

TYPES OF TALAQ AND DISSOLUTION OF MUSLIM MARRIAGE- A DIFFERENT PERSPECTIVE

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Only essential for a Divorce is Marriage. Divorce is the end to the spouse relationship between two individuals. It can also be termed as Dissolution of marriage. Dissolution of marriage under Muslim law can be divided into two categories, i.e. Talaq and Dissolution of Muslim Marriage Act 1939. Talaq is considered to be Male biased law, however true interpretation of Talaq under Muslim Personal Law shows that Talaq is a gender neutralized law which provides equal or more rights to the Muslim Female as well.

This paper emphasizes on determining the true character of Talaq and other forms of dissolution of Muslim marriage. The sole object of this paper is to interpret and derive the true sense out of each and every form of dissolution of marriage and removing the stereotypes related to the Talaq. Talaq provides an opportunity for reconciliation to the parties. Talaq in comparison with existing statutes provide faster remedy to the aggrieved party. With the faster remedy, Talaq is also inexpensive. The aggrieved party is free from mental and physical torture and he/she has the opportunity to get remarried. The concept of Triple Talaq which is the disapproved form of Talaq has been wrongly interpreted. The essence of Talaq law had vanished due the controversy regarding Triple Talaq. Women are considered to be at a disadvantage position under the system of Talaq, however this perception is wrong. There are certain types of Talaq which favors Women. Women had certain advantage over men in the Dissolution of Muslim Marriage Act 1939. Under section 2, grounds for dissolution of marriage are specifically provided for the Muslim Women. Also Women are entitled to maintenance from their husband during Iddat period and also after the Divorce by virtue of Section 125 Cr. Pc. Therefore, criticizing Talaq and Muslim law for being gender bias towards male is completely wrong. This paper also provides the view of the apex court of India while delivering the historic judgment on Triple Talaq. It is also mentioned in the manuscript that why Muslim forms of Dissolution of marriage is better than any other form of dissolution of marriage. This paper concludes with breaking the stereotypes related to Talaq and providing the readers and opportunity to see and interpret Talaq laws with a different perspective.

Keywords | Talaq, Muslim, Marriage, Divorce, Hasan, Ahasan, Biddat, Triple Talaq, Quick Redressal, Zihar, Khula, Tafweez, Dissolution, Mehr, Iddat, Tuhr

INTRODUCTION

Marriage in the literal term refers to the union of two people, who agrees to be in a relationship. It can also be termed as institution where people wilfully unite as spouse

Different religions gave different definition to the term 'Marriage'. According to Hindu Marriage Act 1955 Marriage is a religious sacrament. Marriage under this act can be solemnized by two people if they are Hindu at the time of Marriage and subject to the fulfilment of conditions prescribed under Section 5 of the Act.

Under Muslim Law, Marriage is a contractual relationship between two parties. There is offer, acceptance, consent, consideration, capacity of parties etc. All the essentials that are required for a contract are present under Muslim Marriage.

The only essential that is required for Divorce is Marriage. It is the dissolution of Marriage, which is known as divorce. Divorce is the end to the spouse relationship between two individuals. They are no longer bound to perform their duties as husband or wife. There are certain laws which are made for the legal dissolution of a Marriage. In India itself, Hindu Divorce is governed by Hindu Marriage Act 1955 and Muslim Divorce is governed by Muslim personal laws and Dissolution of Muslim Marriage Act 1939. Other governing law for divorce includes Special Marriage Act 1954.

MUSLIM METHOD OF DISSOLUTION OF MARRIAGE

There are two legal method of dissolution of Marriage under Muslim Law. A Muslim Marriage can come to an end either by Divorce or by Talaq. Divorce is governed by Dissolution of Muslim Marriage Act 1939. Talaq is governed by Muslim Personal Laws.

CONCEPT OF TALAQ

Talaq in the literal term refers to the right of a Muslim man to give divorce to his wife. Man can simply repudiate his wife and dissolve Marriage by announcing the same. It is a general perception that Muslim men had an undue advantage over Muslim female as they have this extra right to dissolve their Marriage. In justification to the advantage given to the Muslim men, it is believed that no man would give divorce to his wife without a good cause. Talaq is recognized under Shia and Sunni Law both with certain differences in the practicing of the same.

Before proceeding further, it is important to mention that Talaq only favors a man is a myth. A female can also give Talaq to her Husband. Different types of Talaq are mentioned below.

TYPES OF TALAQ

Talaq can be categorized under three categories , i.e. Talaq by a Muslim Man, Talaq by Muslim Woman and Talaq by Mutual Consent.

Talaq by Muslim Men

- Talaq ul Sunnat ~ (Talaq – Ahasan and Talaq – Hasan)
- Talaq ul Biddat ~ (Triple Talaq)
- Ila
- Zihar

Talaq ul Ahasan is the most approved form of Talaq. In this Talaq, man makes single pronouncement of Talaq to his wife during the Tuhr period (Purity period during menstruation cycles). After the pronouncement of Talaq, wife goes for Iddat period of 3 Months. During this Iddat period, husband can revoke Talaq expressly or impliedly by having sexual intercourse with his wife. Under Shia law witness to the pronouncement and Intention of husband are important, however under Sunni law No witness are required and even Talaq pronounced by Mistake is acceptable.

Talaq Hasan is a type of Talaq in which husband pronounce Talaq successively during three Tuhr period of wife. There must be clear intention on the part of the husband. Husband is abstained to have sexual intercourse with wife during the Iddat period, practiced by wife during the Talaq period.

Talaq ul Biddat is the most common type of Talaq which is also known as Triple Talaq. It must be noted that this form of Talaq was never approved by the Prophet. Muslims always believes in the concept of reconciliation, however Talaq ul Biddat is irrevocable and hence there is no chance of reconciliation. The entire three pronouncements are given at a single time and Marriage comes to an end without any period of cooling down. It is the reason that Triple Talaq was always condemned. Shia school does not even recognize this type of Talaq. It is only recognized under Sunni law and under which it is considered to be a sin.

Ila is a type of Talaq in which a husband abstain himself from having sexual intercourse with his wife for the period of four months. It is believed that if a man is able to control is sexual urges against his wife for four months, he is entitled to have divorce with her. Marriage dissolves automatically at the completion of four months.

Zihar is a type of Talaq in which husband compares his wife with his mother or any female in prohibited degrees. Ila and Zihar are not observed in India.

Talaq by Muslim Women

- Talaq e Tafweez – It is also known as delegated Talaq, in which husband delegates his power to give Talaq to any third person or to his wife. Wife can give Talaq to herself whenever she wants to dissolve the Marriage.

Talaq by Mutual Consent

- Khula- In this type of Talaq, Wife can get herself out of the Marriage, by making an offer to her husband with some consideration. If husband accepts the offer of the wife, he is bound to give Talaq to his wife.

- Mubarat- in this type of Talaq, either husband or wife can make offer. By mutual agreement, Marriage can come to an end. There is no consideration involved in it.

INTERPRETATION OF TALAQ

As discussed earlier, it is a general perspective that when it comes to dissolution of Marriage by method of Talaq, women are at the disadvantageous position.

However, it is only a myth. True interpretation of Talaq is absolutely different from general perception of Talaq. The basis of Islamic Divorce law is the opportunity for the reconciliation. Every Marriage deserves a second chance before its dissolution. It is possible that a husband may pronounce Talaq in anger or due to any dispute among husband and wife. This is where reconciliation is important.

Let's interpret every form of Talaq prevailing in India and derive its true essence.

Starting from Talaq Ahasan which is already considered as the most appropriate form of Talaq. In this type of Talaq, man does have a period of three months to reconcile with his wife. It must be noted that 3 month period is appropriate, because it is neither too short nor too long unlike other divorce mechanism prevailing in India. After observing three month Iddat , woman is free to remarry. Muslim law provides fastest remedy against divorce proceeding. It should be taken as a positive since both girl and boy are free to get remarry with someone else after the period of three months.

Similarly, in Talaq ul Hasan, husband makes three clear pronouncement of Talaq at three successive Tuhr periods. Making three pronouncements in three successive months shows that the Marriage is unable to work properly. Man does have an opportunity to revoke even before the third pronouncement, but if chooses not to do so, this indicates his clear intention that he does not want to continue this Marriage.

Both the approved form of Talaq do not show any unjustified power to the Muslim Man, it only gives a right to a Muslim Man to dissolve his Marriage. Also for the dissolution of Marriage, he is provided with the reconciliation period. Every party to a Marriage deserves a right to for the dissolution of the Marriage. Men are provided with these two forms, whereas women are provided with Talaq e Tafweez, Khula and Mubarat.

The most controversial form of Talaq is Talaq e Biddat, also known as Triple Talaq - Muslim man who does not wish to continue their Marriage and is not willing to reconcile, opts for this form of Talaq. It is disapproved form of Talaq. It is stereotype that Muslim Man only follows this form of Talaq. Reason and time for every decision is very important, however Triple Talaq lacks both. It is completely wrong to criticize the whole concept of Talaq only on the basis of this form of Talaq. This type of Talaq is condemned even by Muslim Scholars.

However, Justification of Triple Talaq is also very much possible. Every coin has two sides. If we take a positive look at Triple Talaq, it can be said that, woman is set free immediately

after the three pronouncement. She does not have to wait for the period of three months. Triple Talaq is an Instant freedom to a Woman from a Marriage relation.

Talaq e Tafweez gives a right to Woman to give herself Talaq. Interpretation of this Talaq is quite simple and appropriate. Husband delegates his power to his wife. In his absence, if woman wants to set herself free from the relation of Marriage, she can give herself Talaq.

Similarly, power is delegated to any third person. If husband believes that wife is not capable of giving Talaq to herself, any third person can give Talaq to wife on his behalf in his absence. Talaq by mutual consent favors both male and female. Khula provides an opportunity to Muslim woman to buy Talaq from her husband. Mubarat is solely dependent upon mutual consent of both the parties.

MUSLIM LAWS OF DISSOLUTION OF MARRIAGE ARE BETTER THAN ANY FORM OF DISSOLUTION OF MARRIAGE

Before proceeding any further, one principle of law must be kept in mind. "Justice Delayed is Justice Denied". In India, approximately 64000 applications of divorce are filled either under Hindu Marriage Act or under Special Marriage Act every year. The fastest divorce which can be executed by the mutual consent under both the above mentioned statutes takes at least 2 years' time period. (Including judicial separation). But divorce with the mutual consent is rare of rarest cases.

Most petitions for the divorce are filed by single party to the Marriage. In such circumstances, the complete execution of divorce proceeding takes about 9-10 years minimum. Party who filled for the divorce, during such time period of 8-9 years cannot get marry to any other person. They cannot indulge in sexual intercourse with anyone. There is mental torture, societal pressure, financial crisis etc. To sum up, it can be said that person who fill for divorce, suffers during the Marriage, in between the proceeding of divorce and after the divorce as well. Justice is delayed to the aggrieved party and hence justice is denied to the party. If a Marriage is not working, it makes no sense to extend it to 9-10 years. It only frustrates the aggrieved party.

Let's take an example:

Mira and Gopal were married. At the time of Marriage, Mira was 21 years old. After one year of her Marriage, her husband and her in laws started to beat her and asked her for dowry. Mira filed divorce petition at the age of 23. The complete proceeding of divorce took approximately 9-10 years (average time period for the execution of divorce in India). Till the age of 33, Mira could not get marry to anyone else. She suffered financially and she had to bear societal pressure. She was tortured mentally and physically. Does the Divorce granted at the age of 33 is the true justice to Mira? This example in itself shows that justice delayed to Mira and hence it is justice denied.

Now, take a look at the dissolution of Marriage under Muslim law.

In comparison with the above explained dissolution laws, Talaq under Muslim law provides faster justice to the aggrieved party. The maximum time period for the complete dissolution of Marriage is only three to four months. During these three to four months, parties have the right to reconcile the Marriage. This acts as judicial separation.

If we take a look at the Talaq from women perspective, they do not have to suffer financially because they not have to indulge in all the legal proceedings. There is no delay in justice because woman is free to marry again after observing Iddat period. They do have the right to ask for maintenance. They do not have to suffer mentally.

Let's take an example

Zoya and Farhan were married. At the time of Marriage, Zoya was 21 years old. After one year of her Marriage, her husband and her in laws started to beat her. He angrily gave her Talaq (Talaq ul Ahasan). After she observed her Iddat period, she was free to marry again to someone else. By the age of 23 or 24 maximum, she was again in a position to get married. For the physical torture she suffered, she had remedy under IPC, but from Marriage's point of view, she was free.

If we see from a very broad perspective, women under Muslim law have better options to dissolve their Marriage than any other religion.

TALAQ - BOON FOR MUSLIM WOMEN

After discussing every type of Talaq and their interpretation, it is quite clear that concept of Talaq is not at all gender bias. It provides equal rights to both men and women.

If men can give Talaq through Talaq ul Sunnat, women can also exercise their rights through Talaq e Tafweez, Khula and Mubarat.

Khula is an exclusive right given to a wife to purchase Talaq from her husband. Talaq e Tafweez provides women right to give Talaq to herself. Mubarat also talks about mutual consent.

Now if we also look at Zihar, if a man compares his wife with his mother, he is bound to give Talaq to his wife. This provides a special right to the wife as well. According to this, husband is not allowed to compare his wife with his mother and females of prohibited degrees.

Talaq provides speedy and quick justice to the Muslim Woman. Woman is entitled to her Mehr Payment as well from the groom and his father.

DISSOLUTION OF MUSLIM MARRIAGE ACT 1939 – PRIVILEGE TO MUSLIM WOMEN

Talaq is only one form of dissolution of Marriage under Muslim law. There is a specific statute which exclusively provides 9 grounds for dissolution of Marriages only to the Muslim Women. Before discussing the statute, it is important to look at the year of the Act as well. In 1939 women were deprived of their basic rights. In Indian Patriarchal society Muslims were the first one to provide dissolution rights and maintenance rights to the women. Women under Muslim law are also entitled to Mehr from her husband and in laws. Special comparison can be made with the Hindu Marriage Act which came to force on 1955.

No society can grow, without the growth of women of that society. Protection of rights and liberty of a female is very important. Muslims were the first one to observe the same fact. Muslims were more progressive in providing rights to their female. Muslims' concern towards their female can be interpreted under their personal laws and the Act of 1939.

The highlight of the Act is quite clear. Section 2 provides for the grounds of dissolution of Marriage. And those grounds are specifically provided to the Muslim female. This act can said to be gender bias, but towards the female.

For the Maintenance of a divorced Muslim Woman, she is entitled to receive maintenance from her husband during Iddat period according to the Muslim Personal Law. However after the land mark judgment of Mohammad Ahmed Khan vs. ShahBano Begum , Muslim women are entitled to after divorce maintenance from her husband according to Section 125 of Cr. Pc .

CONCLUSION

At the end of this paper, it can easily be concluded that Talaq or any other form of Muslim dissolution of Marriage, is not gender bias towards the Muslim male. They are provided with certain rights, but it should not be ignored that Muslim women are also provided with equal or more rights than men. The dispute only arises because people only see one side of the coin, they totally ignore the other side.

Talaq can be seen as ultimate power to a Muslim man, but can the fact be denied that it is the fastest form of dissolution of a Marriage. It provides for quick redressal. And it is not even ultimate power of a man only. Criticizing any law on one particular ground is easy, but to appreciate its positive is quite difficult. Categorizing Talaq as only Triple Talaq is not only wrong, but also harmful. Half knowledge always misleads. Concept of Talaq was only introduced to provide quick remedy to both the parties, when they feel that Marriage is not working properly.

Importance of Talaq can be recognized if it be compared with other existing dissolution of Marriage laws. Remedy under any other statute will come at the cost of time, money, stress and torture. History speaks for itself, Divorce cases last for years. But Talaq, it is not just quick, it is also less expensive. Talaq favors no one. It is just a set of rights for both male and female.

On the general statute we have Dissolution of Muslim Marriage Act. To uplift the women in the patriarchal set up of Indian Society, this act was enacted in the year 1939. Ultimate grounds for the dissolution of Marriage are provided under section 2 of the Act, exclusively for the Muslim Women.

Before interpretation of any law, it is important to observe the point of view of the law maker and the situation of the society at that particular point of time. Wrong interpretation of the statute or law is quite dangerous. Talaq has been in the controversy for a very long time for being a gender bias law. Law must be studied from a broad perspective. Only then the true essence of the law will be seen. Finally, it can be said that Talaq and Muslim law favors no gender.