



## SYSTEM OF MARRIAGE AND DISSOLUTION AS PER THE ISLAMIC LAW AND ITS LEGAL FACETS IN INDIA

**G Suraj**

Assistant Professor of History

University College, Thiruvananthapuram

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### ABSTRACT

Polygamy was the most common type of marriage among Arabs during Muhammad's time. Women who were taken in battle were engaged or kept as slaves. Marriage might also be arranged by paying the mahar or bride price to the woman's father. The important notion in both models was the husband's right in the lady. There are two types of divorce in Islamism: Khala and Talaq. Khala was a peaceful agreement seen between groom and the wife's father, through which latter was able to repay the dowry and reclaim his daughter. This suggested through the husband was over, freeing the wife from his dominance. It was common practice among Arabs to lend a friend's bride while he was away.

The bride, who claimed being a virgin, was discovered not to be by the groom, which is one of the reasons for the nullity of marriage. The rule of divorce, which considers the marital duty and punishes the female alone for breaching it, is a logical consequence of the idea that a woman may only be sexually possessed by one man. The man's dominance over his wife is highlighted that he would be allowed to divorced his partner at his leisure and without having to defend his decision. This isn't the end of the narrative. Even after the *Talaq* was declared, women were not free; they had to wait three full cycles to find out whether they were pregnant or not. Muhammad, on the other hand, was opposed to divorce. Divorce is also said to be something that is legal but that God dislikes, according to tradition. Repudiation is the most common translation of the term Talaq. The term *Talaq* refers to the



husband's ultimate right to divorce his wife at any moment. In India, the concept of *Talaq* remains a mystery.

**Keywords:** *Talaq, Hadith, Prophet Mohammed, Quran, Sunnath, Mubaaraab Khala, Talaq, Baain, mahar, kithabian, nikah*

## - INTRODUCTION

Marriage, according to Prophet Mohammed, is the legal union of a man and a woman based on mutual agreement. While the goal of marriage in Islam is to develop peace, love, and compassion, that isn't always the case. Although Islam discourages divorce, it does allow for judicial separation by either party, unlike certain religions. Marriage is a significant milestone in a woman's life. Her life is complete when she is a wife and a mother. Unlike Hindus, Muslims see marriage as a transaction rather than a sacrament. In Arabic, the word *nikah* refers to a Muslim marriage. The main goal of *nikah*, according to Mohammedan law, is procreation and the legalisation of children. Muslim marriage involves an initiative taken by those on behalf of the participants, approval of that in the presence and hearing of two male or one male and two female eyewitnesses, and the payment of Dower. In terms of marriage, the Mohammedan Law imposes some limits and bans. A Muslim man can have up to four wives at a time, but a woman cannot have more than a hundred. A Muslim woman cannot marry a *kithabia* or non-Muslim, although a Muslim man may (Indu Menon, 1981, p.63).

The law of divorce has been distorted more than any other facet of Islamic law in India (Ahmad, 1993). With its pragmatic and practical approach to all human issues, Islam accepts divorce as a terrible idea that is unavoidable in some situations.

Divorce is regarded to be the most terrible with God of all the authorised things, according to Hadith (Ahmad, 1994, p.1). Divorce has been used as a kind of torture in pre-Islamic Arabia. Men divorced their spouses on the spur of the moment. The authority of divorce wielded by that of the husband was unrestricted among pre Islamic Arabs. They have the right to abandon their spouses at any time, for just about any reason or no reason (Ahmad



Ghalwash, 1945, p.117). They could charge their wives of infidelity at will, discharge her, and left them with enough reputation to dissuade prospective suitors, all while absolving themselves of any formal support obligations or legal penalties (Abdul-Rauf, 1972, pp.3–10).

These moral and ethical ills and injustices drew Prophet Mohammed's attention. He structured the legislation of divorces and marriages in order to eliminate such evils, fully aware of the consequences of divorce. Those rules were devised to protect the stability of marriage while preserving individual liberty. Prophet offered broad guidelines for the divorce process, emphasising the need of both spouses keeping the virtues of justice and compassion in bringing their marriage to an end. Allah advises every husband and wife the select arbitrators as the first stage in the divorce procedure to help in reconciliation. If this process fails, both men and women have the right to divorce, as stipulated in the Quran, although the method for each is different.

Despite the fact that the Prophet granted man unrestricted freedom, he was opposed to free divorce since his goal was family stability. The term *Talaq* refers to a divorce initiated by a male. *Talaq*, he said, was the most loathsome of all authorised things before God, since it impeded married satisfaction and interfered with appropriate child rearing (Syed Ameer Ali, 2010, p.244). The Arabic term for *Talaq* literally means "to remove or free from a knot." It is a term used by Muslim jurists to describe the divorce of a woman from her marital ties. Repudiation is the most common translation of the term *Talaq*. It is derived from the root *tallaqab*, which meaning to liberate (any animal) from tethering, and hence to reject or free the wife from the bonds of marriage (Ahmad, 1994, p.16).

### **Muslim Personal Law and Divorce**

Divorce is a simple procedure for the husband in Muslim Personal Law, since he has absolute autonomy to leave his wife at any time. The man's domination above his wife is even further shown by the reality that he is free to leave his wife at any time and without justification (Motilal Kapadia, 1966, p.189). Without any misbehaviour on her side and



without naming any grounds, Mohammedan Law allows a man to divorce his wife. The husband's declaration may be oral or nonverbal, but once made, there must be a three-month waiting period during which no sexual interactions are permitted, even when the couple are living in the same house. This waiting time helps to avoid hurried terminations due to rage and gives the parties time to reflect as well as determine if the woman is pregnant. If the woman is expecting a child, the waiting time is extended until the baby is delivered slowly. The couples are permitted to reinstate their conjugal connection at any moment throughout this period, thereby completing the divorce procedure. During this time, the husband is still financially liable for his wife's support.

Divorce may be classified as *Rajai* (revocable) or *Baain* (irrevocable) based on its consequences. *Rajai*, or reversible divorce, does not dissolve the marriage instantly, but gives the husband the option to reverse it within the stipulated time of *iddah* and therefore keep the marriage alive. *Talaq al-absan* is the equivalent of an irreversible divorce. When the *iddah* time expires, the divorce becomes final and irreversible (Ahmad, 1994, p.25).

Irrevocable divorce, also known as *baain*, results in the instant breakdown of the marriage upon the divorce's announcement. It didn't give the husband the option of cancelling it. *Al-Talaq al-mugballazah* as well as *Al-Talaq al-Kbafef* are two types of *Talaq al-Baain*, or irreversible divorce. The term *mugballazah* means "extremely difficult," and it refers to a last deed. It went into force as immediately as the third *Talaq* proclamation was issued.

### **The Process of Divorce: *Talaq***

The wife-initiated divorce is known as *khula* (In case the husband wasn't at mistake) and requires the wife to restore the dowry to end the relationship since she's the contract breaker; he must expect to be paid the dowry in full in cases where it was delayed or enable the bride to maintain all of it if it was already given to her in complete (M Buxamusa,



1993, p.61). If the question of *khula* is submitted to court, the court will not determine whether she wants to separate for a legitimate reason or just to marry another guy. The right to *khula* for a wife is similar to the right to *khula* for a man. The former, like the later, is unconditional. According to Muslim jurists, there are three sorts of *tafweed*: (i) *ikhtiyaar*, which gives her the power to *Talaq* herself; (ii) *amrbaayed*, which gives her the freedom to do anything she wants; and (iii) *masbeeat*, which gives her the freedom to do whatever she wants.

If the husband is at blame and the wife wants to divorce, she may file a petition with the court for a divorce with reason. She would have to provide evidence of her husband had set specific requirements for an Islamically recognised marriage, which the husband had not satisfied, in order to get a conditional divorce. *Khula* is a legal process in which a woman may divorce her husband whether or not he agrees. It's nearly the same as a person's right to *Talaq*.

*Mubaaraab* refers to the dissolution of Muslim marriages with mutual agreement of the husband and wife. *Mubaaraab* is a word that signifies "release." The couple invoked their right to terminate their marriage contract jointly. The principle of voluntary separation of marriages, of which the shariah is unquestionably the parent law, was included into India's Marriage Act of 1954 (See Section 28, the Special Marriage Act of in India in 1954) and into the Hindu Marriage Act of 1976 (See Section 13 B of the Hindu Marriage 9 (Amendment) Act of 1976).

### **Concept of Equality: Marriage and Divorce**

The debate about seeming equality in divorce stems from the notion that males appear to have unlimited authority in getting a divorce. Scholars have already concluded that if the husband pursues a divorce, the reconciliation stage of choosing an arbitrator from both parties is skipped. This interpretation differs from the Quranic prohibitions. Any difference in divorce abilities between both the married couple may be deduced from the following



passage (which means): and what will be expected of them (i.e. the spouses) is comparable to what is fair. The males, on the other hand, have a degree of power and duty over them. And Allah is all-powerful and knowledgeable.

According to current interpretations, Prophet Mohammed explains why there is a slight discrepancy in the verse (which means): males are in charge of women by (right of) what Islam gives one over the other in terms of (qualities) and also what they pay (in support) from their income. So pious women are devotedly obedient, protecting whatever Allah would've had them watch in the absence of their husbands.

As a result, it is apparent that there is a disparity in the inalienable rights of all members in divorce, and that the higher entitlement provided to males is attributable to their status as household leaders and financial backers. This does not, however, imply that women are less than males or because they are second-class citizens. Many of the divorce laws in various Muslim nations are based on Quranic allusions to the issue. They, like human laws, must adjust to changing conditions. Custody issues have gotten contentious in recent years. For example, Allah in the Quran instructs the couples to refer each other fairly about their children's future after divorce, as this verse indicates (which means): if they both wish weaning via mutual agreement and consultation, none of them bears responsibility.

Hence, *Talaq* is the legal phrase for divorce in Islam. In its most literal definition, it refers to the undoing or releasing of a knot. Many Muslim jurists use this phrase to refer to a woman's divorce from her husband. The *Talaq* procedure is made up of many steps that are necessary for the appropriate and legal dissolution of a marriage relationship. The Quran states that if a man intends to divorce his wife, he must invite two men for justice (ideally Muslims) to witness his conduct (M Buxamusa, 1993, p.p45- 49). While the husband may unilaterally and without giving any cause separate his spouse by reciting *Talaq* (that is, "I divorce you") three times, the woman must get a court declaration of divorce on stated reasons (Minattur and Alfred De Souza, 1975, p.99).



By looking at the divorce rules, we can observe that Islam gives both the married couple an equal and fair chance to exit a marital partnership that they believe is decreed to their own beings. Quran and *Sunnath* have constructed these principles and guidelines in order for Muslims to make sensible decisions about their destiny. The Muslim 'Ummah' is required to take their while and make an informed choice devoid of wrath and misunderstanding. Allah obviously prefers that Muslims refrain from divorce and instead endeavour to coexist peacefully and tranquillity, since this is the path to a thriving Muslim community.

### **Legal facets of Talaq: The Indian Scenario**

The Indian Supreme Court deemed immediate triple *Talaq* (Talaq-e-Biddah) unlawful on August 22, 2017. Kurien Joseph, Nariman, and Lalit, three of the five justices on the court, agreed that the practise of triple *Talaq* is illegal and asked the government to immediately ban this unfair and injustice practice of Triple Talaq. This historic verdict is supposed to have put a stop to triple Talaq, a practise that dates back to the arrival of Islam in India. The judgement was welcomed by the media as a watershed moment in the fight for gender justice, equality, identity, and the empowerment and liberation of Muslim women.

The Indian government quickly drafted the Muslim Women (Information and Protection of privacy upon Marriage) Bill 2017 and tabled it in Parliament, with the Lok Sabha passing it on December 28, 2017. The measure prohibited immediate triple *Talaq* (*Talaq -e-Biddah*) in any form, including verbal, written, and electronic methods including email, SMS, and WhatsApp, illegal and invalid, with the husband facing up to three years in prison.

Because the 2018 triple *Talaq* ordinance was set to expire on January 22, 2019, the government presented a new bill in the Lok Sabha on December 17th to replace it. On December 27, 2018, the Lok Sabha passed the bill. The Rajya Sabha, as on previous occasions, continued to oppose the bill, sending it to a special committee. On January 12,



2019, India's president extended the previous Muslim Women (Protection of the Rights on Marriage) Ordinance, 2018 for another six-month term as the Muslim Women (Protection of the Rights on Marriage) Ordinance of 2019 (The Muslim Women Ordinance, 2019).

## CONCLUSION

Divorce is an issue that arises from marriage. Marriage is the polar opposite of divorce. The joyful and mutual material existence on one hand, and the psychological side that leads to the rupture or dissolution of the happy marriage knot on the other. Both are psychological in some ways. Detest arises when pleasure and mutual understanding stop. Skirmishes and disagreements arise as a result of the dark face of existence, leading to self-justification. Here, we must evaluate several sources of marital life based on various laws. In a broad sense, no religion favours divorce, with the exception of a few acceptable and significant problems and circumstances (Subbamma, 1988, pp.30–34).

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