

DE JURE NEXUS LAW JOURNAL

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**ANALYSIS ON DIFFERENT TYPES OF DIVORCE UNDER THE
MUSLIM LAW**

ABSTRACT

The meaning of word 'Divorce' is the legal dissolution of the relationship of marriage between a husband and a wife. In India, there exists different religions and the laws with respect to each religion's marriage and divorce differs. They are guided separately by the personal laws framed. For instance, the laws with respect to Muslim community is guided by Muslim Personal Laws and similarly the laws with respect to Hindus, is guided by the Hindu Personal Laws. This article emphasizes on the analysis of various types of divorces, grounds and other legal elements and implications with respect to Muslim Laws. The incapacity of the parties to live together is the essence of divorce in Islam.

INTRODUCTION

Divorce, according to the Prophet, is the worst of the things that have been permitted by law. Divorce is a bad thing that should be avoided as much as possible. However, there are times when this evil is unavoidable, such as when the parties to a marriage are unable to continue their partnership with mutual affection and love, and allowing them to become apart is preferable to forcing them to live together in an atmosphere of hostility and dissatisfaction. In Islamic law, divorce is based on the incapacity of the spouses to live together rather than any specific cause (or party's fault) for the parties' inability to live together. A divorce might occur as a result of either the husband's or the wife's actions. Under Muslim law, there are numerous types of divorce, which will be explored further below.

ANALYSIS

For bringing into effect the dissolution of marriage or Divorce under the Muslim laws, there are four ways for the same- by husband, by wife, by mutual consent, or through the judicial process.



Talaq by Husband- a husband who is a major, of sound mind, who have acted upon a free will, and with an intention to dissolve the marriage, can divorce his wife.

Husband giving divorce to his wife under the state of intoxication is not considered valid in *Shia Law* but it is considered valid under the *Sunni Law*. It is not necessary under the Muslim laws to pronounce the ‘*talaaq*’ in wife’s presence or pronounce it when she is physical present, ie- to address the same in her presence is not a mandate. But it is to be ensured by the husband, that wife comes to know about it, for the pronouncement to be effective. It may be either oral, or written, because no specific way has been described or prescribed under the Muslim Law.

Talaq might be expressed, implied, conditional, constructive, or even delegated among Sunnis. But only the express and delegated forms of talaq are recognized by Shias.

- Capacity- Every Muslim husband over the age of puberty who is of sound mind is capable of pronouncing talaaq. He is not required to provide any justification for his statement. It is unpronounceable by a husband who is minor or mentally ill. Talaq by a minor or someone who is mentally ill is null and invalid. If a husband is insane, talaq must be uttered during a "lucid interval" is valid. On behalf of a minor husband, the guardian cannot pronounce talaaq. When a husband is mad and has no guardian, the Qazi or a judge has the authority to dissolve the marriage in the husband's best interests.
- Free Consent- Except in Hanafi law, the husband's consent in pronouncing talaq must be freely given. A talaq declared under duress, coercion, undue influence, deception, or voluntary intoxication, for example, is legitimate and dissolves the

marriage under Hanafi law. Even under Hanafi law, talaq uttered under forced or involuntary intoxication is void.

- Formalities- A talaq can be given orally or in writing, according to Sunni jurisprudence. The spouse can just say it, or he can write a Talaqnama. A genuine talaq does not require a specific formula or the usage of a specific term. Any declaration that clearly demonstrates the husband's wish to divorce the wife is adequate. It does not have to be done in front of the witnesses. Unless the husband is unable to speak, Shias believe that talaq must be proclaimed orally. The talaq is void under Shia law if the husband can talk but gives it in writing. Talaq must be said in the presence of two witnesses in this case.
- Express Words- The husband's purpose to terminate the marriage must be clearly stated in the talaq. If the declaration is not explicit and confusing, it is critical to show that the husband definitely wishes to dissolve the marriage.

1) Talaq-E-Sunnat: it is a kind of divorce which has been followed traditionally and is one of the most approved form of talaq by the followers of Islam. It conforms with the traditions given forward by the Prophet.

It is further classified into two types-

- a) Talaq-E-Ahsan: in this form of divorce, the talaq is pronounced by husband only once and for a period of 3 months or 90 days, observes the 'iddat' period. If any sort of consensus has been drawn between the husband and wife during this period, the talaq pronounced can be revoked. In this period, there is a restriction on the wife for re-marriage, after the first marriage has been dissolved. It is one of the most approved form of divorces.
- b) Talaq-E-Hasan: in this form of divorce, the husband pronounces talaq, over the period of three months. The first talaq is pronounced by husband in the first month, second talaq in the second month and the third talaq in the third

month. But if any sort of reconciliation is drawn between the parties, before the pronouncement of third talaq, in the third month, then the divorce will not come into effect.

In the above-mentioned forms of talaq, the parties get the time for drawing a consensus and there exists a scope of reconciliation. Because the period of 90 days is provided to the couple.

- 2) Talaq-E-Biddat: it is the innovatively developed form of talaq. This is popularly known as 'Triple Talaq.' This type of divorce includes the pronouncement of talaq, successively for three times, and the marriage comes to an end.¹
- 3) Talaq-i-Tafweez: this form of divorce allows the husband to delegate the powers of talaq to the third person, or even the wife herself. It basically provides as one of the most potent tools to the wife, which provides her the option, to get the divorce, without the court intervention. For example- if the husband marries another woman, there arises a right of the wife, to pronounce talaq on herself.

❖ **Talaq by Wife-** The Muslim Personal Law (Shariat) Application Act 1937. It is applicable to all the Muslims residing in India. Section 2 of the same act recognizes the three types of divorce by Muslim wives-

- 1) Ila: under this type of divorce, the husband agrees or swears to not have sexual intercourse with his wife, for a period of about 4 months. And after such a period comes to an end the marriage comes to an end and cannot be reconciled.
- 2) Zihar: It is a word used in Islamic law that literally translates to "you are like my mother." It's a form of divorce (though it's not legal), and if a husband says these words to his wife, it's illegal for him to have sexual relations with her until he compensates by freeing a slave, fasting for two months, or feeding sixty hungry people.
- 3) Lian: in this type of divorce the wife is accused by her husband of committing adultery. And hence, the wife becomes entitled to claim divorce through a judicial process on the grounds of being falsely accused of adultery.

❖ **Talaq by Mutual Agreement-** In Islam, divorce is also recognized by the mutual consent between both the parties. It is of following types-

¹ Shayara Bano v. Union of India AIR 2017 SC 4609, the Hon'ble Supreme Court of India held that the practice of pronouncement of triple talaq is unconstitutional, and it violates the rights of women, under article 14 of the constitution of India.

- 1) **Khula:** it is a kind of divorce in which the husband agrees to give the right of divorce to the wife, if some consideration is paid by wife to the husband. She is thus released from the marriage. The husband has a right to sue the wife, if such consideration is not paid. It is not actually a divorce by mutual consent, because it takes place from the wife's side.²
- 2) **Mubarat:** it is the another types of divorce under the mutual consent. In this type of divorce, an offer is made either by the husband or the wife, and once such offer has been accepted, it cannot be revoked.

It is important to note that, the divorce in this type, cannot be revoked. There is no scope by which the marriage can be resumed. After the divorce takes place, the wife has to observe the iddat period.

❖ **Talaq by Judicial Process-** under the Dissolution of Muslim Marriages Act, 1939, certain grounds are provided to the Muslim wife for obtaining a divorce from the court. Under the section 2 of the act following grounds are valid for seeking the divorce-

- If the husband has been missing or his whereabouts are not known for the period of four years, a husband is considered to be missing, if the people who ought to know about him, are not able to trace him.
- Either the husband failed or neglected his duty to provide maintenance for her wife, for a period two years.
- Husband's sentence for the period of seven years or more, has become final.
- If without any reasonable cause, the husband has failed to discharge his obligations under the marriage, for a period of 3 years.
- The husband at the time of marriage, was impotent and continues to be so after the marriage. However, the husband will be given a period of one year, to prove that he is not impotent or he can be given a chance to improve his potency. And the subsequent failure to do so, will lead to the passing of the decree.³
- The husband is suffering from virulent venereal disease or has been insane for a period of 2 years.

² Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, 2014 10 SCC 736, the Hon'ble Supreme Court held that if the wife opts to divorce through Khula, she may or may not offer something in return. The wife can opt to let go of her claim to Mahr (Dower).

³ Gul Mohd. v. Hasina, the wife sought dissolution of marriage on the grounds of impotency. The husband filed an application for proving his potency, which was duly granted by the court.

- The wife was married off by her father or guardian, before attaining the age of 15 years, but she renounced the marriage before the age of 18. And the marriage was not consummated.
- The wife is treated with cruelty by the husband.
- Or any other ground can be considered valid under the Muslim Laws.

CONCLUSION

The divorced wife usually keeps her mahr, including the initial gift and any supplemental property mentioned in the marriage contract, if her husband wants a divorce. She also receives child support until the child reaches the age of weaning, at which point the couple or the courts will decide on the child's custody. In the Middle East, women's divorce rights are frequently restricted in comparison to men's. While men can simply divorce their relationships, women face numerous legal and financial barriers. In Yemen, for example, women can normally only get a divorce if their spouse admits to being unable to support her, whereas males can divorce at any time. However, individuals advocating more liberal interpretations of Islam are increasingly challenging this sensitive area of religious practice and history.

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