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The Dissolution of Muslim Marriage Act, 1939

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Abstract

The Dissolution of Muslim Marriage Act, 1939, is a landmark legislation that grants Muslim women the right to seek divorce on specific grounds. It also counterbalances the husband's unilateral power of Talaq. This research explores the Act's key provisions, addressing why it was introduced, its impact on Muslim personal law, and its contemporary relevance. The Act was essential in clarifying and codifying the grounds for dissolution available to women, ensuring legal protection against unjust marital conditions. Our study examines the various grounds for divorce under Section 2, including desertion, failure to provide maintenance, imprisonment, impotence, insanity, cruelty, and inequitable treatment in polygamous marriages. Furthermore, we analyse the Act's impact on the legal status of Muslim women and how courts have interpreted its provisions over time. Our findings also highlight certain ambiguities in some provisions, such as the unclear definition of "cruelty" and whether conditions like impotence and insanity apply pre- or post-marriage. The Act's recognition of a woman's right to dissolve marriage based on equity and justice marked a significant shift in personal law, though judicial interpretations have varied. These findings are crucial in the broader discourse on gender justice in personal laws, as they underscore the need for clearer legal definitions and potential reforms to further empower Muslim women.

Keywords: *Talaq, Dissolution, Maintenance, Cruelty, Polygamy*

Introduction

Under the Muslim Law, the husband has exclusive right to divorce. He may do so, without providing any reasons and by mere pronouncements of such words that signify his intent to renounce their marriage. There are many ways by which a husband give divorce to his wife such as Talaq-e-Ahsan, Talaq-e-Hasan, Talaq-e-Biddat, Ila, Zihar, etc. There are only a few situations and ways by which a Muslim woman can give divorce such Talaq-e-Tafweed, khula and Lian. Talaq-e-Tafweed is a type of divorce in which a spouse gives his wife or a third party the right to divorce while Lian is a claim of adultery made by the husband against the wife, which empowers her to file a dissolution of marriage suit and obtain a divorce if she can prove the charge is false.

In this article, we would discuss the Dissolution of Muslim Marriage Act, 1939 which expands the scope of divorce which can be initiated by a woman. Before 1939, the governance of the personal laws under Muslim law was divided among various schools, so the prime objective of the Act is to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law.¹ Earlier the marriage used to dissolve ipso facto on renunciation of Islam, so another prime objective of introducing the act was to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.²

Key Provisions of The Act

There are many grounds on which a decree for dissolution of marriage can be sought which are given under Section 2 of the act. A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage if the whereabouts of the husband have not been known for a period of four years.³ This provision is effective with the condition that it shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree.⁴

To avail the benefit of Sec. 2(i) of the act, it is must to serve a notice to the heirs of the husband by the wife when the whereabouts of the husband are not known. If the husband's whereabouts are unknown, the woman must include in her lawsuit the names and addresses of all the people who would inherit her husband's property under Muslim law if he were considered dead on the date of

¹ The Dissolution of Muslim Marriage Act, 1939, Act No. 8 of 1939 (India).

² *Ibid.*

³ The Dissolution of Muslim Marriage Act, 1939, § 2(i), Act No. 8 of 1939 (India).

⁴ The Dissolution of Muslim Marriage Act, 1939, § 2(b), Act No. 8 of 1939 (India).

filing the case.⁵ These heirs must be formally notified about the lawsuit. This is done by serving them with a legal notice informing them of the case.⁶ Furthermore, the identified heirs have the right to appear in court and present their side or raise any objections to the divorce.⁷ Section 3 of the act also gives status to the husband's brother and his paternal uncle as parties to the suit even if they are not his heirs. This provision ensures that close male relatives are aware of and involved in the proceedings. It also seeks to confirm the husband's prolonged absence and protect the legal rights of all parties involved.

The second ground on which the decree for dissolution of marriage can be sought by a Muslim woman is given under Section 2 (ii) of the act which states that if a husband is unable to maintain or has failed to provide maintenance to his wife for at least 2 years due to any reason, the wife is entitled to seek divorce in court. The husband cannot plead that the inability or failure to maintain her was on account of poverty, illness, imprisonment or unemployment, etc.⁸ However, the husband can refuse for her maintenance if her conduct has been such as to disentitle her to maintenance under Muslim Law.⁹ The provision for maintenance should be in consonance with the status of the husband, and sufficient to meet the reasonable wants of the wife.¹⁰

The third ground for decree for dissolution of marriage is given under Section 2 (iii) of the act according to which wife can seek a decree of divorce if a man is convicted for an offence punishable with 7 years or more than 7 years. Provided that such decree shall not be passed before the final judgement against the husband and the husband must be convicted under the offence.¹¹

Section 2 (iv) of the act gives another ground for dissolution of marriage. According to this provision if a man fails to perform marital obligations towards his wife for a period of 3 years without any reasonable cause, the wife can seek decree for dissolution of marriage. The situation of desertion of wife by the husband without any reasonable cause comes under this provision, as held by the court in *Veeran Sayvu Ravuthar v. Beevathumma*,¹². Another example is a husband depriving his wife of conjugal rights. When a wife is deprived of her conjugal rights, whether by not maintaining or treating her inappropriately, it constitutes a failure of marital obligations.¹³

⁵ The Dissolution of Muslim Marriage Act, 1939, § 3(a), Act No. 8 of 1939 (India).

⁶ The Dissolution of Muslim Marriage Act, 1939, § 3(b), Act No. 8 of 1939 (India).

⁷ The Dissolution of Muslim Marriage Act, 1939, § 3(c), Act No. 8 of 1939 (India).

⁸ *Satgunj v. Rahmat Dil Murad*, 1946 Sind. 48

⁹ *Kunju v. Md. Khadeja*, 1959 Ker 1970

¹⁰ *Id. at 8*

¹¹ The Dissolution of Muslim Marriage Act, 1939, § 2(a), Act No. 8 of 1939 (India).

¹² *Veeran Sayvu Ravuthar v. Beevathumma* AIR 2002 KERALA 370

¹³ Dissolution of Muslim marriage act 1939, India, available at: <https://blog.iplayers.in/> (last visited on January 27, 2025)

The fifth ground on which a wife can seek decree for dissolution of marriage is “Impotence of husband”. Impotence of the husband was a ground for divorce even before the coming into force of the Dissolution of Muslim Marriage Act, 1939. Under the old law, the wife had to prove that the husband was impotent at the time of the marriage and continues to be so till the filing of the suit, and the wife was not aware of the husband’s impotence at the time of marriage¹⁴. The old law has now been changed and incorporated under Section 2(v) of the Dissolution of Muslim Marriage Act, 1939. according to which the wife is entitled to a decree of divorce, if the husband was found to be impotent at the time of the marriage and continues to be so. However, as per proviso (c) of Sec. 2 of the act, before passing a decree on this ground the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground. It is to be noted that the husband must have been impotent at the time of marriage and must still be impotent at the time of the suit. If impotence occurs after marriage, it is not covered under this clause.

The sixth ground to seek decree of divorce is Insanity and Illness of the husband which is given under section 2(vi) of the act. According to this provision a wife may seek divorce if her husband has been suffering from insanity for a period of 2 years or is suffering from a virulent venereal disease. The act does not clarify whether the provision consider post-marriage or pre-marriage insanity. It also does not specify that insanity must be continuous and incurable. Before 2019, there was a provision for leprosy in this section, according to which the wife could seek divorce, if the husband is suffering from leprosy. Now, this provision has been repealed through an amendment in 2019.

The seventh ground on which the decree for dissolution of marriage can be sought is given under section 2 (vii) of the act which reads as “she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years: Provided that the marriage has not been consummated.”

This is also known as the “option of puberty”.

To avail the benefit of this provision, the following 3 essential conditions must be fulfilled-

- There must be no cohabitation between the wife and the husband.
- The marriage must take place before the wife attained the age of 15 years.

¹⁴ Dr. Paras Diwan, Muslim Law in Modern India 96 (Allahabad Law Agency, Faridabad, 13th edition, 2018)

- The wife must repudiate the marriage before attaining the age of 18 years.

The eighth ground on which the wife can seek divorce is further categorized in 6 sub-parts. Under this provision, the wife is entitled to a decree of divorce if her husband treats her with cruelty.¹⁵

This ground of cruelty falls under the following six categories-

A) the husband habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment.

This provision is a vast category. This includes many grounds¹⁶ such as the attitude and behaviour of the husband having not cordial and amicable with the wife, the husband and his family member do not accept her as a wedded wife, isolating the wife and keeping distance from her without any reasonable ground, etc. In the case of *Humera Sarfaraz Patel v. Sarfaraz Sadiq Patel*¹⁷, the appellant and the respondent got married at Ahmedabad on 17-10-1998 and after the marriage they were residing at Ahmedabad for some period and they last resided at Byculla. The appellant filed a petition for divorce under section 2(viii)(a) of the Dissolution of Muslim Marriages Act, 1939 in the Family Court at Bandra, in which it was alleged that the husband had treated her with cruelty and made her life miserable by cruel conduct of not treating her as a wife. The above-mentioned allegations, made in paragraph no. 5 to 13, clearly constitute cruelty as referred to clause 2(viii)(a) of the said Act.

B) the husband associates himself with a woman of evil repute (whose reputation is looked down upon in society like prostitute) or leads an infamous life (to live a life that is widely known for negative reasons like a notorious criminal, etc.).

C) the husband attempts to force her to lead an immoral life. This has been considered as cruelty in the case of *Dawn Henderson v. D. Henderson*¹⁸. In this case, the petitioner states that the respondent, her husband, married her, according to Christian rites, at St. Joseph's Church Golden Rock, Tiruchirapalli on 27-5-1961. But soon after the marriage, the respondent behaved to her with great cruelty, and brought drunken young men to the house and attempted to constrain or induce the petitioner to submit to the indecent overtures of those men and attempted to compel her to lead a life of prostitution. It was said that there cannot be a greater degree of cruelty than to compel a chaste wife to submit to overtures of other persons.

D) the husband disposes of her property or prevents her exercising her legal rights over it. In the

¹⁵ The Dissolution of Muslim Marriage Act, 1939, 2(viii), Act No. 8 of 1939 (India).

¹⁶ *Humera Sarfaraz Patel v. Sarfaraz Sadiq Patel*, (2012) 6 AIR Bom R 164.

¹⁷ *Ibid.*

¹⁸ *Dawn Henderson v. D. Henderson* AIR 1970 Mad 104.

case of *Zubaida v. Sarda Shaha*¹⁹, Abdul Rahman, J. observed: “It is not easy to say whether it was only meant to convey a person who had been in the habit of selling his wife’s property for his own selfish ends or also converts the single act of a person who sells or assigns his wife’s property of any value, however insignificant, and not for his own advantage, but, say, for the purposes of procuring medicine for his ailing wife when he did not have the means to buy it himself out of his own money. I should interpret the word property in the sense of substantial portion of wife’s property and its disposal in the sense of getting rid of the property not for the wife’s benefit but for the selfish ends of the husband, not with the object of meeting a pressing need but more in the sense of waste and this also when done with the object of depriving the wife of her property and not with the consent or for things in and from which her consent might have been reasonably or legitimately presumed, implied or inferred,”

E) the husband obstructs her in the observance of her religious profession or practice. The wife may seek a decree of divorce, if the husband obstructs his wife from performing her religious duties. It must be noted that the clause will apply even if the wife is a non-Muslim provided she must be married in accordance with Muslim law.

F) if the husband has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran. If the husband does not treat all the wives equally, she may seek divorce under this clause. It is given in the holy Quran, Surah An-Nisha, verse 3, that a man should marry more than one woman only if he is able to do justice between them and treat them equally with their due respect. In the case of *Ummat-Ul-Hafiz v. Talib Hussain*²⁰, a husband went abroad leaving behind two wives in India. He provided maintenance for one wife from there but ignored the other. The court held that the wife was entitled to divorce under this clause.

Section 2 (ix), this section provides the ninth and the last ground for dissolution of marriage. According to this section a wife can seek divorce on any other ground which is recognised as valid for the dissolution of marriages under Muslim law.

Section 4 of the act talks about the effect of conversion to another faith. According to this section if a married Muslim women leaves Islam or converts to another faith, it does not automatically end her marriage. However, after leaving Islam or converting, she can still ask the court for a divorce based on any of the reasons listed in Section 2 of the Dissolution of Muslim Marriages Act, 1939. Provided this rule does not apply to a woman who converted to Islam from another religion and

¹⁹ AIR 1943 Lah 310, as cited in Paras Diwan, Muslim Law in Modern India 98 (Allahabad Law Agency, Faridabad, 13th edition, 2018)

²⁰ Ummat-Ul-Hafiz v. Talib Hussain AIR 1945, Lah 56

then returns to her original religion.

Section 5 - Rights to dower not to be affected. — Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage. In simple terms this Act does not take away a married woman's right to receive her dower (mahr) under Muslim law when her marriage ends.

Conclusion

The Dissolution of Muslim Marriage Act, 1939 was enacted to provide Muslim women with legal grounds to seek divorce. It addressed issues like desertion, cruelty, non-maintenance, and inequality in polygamy, ensuring protection against unjust marriages. However, some provisions, such as those related to the husband's impotence and insanity, are unclear regarding whether they apply to conditions before or after marriage. Additionally, certain terms like "cruelty" and "immoral life" are vague and open to interpretation, leading to inconsistent judgments.

References

1. Dissolution of Muslim Marriage Act, 1939, No. 8, Acts of Parliament, 1939 (India).
2. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 (India).
3. A.A.A. Fyzee, Outlines of Muhammadan Law 125 (5th ed. 2008).
4. Asaf A.A. Fyzee, Cases in the Muhammadan Law of India and Pakistan 215 (2d ed. 1971).
5. Mulla, Principles of Mohammedan Law 289 (LexisNexis 22d ed. 2017).
6. Tahir Mahmood, Muslim Law in India and Abroad 145 (2012).
7. Flavia Agnes, Muslim Women's Rights: The Religious Versus the Secular 98 (2001).
8. Sachar Committee Report, Social, Economic and Educational Status of the Muslim Community of India (2006).
9. Shaikh Abdul Latif v. Shaikh Abdul Wahid, (2002) 3 MLJ 425 (Madras).

10. Smt. Rukia Khatun v. Abdul Khaliq Laskar, AIR 1981 Gau 32 (India).