs are incorporated separately under the head of Personal Law, these are not, however, as a whole derived from religious laws or customs. Some changes through introducing enactments or promulgating ordinances were made in their application. Still, these have been insufficient to establish equality between women and men. This paper shows how Muslim women are being treated with regard to their Personal Law, in particular Marriage and divorce law. Prevailing social constructions of gender are still a fundamental obstacle in realizing the demands of existing law. In order to remove inequalities and impose justice, particularly in marriage-related matters.**

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## INTRODUCTION

In Islamic Law, marriage is a contract – a social contract – as distinct from a commercial transaction.. It is sometimes also termed a ‘civil contract’ between a single man and a single woman of sound mind who have attained puberty. These contracts must be understood by the parties in order to ensure that the marriage has been performed in the proper manner and the rightful effects of the marriage are granted to each of the participating partners. Also, it is considered best if the contract is executed in spoken form. However, due to need or necessity, it may be done through writing or signing.

In Islam, marriage involves sharing between the two halves of society. Its objectives, besides perpetuating human life, are emotional well-being and spiritual harmony. Its bases are love and mercy. It also indicates legalization of sexual intercourse, and provides a license to produce children. Therefore, in Islam extra-marital sexual relations are prohibited, let alone reproduction. According to *Shia* law marriage in Islam can be of two kinds: first, marriage through a regular contract which is called “permanent”, and second *muta* marriage – a non-permanent marriage for a fixed term.

*Muta* is distinguished from regular, permanent marriage on the basis of its nature. As it is temporary it does not reflect any far-reaching consequences. For example, *Muta* marriage does not create mutual rights of inheritance between the man and the woman, but children conceived while it exists are legitimate and capable of inheriting from both parents. All that is

needed for *Muta* is a valid contract with a mention of the specified period accompanied by a fixed amount of dower. What is also important to note is that for a valid *Muta* two witnesses are required as is also required for the permanent marriage.

The legal effects of marriage depend on the validity of marriage. For example, a marriage can be classified as *sahi* (full valid), *fasid* (irregular) or *batil* (void). There are no legal consequences for a *batil* or void marriage since according to Islamic law, it is not a marriage at all. Limited legal consequences are, however, found in an irregular or *fasid* marriage.

According to prevailing laws puberty is determined on the basis of one’s attaining majority. As a matter of fact, the term puberty is no longer relevant. What is relevant for a marriage contract is whether one has crossed the age of minority. Laws regarding majority were enacted at different times and in response to different situations. The concept of minor or child has, thus, been given varied definitions by different acts and statutes.

Islam allows divorce if circumstances warrant or necessitate it, indeed reluctantly neither liking nor recommending it. The holy Qur’an states, “[a]nd if you fear that the two (i.e., husband and wife) may not be able to keep the limits ordered by Allah, there is no blame on either of them if she redeems herself (from the marriage tie) ...” The Prophet of Islam, Mohammad (SAS) said, among lawful things, divorce is most disliked by Allah. The general ground for divorce in the Qur’an is perceived as a hopeless failure of one or both parties to discharge their marital

duties and to consort with each other in kindness, peace and compassion. The right to divorce is, however, conferred upon men, not on women. Classical Islamic law contemplates different kinds of divorce procedures. This includes: divorce through oral pronouncement (*talaq-i-ahsan*, *talaq-i-hasan*, *talaq-ul-bidaat* or *talaq-i-badai*) and divorce in written form (which is irrevocable divorce (*talaq-i-bain*) and takes its effect immediately on its execution). Among these procedures, the most common mode of divorce in Bangladesh is *talaq-ul-bidaat* or *talaqi-badai*, which means three pronouncements at the same time (e.g., I divorce you thrice or separately, I divorce you, I divorce you, I divorce you or with a single pronouncement that I divorce you irrevocably). Once such a pronouncement is complete, divorce becomes irrevocable or *bain*, and is effective immediately. Remarriage between the parties, according to classical Islamic law, is absolutely forbidden unless an intervention of another marriage with a third party is concluded and divorced thereafter upon consummation.<sup>16</sup> It is interesting that such an interim marriage is only applicable in case of a woman. A man does not need to be married with a third party in between two marriages.

## REGISTRATION OF MUSLIM MARRIAGES

Though in principle Islamic law does not require a ritual solemnization of marriage, among the Muslims of India marriages are invariably solemnized by religious officials known as the “kazi”. The short ceremony performed by the *kazi*, known as “*nikah*”, begins with formally obtaining consent of the parties – first of the bride and then of the groom – and ends with recitation from the Holy Quran followed by prayers. Before, or immediately after, the ceremony the kazi prepares a *nikah-nama* (marriage certificate) which gives full details of the parties and is signed by both of them, and by two witnesses. The kazi authenticates the *nikahnama* by putting his signatures and seal on it.

Printed forms of standard *nikah-nama* in Urdu and Hindi are stocked by all kazis who fill in it the details of the marriages they solemnize, issue copies to both parties, and always preserve a copy in their records.

*The Kazis Act 1880* - There is an old central law called the Kazis Act 1880 empowering State governments to appoint kazis for the purpose of helping desiring local Muslims with solemnization of marriages, etc. The Government in British India had inherited the power to appoint kazis from the Mughal rulers but had abdicated it in 1864. On the demand of Muslim leadership led by the great Sir Syed Ahmad Khan, the power was resumed by enacting the Kazis Act 1880.

Under this Act kazis may be appointed by a State Government for various areas under its control. A kazi can also be removed by the appointing authority on the grounds of misconduct, long absence, insolvency or incapability. The Act, now in force in most States,

makes it clear that presence of a State-appointed kazi will not be mandatory for any marriage.

*Local Muslim Marriage and Divorce Registration Acts* - There are Muslim Marriage and Divorce Registration Acts in force in six States providing for voluntary registration of marriages and divorces among the local Muslims. These States are as follows:

- (i) West Bengal
- (ii) Bihar
- (iii) Jharkhand
- (iv) Assam
- (v) Orissa
- (vi) Meghalaya

The parent law among these is the old Bengal Mohammedan Marriage and Divorce Registration Act 1876 which is now in force in the first three of the above-named States.

The Orissa legislature re-enacted in 1949, with some changes, the old

Bengal law of 1876 referred to above. Titled Orissa Mohammedan Marriage and Divorce Registration Act 1949, it extends to the whole State.

The Assam legislature had enacted a similar law in 1935 – the Assam Moslem Marriage and Divorce Registration Act. The newly created State of Meghalaya locally re-enacted this law in 1974 with no substantive change. All these Acts empower the local governments to license suitable persons in various areas authorizing them to register marriages and divorces among the local Muslims. These persons, to be known as “Mohammedan Marriage Registrars”, have to act as per the procedure laid down at length in the Acts. All the Acts also prescribe various forms for registration of marriages and different forms of divorce, including *talaq* (divorce by husband) and *khula* (divorce at the instance of wife).

The position of the Mohammedan Marriage Registrars appointed under these Acts is akin to the kazis appointed under the central Kazis Act 1880. Like the latter, all these local Acts also clarify that the presence of a State-appointed Mohammedan Marriage Registrar will not be obligatory for any marriage, and also that neither non-registration would affect the validity of any marriage nor will mere registration validate a marriage which is otherwise invalid under Muslim law. Registration under these Acts is thus a mere facility provided by law.

Under the Rules framed under the Bengal law of 1876 a Permanent Committee headed by the Inspector-General of Registrar oversees appointments,

suspension and removal of Mohammedan Registrars. With the approval of the Government the Committee can also examine from time to time their knowledge of Muslim law.

## REGISTRATION OF DIVORCES

*Divorces Obtained Outside the Court* - The Muslim Marriage and Divorce Registration Acts applicable in West Bengal, Bihar, Jharkhand, Orissa, Assam and Meghalaya – referred to above – provide for voluntary registration of out-of-court divorces with the Mohammedan Marriage Registrars appointed under those Acts by the State Governments. The following forms of divorce can be so registered in all the States:

- (i) *Talaq* (divorce by the husband),
- (ii) *Khula* (divorce at the instance of wife), and
- (iii) *Mubara'at* (divorce by mutual consent).

Separate forms are prescribed by these Acts for the registration of each of these categories of divorce.

The Orissa Mohammedan Marriage and Divorce Registration Act 1949 provides also for registration of *talaq-tafwiz* (divorce by wife in terms of a stipulation for this purpose in the marriage contract). It prescribes special forms for the registration of such divorces.

Registration of all divorces under all these laws is to be made on a voluntary basis; and non-registration of any divorce does not vitiate its legal validity.

## CONCLUSION

This paper has examined classical Islamic laws concerning marriage and related issues; Muslim laws; and has attempted to identify the inequalities between rights enjoyed by men and women. While I stressed the inequality of Muslim women through their own personal laws. Since laws vary from religion to religion, inequalities also vary from woman to woman, depending on which religion she belongs to. It is extremely undesirable for laws regarding the same matters to be so diversified. There is high demand for the Uniform Family Code, with the exception of religious fundamentalists, which would bring the diversity of personal laws under one rubric within the country's civil code.

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