

Concept of Divorce and Dissolution of Muslim Marriages Act 1939

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Abstract – Firm union of the husband and wife is a vital condition for a glad family life. Islam in this way, demands the subsistence of a marriage and recommends that break of marriage contract ought to be maintained a strategic distance from. At first no marriage is contracted to be disintegrated yet in sad conditions the wedding contract is broken. One of the methods for such dissolution is by method for divorce. Under Muslim law the divorce may occur by the demonstration of the parties themselves or by an announcement of the court of law. Anyway in whatever way the divorce is affected it has not been viewed when in doubt of life. In Islam, divorce is considered as a special case to the status of marriage. Talaq in its crude sense implies dismissal. In its strict significance, it signifies "setting free", "letting free", or removing any "ties or limitation". In Muslim Law it implies opportunity from the subjugation of marriage and not from some other servitude. In legitimate sense it implies dissolution of marriage by husband utilizing suitable words. At the end of the day talaq is disavowal of marriage by the husband as per the method set somewhere around the law.

Keywords: Divorce, Marriage, Muslim Law, Dissolution of Muslim Marriages Act, etc.

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I. INTRODUCTION

The Prophet announced that among the things which have been allowed by law, divorce is the most noticeably terrible. Divorce being an abhorrent, it must be maintained a strategic distance from beyond what many would consider possible. Be that as it may, in certain events this malice turns into a need, since when it is outlandish for the parties to the marriage to carry on their union with shared fondness and love then it is smarter to enable them to get isolated than constrain them to live together in an environment of scorn and alienation. The premise of divorce in Islamic law is the powerlessness of the spouses to live together as opposed to a particular reason (or blame of a gathering) because of which the parties can't live together. A divorce might be either by the demonstration of the husband or by the demonstration of the wife. There are a few methods of divorce under the Muslim law, which will be talked about in the future. The focal discussion on translation of Muslim personal laws has both constructive just as adverse viewpoints. A few creators have upheld that, Muslim personal laws have given different rights to Muslim women, for example, decision in marriage, inheritance and so on²³. While, some are of the feeling that, there

are different practices which is against the soul of Indian Constitution. The personal law in India is a law for individuals of various religion and material as indicated by the religion of the individual. For a long time Muslim women are battling for gender equality in the Islamic law that oversee right identified with marriage, divorce and property rights. Be that as it may, all-India Muslim Personal Law Board is one of the principle persuasive bodies in Muslim community. There are bunches of backings just as analysis about this board. Many time this load up rejected the proposition to change the Muslim personal law as they trust it will encroach the essential standards of Islam. Further, there is numerous male individuals' mastery in that specific board. Muslim women rights of marriage, divorce, inheritance has supported numerous Muslim women activists to battle for their rights. Personal laws in India and particularly Muslim personal law has been a noteworthy political and questionable issue, and has been broadly discussed. Since freedom it has been a rallying point for Muslim associations, yet in addition for Hindu rights wing governmental issues.

²³ Muslim Personal Law (Shariat) Application Act 1937- s. 2 - Application of Personal law to Muslims. – Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal

Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be Muslim Personal Law (Shariat).

A husband may divorce his wife by renouncing the marriage without giving any reason. Declaration of such words which connote his goal to abandon the wife is adequate. By and large this done by talaq Be that as it may, he may likewise divorce by Ila, and Zihar which contrast from talaq just in structure, not in substance. A wife can't divorce her husband voluntarily. She can divorce the husband just when the husband has appointed such a privilege to her or under an agreement. Under an agreement the wife may divorce her husband either by Khula or Mubarat. Prior to 1939, a Muslim wife reserved no option to look for divorce aside from on the ground of misleading allegations of infidelity, craziness or impotency of the husband. In any case, the Dissolution of Muslim Marriages Act 1939 sets out a few different grounds based on which a Muslim wife may get her divorce order gone by the request of the court. There are two categories of divorce under the Muslim law

- Extra judicial divorce, and
- Judicial divorce

II. TYPES OF DIVORCE

2.1 Talaq by Husband

When clear and unequivocal words, such as "I have divorced thee" are uttered, the divorce is express. The express talaq, falls into two categories:

1. Talaq-i-sunnat is considered to be in accordance with the dictats of Prophet Mohammad.
2. Talaq-i-Biddat: It came into vogue during the second century of Islam. It has two forms: (i) the triple declaration of talaq made in a period of purity, either in one sentence or in three, (ii) the other form constitutes a single irrevocable pronouncement of divorce made in a period of tuhr or even otherwise. This type of talaq is not recognized by the Shias. This form of divorce is condemned. It is considered heretical, because of its irrevocability. Under Ithna Asharia (Shia) School, Ila, does not work as divorce without request of the court of law. After the expiry of the fourth month, the wife is essentially entitled for a judicial divorce. In the event that there is no living together, even after expiry of four months, the wife may record a suit for compensation of matrimonial rights against the husband.

2.2 Talaq by Mutual Agreement

Khula and Mubarat: They are two types of divorce by common assent yet in both of them, the wife needs to part with her dower or a piece of some other property. A refrain in the Holy Quran keeps running as: "And it not lawful for you that ye remove from women from that which ye have given them: aside from (for the

situation) when both dread that they will most likely be unable to keep inside the points of confinement (forced by Allah), all things considered it is no wrongdoing for both of them if the lady deliver herself."²⁴ The word khula, in its unique sense signifies "to draw" or "uncover" or "to take off, for example, removing one's garments or garments. It is said that the spouses resemble garments to one another and when they take khula every remove his or her garments, i.e., they dispose of one another.

In law it is said will be said to mean an agreement between the spouses for dissolving a marriage union in lieu of pay paid by the wife to her husband out of her property. Despite the fact that thought for Khula is basic, the actual arrival of the dower or delivery of property establishing the thought isn't a condition point of reference for the legitimacy of the khula. When the husband gives his assent, it results in an irreversible divorce. The husband has no intensity of dropping the 'khul' on the ground that the thought has not been paid. The thought can be anything; usually it is mahr, the entire or part of it. Be that as it may, it might be any property however not fanciful. In mubarat, the outstanding element is that both the parties want divorce. Along these lines, the proposition may radiate from either side. In mubarat both, the husband and the wife, are glad to dispose of one another. Among the Sunnis when the parties to marriage go into a mubarat all common rights and commitments reach an end.

The Shia law is stringent however. It necessitates that both the parties must true blue observe the conjugal relationship to be infuriating and bulky. Among the Sunnis no particular structure is set down, yet the Shias demand a legitimate structure. The Shias demand that the word mubarat ought to be trailed by the word talaq, generally no divorce would result. They additionally demand that the pronouncement must be in Arabic except if the parties are unequipped for articulating the Arabic words. Goal to break up the marriage ought to be unmistakably communicated. Among both, Shias and Sunnis, mubarat is irreversible. Different requirements are equivalent to in khula and the wife must experience the time of iddat and in both the divorce is essentially an act of the parties, and no mediation by the court is required.

2.3 Talaq by Wife

The divorce by wife can be categorized under three categories:

1. **Talaq-I-tafweez:** or appointed divorce is perceived among both, the Shias and the Sunnis. The Muslim husband is allowed to assign his capacity of articulating divorce to his wife or some other individual. He may assign the power completely or

²⁴ The Holy Quran, IV, 35

conditionally, briefly or forever. A lasting assignment of intensity is revocable however a transitory designation of intensity isn't. This assignment must be made particularly for the individual to whom the power is appointed, and the motivation behind designation must be obviously stated. The intensity of talaq might be designated to his wife and as Faizee watches, "this type of assigned divorce is maybe the strongest weapon in the hands of a Muslim wife to acquire freedom without the mediation of any court and is presently starting to be genuinely basic in India". This type of assigned divorce is usually stipulated in prenuptial agreements. In *Md. Khan v. Shahmai*, under a prenuptial agreement, a husband, who was a Khana Damad, attempted to pay certain measure of marriage costs brought about by the dad in-law in case of his going out and gave a capacity to articulate divorce on his wife. The husband went out without paying the sum. The wife practiced the privilege and divorced herself. It was held that it was a legitimate divorce in the activity of the power designated to her. Assignment of intensity might be made even in the post marriage agreements. In this manner where under an agreement it is stipulated that in case of the husband neglecting to pay her upkeep or taking a second wife, the will have a privilege of articulating divorce on herself, such an agreement is substantial, and such conditions are sensible and not against open strategy²⁵. It ought to be noticed that even in case of possibility, regardless of whether the power is to be worked out, rely on the wife she may practice it or she may not. The incident of the occasion of possibility does not result in programmed divorce.

2. **Lian:** If the husband levels bogus allegations of unchastity or infidelity against his wife then this adds up to character death and the wife has the privilege to request divorce on these grounds. Such a method of divorce is called Lian. In any case, it is just a willful and forceful charge of infidelity made by the husband which, assuming false, would qualifies the wife forget the wife to get the pronouncement of divorce on the ground of Lian. Where a wife offends of her husband with her conduct and the husband hits back an allegation of unfaithfulness against her, at that point what the husband says in light of the awful conduct of the wife, can't be utilized by the wife as a misleading allegation of infidelity and no divorce is to be conceded under Lian. This was held on account of *Nurjahan v. Kazim Ali* by the Calcutta High Court.

²⁵ Faizee, Muslim Law, p. 156

III. DISSOLUTION OF MUSLIM MARRIAGES ACT 1939

Qazi Mohammad Ahmad Kazmi had introduced a bill in the Legislature regarding the issue on 17th April 1936²⁶. It however became law on 17th March 1939 and thus stood the Dissolution of Muslim Marriages Act 1939.

Section 2 of the Act runs there under: A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds, namely:-

- ◆ ***That the whereabouts of the husband have not been known for a time of four years:*** if the husband is absent for a time of four years the wife may record an appeal for the dissolution of her marriage. The husband is esteemed to miss if the wife or any such individual, who is required to know about the husband, is unfit to find the husband. Area 3 gives that where a wife records appeal for divorce under this ground, she is required to give the names and addresses of all such people who might have been the lawful beneficiaries of the husband upon his demise.
- ◆ ***That the husband has dismissed or has neglected to accommodate her upkeep for a time of two years:*** it is a legitimate commitment of each husband to keep up his wife, and on the off chance that he neglects to do as such, the wife may look for divorce on this ground. A husband may not keep up his wife either on the grounds that he disregards her or in light of the fact that he has no way to give her upkeep. In both the cases the outcome would be the equivalent. The husband's commitment to keep up his wife is liable to wife's own presentation of marital commitments.
- ◆ ***That the husband has been condemned to imprisonment for a time of seven years or upwards:*** the wife's privilege of judicial divorce on this ground starts from the date on which the sentence winds up last. Along these lines, the announcement can be passed to support her simply after the expiry of the date for claim by the husband or after the intrigue by the husband has been rejected by the last court.

²⁶ Diwan Paras, Law of Marriage and Divorce, 5th Edn., (New Delhi:2008)

- ◆ **That the husband has neglected to perform, without sensible reason, his conjugal commitments for a time of three years:** the Act defines 'conjugal commitments of the husband'. There are a few conjugal commitments of the husband under Muslim law. Be that as it may, with the end goal of this statement husband's inability to perform just those matrimonial commitments might be considered which are excluded in any of the conditions of Section 2 of this Act.
- ◆ **That the husband was inept at the season of the marriage and keeps on being so:** for getting a pronouncement of divorce on this ground, the wife needs to demonstrate that the husband was barren at the season of the marriage and keeps on being weak till the recording of the suit. Prior to passing a pronouncement of divorce of divorce on this ground, the court will undoubtedly provide for the husband one year to improve his power gave he makes an application to it.
- ◆ **If the husband has been insane for a time of two years or is experiencing uncleanness or a destructive venereal infection:** the husband's craziness must be for at least two years promptly going before the introduction of the suit. In any case, this act does not determine that the unsoundness of mind must be treatable or serious. Disease might be white or dark or cause the skin to shrink away. It might be treatable or serious. Venereal malady is an infection of the sex organs. The Act gives that this ailment must be of serious nature. It might be of any length. Besides regardless of whether this illness has been tainted to the husband by the wife herself, she is qualified for get divorce on this ground.
- ◆ That she, having been given in marriage by her dad or other gatekeeper before she achieved the age of fifteen years, revoked the marriage before accomplishing the age of eighteen years, gave that the marriage has not been fulfilled.

IV. CONCLUSION

India is a standout amongst the most tolerating and progressive nations and invests heavily in being the most common democratic state on the planet. It has constantly upheld what is correct and has annulled what's up. The male centric Muslim population needs to perceive the rights of women, and the time we, as natives of India do that as well. Today is urgent, for individuals to stand joined against the predicament of those Muslim women, who have been languishing over quite a while. There has been an out of line interpretation of Islam and it is upon the Legislature and Judiciary to change that. Having a 14.2% Muslim

population, i.e., around 172 million individuals (according to the 2011 statistics), it is significant for India to acknowledge that occasions are changing, and personal laws need some reorganization. Drawing upon the post-present day grant the subjectivity of the Muslim women must be comprehended to be developed inside the equivalent socio-social setting. For instance, devout Islamic women may challenge male centric routines of Quaranic. Here we stand gone up against by probably the most unmanageable issues of the conflict of rights where self- - picked sedimentation of identity inside a religious custom is inconsistent with types of universalistic modes of de-traditionalization of the politics of distinction requesting gender equality and equity. Here goes to the rescue the conceptualization of inter-sectionality were we can all the more likely recognize and ground the distinction among us and arrange the methods by which these distinctions will discover expression in building bunch politics.

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