

The right of retention of possession over the property of the deceased husband by the wife arises on two grounds—as heir of the deceased and (2) as entitlement of her unpaid *mahr*. Thus the right of retention is extinguished if the *mahr* is paid. Dower is a debt which must be paid by the heirs of the deceased in proportion to their shares. She will inherit, as sharer as well as she will receive the dower from the property left by her deceased husband. An illustration is given for proper understanding of the position of the widow.

A Muslim died leaving a widow, a mother, and a father. The widow's dower debt is Tk. 4000.00. The valuation of the property of the deceased is Tk. 10,000.00. The heirs have the right to recover their shares on payment to the widow the amount of *mahr* proportionate to their shares.

Here Mother gets $\frac{1}{4}$ as sharer ($1 - \frac{1}{4} = \frac{3}{4}$; $\frac{1}{3}$ of $\frac{3}{4} = \frac{1}{4}$)

Widow gets $\frac{1}{4}$ as sharer

Father gets $\frac{1}{2}$ as residuary

The widow, therefore, will contribute $\frac{1}{4}$ of 40000.00 = 10000.00

Mother's contribution is $\frac{1}{4}$ of 40000.00 = 10000.00

and Father's contribution is $\frac{1}{2}$ of 40000 = 20000.00

After deduction to *mahr* (10000.00+10000.00+20000.00) Tk. 40000.00,

There remains tk. 60000.00 (10000.00- 40000.00)

Now wife gets $\frac{1}{4}$ of 60000.00=15000.00+40000.00(*mahr*)=Tk. 55000.00

Mother takes $\frac{1}{4}$ of Tk. 60000.00 = Tk. 15000.00

Father $\frac{1}{2}$ of Tk. 60000.00 = Tk. 30000.00

7. Dower debt- unsecured debt:

Mahr or dower is a debt just like an ordinary debt which the widow is entitled to recover from the property of her deceased husband. But in the absence of any charge under a special agreement, a widow is like an ordinary creditor and is entitled to recover the debt in an ordinary way i.e. by filing a suit in the court of law.¹⁶ In this sense it is said that dower is an unsecured debt.

¹⁶ Muhammad Sadiq Ali Khan V. Fakher Jahan Begum, AIR (1934) Oudh. 307.

Dissolution of Marriage

I. Introduction:

A Muslim marriage is a contract between a male and a female. Ordinarily, this contract is made for lifetime and it is dissolved by death of either husband or wife. This is natural dissolution over which no party has any control. But a marriage-tie can also be dissolved in the case of necessity. The dissolution of marriage contract, except by death, has been condemned by the holy Prophet (peace be on him). He said, 'With Allah, the most detestable of all things permitted is divorce'.¹ On the basis of this Hadith it can be said that marriage is not only a civil contract but also a sacrament. Islam regards marriage a strong covenant. So marriage is the combination of civil contract and sacrament. Marriage-tie, therefore, should not be dissolved on flimsy ground like emotion, sentiment, temperament etc.

If, for some reasons or other, the relationship between the husband and the wife deteriorates and there is no way to improve it, then and then only divorce or dissolution of marriage contract is permitted. Islam has made the provision of *talaque* or divorce so that both of them can lead a better life.² Divorce disintegrates the family unity and therefore it is a social evil in itself, but sometimes it becomes a necessary evil. Under the circumstances, it is better to wreck the future happiness of the parties by binding them to a companionship that has become odious.³ Islam makes the provision of *talaque* or separation on the one hand and on the other, it dislikes *talaque*. Islam, therefore, imposes check and balance on the right of the parties.

¹ Muhammad Ali, Manual of Hadith, P.284 (N.D.)

² Syed Qutub, Fizilalil Quran., Tr.Al-Quran Academy London, Bangladesh Center Vol. 4, P.95.

³ AA. Asaf Fyzee, outlines of Muhammadan law, P.148.

2. Modes of dissolution of marriage

The dissolution of marriage tie can take place in the following modes:

A. By death of the parties- husband or wife

B. By the act the parties- this may either by the husband or by the wife.

By the act of the husband;

(1) *Talaque* (divorce)

(2) *I'lla* (vow of continence)

(3) *Zihar* (Injurious Assimitation)

By act of the wife (*talaque Tafyees* or Delegated *talaque*)

By common consent

(1) *Khul'a* (Redemption)

(2) *Mubara't* (Mutual freeing)

C. By judicial process

(1) *Lian* or mutial Imprecation

(2) *Faskh* (Judicial Rescission)

(3) Option of puberty

(4) Apostasy

We shall discuss each of the modes in detail.

(i) By death of the spouse

The death of either the husband or the wife operates as a natural dissolution of marriage contract. At the death of the wife, the husband may remarry immediately, but the widow has to wait for a definite period before her remarriage. This period is called *Iddat* or period of waiting which extends to four months and ten days from the death of her husband. But if she is pregnant, *iddat* shall expire after delivery of the child or four months ten days whichever is longer.

(ii) By the act of the parties

(i) *Talaque* or Divorce (by the husband)

Talaque or divorce means removal of restraints and it proceeds from the husband. A Muslim husband may divorce under Islamic law at any time without assigning any reason.

Some conditions must be fulfilled by the husband for effective *talaque*. These are as follows:

He must attained puberty, proper understanding, free will or choice and intention or design. The husband must be major according to Islamic law. A minor cannot exercise the right to divorce his wife since he cannot contract a marriage for himself. Repudian by an insane person is invalid. Similarly, divorce is invalid when pronounced by one in a state of intoxication, because an addict cannot understand at the time of pronouncement of *talaque* to his wife. Repudiation by a person under compulsion is invalid, though it is valid according to Hanafi law. Further, the husband must have intention to repudiate the marriage tie at the time of pronouncing *talaque*. It must be in clear language. For example, he should say, " My wife is repudiated" or " I have repudiated you." Baillie has mentioned further conditions for valid divorce. These are- she must be the wife of the man who divorces her; she was married by a permanent contract; it should not be *moota* or temporary contract or a legalized slave; she is not in her courses or in a *nifas* after childbirth. i.e. she must be purified (*tuhr*); presence of two male witnesses at the time of pronouncement of the words of divorce, though according to Hanafi law, it is not necessary.

3. Forms of *Talaque*

(i) *Talaque* in Oral Form and

(ii) *Talaque* in Writing Form

(i) Oral *talaque*:

Hanafi law does not prescribe any definite words to be used for *talaque*, but must be pronounced only during the period between two *tuhrs*. The words employed may be either express or implied. In case of ambiguous words, the husband must say whether he intended to pronounce it for divorce or not. According to Hanafi law, presence of wife is not necessary for the validity of divorce. But under shia law, presence of two witnesses is a must at the time of pronouncement of *talaque*.

(ii) *Talaque* in writing:

Talaque may be in writing as well though Hanafi law considers it as *bidyat* or irrevocable. *Talaque* in writing becomes operative from the time of writing and not from the time of when it is received by the

wife. But according to the Muslim Family Laws Ordinance, 1961, which is in force in Bangladesh, *talaque* in any form would not be effective before the expiry of 90 days from the date of sending notice to the chairman or Mayor as the case may be, regarding *talaque* by the husband.

4. Kinds of *Talaque*

Basically *talaque* is of two types -

- (i) *Talaqul sunnat* or Approved form
- (ii) *Talaqul Bidyat* or unapproved form

(i) *Talaqul sunnat*:

Talaqul Sunnat is also called *Talaque-e-Raji* or Revocable *talaque*. The husband can revoke it at any time before the expiry of *Iddat*.

Talaqul Sunnat is again of two types -

- (a) *Talaqul Ahsan* or most approved
- (b) *Talaqul Hasan* or approved

(a) *Ahsan Form*:

This consists of one single pronouncement in a period of *tuhr* (purity, i.e. when the woman is free from her menstrual courses), followed by abstinence from sexual intercourse during that period; he then leaves her to observe *iddat*. But if any such intercourse takes place during the period of *iddat*, the divorce will not be effective. This form of *talaque* has been approved by the Prophet (peace be on him) and therefore, it is the most approved form of *talaque*. If the parties have been away from each other for a long period, or if the wife is old and beyond the age of menstruation, the condition of *tuhr* is not required.⁴

A pronouncement made in the *ahsan* form can be revoked during *iddat* which consist of three months from the date of such pronouncement or until delivery in case of pregnancy. Revocation can be made at any time during *iddat*. Such revocation may be expressed or implied i.e. he may cohabite with her or says to her, "I have retained you." *Talaque* becomes final and irrevocable, after the lapse of *iddat* period.

⁴ Chand Bibi vs. Bandesha AIR (1960) Bam.121

(b) *Hasan form*

Hasan is also an approved form but less approved than *ahsan* form. It consists of three successive pronouncements of *talaque* during the three consecutive *tuhrs*. The husband shall refrain from sexual intercourse during the whole period of *tuhr*. The *talaque* is complete on the third pronouncement. It can be revoked after first or second pronouncement but not after third. If the wife is not subject to menstrual courses due to her minority or pregnancy or old age, then each pronouncement is to be made during the period of three lunar months with an interval of 30 days.

In *Ahsan* and *Hasan* forms, there remains a chance for the parties for reconciliation by the intervention of friends, well-wishers or relations. With this aim in view section 7(4) of the Muslim Family Laws Ordinance 1961 provides facilities for reconciliation through Arbitration Council within 90 days. This provision has been made in the light of Al-Quran which states, "And if you fear a breach between them two (husband and wife), then appoint an arbitrator from his folk and an arbitrator from her folk. If they both desire amendment, Allah will effect harmony between them."⁵ Prophet (peace be on him) limited the pronouncement to three (maximum). Shia law does not approve any other forms of *talaque* except *Talaqu-E-Ahsan*.

(ii) *Talaqul Bidyat*

It is also called *bain talaque*, which means irrevocable *talaque*. Under this form *talaque* becomes effective immediately after the pronouncement of *talaque*. As for example, a man says to his wife, "I have given you *talaque bain*." This *talaque* is irrevocable and the husband has no right to retract. This form of *talaque* has been approved by the Prophet (peace be on him). The husband will be sinner if he divorces his wife under this form.

When divorce becomes irrevocable :

In the following cases *talaque* becomes irrevocable:-

- (1) *Talaqul Ahsan* becomes irrevocable on the completion of the period of *iddat*.

⁵ Al-Quran 4:35 . Tr. by Marmaduke Pickthal, The glorious Quran.

(2) *Talaqul Hasan* becomes effective on the third pronouncement and it becomes irrevocable.

(3) *Talaque Bidyat* either on triple or single pronouncement also becomes irrevocable instantly.

(4) Divorce becomes irrevocable right on the pronouncement where there was no consummation.

5. *I'la* or vow of continence

I'la means to swear. Legally speaking, *I'la* means when a husband swears that he will not have sexual intercourse with his wife and if he abstains from it for four months or more and then *talaque* becomes effective. The Holy Quran states regarding *I'la* as follows—“Those who forswear their wives must wait four months; then if they change their mind, lo! Allah is forgiving, merciful”.⁶ According to Hanafi law, *I'la* can be retracted before the period specified by resumption of cohabitation or even by verbal retraction if actual cohabitation is not possible due to some reasons, but expiration is incumbent on him for breaking his vow.⁷ A vow of abstinence for a period less than four months does not constitute *I'la*. Hanafi law provides that due to *I'la*, marriage is dissolved without judicial process after the expiry of four months. The argument in its favour is that since the husband acted unjustly towards his wife, it is equitable that on the expiration of four months he should be deprived of the benefit of marriage. But according to *shia* and *shafei* law, such a vow does not amount to divorce, but only gives the wife a ground to seek judicial divorce.⁸ This mode of dissolution is obsolete in Bangladesh, Pakistan and India. Section 2 of the Muslim Personal (*Shariyat*) Application Act, 1937 considers *I'la* as a mode of dissolution of marriage-tie. Now in Bangladesh Family Courts, established under the Family Courts Ordinance 1985, decide all types of litigations concerning dissolution of marriage.

6. *Zihar* or Injurious comparison

The word '*Zihar*' is derived from the word '*zahir*' meaning 'back'. Legally, it signifies the act of a husband comparing his wife to any of his female relations with whom the marriage is prohibited on

⁶ Al-Quran, 2: 226

⁷ Hedaya, Tr. Charles Hamilton, P.109

⁸ Syed Khalid Rashid, Muslim Law, P.105.

account of consanguinity or fosterage. In *Zihar*, the usual phrase is used to the wife “you are to me like the back of my mother” *Zihar* by itself does not dissolve the marriage, but the wife becomes unlawful to the husband without expiation. The husband may revoke the declaration but he shall have to make a slave free or to keep fast for two consecutive months or to feed sixty needy persons.⁹ In case of *Zihar*, the wife can claim judicial separation or even regular divorce. *Zihar* was practiced in the early period of Islam for *muta* marriage. *Zihar*, though not in vogue, has been recognized in Section 2 of the Muslim Personal (*shariyat*) Application Act, 1937 like *I'la*.

7. By act of the wife

Talaque-e tafweez

The power to divorce a wife belongs to the husband absolutely. But he may also delegate the power of divorce to the wife herself or to a third person. This is called '*tafweez*'. This delegation may be absolutely or conditionally and it may be for once only or for a time or for permanently.¹⁰ The power so delegated to the wife is irrevocable and it can be exercised even after the institution of a suit against her for restitution of conjugal rights.¹¹ Delegation of power may be given at the time of marriage or at any time after the marriage contract.

Talaque-e tafweez shall operate subject to certain conditions to be fulfilled by the husband. The wife can exercise her right of divorce if these conditions are not satisfied. But these conditions must not be opposed to recognized law of Islam.¹² Some of the conditions are as follows—

- (i) The husband should lead a respectable life by earning his livelihood. He should provide maintenance to his wife and should live in a house approved by her.
- (ii) The husband should not ill-treat her and in case of misbehaviour, she should be allowed to live at the residence of her father and realize a maintenance charge from him.

⁹ Al-Quran, 58:3-4; 33:4

¹⁰ PLD 1963 Dhaka 602

¹¹ 4DLR 613; PLD 1952 Dhaka 385

¹² Shawkat Mahmood, Muslim law, PP.68-69.

- (iii) The wife should be allowed to go to her father's house at least four times in a year and he shall bear the expenses of such joining to and coming back to her husband's residence.
- (iv) The husband would not contract a second marriage without her consent unless she is either barren or perpetually sick.
- (v) The husband should pay dower on demand and he should not make any remission of it except in the presence of her relations.¹³

8. By Mutual Consent

Marriage (*Nikah*) may also be dissolved by mutual agreement between the parties. These are –

(i) *Khul'a* and (ii) *Mubar'at*

(i) *Khula*: *Khula* means 'draw off' or 'digup' or 'put off'. In law, it signifies an agreement entered into for the purpose of dissolving a connubial connection in lieu of a compensation paid by the wife to her husband out of her property. There is a reference in the Holy Quran about *Khul'a*. It states, "It is not lawful for you (husband) to take from them (wives) anything of what you have given them; except (in case) when both fear that they cannot keep within limits imposed by Allah. And if you fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if she ransoms herself on payment."¹⁴

A *Khul'a talaque* is effected by an offer from the wife to compensate husband if he releases her from his marital rights and acceptance by the husband of the offer. Once the offer is accepted, it operates as a single irrevocable divorce (*talaque-e bain*). A *talaque* by *Khul'a* originates from the wife's aversion towards her husband. She is to receive the consent of her husband in lieu of consideration, namely, return of dower or gifts which she received from her husband or property as agreed by the husband.¹⁵ The divorce under *Khul'a* form is not invalidated even when the wife does not pay the consideration she agreed to offer, because, the divorce takes place at the instance of the wife. The

¹³ PLD 1952 Dhaka 385

¹⁴ Al-Quran, 2: 229

¹⁵ PLD 1952 Lah. 113

husband can sue his divorced wife to claim the release of dower or any money or property due under the agreement.¹⁶

(ii) *Mubar'at*

Literally speaking '*Mubar'at*' means release. It is a mode of mutual release or discharge which leaves each party without any claim upon the other.¹⁷ *Mubar'at* is a mode of dissolution of marriage with the mutual consent of the parties. Under this form, both the husband and the wife feel aversion for each other. *Mubar'at*, like *Khul'a*, is a dissolution of marriage by agreement. The difference between the two is that in the case of *Khul'a* aversion comes from the wife and she gives the husband consideration for the separation. But when the aversion is mutual and both parties desire dissolution of the marriage tie, it is called *Mubar'at*.¹⁸ The separation in *Mubar'at* may proceed from either side. In *Mubar'at*, dissolution operates as an irrevocable divorce as soon as the offer is accepted.

9. Difference between *Khul'a* and *Mubar'at*

The differences between *Khul'a* and *Mubar'at* are very sharp and need to be discussed which are as follows :

- i. In *Khul'a*, offer comes from the side of the wife and then it is accepted by the husband. But in case of *Mubar'at*, any party may propose while the other party accepts.
- ii. *Khul'a* is a redemption of the contract of marriage but *Mubar'at* is a mutual release from marital tie.
- iii. In *Khul'a*, consideration proceeds from the wife to the husband; but in *Mubar'at* the question of consideration does not arise.
- iv. In the case of *Khul'a* aversion comes from the side of the wife only while in *Mubar'at*, aversion or disliking comes from both the sides, i.e. mutual aversion.

In both the cases, wife must observe *iddat* and it is treated as irrevocable divorce.

¹⁶ Sir Roland Knyceet Wilson, Anglo Muhammadan law, P.147.

¹⁷ Hodaya . P, 116

¹⁸ 16 DLR (S.C) 389; PLD 1967, PLD (S.C 97

In Bangladesh, registration of marriage and divorce in any form has been made compulsory under the Muslim Marriages and Divorces (Registration) Act, 1974.

10. Dissolution by Judicial Process

Dissolution of marriage can take place by judicial process in the following cases:

- (i) *Lian* or mutual Imprecation
- (ii) *Faskh* or judicial Rescission
- (iii) Option of puberty or *khyarul Bulug*
- (iv) Apostasy (*murtad*)

Let us discuss each of them.

(i) *Lian* or Imprecation :

It is a mode of dissolution of marriage, which signifies testimonies confirmed by oath, on the part of a husband and a wife in case of the former accusing the latter of adultery.¹⁹ Procedure of imprecation has been stated in the Holy Quran as- "And those who accuse their own wives and there is no witness except they themselves, then he should in the name of Allah swear four times that he is telling the truth and for the fifth time he will say that may Allah's curse be upon him if he is false. And the punishment is warded off from her if she in the name of Allah swears four times that he is false and for the fifth time she will say that the wrath of Allah be upon her if he is telling the truth."²⁰

So according to the version of the Holy Quran, if a husband brings a charge of adultery against the chastity of his wife and if he fails to bring four witnesses in favour of his such charge, in that case, the husband takes oath in favour of his claim and similarly, if she also takes oath in favour of her innocency and denies the charge then the marriage will be dissolved. This whole process is known as *lian*. The wife can pray to the court for the dissolution of her marriage.²¹ Under the present

¹⁹ Hedaya

²⁰ Al-Quran 24: 6-9

²¹ PLD 1958 Dhaka 62

system, an accusation of adultery does not *Ipso facto* dissolve the marriage. A decree of the court is necessary to do so. The Prophet (peace be on him) during his time dissolved marriage under this system, because he used to exercise judicial power in addition to executive power.

Application of the rule of *lian*

The doctrine of *lian* is concerned in the following cases :-

- (a) When the husband accuses his wife with a view to make liable for the punishment of adultery.
- (b) When the husband brings the charge of adultery against his wife with a view to denying the paternity of the child who has been born to his wife or who is still unborn and is in the womb of his wife.
- (c) When the wife complains that the husband has falsely charged her with adultery.
- (d) If dissolution takes place on account of *lian*, then it amounts to irrevocable *talaque*.

Retraction of *lian*

If a husband brings a charge of adultery on a strong ground and on coming to know that he has been misled, retracts (withdraws) the charge *bonafide* and with sincerity, and not merely as a plea to defeat the suit of the wife, then it is a good ground to dismiss the suit of the wife brought for the dissolution of the marriage.²²

In Bangladesh, The Family Courts, established under the Family Courts Ordinance 1985, deal with suits relating to family disputes including dissolution in any form.²³ The Muslim Personal (*shariyat*) Application Act 1937 (section 2) also deals with *lian*.

(ii) *Faskh* or judicial Rescission

The word *faskh* means annulment or abrogation. It comes from a root, which means to annul (a deed) or to rescind (a bargain).²⁴ Legally, it means the right of the *Qadi* or Judge to annul a marriage contract on

²² PLD 1957 Lahore 998; AIR 1962 All. 570 (D B)

²³ Section 2 of the Family Courts Ordinance 1985 deals with dissolution of marriage.

²⁴ Fyzee, P.168

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the application made by the wife. It is, therefore, the dissolution or rescission of the contract of marriage by judicial decree.

The wife can file an application to the court for rescission of her marriage for the physical or mental faults or immoral character of husband or if the life of the wife becomes miserable due to repression by the husband or if such situation prevails, when dissolution of marriage becomes indispensable.²⁵ Under such conditions the court (*Qadi*) can dissolve the marriage.

This process is known as *faskh*. The power of the judge to dissolve the marriage is supported by a renowned *Hadith* of the Prophet (peace be on him), which is as follows – “If a woman be prejudiced by a marriage, let it be broken off.”²⁶ Presently in Bangladesh, Pakistan and India such judicial annulments are governed by section 2 of the Dissolution of Muslim Marriages Act 1939. Analytical discussion on this Act has been made in part 2 of this book.

(iii) Option of puberty or *khyar-ul Bulug*

A Muslim marriage can be contracted by the parties independently when they are adult or have attained puberty. But Islam allows a child marriage under the guardianship (*waliyat*). If the husband was minor at the time of marriage, he can approve or repudiate it after attaining his majority or puberty. But what about the wife who was minor at the time of marriage and now has attained puberty? According to *shariya*, if a girl was contracted into marriage by her father or other guardians during her minority, she can exercise the right of repudiating the marriage on attaining puberty. This is called option of puberty or *khyarul- Bulug*. According to the old jurists, a girl has no option of puberty if she is married during her minority by her father or grandfather.²⁷ But after the enactment of the Dissolution of Muslim Marriages Act 1939, the right of a wife has been enlarged and now she is entitled to dissolve or reject her marriage after attaining puberty even though the marriage was given by her father or grandfather. Under this Act she can exercise the right for the dissolution of her marriage subject to the fulfillment of the following conditions-

- (1) She was given in marriage by her father or other guardians;
- (2) The marriage took place before her attaining the age of sixteen years;
- (3) She repudiates the marriage before her attaining the age of eighteen years;
- (4) The marriage has not been consummated.

(iv) Dissolution on the ground of apostasy

A Muslim, male or female, may renounce Islam and this is known as apostasy and a non-Muslim, male or female, may embrace Islam and this is called conversion. A man who renounces Islam suffers seriously both under criminal and civil law. An apostasy, according to Islamic law, is a treasonable offence.

An adult male apostated (*murtad*) is subject to death penalty in extreme cases and in case of female apostate, she suffers imprisonment until her embracing Islam.²⁸ So prior to the enactment of the Dissolution of Muslim Marriages Act, 1939, apostasy of either party to a Muslim marriage operated as a complete and immediate dissolution of the marriage.²⁹ Under this Act, which is in force in Bangladesh, as stated above, the marriage of a Muslim male with a Muslim female shall stand dissolved on his apostasy. But section 4 of this Act provides that renunciation of Islam by a married Muslim woman or her conversion to any religion other than Islam shall not by itself operate to dissolve her marriage.

(v) Contingent *talaque*

A husband may stipulate that on the happening of a certain event his marriage with his wife shall *ipso facto* be dissolved. Thus where the wife wanted to go her friend's house at 5 p.m on a definite date and her husband told her not to go there at that time, but at her insistence to go there at that very time, he pronounced a divorce contingent on her going there. She stopped her visit but she went there on subsequent date. It was held that divorce was not operative.³⁰ But if the wife would go there defying the order of the husband, then divorce would take place. But

²⁵ M. Faiz-ud-Din, Muslim Marriage and statutory law, P. 134.

²⁶ Ameer Ali, Mahomedan Law vol.2 P.519; cited from Bukhari Sharif.

²⁷ Aziz Ahmad, P.188.

²⁸ Ameer Ali, Mahomedan Law, vol. 2 P.388; Fyzee, P.178

²⁹ AIR 1937 Lahore 759; AIR 1938 Lah.482

³⁰ PLD 1962 (W. P) Karachi 491.

section 7 of the Muslim Family Laws Ordinance, 1961 has made this type of *talaque* obsolete. Now under this law separate procedure is followed.

11. Legal Effects of Dissolution of Marriage

Muslim marriage is a civil contract like other ordinary contract and as such it creates some rights and obligations on both the parties after dissolution. These are called legal consequences that are as follows:-

(i) In the field of payment of *mahr* or *dower*,

If the marriage was consummated or valid retirement took place before divorce, the entire amount of unpaid dower, whether prompt or deferred, becomes payable immediately by the husband to the wife and is recoverable like any debt.

In case of non-consummation, the husband will have to pay half of the specified dower.³¹ But if no *mahr* or *dower* was specified, he must give the divorced wife three set of present (*mutat*) dress suitable to her rank. But she cannot claim anything if divorce takes place by her wish or fault like her apostasy. In case of death of husband before consummation, the wife is entitled to her full *mahr*, specified or proper.³²

(ii) In the field of inheritance.

The husband and the wife are entitled to inherit each other if either of them dies during *iddat* following revocable *talaque*. But in case of irrevocable *talaque*, the right of mutual inheritance ceases. If the husband divorces his wife during death-illness (*marzul maüt*), the right of inheritance persists until the expiry of *iddat*.

(iii) In the case of maintenance:

The wife is entitled to maintenance during *iddat* in the following cases-³³

- (a) When she is divorced during her pregnancy whether revocable or irrevocable form.

³¹ Al-Quran 2: 237; Fyzee P.186

³² AIR 1934 All 52.

³³ Abdur Rahman, Insilute of Mussalman Law P.174.

- (b) When after conversion to Islam, she is separated from her husband, consequent upon her husband's refusal to accept that faith.
- (c) When the husband exercises his right of option of puberty for dissolution of marriage.
- (d) When the marriage is dissolved through imprecation.
- (e) When the marriage is dissolved by reason of her husband's apostasy.

(iv) In the case of observance of *Iddat*

The following rules shall follow regarding observance of *iddat* -

- (a) In case of death of husband, she will have to observe *iddat* whether the marriage was consummated or not.
- (b) In case of consummation or valid retirement, she is to observe *iddat*.
- (c) If dissolution takes place before consummation, no *iddat* is to be observed.³⁴

(v) Cohabitation is unlawful

When the divorce is irrevocable and final, sexual cohabitation between the divorced couple becomes unlawful.

(vi) Remarriage

When the husband has repudiated his wife by three pronouncements, remarriage with her is not lawful until she marries another man and the latter has divorced her or dies after actual consummation of the marriage. But there has been a revolutionary change in the statutory law that the same husband can remarry his divorced wife without an intervening marriage with a third person, unless such marriage was terminated for the third time.³⁵

³⁴ Al-Quran, 33:49.

³⁵ See section 7(6), The Muslim Family Laws Ordinance, 1961.