

DISSOLUTION OF MARRIAGE UNDER MUSLIM LAW

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INTRODUCTION

Nature Of Muslim Marriage

Matrimonial relation is the very foundation of human civilization and civil societies. Marriage in Muslim law is a civil treaty between a masculine and a feminine who is lawfully eligible to be his spouse with the objective of the Joint life as well as breeding. Unlike Hindu law, Muslim marriage is not a ritual of life but it is an agreement between the parties that is concluded by an offer made by one party and consent given by the other. Wilson defines a "Muslim marriage a contract for the purpose of legalizing sexual intercourse and the procreation of children".¹ In **Ahdul Qadir v. Salima**² the court had to make a number of observations of which the nature of Muslim marriage received pre-eminence. Mr. Justice Mahmood, referring to **Munshi Buzlur R. Wzeem v. Shamsunnisa**³ decided by Privy Council, drawing inspiration from the Tagore Law Lecture⁴ by Sarkar, and basing his support from Hamilton's Translation of Hedaya, observed that 'Marriage among Muhammadans is not a sacrament, but purely a civil contract⁵,.....: with ejab-o-kaboo as 'declaration and consent. both expressed in preterite⁶, and dower partaking of 'consideration for the connubial intercourse'⁷, in gross disregard of the religious aspect of marriage, although its social aspect has not been lost sight of by him when he mentions that 'it was also instituted for the solace of life, one of the prime or original necessities of man.'⁸ Mahmood, J., also set up an analogy of sale of goods with wife married to her Muslim husband in a limited sense.⁹ In Muslim law it is essential for the

¹Anglo-Mohammadan Law, 94.

² (1886) 8 ALL 149

³ (1867) 11 M.I.A 551,615.

⁴ S.C. Sircar, The Muhammadan Law: Tagore law lectures, 1874(1975).

⁵ Baillie

⁶ Hamilton, Hedaya.

⁷ Abdul Qadir vs Salima (1867) 11 M.I.A 551,615

⁸ ibid

⁹ ibid

validity of a marriage there must be a proposal and approval at the same meeting. It should be noted that a proposal made at one conference and approval made at another conference does not make a valid Muslim marriage. Neither writing nor any religious ceremony is essential. For a happy family firm union of the partners it is an essential situation. Islam therefore, insists upon the part of a marriage and prescribed that breach of matrimonial contract must be avoided. The termination of matrimonial relationship is by way of divorce under Muslim law the divorce may take place by the act of the parties themselves or by a verdict of the court of law. There are several modes of separation under the Muslim law, which will be discussed thereafter.

TALAQ;

Talaq is an Arabic word and its literal significance is "to release" Or Talaq in its original logic means termination or its precise meaning "setting free" also unaffected. In Muslim law it is considered liberty from the burden of matrimonial relationship and not from any other burden. In legal sense it means dissolution of marriage by husband using proper words. It is also common name for all kinds of divorce but it is particularly applied to the repudiations by or on behalf of husband.

In Muslim law an excuse for talaq does not require the existence of any fault or marriage offence. The concept of divorce under Muslim law is that, where it is impossible for a spouse to live together, they must separate peacefully. It is the duty of the man to protect and maintain woman, since Allah has assembled some of them to surpass others and because they spend out of their possessions (On their maintenance and dower). When the male companion uses his power for separation, this is known as Talaq .

School of the Sunni and Shia distinguish it opposing few facts. It is considered in Muslim Law, talaq that even Imam exercise it. The complete authority of a Muslim spouse of separating his partner (wife) individually, deprived of conveying any intention, precisely at his urge, even in a gag, and deprived of alternative to the court and even in the absence of his partner presence, in recognizing modern India. How, when or in what Muslim man doesn't important. In Sunni law, a talaq may be verbal or in writing. No exact formula or use of any exact expression is mandatory to establish a valid separation. The man wants to discontinue the conjugal is mandatory. No present of witness is mandatory.

In **Hannefa Vs Pathummal Beevi**,Khalid,J., termed this as “monstrosity”, talaq may be express,implied,contingent constructive or even delegated.¹⁰

CONDITION FOR A VALID TALAQ;

Capacity;

The approval of the partner (husband) at the time of stating talaq must be unrestricted excluding under Hanafi law. All Muslim married male of oriented mind (stable mind), who is reached age of adolescence, is capable to state divorce; it's not obligatory for husband to give any required cause for his statement a minor or of unsound (who is mentally not stable) cannot speak it. It consider as invalid. But, if a married male is Insane, talaq pronounce by him in “lucid interval” (Lucid interval: it is period in insanity when all the symptom of insanity is disappear) is lawful. When a partner (husband) is minor the guardian cannot state a Divorce. In case of insanity the Qazi or a judge has a right to disband the marriage in concern of the male partner.

Free consent;

It is required that during divorce, approval of the husband in stating Divorce must be pronounce through his free will. Excluding hanafi law, a talaq is state under force, pressure, under effect, fraud and voluntary intoxication etc. is invalid and liquefies the marriage.

Involuntary Toxication;

Under school of hanafi law talaq state beneath forced or involuntary toxication is invalid. Under shai law and also under Sunni's school a talaq is state under force, pressure, under any effect, fraud, intended toxication is invalid and ineffective.

Express word;

The term of talaq must clearly show the husband's intension to disband the marriage. If the statement is not express and is unclear then it absolute compulsory to prove that the husband clearly mean to disband the marriage.

¹⁰1972

NOTICE OF TALAQ;

It is not compulsory that talaq must be state in the presence of wife for the legitimacy of the talaq;neither the notice nor the message to the wife is required. In case of *Ful Chand Bibee vs Nawab Ali Chaudhary*¹¹it was laid that talaq should be deem to have come into effect on the date on which the wife came to know it.

However, knowledge of talaq is required for claiming dower and maintenance from her husband.

Talaq is of two types;

1. Talaq –e-sunnat(revocable)

2. Talaq-e-biddat (irrvocable)

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

a) Talaq-e-ahasan

It consists of single statement of divorce made in the period of tuhr (purity, between two mensurations)or at any time if the wife free from mensuration followed by self-restraint from sexual relation during the period of iddat. It is an Arabic word ‘ahasan’ means ‘best’. It also called very appropriate form of Talaq this showed that the talaq pronounce ahasan is very best kind of talaq. Ahasan talaq is the most favor and best form talaq. The best feature of this kind of talaq that it is revocable so hastily divorce can be prohibited. Thus, before the end of iddat the husband resume cohabitation with his wife or says I HAVE RETAIN THEE the divorce is cancelled. Assumption of sexual relation before the competition of period of iddat also results in the revocation of divorce. The raad-ul-muhtar put it thus it is proper and write to observe this form of human nature is opt to be to mislead and to lead astray the mind far to perceive fault which may not exist or to commit mistake of which one is certain to feel ashamed afterwards.

¹¹ 1 Ind Cas 740

b) The Hasan talaq

In Arabic hasan means good. While Ahasan means very good, in this custom also there is a provision of withdrawal or revocation. But it is not best manner because sinful word of talaq is to be stating in three times in the consecutive tuhrs. This also called kind of talaq-e-sunnat but considers less approved then talaq-e-ahasan. In this kind of talaq the husband is required to utter the formula of talaq three times during three successive tuhrs. If the cross the age of mensuration then the declaration of the talaq is made after interval of Thirty days between the successive statement it is there for a divorce upon a divorce where the first and second statement are revoke and followed by a third only then talaq become irretrievable.

Example: W, a wife is having her period of purity and not sexual relation has taken place. At this time, her husband, H, articulates talaq on her. This first statement by express word. Then again when she enter the next period of purity

And before he indulges in sexual relation he makes second statement. He again revokes it. Again when the wife enters the third period of purity and before any intercourse take place H pronounces the third statement. The moment H makes this third statement, the marriage stand dissolve, irrevocable, irrespective of iddat.

Talaq-e-bidat

It is also known as talaq-e-bain. It came into presence during the second century of Islam. It consist a three statement made during a single tuhr either in one statement clearly showing and intension to put an end to the marriage irretrievable or in three sentence in collective word it is also known as 'instant triple talaq'. In the calendar year of 2019 the Apex court pronounces a historical judgment in the case of **Mohd. Ahmad Khan vs. Shah Bano Begum & Ors.** The court held that Talaq-e-bidat also known as instant triple talaq is unconstitutional.¹²

Triple talaq, also known as Muslimwomen (protection of right on marriage) bill, 2019 was pass by the Indian parliament as a law on July 30, 2019. The Rajya Sabha passes the bill, with 99 vote in its favour and 84 against it. The triple talaq law makes the instant triple talaq a criminal offence and provided for a jail term of 3 year for a Muslim man who commits the crime.¹³

¹²1985 AIR 945, 1985 SCR (3) 844

¹³<https://rajyasabha.nic.in/>

ILA and Zihar;

Beside talaq a Muslim husband can dissolve his marriage by two others mode ILA and zihar it is also called constructive divorce. In ILA, the husband takes an oath not to maintain sexual relation further with his wife. Followed by this oath there is no compulsion for a period of four months. The marriage dissolves irrevocably, after the expiry of four months. But if the husband doesn't fulfill the oath within four months, ILA is cancelled and marriage doesn't dissolve. On the other hand in zihar mode the husband is comparing his wife with a woman within his prohibited relationship.

Example: Mother and sister.

MUTUAL CONSENT;**Khula**

The word Khula in its original sense means "dig up" or "to draw" or "to take off" such as taking off one's cloth or garment. That is they get rid of each other in khula women have a right to ask a divorce if she doesn't desire to live with her husband even where he is not at fault. The wife takes part or whole of her dower amount or any other benefit that may be agreed upon between the two. If the offer once accepted by a husband it becomes irrevocable.

Mubarat;

In this mode of divorce both the parties mutually discharge from the marriage claims, when an offer of mubarat is accepted iddat is necessary.

In **Aga Mohamed Jafar vs Koolsum Bibi¹⁴ and Bakar Ali vs Anjuman Ara** the privacy council had prevented the court from directly looking into the original source of Muslim law, to see if the provision as popularly understood in fact conformed to the dictates of that source. This ruling greatly restricted the role of the courts in discovering the true Muslim law and removing the distortion which had crept into the system by efflux of time.

¹⁴ (1897) 24 IA.

Talaq-e-tafweez

Tafweez means 'delegate' in Muslim law talaq-e-tafweez also known as Talaq-e-tawhid'. A Muslim man can delegate his power of uttering the statement of Divorceto his spouse or to any other individual. A Muslimmanmightgive the controlunquestionably or conditionally, temporally or permanent. It should be noted that alwayspermanently handing over of power is capricious; on the other hand temporally delegation of power is not capricious. In order to exercise the authority of separation beneath her delegated talaq, wife is obligatory to clearly require the circumstance that in title her to exercise this right.

Lian

The wife has got the power to ask for separation on the foundation of the man/spouse claims untrue charge of unchastely or adultery against his wife this consider as character assassination.