

## CHAPTER-IV

### RIGHTS OF MUSLIM WOMEN IN CONTEXT TO DIVORCE

#### 4.1 Introduction:

Divorce is known as ‘Talaq’ in Islamic law. Divorce in Islam is considered as an exception to the status of marriage. Earlier a marriage once contracted cannot be dissolved but the changing circumstances have made it easy to be broken. And one of the way to end or break the marriage is divorce. The most unhappy aspect of Muslim family law is divorce which is shockingly capturing the most controversial issue in India. And the most unholy among the divorce is what we call ‘Triple Divorce’. The instant triple talaq which is considered impulsive and hasty is an innovation and the termed as Talaq-e-Bidah. It is a kind divorce in which the husband pronounced talaq thrice in one sitting when the wife is in the state of purity<sup>1</sup>.

Divorce is the most unhappy aspect of the cherished institution of marriage, as conceived by the experts of Muslim Family Law<sup>2</sup>. Nevertheless, it is regarded as the natural corollary or marital rights. Islam is the first religion which has expressly recognised the termination of marriage by way of divorce<sup>3</sup>. Generally, the marriage contract is automatically terminated if anything happens which makes its continuation incompatible with the established precepts of the Shariah<sup>4</sup>. The fundamental principle of the contract is that it is permanent and to endure as long as the spouse live. But it is itself insufficient. The love which needs the two spouses together must also continue

---

<sup>1</sup> History of Triple Talaq – Future, Available at: <https://qrius.com/history-triple-talaq-future/> (visited on 10<sup>th</sup> Aug. 2020).

<sup>2</sup> Dr. Mohd. Shabbir, *Muslim Personal Law and Judiciary* 172, (the Law Book Company (P) Ltd, Allahabad, 1988).

<sup>3</sup> Aqil Ahmed, *Text Book of Mohammedan Law* 165, (Central Law Agency, 25<sup>th</sup> Edn., Allahabad, (2015).

<sup>4</sup> Dr. Arif Ali Khan & Tauqir Mohd. Khan, *Encyclopaedia of Islamic Law* 1919, Vol. 5, (Pentagon Press, New Delhi, 2006).

when the spouses develop a strong aversion to each other without any love among themselves, the Shariah gives them three choices, which they are to exercise.

1. To continue the marriage despite the strong aversion.
2. Physical separation while preserving the marriage status.
3. Divorce, which breaks the marriage bonds<sup>5</sup>.

The reforms of Islam made a new departure in the history of humanity. It restrained the abuse of power by the husband and gave the women the right obtaining divorce on reasonable grounds. The Prophet (PBUH) prohibited its exercise without the intervention of arbiters or a Judge, for of all permitted things it was a thing most detestable before God<sup>6</sup>.

In Islam, there are different rules for divorce for men and women under the terms of Islamic law. When a man initiate a divorce the process is known as Talaq when a woman initiate a divorce the process is known as Khula. There are rules of divorce among major Islamic Schools of Jurisprudence. Among them, mainly Shia and Sunni Muslims have different procedure for exercising an Islamic divorce under Sunni Muslim, no witnesses is mandatory for pronouncing talaq and he can end the relationship by saying triple talaq, but under Shia community, triple talaq is against the Pre-Islamic custom<sup>7</sup>.

To understand the historical background of Divorce law, the evolution in the concept of divorce in the Pre-Islamic period as well as in the Islamic Period is imperative:

#### **4.1.1 Divorce in Pre-Islamic Period:**

During the Pre-Islamic Period, the power to divorce is solely granted to the husband. The powers enjoyed by them were boundless with no reason or whenever they wish they could separate their wives. The powers were so exclusive that they could self

---

<sup>5</sup> Id.

<sup>6</sup> Ibid.

<sup>7</sup> Danish Yusuf, *Islamic Law and Divorce* 25, (Random Publications, Delhi, 1<sup>st</sup> Edn., 2013).

assertively blame their wives for unchastity expel them and abandon them. This happens in spite of the fact that Islam being the first religion which provides for the dissolution of marriage by way of divorce. In Pre-Islamic days, there were no restrictions at all in terms of divorce. The self assertive divorce exists in the Pre-Islamic days at the sweet will of the husband. The husband has full freedom to pronounce talaq any number of times and again taking them back and continuing conjugal association. According to the hadis<sup>8</sup>, talaq was announced to be the most disgusting before God of all allowed things. The status of women were miserable as the husband could arbitrarily accuses his wife of adultery, dismiss her and leave her with such notoriety as would deter other suitors; while they themselves would go exempt from any formal responsibility of maintenance or legal punishment<sup>9</sup>.

Abdur Rahim opined that there were minimum four kinds of dissolution of marriage existed during the Pre-Islamic Arabia. They were Talaq, Ila, Zihar and Khula. By invoking any of the following method of woman is completely separated from the husband. Even the husband has the choice to remarry her but only with the completion of Iddat Period. Sources also reveal that during Pre-Islamic days even the pregnant wife was divorced and remarried to another person under an agreement. And in case of death of the husband the period of Iddat at that time was one year<sup>10</sup>.

#### **4.1.2 Position in the Islamic Period:**

The Holy Prophet (PBUH) of Islam highly disapproves these customs of divorce. The Prophet Muhammad (PBUH) looked upon these traditions of divorce with extraordinary objection and viewed that these customs will undermine the establishment of a civil society. However, Prophet (PBUH) realised that it would not be possible to annul the custom altogether. So, the Prophet tried to shapes the mentality of an

---

<sup>8</sup> B. R. Verma, *Islamic Law 203*, (Law Publishers Private (India) Limited, 6<sup>th</sup> Edn., 1986).

<sup>9</sup> Ibrahim Abul Hamid, "*Dissolution of Marriage in Islamic Law*" 165, (Islamic Culture Centre, Vol II, 1956-1957).

<sup>10</sup> Abdur Rahim, *The Principles of Muhammadan Jurisprudence 11*, (Thacker, Spink and Co., Calcutta and Shimla, 1911).

uncultured and semi-primitive group to a somewhat higher advancement. Therefore, He started allowing the husband to separate their wife under certain conditions. Prophet (PBUH) suggested to divorce parties in three distinct period so that they may have the chances for reconciliation and if not possible then the third period will become effective<sup>11</sup>.

The boundless powers of the husband with regard to divorce are controlled by the advent of Islam under the reforms made by Prophet (PBUH). The changes are praiseworthy as it also provided the women to get separated on reasonable ground<sup>12</sup>. Talaq as regarded by Prophet (PBUH), the most distortable thing before God of all allowable things for it hampers the matrimonial happiness and affect the raising of offspring's.

An operative bar put by Islam on habitual divorce and remarriage was that in case of irrevocable dissociation, it is key requirement for remarriage, that the wife need to marry another man, and this marriage should be consummated before separation, and

The wife ought to undergo Iddat. This was a course of action to furnish separation as rarest. Certain detractor denounce this process as an appalling trial and revolting however they disregarded that in Arabs where sensitive race is visible, such a condition was a necessary antidotes for the evil. It expected to control a standout amongst the most delicate countries of the earth by acting on the strongest feeling of their nature, the sense of honour<sup>13</sup>.

Talaq in its strict sense signifies the taking off of any tie or restriction. The privilege of separation is yielded in Muslim law however the law restricts its activity by dangers of heavenly dismay it was, says Baillie originally forbidden and is still disapproved but has been permitted for the avoidance of greater evils<sup>14</sup>.

---

<sup>11</sup> Ameer Ali, *The Spirit of Islam* 98, (Easter Book Co., Lucknow, 4<sup>th</sup> Edn., 2004).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Baillie, *Digest of Mohammedan Law*, cited of Dr. M. A. Qureshi, *Muslim Law* 204, (Central Law Publications, Allahabad, 2<sup>nd</sup> Edn., 2002).

One of the major loopholes of the Islamic system is the boundless authority entrusted to the husband to detach his wife without any reasonable ground. However, Mahr to a greater extent restrain the use of his power. But studies show that large suffering is engendered by the husband's withholding divorce than by his irresponsible exercise of the right<sup>15</sup>.

#### 4.2 Meaning of Talaq:

Talaq is an Arabic word and its literal meaning is “to release”. Under Muslim Personal law, talaq means revocation of marriage by the husband<sup>16</sup>. The word talaq originates from a root (Tallaqa) which signifies to release (a creature) from a tie to renounce the wife or free her from the servitude of marriage<sup>17</sup>.

According to Hedaya<sup>18</sup>, Talq in its primitive sense signifies dismissal in law it means the dissolution of or the annulment of its legality, by certain words<sup>19</sup>. Talaq is defined as the power of the husband to pronounce Talaq on the wife arbitrarily without any reason at any point of time during the continuance of a valid marriage including the period of Iddat.

Muslim law does not prescribe any requirements of blame or matrimonial offence as an excuse for Talaq. The Muslim concept of divorce is that where it is not possible for the couple to live respectively they should isolate peacefully<sup>20</sup>. According to

---

<sup>15</sup> Fyzee, “*The Muslim Wife and Right of Dissolving her Marriage*” 38, Bombay Law Reporter, LJ 43 Cited of Khalid Rashid, *Muslim Law* 98, (Eastern Book Publication, 2009).

<sup>16</sup> Dr. R. K. Sinha, *Muslim Law* 82, (Central Law Agency, Allahabad, 5<sup>th</sup> Edn., 2003).

<sup>17</sup> A. A. A. Fyzee, *Outlines of Muhammedan Law* 150, (Oxford University Press, New Delhi, 6<sup>th</sup> Edn., 2016).

<sup>18</sup> Hedaya, 72, Cited of: B. R. Verma, *Islamic Law* 202, (Law Publishers (India) Private Limited 6<sup>th</sup> Edn., 1986).

<sup>19</sup> Dr. Nishi Purohit, *the Principles of Mohammedan Law* 183, (Orient Publishing Company, Allahabad, 2<sup>nd</sup> Edn., 1998).

<sup>20</sup> Ameer Ali, *Mohammedan Law* 512, Vol. I, II, Ed III; cited of Dr. R. K. Sinha, *Muslim Law* 82, (Central Law Agency, Allahabad, 5<sup>th</sup> Edn., 2003).

Dictionary of Islam<sup>21</sup>, Talaq is the title of the One of the Surah Al-Talaq (5<sup>th</sup> Surah of Holy Quran which deals with the Subject of the Divorce).

Talaq literally means “untying the knot being released from a covenant”. The Talaq means coming out of marital knot and becoming free. It is a generic name for all kinds of divorce; but mainly means the cancellation of marriage by or on behalf of husband<sup>22</sup>.

### **Divorce:-**

The English meaning of Divorce is legal dissolution of marriage or separation or to dissolve the marriage<sup>23</sup>.

### **Distinction between Talaq and Divorce:**

It is a cumbersome task to differentiate between Talaq and divorce. The term Talaq is used in two senses:-

- (i) A restricted sense in which it is confined to separation effected by use of certain appropriate words by the husband;
- (ii) A wide sense – In this category it covers all separations for causes originating from the husband<sup>24</sup>.

The term divorce includes all separation originating from the husband and repudiation for Talaq in the limited sense, namely, of separation effected by use of appropriate words.

---

<sup>21</sup> J. C. Mohammad Ali, *Commentary on the Holy Quran* 96, (Kitab Bhawan, New Delhi, 1<sup>st</sup> Edn., 1917).

<sup>22</sup> Aqil Ahmed, *Text Book of Mohammedan Law* 167, (Central Law Publication, Allahabad, 25<sup>th</sup> Edn., 2015).

<sup>23</sup> Supra Note 21.

<sup>24</sup> Furzund Hussain V. Janu Bibee (1878) 4 CL 588.

#### 4.2.1 The Quranic verses on Talaq:

To understand the true concept of Talaq, it would be appropriate to quote the various verses mentioned in the Holy Quran on Talaq as well as related matters. The verses are as follows:

- (1) If ye fear a breach between the twin, appoint (two) arbiters one from his family and the other from hers if they wish for peace Allah will cause their reconciliation for Allah hath full knowledge and is acquainted with all things<sup>25</sup>.
- (2) If a wife fears cruelty and desertion on her husband's part, there is no blame of them if they arrange an amicable settlement between themselves and such settlement is best even though men's souls are swayed by greed. But if ye do good and practice self restraint Allah is well acquainted with all that ye do<sup>26</sup>.
- (3) But if they disagree (and must part), Allah will provide abundance for all from His all – reaching bounty for Allah is He who careth for all and wise<sup>27</sup>.
- (4) A divorce is only Permissible twice after that the parties should either hold on together on equitable terms or separate with kindness. It is not lawful for you, (men) to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah so do not transgress them, if any do transgress the limits ordained by Allah, such persons wrong/themselves as well as others<sup>28</sup>.
- (5) So, if a husband divorces his wife (irrevocably) he cannot after that remarry her until after she has married another husband and he has divorced her. In that

---

<sup>25</sup> The Quran, 4:35.

<sup>26</sup> The Quran, 4:128.

<sup>27</sup> The Quran 4:130.

<sup>28</sup> Quran, 2:229.

case there is no blame on either of them if they reunite provided they feel they can keep the limits ordained by Allah. Such are the limits ordained by Allah which He makes plain to those who understand<sup>29</sup>.

- (6) O Prophet! When ye do divorce women, divorce them at their prescribed periods and keep count of the waiting Period and fear Allah, your Lord and turn them out of their houses not shall they (themselves) leave except in case they are guilty. And those are the limits [set by Allah]. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; Perhaps Allah will bring about after that a matter<sup>30</sup>.
- (7) Thus when they fulfil their term appointed either take them back on equitable terms apart with them on equitable terms and take for witness two persons from among you and establish with justice the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the last day. And for those who fear Allah He (ever) prepares a way out<sup>31</sup>.
- (8) When ye divorce woman and they fulfil the term of their iddat either take them back on equitable terms or set them free on equitable terms but do not take them back..... injure them (or) to take undue advantage if does that, he wrongs his own soul. Do not treat Allah's signs as a jest best solemnly rehearse Allah's favour on you and the fact that He sent down to you the Book and wisdom for your instruction. And fear Allah and know that Allah is well acquainted with all the things<sup>32</sup>.
- (9) Such of your women as have passed the age of monthly courses for them the prescribed period if ye have any doubt is three months and for those who have no courses (it is the same) for those who carry (life within their wombs) their

---

<sup>29</sup> Quran, 2:230.

<sup>30</sup> Quran, 65:1.

<sup>31</sup> Quran 65.2.

<sup>32</sup> Quran, 2.231.



period is until they deliver their burdens and for those who fear Allah. He will make their path easy<sup>33</sup>.

- (10) O ye who believe when ye marry believing women and then divorce them before you have touched them no period of Iddat have for you, make some provision in respect of them and release them in a handsome manner<sup>34</sup>.
- (11) Let the woman live (in Iddat) in the same style as ye live according to your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breast feed for you, then give them their payment and confer among yourselves in the acceptable ways but if you are in discord, then there may be breast feed for the father another woman<sup>35</sup>.
- (12) Let the man of means spend according to his means and the man whose resources are restricted let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. After a difficulty Allah will soon grant relief<sup>36</sup>.
- (13) There is not blame on you if ye divorce women before consummation or the fixation of their dower but bestow on them (a suitable gift) the wealthy according to his means and the poor according to his means a gift a reasonable amount is due from those who wish to do the right thing<sup>37</sup>.
- (14) And if ye divorce them before consummation but after fixation of a dower from them, then the half of the dower (is due to them) unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie and the

---

<sup>33</sup> Quran 6.45.

<sup>34</sup> Quran 33.49.

<sup>35</sup> Quran 65.6.

<sup>36</sup> Quran 65.7.

<sup>37</sup> Quran 2.236.

remission (of the man's behalf) if the nearest to righteousness. And do not forget liberality between yourself. For Allah sees well all that ye do<sup>38</sup>.

- (15) For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous<sup>39</sup>.

### 4.3 Classification of Talaq under Islamic Law:

#### Introduction:

Dissolution of marriage leads to annihilation of family life with consequent uncertainty and miseries for the offspring's born of the marriage but on the other hand if must be equally conceded that dissolving of marriage is evidently important when the spouses cannot live in peace and have ended all the conjugal regard love and affection. The continuance of undesirable marriage breeds hate and disgust and may ruin the lives of the parties involved or at least one of them<sup>40</sup>.

Islam takes pragmatic and consoling view of human affairs and thus it put significance to the happiness of both the husband and wife. It emphasise that every effort should be taken to preserve a marriage but if it happens that a marriage has proved a failure and has appear a mere hollow shell Muslim law does not scruple to allow the parties to separate from each other. In Islam, the true meaning of marriage is that it should continue till of the spouses to the marriage dies but it become impossible for the parties to continue with the marriage, the very object of the marriage is defeated and it becomes a mere farce then its continuance is no longer considered desirable. Under such circumstances dissolution of marriage is allowed under Islamic law<sup>41</sup>.

In Muslim law there are two types of divorces i.e. extra judicial divorce and judicial divorce. In extra judicial divorce, the topics discussed are unilateral divorce (Talaq), divorce at the instance of wife (Khula), divorce by mutual consent (Mubarat),

---

<sup>38</sup> Quran 2.37.

<sup>39</sup> Quran 2.241.

<sup>40</sup> K. N. Ahmed, *The Muslim Law of Divorce 1*, (Kitab Bhawan, New Delhi, 5<sup>th</sup> Edn., 1984).

<sup>41</sup> Ibid.

delegated divorce (Talaq-i-Tafweez). In constructive divorce, it covers the topics of Ila and Zihar. The effects of conversion (apostasy) are also discussed. It also deals with the grounds of Judicial separation and grounds of dissolution of marriages which a Muslim wife can apply for divorce.

Divorce may be affected by the act of the husband but in certain special circumstances also by wife or by mutual agreement or by the operation of law. A Muslim spouse can seek restitution of conjugal rights by a civil suit. The dissolution of Muslim Marriage Act, 1939 now lays down several other grounds on the basis of any one of which a Muslim wife may get her marriage dissolved by an order of the Court. Islam provides a modern concept of divorce by mutual consent.

#### **4.3.1 By the death of Husband or Wife:**

Death of either of the spouse during the continuance of marriage dissolves the marriage immediately under all the personal law systems. To end the marriage by death of either husband or wife is sufficient. Thus the decree of the court to dissolve the marriage is not required.

Where a marriage terminates by act of the parties, the dissolution is called divorce. Under Muslim law, the divorce may take place by the act of parties the dissolution is called divorce. Under Muslim law, there are two ways to dissolve the marriage either by the act of the parties themselves or through decree of the court of law. However, divorce has never been regarded as a rule of life under Muslim law. Islam regards talaq as an exception to the status of marriage.

As far as possible, dissolution of marriage must be avoided, but under certain situation divorce becomes a necessary evil when the husband and wife failed to live together with love and affection than it is desirable to get separated instead of living in a miserable and hatred environment. There are several modes of divorce under Muslim law. Thus, it is comprehensible that with the death of the husband or wife the marriage tie comes to an end. When the wife dies, the husband may remarry immediately, but in

case of husband's death widow has to wait till the expiry of Iddat i.e. 4 months and 10 days, or if pregnant, till delivery<sup>42</sup>.

#### **4.3.2 By the Act of the Parties:-**

A divorce or (the dissolution of marriage by act of parties) may be initiated either by Act of husband or by Act of the wife. A husband may dissolve the marriage with his wife by repudiating the marriage without giving any reasonable cause. Pronouncement of such words generally makes it clear the intention to end the ties with his wife by sufficient. Mostly this is done by Talaq. Apart from it, the husband may separate his wife by two other means also they are Ila and Zihar which is different from a Talaq. Only in form not in substance. However the wife cannot divorce her husband of her own accord. She can divorce the husband only where husband has delegated such right to her or under an agreement in which a wife may divorce the husband either by Khula or Mubarat. It was only after the passage of dissolution of Muslim marriage Act 1939 the wife has the right to seek divorce on the several grounds mentioned under the Act. Earlier she can seek divorce only on the grounds of false charge of adultery by the husband, insanity or impotency of the husband.

#### **4.3.3 Divorce by the Husband:**

- (i). Talaq – Talaq-ul-Sunnat & Talaq-ul-Biddat
- (ii). Ila
- (iii). Zihar

**Talaq:-** Muslim law endow the husband the power to dissolve his marriage as and when he likes to do so. It is an arbitrary act of a Muslim husband who may repudiate his wife at his own pleasure with or without showing any cause. The husband can pronounce the Talaq at any time. It is not important for him to obtain the prior approval of his wife for the dissolution of marriage. Talaq may be pronounced on

---

<sup>42</sup> Syed Khalid Rashid, *Muslim Law* 99, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

mere whim or Caprice without any reason<sup>43</sup>. The Talaq is an Arabic word and its literal meaning is “To release”. Under Muslim law talaq means repudiation of marriage by the husband<sup>44</sup>. In *Moonshee Buzloor Rahim V. Laleefutoon Nisa*<sup>45</sup>, it was said that under Muslim law Talaq is the mere arbitrary act of a Muslim husband who may repudiate his wife at his own pleasure with or without cause. He can pronounce the Talaq at any time. It is not necessary for him to obtain the prior approval of his wife for the dissolution of his marriage.

Communication of Talaq becomes necessary in certain cases, where the wife needs to undergo Iddat and the Mahr becomes payable during Iddat. The Sunni permit both oral and written Talaq, while the Shias insist on Oral Talaq. The practice of Talaq almost disobey any bondage, the husband holds sole authority to assign no reason, to go to no court, take no consent of the wife, give no regard to her condition, follow no procedure or formality, and just pronounce Talaq. ‘How he does it, when he does, or in what manner he does it, is not very material’<sup>46</sup>. In *Hannifa V. Pathummal*, the judicial conscience of Khalid, J. was so much perturbed that he termed the practice as a monstrosity<sup>47</sup>.

### **Essential Conditions for valid Talaq:**

There are many ways by which Talaq can be pronounced. In order to pronounce a valid Talaq, the following essential elements must be present.

(a). Capacity: Every Muslim husband of sound mind, who has attained the age of majority, is competent to pronounce Talaq. The husband can pronounce the Talaq wherever he likes against his wife provided he has attained the age of puberty. This absolute right can be exercised by him without giving cause or condition. If the husband is a minor or is of an unsound mind he cannot pronounce Talaq. Talaq by

---

<sup>43</sup> Dr. M. A. Qureshi, *Muslim Law* 68, (Central Law Publication, Allahabad, 2<sup>nd</sup> Edn., 2002).

<sup>44</sup> Dr. R. K. Sinha, *Muslim Law* 82, (Central Law Agency, Allahabad, 5<sup>th</sup> Edn., 2003).

<sup>45</sup> 8 MIA 397.

<sup>46</sup> Paras Diwan, *Muslim Law* 76, Allahabad Law Agency, 1985

<sup>47</sup> 1972 KLT 512.

such person is void and ineffective. However, if the husband is a lunatic the Talaq pronounced by him during 'lucid interval' valid. The guardian of a minor cannot pronounce Talaq on the minor's behalf, he has no right in respect of Talaq on behalf of such insane husband if such Talaq is in the interest of the husband. In the absence of guardian, the Kazi or a Judge has right to dissolve the marriage in the interest of such husband.

**(b). Free Consent:**

Except under Hanafi law, the consent of the husband in pronouncing Talaq must be a free consent. Under Hanafi law of Talaq, a divorce pronounced under compulsion, intoxication is just or valid. The necessary requirements are:

- (i) The person compelling must be in a position to do what he threatens to.
- (ii) There is a strong possibility of threat being carried out.
- (iii) The threat involves some imminent and serious danger to the man.

Only Hanafi Jurists hold that a divorce given under compulsion, intoxication and jest will be valid. Hanafi law is followed by a majority of Muslims in India, hence this type of divorce shall be perfectly effective in India. The rule however, has been criticised by Ameer Ali, Fyzee and others<sup>48</sup>.

(c). Express words: The pronouncement of Talaq must clearly specify the intention of the husband to dissolve the marriage. Thus the words of Talaq must be express. But if the words used are ambiguous and confusing then it is necessary to prove the actual intention of the husband to dissolve the marriage.

**Kinds of Talaq:**

An express form of Talaq may be of Two Types:

- (1). Talaq-ul-Sunnat or revocable Talaq and
- (2) Talaq-ul-Biddat or irrevocable Talaq

---

<sup>48</sup> Syed Khalid Rashid, *Muslim Law 102*, Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

### **(1). Talaq-ul-Sunnat –**

It is a Talaq which is in accordance with the traditions of the Prophets. Talaq-ul-Sunnat is an approved form of Talaq. It is a revocable Talaq. In this type of Talaq, the evil consequences of Talaq do not become final at once. The possibilities of reconciliation exist between the husband and the wife. This was the only kind of Talaq which is recommended by the Holy Prophet and was in practice during his life time. It is recognised by both the Sunnis as well as by Shias<sup>49</sup>.

#### **There are two forms of Talaq-ul-Sunnat:-**

(a). Ahsan Talaq (b) Hasan Talaq

(a). Ahsan Talaq: It is one of the best and approved form of Talaq. The Arabic word 'Ahsan' means 'best' or 'very proper'. The best feature of Ahsan Talaq is that it is revocable, and the evil consequence of divorce can be prevented. There are three essential conditions to be fulfilled in Ahsan Talaq:

- (1) The husband must pronounce the formula of divorce in a single sentence;
- (2) The pronouncement of divorce must be in a state of purity (Tuhr); (Tuhr is a period when a woman is free from her menstrual course.
- (3) He must abstain from intercourse for the period of Iddat<sup>50</sup>;

Where the spouses are in distance from each other for a long period or where the wife is beyond the age of menstruation, the condition of Tuhr (purity) is not applicable<sup>51</sup>.

The Ahsan Talaq is revocable during the iddat period; it can be either expressly or impliedly initiated by the husband. Consummation with the wife after the

---

<sup>49</sup> Dr. Rakesh Kumar Singh, *Text Book of Muslim Law 118*, (Universal Law Publishing, New Delhi 2011).

<sup>50</sup> Aqil Ahmed, *Text Book of Mohammedan Law 170*, (Central Law Agency, Allahabad, 25<sup>th</sup> Edn., 2015).

<sup>51</sup> *Chand Bi V. Bandesha*, AIR 1960 Bom. 121.

pronouncement of Ahsan Talaq is an implied revocation of Taalq. After the expiration of the Iddat the divorce becomes irrevocable.

**(b). Hasan Talaq:**

It is an approved form of Talaq. The word ‘Hasan’ means good. Like Ahsan Talaq, Hasan Talaq too is revocable. But it is not regarded as the best mode of Talaq because the sinful words are to be said three times in the successive Tuhrs.

**The Essential Requirements of a Hasan Talaq are:**

1. There must be three consecutive pronouncements of the formula of divorce.
2. In case of menstruating wife, the first pronouncement should be made during a period of Tuhr, the second during the next Tuhr and third during the succeeding Tuhr.
3. In case of Non-Menstruating wife, the statement should be made during the successive intervals of 30 days.
4. No Sexual intercourse should take place during these three periods of Tuhr<sup>52</sup>.

Hasan Talaq becomes irrevocable on the third pronouncement.

(a). Talaq-ul-Biddat (Sinful Talaq): - It is an immoral form of divorce. It was not introduced by Islam but by Omeyyads in order to get out of the strictness of law. The Hanafis followed Talaq-ul-Biddat as a recognised form of divorce. Triple pronouncement is not necessary for irrevocability of effect<sup>53</sup>.

The following requirements are necessary for this kind of divorce.

- Three pronouncements made during a single Tuhr either in one sentence or in separate sentence eg; “I Divorce Thee Thrice” or I Divorce thee, I divorce thee, I divorce thee”.

---

<sup>52</sup> Supra Note 50.

<sup>53</sup> *Mst. Saleha Bi V. Sheikh Gulla*, AIR 1973 M. P. 207.



- A single pro pronouncement made during a Tuhr clearly indicating an intention irrevocable to dissolve the marriage, “I divorce thee irrevocably.

Under the Talaq-ul-Biddat divorce, if the parties to the marriage finally get separated than they cannot reconcile with each other without the intervention of intermediary marriage. In *Sarabhai V. Rabia Bai*.<sup>54</sup> It was held that this form of Talaq is theologically improper. It is improper from the moral point of view. In *Fazlur Rahman V. Aisha*.<sup>55</sup> It was held that this type of divorce is against the Quranic Verse as well as the traditions of the Holy Prophet (PBUH).

Talaq-ul-Biddat becomes irrevocable immediately when it is pronounced irrespective of Iddat and when it is in writing it becomes irrevocable immediately<sup>56</sup>.

Although such divorces are theologically bad, it is perfectly valid in Law<sup>57</sup>.

#### **(a). Single Irrevocable Talaq:**

For Single irrevocable Talaq, the marriage must be consummated, it is enough for this kind of divorce if the husband pronounce. ‘I had divorced thee in Talaq-ul-Biddat form. It becomes irrevocable. The pronouncement may be made even though the husband had intercourse with his wife since the last menstruation. Immediately on the pronouncement of Talaq, the marriage becomes dissolved<sup>58</sup>.

#### **(b). Triple irrevocable Talaq:**

Triple pronouncement of Talaq is mandatory such as ‘I divorce thee, I divorce thee, I divorce thee’ or even in single sentence eg; ‘I divorce thee thrice or triply, such pronouncement may be made in a period of Tuhr, the marriage is dissolved immediately on the pronouncement of Talaq irrevocably.

---

<sup>54</sup> (1906) 30 Bom. 537.

<sup>55</sup> (1929) 8 Pat. 690.

<sup>56</sup> *Mohammad Ali V. Fareedunnisa Begum*, (1970) Pat. 298.

<sup>57</sup> *Ahmad Giri V. Mst. Bigha*, AIR 1955 J & K 1:1955 Cr LJ 1067.

<sup>58</sup> *Dr. Rakesh Kumar Singh*, Text Book of Muslim Law 121, (Universal Law Publishing, New Delhi 2011).

It may be noted that from past one decade Indian Courts have been criticising Talaq-ul-Biddat and made efforts to discourage it.

In *Rahmat Ullah V. State of Uttar Pradesh*<sup>59</sup>, the Allahabad High Court has observed that an irrevocable Talaq is unlawful because this kind of Talaq is against the dictates of the Holy Quran and also against the true spirit of the Constitution of India.

Thus, it may be said that the practice of Talaq-ul-Biddat is against the mandate of the Holy Quran and a practice derogatory to the dignity of the woman. From the above discussion it is clear that in Ahsan mode, divorce is effective on expiration, in the Hasan mode divorce is effective on the third pronouncement. In the Talaq-ul-Biddat, the divorce is effective immediately after the pronouncement or execution of the writing of divorce (Talaq Nama)<sup>60</sup>.

### **An Analysis of Triple Divorce:**

Triple divorce is an accepted but sinful form of divorce and acknowledged by the Islamic exponents as a transformation within the fold of shariat. Triple Divorce is neither the mandates of Holy Quran nor among the traditions of the Prophet (PBUH). It was not in exercise during the lifetime of first Caliph Abu Bakar's time. But due to some unusual situation it was allowed by Hazrat Umar to meet the exigencies. It happened when Syria, Egypt, Persia etc get conquered by Arabs, the Arabian males found women there much more beautiful as to Arabian women and so they wanted to marry them. However the Egyptian and Syrian women insisted that in order to marry them, they should divorce their existing wives in one sitting. The Arabian males willingly accepted the condition as they knew in Islam divorce in one sitting is against the principles of Islam and it will void and ineffective. The tactics used by the Arabian males was to retain their existing wives as well as get marry to another one also. This reality was reported to the second Caliph Hazrat Umar. The Caliph then to control the abuse of religious principles by the unscrupulous husbands held that even repetition of

---

<sup>59</sup> II (1994) DMC 64.

<sup>60</sup> A. A. A. Fyzee, *Outlines of Mohammedan Law* 155, (Oxford University Press, India, 4<sup>th</sup> Edn., 2008).

word Talaq, Talaq, Talaq at one sitting would end the marriage irrevocably. It is to be noted that what Caliph Hazrat Umar done was to meet an emergency situation and not to make a law permanently. But regrettably, the Hanafi Jurists strengthen the administrative order of the Caliph declared this form of divorce as valid and also gave religious sanction to it<sup>61</sup>. Let us analyse the above concept in the light of Holy Quran and Hadith.

Holy Quran being the Paramount source of Islamic Jurisprudence never mentioned about the three divorces pronounced in a single breath would have the effect of three separate divorces.

The relevant verse of the Quran to this effect may be relied upon.

“A divorce is only permissible twice, after that, the parties should either hold together on equitable terms or separate with kindness”<sup>62</sup>.

Thus, the instant verse (II: 229) confirmed that three divorces pronounced at a single time does not result to irrevocable divorce. There is no proof that the three divorces pronounced in one sitting would be treated as three divorces or irrevocable footing.

Consequently on the basis of Quranic Materials as analyzed above, it may be summed that only one divorce in effect results from the three pronouncements at one occasion<sup>63</sup>.

#### **Ahadis on Triple Talaq:**

The aspect that mere repetition of divorce without an intention to give final divorce or solely by way of emphasis or in fleeting excitement does not amount to final divorce realize full assistance from the following Hadith.

---

<sup>61</sup> Aqil Ahmed, *Text Book of Mohammedan Law* 174-175, (Central Law Agency, 25<sup>th</sup> Edn., Allahabad 2015).

<sup>62</sup> Holy Quran Verse I-II: 229.

<sup>63</sup> Supra Note 61.

“Mahmud-b, Labeed reported that the Messenger of Allah was informed about a man who gave three divorce at a time to his wife. Then he got up enraged and said; Are you playing with the Book, of Allah who is great and glorious while I am stile amongst you? So much so that a man got up and said; shall I not kill him”<sup>64</sup>.

There is another tradition reported by Rokanah-b, Abu Yazid that he gave his wife Sahalmash an irrevocable divorce, and he conveyed it to the Messenger of Allah and said, by Allah, I have not intended but one divorce. Then Messenger of Allah asked have you intended but one (Divorce)? Rokana said. By Allah, I did not intend but one divorce. The Messenger of Allah then returned her back to him. Afterwards he divorced her for second time at the time Hazrat Omar and third time at the time of Hazrat Osman<sup>65</sup>.

Thus, it become clear from the above tradition that if the husband pronounces one divorce against his wife and then repeats for the second and even third time solely to emphasis the first pronouncement and with a view to effect a final divorce then, he is required to explain his intention to bring back his wife. For a long period during the time of Holy Prophet and even after him, cases of triple divorce were termed as cases of single divorce and husband and wife were reunited.

### **Juristic View:**

The Madras High Court in Aisha Bibi V. Qadir Ibrahim<sup>66</sup> held that absence or presence of wife is immaterial so far as the irrevocability of ‘Triple Divorce’ is concerned.

Similar view was expressed by Mr. Justice Venkata Subha Rao<sup>67</sup> the Calcutta High Court opined that presence or absence of wife makes no difference so far as the effectiveness of triple divorce is concerned.

---

<sup>64</sup> Al Maulanan-Fazlul Karimi, *Mishkat-ul-Masabih: An English Translation & Commentary* 693, (Islamic Book Service, New Delhi).

<sup>65</sup> Ibid 690.

<sup>66</sup> (1910) 3 Mad. 22.

<sup>67</sup> *Fulchand V. Namal Ali*, (1909) 36 Cal. 184.

In British India as well as after independence, all the courts held triple pronouncements of divorce in one sitting as valid and lawful. The Bombay High Court in *Sara Bai V. Rabia Bai*<sup>68</sup> recognised triple divorce on irrevocable footing.

Again, In *Saiyid Ahmad V. Mst. Aneesa Khatoon*<sup>69</sup>, the privy council recognised triple divorce pronounced at one time as validity effective.

Nevertheless the pronouncement of triple Divorce was highly criticized by the Jammu and Kashmir High Court but serve it effective and show inefficacy regarding the bringing of any change in Judicial interpretation.

**In Ahmad Giri V. Mst. Megh<sup>70</sup>, the Court observed:**

“The Talaq-ul-Biddat is the most prevalent form of obtaining divorcee in India. Any change in this regard cannot be brought about by judicial interpretation.

In *Yusuf V. Sowramma*<sup>71</sup>, Justice Krishna Iyer made an important observation with regard to divorce. He viewed that it is popular fallacy that a Muslim male enjoys, under the verse of Holy Quran, unbridled authority to liquidate the marriage. The Holy Quran expressly forbids a man to seek pretext for divorcing his wife so long as she remain faithful and obedient. He further observed about the state of affairs in India, that “Muslim law as applied in India has taken a course contrary to the spirit of what the Holy Prophet (PBUH) or the Holy Quran laid down and the same misconception vitiates the law dealing with the wife’s right to divorce.

It is, therefore, submitted that the concept of triple divorce should be understood with the contemporary needs of the society, otherwise it will bring unnecessary problems for the concerned community.

---

<sup>68</sup> I. L. R. (1905) 30 Bombay 537.

<sup>69</sup> AIR 1932 PC 25.

<sup>70</sup> AIR 1955 J & K 1.

<sup>71</sup> V. R. Krishna Iyer, *The Muslim Women (Protection of Rights on Divorce) Act 79*, (Eastern Book Company, Lucknow, 1987).

(ii) Ila (Vow of Continence) – When the husband who is of sound mind and who has attained the age of Puberty, swears by God that he will not have any sexual intercourse with his wife and abstains from it for a period of four month, leaves the wife to observe Iddat he is said to make Ila. Thus, if a husband makes an oral statement to his wife, ‘I swear by God that I shall not approached thee’ than it is a valid Ila.

### **Essential Requirements of Ila:**

- The husband must be both sound minds as well as has attained the age of puberty.
- The husband takes a vow in the name of God.
- That he will not have sexual relation with his wife.
- And he abstains from sexual intercourse for a period of four months.

Under Sunni law, no legal proceeding is required, only requirements are the expressed intention of the husband. However, under Shias and Shafis, the wife can seek judicial divorce on the grounds of Ila.

In *Rahema Khatoon V. Iqtidar-Uddin*<sup>72</sup>, the husband, on entering the room of the wife on the very first day of the marriage called her a wife in name only. The court refused to accept it as an Ila in absence of a clear intention.

It is to be noted that Ila is not in Practice in India.

### **Revocation of Ila:**

Ila may be cancelled by –

- (a). The husband resuming sexual intercourse within the period of four month, or,
- (b). A verbal restriction thereof<sup>73</sup>.

---

<sup>72</sup> AIR 1943 All 184.

<sup>73</sup> Aqil Ahmed, *Text Book of Mohammedan Law 184*, (Central Law Agency, 26<sup>th</sup> Edn., Allahabad 2016).

(iii). Zihar – (Injurious Comparison)

Zihar denotes a husband's who is a sane and adult compares his wife to his mother, or any female relation within the prohibited degrees. Although Zihar itself do not dissolve the marriage but the sexual intercourse between the spouses becomes unlawful till the husband expiated himself by undergoing Penance. The Penance prescribe by law are –

- Freeing a slave;
- Fasting for two months
- Feeding sixty poor person<sup>74</sup>

The wife can claim Judicial separation if the husband continues in the wrong doing. According to Ameer Ali<sup>75</sup>, the intention of the husband must be to show disrespect to the wife. Zihar is also out of practice, 'these words do not naturally come to Muslims in India (Tyabji).

Divorce at Wife Instance: The forms of divorce at the instance of wife are briefly mentioned below:

- (a).Talaq-e-Tafweez
- (b).Khula and Mubarat
- (c).Divorce with the intervention of Court

#### **4.3.4 Talaq by the wife (Talaq-e-Tafweez delegated Divorce):**

It is type of divorce at the instance of a wife. Under Muslim law of divorce Talaq-e-Tafweez is a significant topic. The term Tafweez means delegates. So far as it is understood that the powers of divorce exercised by the husband are absolute, so he has also the power to repudiate the marriage by delegating his right to another person

---

<sup>74</sup> Id.

<sup>75</sup> Syed Khalid Rashid, *Muslim Law 105*, Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

including his wife. Such delegation of power is known as Talaq-e-Tafweez. Baillie defines it as follows<sup>76</sup>.

“As a man may in person repudiate his wife, so he may commit the power of repudiating her to herself or to a third party”. That is, the husband may delegate the power of divorce to his wife. He may do so at the time of marriage contract or at any time when he so likes.

It is significant to note in case of Talaq-e-Tafweez, the wife does not divorce the husband, but she divorces herself on behalf of the husband by exercising the power granted to her.

It is essential that the delegation made by the husband must be in clear terms and not ambiguous. According to Ameer Ali, there are three kinds of Tafweez:

- Ikhtiar-giving her the right to Talaq herself.
- Amr-bayed-Leaving the matter in her own hand; and
- Mashiat-giving her the option to do what she likes.

The bare fact that husbands grants talaq-e-tafweez does not deprive the husband himself of his right to pronounce talaq. The delegation of power to the wife may either be permanent or temporary i.e. only for a defined duration. A temporary delegation of power is irrevocable; however, a permanent delegation may be revoked by husband<sup>77</sup>.

#### **Valid conditions for Talaq-e-Tafweez:**

- That the husband would forsake the community<sup>78</sup>.
- That the husband will not ill treat the wife and will pay some dower on demand<sup>79</sup>.

---

<sup>76</sup> Id.

<sup>77</sup> Dr. Rakesh Kumar Singh, *Text Book of Muslim Law 129*, (Universal Law Publishing, New Delhi 2011).

<sup>78</sup> *Fida V. Senai Badar*, AIR 1923 Nag. 262.

<sup>79</sup> *Aziz V. Mst. Nara*, AIR 1955 HP 32.



- That the husband would lead a respectable life and would maintain his wife and would live in a house approved by her and her parents<sup>80</sup>.
- That the husband should give separate maintenance to the wife for specified period<sup>81</sup>.
- That the husband does not give mental pain to wife and does not misconduct the wife<sup>82</sup>.
- That the husband would not abuse or assault the wife and would stay with her in her parent's house for three years during minority<sup>83</sup>.

#### 4.3.5 Divorce by Mutual Consent:

(i). Khula (Redemption): It is a divorce at the request of wife. The word Khula or redemption literally means "to lay down". It signifies laying down by the husband of his right over his wife. In *Bilquis Ikram V. Najmal Ikram*<sup>84</sup>, the Court held under Muslim Law, the wife is entitled to khula as of right otherwise it will amount to wrong full compelling her into the unpleasant union.

If it appears between the parties that they cannot carry forward the marital relation peaceably or they found distasteful to live together, the wife, if desires may seek khula by relinquishing her right to dower. It is, however, totally upon the husband either to accept the consideration of dower and to allow the divorce. In case the wife failed to pay the consideration to the husband he has the right to claim the release of dower or he can sue for any money or property due under the agreement. It is to be noted here that although the consideration is due, it does not invalidate the divorce. In the leading case *Moonshee Buzul Raheem V. Lateefut-oon-Nissa*<sup>85</sup>, it was observed by the Court

---

<sup>80</sup> *Mohd. Yasin V. Mumtaz Begum*, AIR 1936 Lah. 716, 38 Pun. L R 400.

<sup>81</sup> *Saifuddin V. Mst. Soneka*, AIR 1955 Assam 153.

<sup>82</sup> *Fatima Khatun V. Fazlal Karim*, AIR 1928 Cal. 303.

<sup>83</sup> *Nafizunnissa V. Bodi Rahman*, 201 C 642.

<sup>84</sup> 8 MIA 395, 399.

<sup>85</sup> (1861) 8 MIA 379.

that a divorce by Khula is complete from the period when the husband repudiates the wife. It is a right of divorce purchased by the wife from her husband.

The foundation for khula is based upon the provision of Quran, which read as follows:

“Then if you fear that they cannot keep within the limits of Allah. There is no blame on them for what she gives to become free thereby”.

One of the examples may be cited during the time of Hazrat Umar, where a complaint has been made before Hazrat Umar regarding a conflict between husband and wife, Umar admonished the wife and asked her to stay with the husband, but the wife denies, so she was kept in a room full of garbage's. After three days when she was taken out Umar asked her how she was. She replied, by Allah grace, “She had real comfort in these nights”. Listening this, Umar ordered her husband to give her Khula even though it might be in the exchange of her earrings”<sup>86</sup>.

#### **Requirements of Valid Khula:**

- The offer must initiate from the wife
- The offer must be accepted with the consideration (evaz) for the release.
- The offer must be accepted by the husband<sup>87</sup>.

#### **(b).Mubarat (Divorce by Mutual Agreement):**

Mubarat is also a way by which marriage may be dissolved. The parties mutually discharge each other from the marriage claims. Mubarat happens when both the parties desire to get separate. The essential of Mubarat is the mutual consent of both of the parties<sup>88</sup>. The initiation of Mubarat may come either from the husband or from the wife. Once the Mubarat is accepted by either of the party, it becomes irrevocable

---

<sup>86</sup> Aqil Ahmed, Text Book of Mohammedan Law 188, Central Law Agency, 26<sup>th</sup> Edn., Allahabad (2016).

<sup>87</sup> Ibid.

<sup>88</sup> *Jani V. Mohammad Khan*, AIR 1970 J & K 154.

divorce and iddat at is mandatory. In other words Mubarat can be said as a process of freeing of each other from the marriage tie by mutual agreement.

Fyzee puts – while in khula the request proceeds from the wife to be released and the husband agrees. For certain consideration, usually the Mahr, in Mubarat both the parties are happy at the prospects of being red of each other<sup>89</sup>.

Aqil Ahmed notes the following points of difference:<sup>90</sup>

1. Khula is redemption of the contract of marriage where as Mubarat is mutual release from the marital tie.
2. In Khula offer comes from the wife, husband accepts where as in Mubarat, any party may make the offer, the other side accepts.
3. In Khula consideration passes from wife to husband but in mubarat there is no question of consideration.
4. In Khula there is aversion on the wife side but in mubarat there is mutual aversion.

#### **Legal Effects of Khula and Mubarat:**

Dissolution of marriage by khula and mubarat shall have the same effect of single divorce and it becomes irrevocable under hanafi and ismaili shia school.

Under Shia law when the Khula is completed, the husband has no power of revocation, nevertheless the wife shall have the option to reclaim the consideration during iddat period.

#### **(c). Divorce with the intervention of Court:**

Divorce with the intervention of the court may be put under the two categories.

- (i) At the instance of the wife by judicial process.

---

<sup>89</sup> Syed Khalid Rashid, *Muslim Law 107*, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

<sup>90</sup> Ibid.

(ii) Judicial divorce under the dissolution of Muslim marriage act, 1939.

(i). At the instance of the wife by Judicial Process: Lian (Mutual Imprecation)

Where a husband falsely charge his wife of adultery, the wife shall have the right to sue him for a divorce. The wife must file a regular suit for the dissolution of marriage. The husband is entrusted with two options at the time of hearing – (a) he may retract (withdraw) the charge before the end of the trial for divorce.

(b). To persist in his attitude, whereby he will be required to accuse his wife on oath.

Under Muslim law, false charge of adultery is known as lian. To dissolve the marriage on the ground of lian, it is important that marriage between parties must be sahih and not fasid.

In *Nur Jahan Bibi V. Mohd. Kazim Ali*, it was opined by Bhattarcharya, J., that the doctrine of lian has not become obsolete. A Muslim wife can seek divorce on the ground of lian<sup>91</sup>.

#### **Retraction of Charge:**

The option of retraction of charge is granted to the husband by the Muslim law. The retraction must be (i) Bonafide (ii) unconditional (iii) made at or before the commencement of hearing and not after the close of evidence.

#### **In Tufail Ahmad V. Jamila Khatun<sup>92</sup>**

The Allahabad High Court held that retraction of charge by the husband before the suit for dissolution of marriage was enough to set aside the wife's suit.

#### **Faskh (Judicial Annulment):**

Faskh means cancellation of marriage. The Holy Quran ordained that it is the Primary obligation to treat his wife well on the other hand the wife must obey her husband. But, if a situation arises between the parties where they no longer can reside under the

---

<sup>91</sup> AIR (1977) Cal. 90.

<sup>92</sup> 1962 ALL L. J. 971.

same roof, they can refer the matter to Qazi, who after his scrutiny of matter, terminates the marriage.

The literal meaning of Faskh is cancellation, abrogation, annulment, recession, and abolishment. The law of Faskh is based upon this Quranic injunctions and traditions on the Prophet (PBUH). The Quran ordains that “And if ye fear a breach between them twain (the man and wife) appoint an arbiter from his folk and on arbiter from her hold. If they desire amendment Allah will make them of one mind”<sup>93</sup>.

#### **Valid Grounds for Dissolving the Marriage at the instance of the Wife –**

- (i). That the marriage is irregular
- (ii). That the marriage took place within Prohibited degrees.
- (iii). That the marriage having been contracted by non Muslim, later adopted Islam.
- (iv). That to avoid the marriage, the option has been exercised.

#### **4.3.6 Divorce under Dissolution of Muslim Marriage Act, 1939:**

The dissolution of Muslim Marriage Act, 1939 is a landmark enactment among the all legislation dealing with Muslim personal law in India. This enactment introduced a substantive reform in the Islamic law. The Quran expressly sanctioned dissolution of a woman’s marriage in case of necessity by ordaining:

“If a woman be prejudiced by a marriage, let it be broken off”<sup>94</sup>

India is dominated by followers of Hanafi School, since for Muslim wives Hanafi School did not sanction the divorcing right so being suffocated they started embracing Christianity; some Muslim Jurists laid down a principle that in such cases the marriage would not stand dissolved and that the woman would be imprisoned till she returned to Islam<sup>95</sup>.

---

<sup>93</sup> Quran IV: 34 & 35.

<sup>94</sup> Ibid.

<sup>95</sup> Fatwa Qazi Khan, as cited in M. Yusof, Mahamedan Law 347 C.T.L.L. Calcutta, (1898) as Quoted by Zahir Mahmood Ibid.

The Dissolution of Muslim Marriages Act was passed by British legislature in March, 1939 along with the changes made in the original bill at the instances<sup>96</sup> of the select committee. It dealt with:

- (a). Grounds on which a Muslim Wife can apply to the court for the dissolution of her marriage (Sec 2);
- (b). The effect of renunciation of Islam by a Muslim Wife (S -4); and
- (c). Matters incidental to the aforesaid subject (sec 3 and 5).

The final shape of the enactment disappointed and displeased the Ulema on account of the radical changes made in the original bill as drafted by them so they requested the viceroy not to give assent to it. Certain proposals were made by Jami al-Ulema but none were accepted and the Act passed in 1939 and remains substantially in its original form till today.

Regarding the object of the statutory provision dealing with the grounds of dissolution for marriage, the different High Courts opined from time to time as follows<sup>97</sup>:

- (i). The Allahabad High Court<sup>98</sup> held that the object of the Act is to ameliorate the lot of Muslim wives and enlarge her rights for matrimonial separation
- (ii). The Allahabad<sup>99</sup> and Peshawar High Court held that the provisions of the dissolution of Muslim Marriage Act, 1939 are complete and self sufficient and cannot be subordinated any rules of procedure prescribed by Muslim Law.
- (iii) The Nagpur High Court<sup>100</sup> opined that the Act crystallises only a position of Muslim law and should, therefore be applied in conjunction with the provisions of the entire Muslim law.

---

<sup>96</sup> Tahir Mahmood, *Muslim Personal Law* 57, (1972).

<sup>97</sup> Tahir Mahmood, *Muslim Law of India* 97, 2<sup>nd</sup> Edn., 1882).

<sup>98</sup> (Mst.) Sofia Begum V. Zaheer Hasan Rezvi, AIR 1947 All 16, 18.

<sup>99</sup> *Kaloo V. Imaman*, AIR 1949 All 445, 447.

<sup>100</sup> *Jamila Khatun V. Karim Ali Akbar Ali*, AIR 1951 Nag. 375.

Under this act, a married woman may get a decree of dissolution, after proving any of the grounds mentioned in section 2 of the Act. The words used by Section 2 of the Act are a “Woman Married under Muslim Law” and not a ‘Muslim woman’. The Act is applicable to all Muslims and the provisions of the Act will be applied by taking recourse of ordinary process of civil court.

There are nine grounds mentioned under Section 2 of the Dissolution of Muslim Marriage Act, 1939. A Muslim wife can seek a decree for the dissolution of her marriage on the following grounds.

**(i). Absence of Husband:**

If the whereabouts of the husband are not known for a period of four years, a woman married under Muslim law have the right to get decree for the dissolution of marriage.

**(ii). Failure to Maintain:**

When the husband failed or neglected his wife to provide for her maintenance, the married women can obtain a decree for the divorce. In Yusuf V. Souramma<sup>101</sup>, the girl of 17 years was married to the appellant, who was double of her age. After living one month with the husband, she left him and went back to her parents and lived separately for more than two years. The appellant make the plea in the Court that though he failed to maintain his wife, he wanted to bring back her. Mr. Justice Krishna Iyer rejected the husband’s contention and upheld the decree under Section 2 (II).

**(iii).Imprisonment of Husband:**

The wife is entitled to obtain the decree for the dissolution of marriage, if the husband has been sentenced to imprisonment for a period of seven years or upward. But no decree can be passed until the sentence become final. (Sec 2 (II) read with proviso (a), Dissolution of Muslim Marriage Act, 1939.

---

<sup>101</sup> AIR 1971 Ker. 261.

**(iv). Failure to Perform Marital Obligations:**

If the husband without any reasonable cause failed to maintain his wife for a period of three years, the wife can get her marriage dissolved by means of decree.

**(v). Impotency of Husband:**

The wife may obtain a decree for the dissolution of marriage, if the husband is impotent at the time of marriage and continues to be so thereafter.

**(vi). Insanity, Leprosy or Venereal Disease:**

If the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease, the wife may obtain judicial divorce under Section 2 (iv) of the Act.

**(vii). Repudiation of Marriage by Wife:**

It may also mean as the option of Puberty where the wife is given in marriage by her father or guardian before the age of 15 years, she repudiated the marriage before attaining the age of 18 years provided the marriage is not consummated. In such a situation, she can obtain the decree to dissolve the marriage.

**(viii). Cruelty of Husband:**

A woman married may get decree to dissolve her marriage, if the husband treats her with cruelty. Cruelty includes the following:-

- If the husband habitually assaults her or makes her life miserable by cruelty.
- If the husband associates with women of ill repute.
- If the husband force her to lead an immoral life.
- If the husband disposes her property or obstruct her to exercise her legal right.
- Stops her in the performance of religious professions.



- If he fails to treat equally among all the wives he has, in accordance with the injunctions of Holy Quran.

**(ix). Grounds of Dissolution Recognised by Mohammedan Law:**

The wife may dissolve her marriage by obtaining decree on any other ground which is recognised as valid for the dissolution of marriages under Muslim Law<sup>102</sup>.

**Apostasy and Conversions as grounds of Divorce:**

Sec 4 of the Act provides that the husband's apostasy from Islam would ipso facto dissolve the marriage; on the other hand apostasy of the wife will not ipso facto dissolve the marriage. It is understood that when a Muslim renounces or leaves Islam it is called apostasy and when a non-Muslim embraces or accepts Islam, it is known as conversion.

According to Ameer Ali, where husband embraces Islam and marries a Christian or Jewish wife, marriage is not dissolved whereas if the wife embraces Islam her marriage to a Hindu, Christian, Jew or an Irani, her marriage is valid, even though the husband is non-Muslim<sup>103</sup>.

**4.3.7 Legal effects of Divorce:**

Once the divorce is completed in any form, the marriage is dissolved. After the dissolution of a marriage, the parties are not husband and wife. The legal consequence on the rights and obligations of the parties follows from the divorce:

- (a). Cohabitation becomes Illegal: Once the divorce is completed between the parties, cohabitation between them becomes illegal.
- (b). Iddat: It is mandatory for the wife to observe an iddat of three lunar months after the divorce and if the wife is pregnant then the iddat will be observed till

---

<sup>102</sup> Sec 2 (ix), The Dissolution of Muslim Marriage, Act, 1939.

<sup>103</sup> Syed Khalid Rashid, *Muslim Law 117*, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

the delivery of the child. However, if there is no consummation of marriage, the wife needs not to observe iddat.

- (c). Right to contract another marriage: Both the husband and wife are free to contract another marriage with other person. The husband can marry immediately after the divorce, but the wife needs to observe iddat, thereafter she can marry another person.
- (d). Dower: The dower or Mahr which is due to the wife becomes payable to her immediately after the divorce.
- (e). Remarriage between the divorced Couple: Although the parties are free to contract remarriage after the completion of divorce with other person. But, there is restriction of they want to remarry between themselves. The conditions are:
  - (i). Observance of Iddat.
  - (ii). The divorce wife contract a valid marriage with other person.
  - (iii). The marriage with the other person must be consummated.
  - (iv). The marriage with such other person dissolves. The husband either voluntarily divorces the wife or is himself dead and the wife observes Iddat.
  - (v). Now, after the expiry of this Iddat, the wife may lawfully remarry the former husband.
- (f). After the completion of a divorce, the mutual rights of inheritance between the spouses ceases.

#### **4.4 Women's Post-Divorce Rights:**

One of the most important rights of Muslim women post-divorce is her dower and marriage gift. In Muslim law, Mahr or dower is essential aspect of marriage and not of divorce. Dower is an important right of the wife vested in her at the time of marriage. However, its payment may be deferred – the postpone of payment may be for the

whole duration of the marriage. If it happens, then the unpaid dower becomes immediately payable on divorce. If a marriage is dissolved before its consummation, half of the specified dower is to payable. It will be the same for fasid marriage.

The topmost legal obligation of the husband is to release of dower liability with regard to the divorced wife. The text of Islamic law stressed upon the payment of dower as soon as possible any kind of delay without any reasonable ground is not permitted under Muslim law.

The unpaid dower is to be paid immediately in all the forms obtained to the wife, be it Talaq by husband, talaq-e-tafweez, faskh, khula until the wife willingly waives it. In case of mubarat, its payment will depend on the terms and conditions of the agreement for divorce by mutual consent.

Apart from dower, all property given to a woman at the time of her marriage or after marriage by her parents, relatives and friends, or by the husband or his relatives and friends is her absolute property. Once the divorce is completed, she can claim all such property from her husband and relatives<sup>104</sup>.

### **Nafaqa as a post – Divorced Right:**

There is a wrong believe that under Islamic law a divorced wife has no right to claim any nafaqa (maintenance) from the divorcing husband after the expiry of Iddat. The actual lawful position is that maintenance is payable during iddat and its continuance after iddat too however depending upon the circumstances. The Holy Quran and the Hadith never mentioned about non payment of maintenance after iddat.

The verse of the Quran [II: 241,] praised in the Shah Bano Case of 1985, says, “For divorced women a fair provision; this is an obligation of the righteous” another longer verse [II: 233] provides for divorcee’s maintenance for the period while she is nurturing the divorcing husband’s child. The two verses throw light on the quantum of

---

<sup>104</sup> Tahir Mahmood and Saif Mahmood, *Introduction to Muslim Law 131*, (Universal Law Publishing, 2<sup>nd</sup> Edn., 2018).

maintenance to be paid to the divorcee. The following inferences are drawn from the above mentioned two verses of the Holy Quran: -

- (a). Maintenance to be paid during iddat in all cases.
- (b). If the divorced wife has a child with her, maintenance will continue at least till it attains the age of two years.
- (c). Payment of maintenance will continue as long as she remains unlawful custody of the couple's children.
- (d). According to the needs and capacity of the husband, maintenance will be fixed.
- (e). No maintenance, if she has remarried, but if she still has custody of his children, then the cost of their maintenance will be his liability.

#### **4.5 Nikah Halala as Violative of Fundamental Right:**

Nikah Halala is a practice in which a woman after getting triple talaq, marries another man, consummates the marriage and gets divorced in order to be able to remarry her former husband<sup>105</sup>. It is one of such practice under Muslim Personal law, which must have outraged the people of this country long back. Nikah Halala is a practice where if a husband, who was in a fit of rage or otherwise divorced his wife and after realizing his mistake or regretting his decision if wishes to remarry her then the woman have to first marry some other man and consummate such marriage. Only when this second man divorces the women, she becomes 'halal' (lawful) for her former husband than the husband can legally reunite with her<sup>106</sup>. According to the Quranic verses, there must be a reasonable gap between two pronouncements of 'Talaq'. So as to ensure sufficient cooling time for the husband to rethink about his

---

<sup>105</sup> Supreme Court Seeks Centre's Response on Plea against Polygamy, Nikah Halala at: <https://thewire.in/law/sc-seeks-centres-response-on-plea-against-polygamy-nikah-halala> (visited on 22nd Aug., 2020).

<sup>106</sup> Nikah Halala: Violation of Fundamental Rights of Muslim Women at: <https://www.sirfnews.com/nikah-halala-violation-of-fundamental-rights-of-muslim-women/> (visited on 19<sup>th</sup> Aug. 2020).

decision of separating his wife. The Quran's chapter Surah-al-Baqarah verse 2:230 provides, "If a husband divorces his wife irrevocably, he cannot after that remarries her until she is married to another husband and he has divorced her. In that case there is no blame on either of them if they reunite.

The Quran proclaims that a wife becomes Haram or disallowed to her husband after she has been divorced. But if she marries another man for any reason and the marriage does not last the second husband gives her divorce or dies – after that she and her former husband can decide to remarry and that is lawful<sup>107</sup>.

However, the husband can remarry his divorced wife without the necessity of an intermediary marriage only if he divorces her once or twice. The aim of this rule is to impose upon the husband the necessity of proceeding with much care, sound decision and patience and also to restrict men from the mughallazah form of divorce<sup>108</sup>. This is a fearful law meant to prevent the husband from divorcing his wife irrevocably. Although this rule has an exception, Tahir Mahmood says:

In its wisdom, the law, however, carved out a well meaning exception to this general publication. If a divorced woman married another, but was unfortunately divorced by her second husband too, her first husband could now marry her, should he and she mutually so desire. It was a pro-women law of a permissive nature, jurisprudentially this woman would no more be the 'thrice divorced wife' of her first husband (remarriage with who is not allowed). She is now the divorced wife of her second husband. Her first (former) husband is now allowed (rather encouraged) to come to her rescue. His remarriage with her, which was initially not allowed, has now been legitimated by the fact of her intervening marriage. The legal process of legitimation is called halalah<sup>109</sup>.

---

<sup>107</sup> Supra Note 105.

<sup>108</sup> Furqan Ahmed, *Triple Talaq: An Analytical Study with Emphasis on Socio-Legal aspects 12*, (Regency Publication, New Delhi, 1994).

<sup>109</sup> Tahir Mahmood, "*Halalah: A Misunderstood Concept of Muslim Law 1301*, (Islamic Comparatively Law, 1982).

A very distorted form is in practice where the husband pronounces, “Talaq, Talaq, Talaq’ thrice in one sitting and afterwards.

If he desires to reconcile, the woman have to marry someone else, and consummate the marriage. Most Indian men are not in a position to bear the reality that their wife consummate with someone else, nevertheless its an essential requirement to complete the legal validity to remarry him. This diminishes the so-called male ego of the man and this aggregate more domestic violence for the woman, who has gone through ‘Halalah’. This practice has immense legal problem. It is against the very fundamental rights of Muslim women, guaranteed under the constitution of India. It violates the fundamental right to equality and Right to life and liberty guaranteed under Article 14, 15 and 21 of the constitution. Most important the exercise of Nikah Halalah also amounts to the Criminal offence of cruelty under Section 498 A of the Indian Penal Code 1860. This provision criminalises harassment of any kind be it physical, mental or emotional caused to a married woman by her husband or in laws<sup>110</sup>.

Plea in Supreme Court to declare ‘Nikah Halalah’ among Muslim as unconstitutional was placed. The petition alleged that Nikah-Halalah practice violate the basic ‘fundamental rights of Muslim women’ granted under the constitution.

Practice of Nikah-Halalah is injurious to fundamental right guaranteed under Articles 14, 15 & 21 of the constitution and public order, morality and health. The petition claimed that ban on Nikah-Halaha was the need of the hour to secure basic rights and was in the interest of public order, morality and health. Although the Apex Court held Triple Talaq as unconstitutional but reserved the decision for Nikah Halala<sup>111</sup>. On the other hand Muslim Personal law board moves SC against PIL seeking ban on Nikah Halalah and Polygamy. The board said the Supreme Court had rejected similar petition in 1997.

---

<sup>110</sup> Supra Note 106.

<sup>111</sup> Supreme Court declines urgent hearing of plea against polygamy, nikah halala at: <https://www.thehindu.com/news/national/supreme-court-declines-urgent-hearing-of-plea-against-polygamy-nikah-halala/article30136168.ece> (visited on 1st Oct. 2020).

It also said that petitions challenging a religious practice cannot be filed by a person who is not a part of that particular religion. The board also argued that the legality of Muslim laws cannot be tested as the Mohammedan law is founded essentially on the Holy Quran and the Hadith of the Prophet Mohammed as thus it cannot fall within the purview of expression 'laws in force' as mentioned in Article 13 of the Constitution. In 2018, the Supreme Court referred the matter to constitution bench<sup>112</sup>.

#### **Reason for the ban of Nikah Halala:**

- Once divorce is completed, the women are left in miserable condition without any maintenance.
- In majority of the cases, triple talaq are pronounced without the wife's presence which is very capricious and despotic for reference (Aisha Bibi V. Qadir Ibrahim) the wife was given divorce in her absence without any reasonable cause.
- In some of the cases, it appears that husband has boundless power to pronounce triple talaq and if he wants for reconciliation, the wife has to suffer so much emotionally for the fulfilment of Nikah Halala.
- In many cases the study reveals that women have to go halala by some paid persons. This is the most vulnerable situation for women.

Thus, it is the urgent requirement to abolish such an evil practice to protect the women section from being abandoned dejected part of the society.

#### **4.6 A much needed Reform of Triple Talaq:**

India runs on the provision of the Constitution of India. In India various legislations were passed to abolish social evils such as Sati Pratha and Child marriage. As there

---

<sup>112</sup> Muslim personal law board moves SC against PIL seeking ban on nikah halala and polygamy at: <https://scroll.in/latest/951256/muslim-personal-law-board-moves-sc-against-pil-seeking-ban-on-nikah-halala-and-polygamy> (visited on 1st Oct. 2020).

was no mention of Triple Talaq in the Holy Quran as well as in the Ahadis of Prophet. The Muslim women (Protection of Rights on Marriage) Act, 2019 was passed on 26<sup>th</sup> July 2019 and from 1<sup>st</sup> August 2019 the Act aims at insuring gender equality and strengthened the constitutional, fundamental and democratic rights of Muslim Women.

Many Muslim majority nations of the world had declared Triple Talaq as illegal and arbitrary. Egypt, Sudan, Pakistan, Bangladesh, Iraq, Syria, Malaysia had abolished Triple Talaq many year ago. However, India took 70 years to get rid of this evil practice<sup>113</sup>.

It is to be understood that the Act uses the word Talaq throughout its provisions but restricts its meaning by defining the word as “Talaq-e-Biddat” or any kind of Talaq which is instant and irrevocable divorce. The Act declares the so called talaq-e-biddat to be “Void and Illegal” and makes it an offence punishable with imprisonment for a term up to three years and fine. The offence is to be cognisable but a compoundable one. It is also important to note that the correct way of divorce by men according to Quranic verses or by the tradition of Prophet (PBUH) shall remain unaffected by the Act. Even the Act does not have any effect on the provisions of divorce by mutual consent between the husband and wife. A man has pronounced a talaq as per actual Muslim law or in violation of its precepts will be a matter to be proved by evidence. In the former case, the Act will not apply. In the latter case it will, and should, apply will all its vigour<sup>114</sup>.

#### **4.7 Discussion:**

- The chapter gives details about the divorce law under Muslim law. The historical background of Talaq in Pre-Islamic as well as Islamic Period. The Quranic verses and the Ahadis of the Holy Prophet (PBUH) upon the concept

---

113 Triple Talaq- Big Reform, Better Result at:

<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1640352> (visited on 4th Oct. 2020).

114 Ending discriminatory practice of triple talaq was a much-needed reform

at: <https://indianexpress.com/article/opinion/columns/triple-talaq-muslim-women-supreme-court-6571330/> (visited on 1st Oct. 2020).



of talaq. The chapter also make an analysis of the various modes of talaq under Islamic law and a detail study of triple talaq reform as a golden rectification for the Muslim women. Study about the concept of Nikah Halala and its impact on the fundamental Rights of Muslim women was also been done in this chapter. In short, the chapter deals with the rights of Muslim women in context of divorce in the light of leading cases.

- Divorce among all the nations was regarded as a natural corollary or marital rights. Although divorce has been acknowledged in all the religions but Islam is the first one which expressly conceded about the termination of marriage by way of divorce.
- In the ancient Arabs, divorce was very easy and uncomplicated occurrence. During the Pre-Islamic Period, the husband has absolute and boundless power with regard to divorce. The powers are so enough that the husband would give any reason for pronouncing the divorce.
- The Prophet (PBUH) declared that among the things which have been permitted by law divorce is the worst. So, divorce in any form must be avoided as far as possible.
- After the advent of Islam, tremendous reforms were done with regard to divorce to raise the standard of women in the society.
- To control the abuse of power on the part of the husband in pronouncing irrevocable talaq, an intermediary marriage was made mandatory. However, this condition was highly criticised on the ground being insensible.
- Although divorce is regarded as evil, but this evil sometimes becomes as a necessity, so when the husband and wife cannot mutually live together divorce is the remedy.
- Divorce today is not only a private matter between the husband and wife but has great impact on the society as well. So, all the ways by which

reconciliation may be achieved should be considered not only by the spouses but by the impartial arbitrators too.

- It is to be noted that Islamic law provides various modes of talaq so as to resolve the inability of the spouses to live together.
- The right method of pronouncing divorce as provided in the Holy Quran and in the teachings of Prophet (PBUH) is that if it pronounced only when she is not in her menses and even if a dispute arises during the monthly period it is not right time to make any arguments.
- According to Ameer Ali, the reforms of Prophet Mohammad marked a new departure in the history of eastern legislation. Prophet (PBUH) gave women the right of obtaining separation on reasonable grounds.
- Talaq is an Arabic word, meaning 'to release'. Under Muslim law talaq means revocation of marriage by the husband. It may also be defined as the power of the husband to pronounce talaq on the wife arbitrarily without any reason at any time during the continuance of marriage.
- Dissolution of marriage can be done by following ways:-

By divorce:

A husband may divorce in the following manner:

- (a). Talaq: which is release from the marriage tie immediately for eventually.
- (b). Ila: Where a sound mind husband takes vow that he will abstain from all relationships with his wife.
- (c). Zihar: where the husband is of sound and adult one makes comparison of his wife to his mother or any other female within the prohibited degrees.

Talaq is of two forms:

- a) Talaq-ul-Sunnat
- b) Talaq-ul-Biddat

Under Talaq-ul-Sunnat: there are two way to pronounce Talaq by the husband and they are Ahsan and Hasan modes of Talaq. On the other hand, Talaq-ul-Biddat is regarded as sinful form of Talaq. Islam never introduced this mode of talaq, it was omeyyads who introduce it. In this mode of Talaq, three pronouncements are made in a single sentence e.g. I divorce thee. This form talaq immediately becomes irrevocable once pronounced irrespective of iddat.

### **Two Types of Talaq-ul-Biddat:**

(a).Single irrevocable Talaq

(b).Triple irrevocable Talaq

- Triple Talaq means freedom from the relationship of marriage, eventually or immediately, where the husband pronounce Talaq thrice and end his marriage. This is known as instant divorce or also known as talaq-e-Biddat.
- According to the Islamic experts it is a sinful form of talaq but legally valid. The Ulema considered this form of divorce binding provided the pronouncement was made in front of Muslim witnesses and later confirmed by a Shaira Court.
- The Holy Quran and the Hadith, viewed talaq as one of the most disliked acts that a believer can perform. Islam bears talaq by making provisions for it under highly unfavourable conditions only as a last resort. In the words of Prophet Mohammad, of all the lawful things, divorce is the most hated by Allah. Triple talaq is not sanctioned in the Quran. No verse in the Quran validated instantaneous triple talaq.
- A Muslim woman has the right to divorce her husband unilaterally with instant effect if she has mentioned it as a clause in the Nikah-Nama. This is called Talaq-e-Isma. A number of clauses can be added by the woman during the time of her Nikah which will hold legal value because Islamic marriage is considered as legal contract.

- A wife may divorce in the following manner:- (a). Talaq-e-Tafweez – Talaq by the wife under the husbands delegated power.
- Divorce between the husband and wife can also occur by resort to judicial decree under the ground of Lian and Fask. Lian – where the wife is falsely charged with adultery, she can file a suit in the court for the dissolution of the marriage. Fask – under the doctrine of Fask a woman can apply for the dissolution of marriage.
- The spouses can also get separated under the grounds mentioned in the dissolution of Muslim marriage act, 1939.
- The parties to the marriage can also divorce by mutual agreement between them.
- Khula is another mode of annulling a Muslim marriage which is a form of divorce with the consent and at the instance of the wife. The wife agrees for consideration to the husband for her release from the marriage tie.
- A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any of the ground.
  - i. Absence of the Husband
  - ii. Failure to maintain
  - iii. Imprisonment of husband
  - iv. Failure to perform marital obligations
  - v. Impotency of husband
  - vi. Insanity, leprosy or venereal disease
  - vii. Repudiation of marriage by wife
  - viii. Cruelty of husband
  - ix. Other grounds of dissolution recognised by Mohammedan law

- Besides talaq, a Muslim husband can repudiate his marriage by two other modes, that are Ila and Zihar. In Ila, the husband takes vow not to have sexual intercourse with his wife. In Zihar mode, the husband makes comparison of his wife with a woman with his prohibited degree. In Zihar the husband does not cohabit with his wife for a period of four months. Ila and Zihar both are the modes by which the husband can divorce his wife.
- Divorce by mutual agreement khula and mubarat are the two modes by which divorce can take place between the parties mutually.

- Legal Effects of Talaq:

(a).Cohabitation becomes Illegal

(b).Iddat

(c).Right to contract marriage

(d).Dower

(e).Remarriage between the divorced couple

- **Women's Post-Divorce Rights:**

The rights and duties of the Muslim divorced women's in India are now governed both by the traditional Muslim law as well as by the statutory law. The foremost rights of divorced wife is to get her unpaid dower paid, dower is the most important right vested in her at the time of her marriage other than dower or Mahr, all property given to her at the time of marriage by her parents as well as by her in-law in her absolute right to take them back after divorce.

Another important right of a woman after divorce is to get maintenance during iddat as well as its continuance after it depending upon the circumstances.

Section 125-128 of CrPC makes provision for the women to claim maintenance from her husband.

- The chapter also make analysis of Nikah Halala as violative of fundamental right of Muslim woman. Nikah halala is a practice where a woman after getting divorce, marries and consummates the marriage with another man, and gets divorced again so as to become halal to marry her former husband.
- Nikah halala are mostly triggered by instant triple talaq, it not reduces a woman to an object for lust of another man but also violates the fundamental rights of Muslim women.

The entire study about the divorce law from Islamic perspective suggest that the Holy Quran lay emphasis on Justice not on arbitrariness. It is upon the Muslim law experts and the members of Muslim Personal law Board to protect the true spirit of Holy Quranic injunctions. The Holy Quran favoured the women sections and empowered them through their legal rights. Time has emerged when Holy Quranic spirit be upheld and justice to be done to the suffering of Muslim Woman.