

# THE CONCEPT OF DIVORCE UNDER SHARIAH LAW

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## Introduction

A strong marriage between the husband and wife is required for happy family life. As a result, Islam emphasizes the necessity of keeping a marriage together and warns against violating a marriage commitment. No wedding was initially dissolved, but dire circumstances forced the marriage bond to be broken. Divorce is one way to dissolve such a relationship. Divorce in Islamic law can take place either through the spouses' actions or through a court order. Regardless of its prevalence, divorce has never been seen as a rule of life. Divorce is regarded as an exception to the validity of marriage in Islam. There are three types of divorce in Islamic law (sharia), each with its own set of rules. The procedure is known as talaq when a man initiates a divorce. The Lia'an process occurs when a man accuses his wife of infidelity without providing evidence, and the wife rejects it. Khul'a is the term for a divorce initiated by a woman. Talaq is relatively easy to come by; however, khul'a is harder to come by.

The term "TALAAQ" is originated from the Arabic verb talaq. Which implies "to untangle" or "to set free." Technically, talaq gives a Muslim husband the one-sided ability to separate his partner whenever he wishes. The word Talaq is usually interpreted as "rejection," however, it derives from the Arabic origin "Talaq," which meaning "to free (an animal) from its tether." The woman, or her release from the ties of marriage in law, signifies the husband's absolute ability to divorce his spouse. "Men are maintainers of women, since Allah has made some of them to excel others and because they spend out of their property," says the verse in defense of the husband's unilateral divorce right (on their maintenance and dower). Talaq is the legal term used when a husband utilizes his right to declare divorce. The most remarkable aspect of Muslim talaq law is that it is acknowledged by Sunni and Shia schools, with minor variations. Talaq seems to be so common in Muslim society that Imams have even employed it. Islam recognizes a Muslim husband's unrestricted ability to divorce his wife without giving a reason, and literally at his desire, even in jest or intoxication, without going to court, and even while the woman is not there. All that is needed of the spouse is to recite Talaq; how he does so or what he does, is irrelevant. Talaq might be expressed, implicit, qualified, productive, or even chosen among Sunnis. Only the express and trusted forms of talaq are recognized by Shias.

In Talaq, the guy is not required to use the precise wording "I divorce thee" or "I divorce you" (divorce). Under Shariah law, other phrases are permissible. As a result, divorce statements can be divided into two groups:

**Talaaq e-Sareeh:** A prescribed divorce pronouncement, such as "I divorce thee," is known as talaaq e-Sareeh.

**Talaaq e-Kinaya:** An ambiguous or oblique divorce declaration employs terms that aren't expressly geared at granting divorce but alludes to it.

"You are divorced," "clear," "irrevocable," "cut off," "you are concluded," "you are a free woman," and "you are forbidden," according to an Islamic scholar, Ibn Abdul-Wahaab are some examples of Talaaq Kinaya's statements.

If the husband intended to provide talaaq, Talaaq-Kinaya would result in irreversible divorce (Talaq-Bayyin). Still, it will not count if he did not want to signal divorce, according to at least one school of Islam (Bani, Pate, 2015).

### **The Concept of Marriage**

According to Allah, marriage is the legal organization of a man and a woman based on mutual consent. It is a contract that allows a man and a woman to live together and support each other within the boundaries of the rights and obligations that have been established for them. It is a commitment among a man and a woman, intending to enjoy the other and become a godly family and a good society. Marriage is a sacred covenant that unites two otherwise unconnected people. Its goal is to take people out of their frantic lifestyle and place them in a controlled environment with a life path and someone to lean on. On a spiritual, physical, emotional, and psychological level, marriage brings individuals together. Love, kindness, compassion, confidence, solace, and aid are all generated and sustained by this friendship. It provides a spiritual as well as a legal foundation for family life.

Marriage is a religious obligation and, as a result, a moral and social necessity. Families are formed through marriage, and the family is society's fundamental unit. Celibacy does not imply a high level of taqwaa or emaan in Islam. Marriage provides a haven for one's sexual demands while also regulating them not become a slave to his impulses. Furthermore, marriage is the only legal option for a man and a woman to engage in sexual relations except for concubines. As a result, unlike other religions, Islam strongly supports marriage. Celibacy is not tolerated, as it is among Roman Catholic priests and nuns.

### **Divorce: What, Why and How?**

When it comes to divorce, the three religions have strikingly different perspectives. Divorce is completely forbidden in Christianity. The New Testament unmistakably endorses the

indissolubility of marriage. Without a doubt, this rigorous ideal is unattainable. It presupposes a level of moral purity that no human society has ever attained. When a couple discovers that their marriage is beyond repair, a divorce ban isn't going to help them. It is neither adequate nor reasonable to force ill-matched couples to stay together against their will. It's no surprise that the entire Christian world has been forced to sanction divorce.

Judaism, on the other hand, permits divorce even when there is no need for it. Even if he dislikes his wife, the husband has the right to divorce her according to the Old Testament. The Old Testament not only provides the husband the freedom to divorce his "displeasing" wife, but it also deems it an obligation to divorce a "bad woman" who eats, drinks, or suckles in the street.

According to the Talmud, a barren wife who hasn't had any children in ten years must be divorced. On the other hand, wives can only file for divorce if there are bodily deformities or skin illness or if they have failed to fulfill their marital responsibilities. The Court may agree with the wife's divorce request, but it cannot destroy the marriage. Only the husband can end the marriage by filing a divorce petition with the Court. To compel him to give the appropriate divorce bill to his wife, the Court might scold, penalize, imprison, and excommunicate him. If the husband is obstinate enough, he can deny his wife a divorce and keep her married to him permanently. Worse yet, he has the option of abandoning her without getting her a divorce, leaving her single and undivorced. He is free to marry another lady or live with an unmarried woman and bear children from her (these children are considered legitimate under Jewish law).

On the other hand, the deserted woman cannot marry or live with any other man because she is still legally wedded, and her offspring from this connection will be regarded illegitimate for generations. When it comes to divorce, Islam falls between Christianity and Judaism. It has taken every precaution to ensure that marriage is a happy and long-lasting union. Marriage in Islam is a legal agreement between a man and a woman to live as husband and wife. It automatically gives the partners mutual rights and obligations, which they must both be aware of. The holy Prophet (S.A.W.) and the Quran emphasize that both partners should treat each other with kindness and fairness. However, it is common for all married couples to have arguments from time to time. In a significant disagreement, Islam recommends a technique to assist in rectifying the problem before a divorce.

The arbitration procedure and steps before the actual termination of marriage are as follows: (i) the two parties must attempt to resolve their differences on their own; (ii) the two parties must try to resolve their differences on their own; (iii) the two parties must try to resolve their differences on their own; (ii) if they fail, two arbitrators must be chosen, one from the husband's family and the other from the wife's family, to try to make peace and settle their disagreements; (iii) If this attempt likewise fails, the husband or wife may seek a divorce or the breakdown of the marriage

tie in whole or in part; (iv), and if divorce is served, a three-month period for reconciliation and reconsideration is offered (except if the parties have divorced each other for the third time) and (v) if the time as mentioned earlier restriction has passed and there has been no reconciliation, the divorce will be finalized, and will end the marriage.

Islam encourages the reconciliation of the two opposing parties and deems it worthy of annulling the divorce during this time. It was evident from the method that Islam allows divorce only when it has become impossible for the parties to live together in peace and all attempts to reach an agreement have failed. No power on earth can force a divorce if both partners are determined to live happily together despite the flaws or shortcomings of the other.

For the institution of marriage to achieve its stated aims, divorce must be permitted in specific circumstances. Religions and civilizations who strayed from this point and enforced the myth of "until death do us part" in all possibilities have been responsible for immense human suffering and sin. This law is incompatible with human nature. Islam forbids us from enacting harsh laws such as celibacy, perpetual marriage without the possibility of divorce, or promiscuity and mayhem (the most popular one in our time). In this regard, Islam provides us with two essential societal goals: the "eradication" of unmarried persons of marriageable age as much as possible through encouraging weddings and creating a social climate that can eliminate all non-marital relationships between men and women. Obviously, not imprisoning spouses in a marriage that is not psychologically or physically gratifying is a part of achieving these goals. Some will undoubtedly succumb to the pressure and seek alternative outlets for their demands, undermining society's moral fiber. In these situations, it is advisable to end the marriage. One of the essential aims of marriage is to generate a new generation of Muslims who will continue to spread the Islamic religion and practice. The first source of advice and enjoyment is the family. Suppose they are raised in an environment where they can observe their parents' dissatisfaction and sadness. In that case, the family's troubles may be passed down to the children, ruining their behavior and potentially even their Islam. Divorce and the various other options allowed by Islam to end a marriage are provided to men and women in Islam to help them achieve these aims - either within an existing marriage or by completing it all together.

Divorce does not have to be "ugly." It should be done with consideration, decency, and tenderness if it becomes necessary. In Islamic law, a marriage can be ended in various ways, including automatically, on the leadership of the husband, wife, or judge. While it is true that the husband has the "power" to divorce rather than the wife, this does not imply that the woman has no authority to quit the marriage if she is abused, dissatisfied, or miserable. Men who persuade their women that they have no recourse unless they divorce have strayed from Islam, cheated, and used.

The decision on Divorce differs depending on the circumstances. It can be legal, illegal, permitted, disgusting, desirable, mandatory, or banned. As a result, any of the five preliminary rulings could be involved. It is legal when the husband requires it due to his wife's bad behavior, the harm caused to him by keeping her, and the failure to meet the legal goal of marriage. If there is no necessity for it, such as when there is no dispute between the married pair, it is disgusting; some academics consider it illegal in such a scenario.

On the other hand, Divorce becomes desired when the wife experiences injury throughout her marriage, such as when she and her husband are at odds or when she dislikes him. If the wife is not religiously upright or righteous, it becomes mandatory for the husband to do so. For example, the wife may be so careless with the prayer that she abandons it or performs it late, leaving the husband unable to correct her, or she may be morally dishonest. It is illegal for a husband to divorce his wife. At the same time, she is menstruating during her confinement or in a condition of major ritual impurity (i.e., the time between her menstruations) in which he has already had sexual intercourse with her. The husband is also forbidden from divorcing his wife three times in a row.

When there is no longer a benefit to keeping the marriage tie, or when the wife is damaged by staying with her husband, or when one of the married couples is immoral, brazenly disobedient, and irreligious, unlike the other, divorce is a relief and a beneficial solution. Communities that prevent divorce face many major societal issues, including an increase in suicide, crime, and family breakdown. The great religion of Islam allows divorce and establishes adequate rules to govern it to achieve the desired goals and ward off any potential evil, as is the case with all of Islam's great laws and regulations that protect human interests in the long and short term.

As a result, we thank Allah, the Exalted, for His blessings and the gift of Islam to us. If a man divorced her for the third time, or he has divorced her once or twice and her "iddah" has ended, she becomes a stranger (non-mahram) to him, and she is not allowed to be alone with him, touch her, or look at her. An ex-connection husband with his ex-wife is similar to his relationship with any other non-mahram lady. They have children does not excuse him from staring at her, being alone with her, or accompanying her on a trip. He can spend time with his children without her, and she can spend time with one of her mahrams without doing anything illegal. There is no reason not to accept the amount that the divorced husband spends on his children (Dogarawa, 2009).

### **Subdivisions of Divorce under Shariah Law**

1. Extrajudicial divorce is permitted under Islamic law.
2. Divorce by a judge.

Extrajudicial divorce can be classified into three types:

- Talaq, Illa, and Zihar are three different types of Talaq (by Husband).
- Li'an and Talaq-i-tafweed (by wife).
- Khul'i (by mutual agreement).

**A valid Talaq must meet the following criteria:**

1. **Capacity:** Any Muslim husband of a healthy mind who has reached puberty can declare talaq. He is not obligated to provide any justification for his statement. It is unpronounceable by a husband who is minor or mentally ill. A minor's or a person with an unstable mind's talaq is null and void. If a spouse is insane, however, divorce pronounced within the "lucid interval" is valid. On behalf of a minor husband, the guardian cannot pronounce the divorce. When a husband is psychotic and has no one to care for him, the Judge or Qadi has the authority to dissolve the marriage in the husband's best interests.
2. **Free Consent:** Unless following Hanafi law, must give the husband's consent in pronouncing Talaq freely. A talaq proclaimed supporting coercion, pressure, improper influence, deception, or deliberate intoxication, for example, is legitimate and terminates the marriage in Hanafi law. Unintentional Intoxication: Talaq uttered under the influence of alcohol or drugs is void under Hanafi law.

A Talaq has given under stress, pressure, unfair influence, fraud, or purposeful intoxication is void and ineffective, according to Shia law (and other Sunni schools of thought) (and other Sunni schools of study).

3. **Formalities:** A Talaq can be given orally or in writing, according to Sunni jurisprudence. The spouse can speak it, or he can write a talaq. A genuine talaq does not require a particular formula or the usage of a specific duration. Any remark expressing the husband's desire to divorce is enough. It isn't necessary to perform it in front of the witnesses.

Talaq must be pronounced orally, according to Shias, unless the spouse is unable to talk. The divorce is void under Shia law if the man can speak but gives it in writing. Talaq needs to be delivered in the presence of two eyewitnesses in this instance.

4. **Express Words:** The husband's purpose of terminating the marriage needs to be expressed explicitly in the Talaq wording. It is critical to notice that the husband intends to break the marriage if the declaration is unclear and ambiguous.

**Express Talaq (by Husband):** The divorce is express when certain words, such as "I have divorced thee," are said. The express Talaq is divided into two types:

- *Talaq-e-sunnah*,
- *Talaq-al-bid'ah*

**Talaq-e-sunnah:** It is said to be dictated by Prophet Mohammad. It consists of a single talaq made at the time of tuhr (purity between two menstruations) or when the woman is free of

menstruation, followed by a period of iddah in which the lady refrains from sexual intercourse. As opposed to divorce in writing, oral divorce necessitates making his proclamation within a period of tuhr. Furthermore, if the woman has reached menstruation age, the individual has been separated for an extended period, or the marriage has not been performed, this requirement does not apply. This technique has the advantage of allowing divorce to be rescinded at any moment before the end of the iddah period, avoiding a hasty and complicated divorce. The revocation might be made explicitly or implicitly. If the husband continues cohabitation with his wife before the end of iddah or states, "I have retained thee," the divorce is dismissed. The talaq is also annulled if intimate ties are resumed before the completion of the iddah period.

**Talaq-al-Bid'ah:** During the 2nd century of Islam, it became fashionable. It comes in two varieties:

- (i) In one or three sentences, a threefold announcement of divorce was made during a period of purity.
- (ii) A single irreversible divorce decree was given during Tuhr (purity) or otherwise is another option. The Shias do not recognize this sort of Talaq. This type of divorce is frowned upon. Because of its irreversibility, it is considered sinful.

### Completion

The couple is divorced, and she is no longer his mahram when the talaq procedure is completed. Therefore she needs to follow the hijab (veil) laws. Shias scholars understand that the talaq procedure is completed when the waiting period (iddah) is finished. The completion of the talaq must be witnessed by two people.

The pertinent portions of the Qur'an are as follows:

- (i) "So, when they complete their tenure, either take them to hack on equitable terms or part with them on equitable terms; and designate two witnesses from among you, endued with justice, to establish the evidence before Allah. Such is the warning provided to those who believe in Allah and the Day of Judgment. And He (always) creates a way out for those who fear Allah."
- (ii) "And when you divorce women and they reach their prescribed time, either keep them in good fellowship or set them free with liberality, and do not keep them for injury, as this is unjust to one's soul; and do not mock Allah's communications, and remember Allah's favor upon you, and what He has revealed to you the Book and the wisdom, admonishing thereby; and be careful (of your duty to) Allah, and know that Allah is the knower of all things."

**Aftermath:** If a man and his wife are divorced, he must seek assistance from another woman to care for the child if the mother agrees. A husband who has divorced his wife three times is not permitted to marry her again unless she has married another man and divorced herself from his will.

**In practice:** It is considered improper for a divorced woman to live alone in most Islamic societies (as usually is also the case with unmarried ladies). Divorced women typically return to live with their parents or another close relative in most cases.

The Holy Qur'an states: "And after you have divorced women and their term (of waiting) has expired, do not hinder them from remarrying their husbands when they legitimately agree among themselves; this is more lucrative and purer for him who believes in Allah and the Last Day; Allah knows while you do not know." "And there is no blame on you in respect of what you say indirectly in asking (such) women in marriage or keeping (the proposal) hidden in your minds; Allah knows you will mention them, but do not make a secret promise unless you speak legally, and do not confirm the marriage tie until the writing is fulfilled, and know that Allah knows what is on your mind, so beware of Him."

"Maintenance (should he provide) on a reasonable basis for divorced women (scale). The righteous have a responsibility in this."

### **Ila:**

A Muslim man has two further options for annulling his marriage besides talaq: ila and zihar. Effective divorces are what they're called. The husband asserts not to have sexual relations with his wife in ila.

There will be a four-month period of no completion following this declaration. After the fourth month, the marriage is irreversibly dissolved. The ila is paused, but the union is not terminated if the husband resumes cohabitation within four months. Ila does not work as a talaq without a court decree' under Ithna Ashari (Shi'a) School. The woman is merely labeled to a legal divorce after the fourth month has passed. If there is no cohabitation after four months, the woman has the right to sue the husband to return conjugal rights.

### **Zihar:**

In this variation, the husband compares his wife to a lady from one of his forbidden connections, such as his mother or a brother. In today's world, a man would compare his wife to his mother or sibling. After such a comparison, the husband chooses to live separately from his wife for four months. Zihar is finished when the time deadline expires. After the fourth month has passed, the wife gets the following rights:

- (i) She might seek a judicial divorce declaration from the court.
- (ii) She can ask the court to issue restitution of nuptial rights decree.

The wife cannot seek judicial divorce if the husband seeks to rescind Zihar by continuing cohabitation within the specified term. The following circumstances can revoke it:

- (i) For two months, the husband maintains a fast, or



(ii) He feeds at least sixty individuals, or

(iii) He releases a slave.

Zihar must be done in the presence of two observers, according to Shi'a law.

### **Divorce by mutual Agreement:**

**Khul'a:** In Islam, a woman has the right to separate or divorce from her spouse. In non-Islamic regions, a Muslim woman can petition a Qadi (judge) or an Islamic community board to give her divorce if her spouse refuses to divorce her. Three menstrual cycles or three months, if she is post-menopausal (that is, she has ceased menstruating), is the wailing time (iddah) for a woman seeking a divorce. This is to make assured she isn't expecting a child. If the lady is expecting a child, the waiting phase begins when she becomes pregnant.

In contrast to men, women's right to launch divorce is firmly limited. A wife may be granted divorce for two reasons, according to sharia law:

When she can show that her husband did not have sexual relations with her for more than three months, or when she can show that her husband does not provide her with life necessities, such as food and shelter. Unlike men, women confront the legal and economic barriers to divorce, who have the legal right to do so. The lady is frequently obliged to return her dower and marital debts. She must generally relinquish custody if the child is older than seven years. Even if she is allowed custody of the child, she must hand it up to the father when the child is seven years old.

### **Divorce by Wife:**

The divorce by the wife can be categorized under these categories:

(i) *Talaaq-e-tafweed*

(ii) *Li'an*

**TALAAQ-E-TAFWEED:** Both the Shias and the Sunnis recognize talaaq-it-tafweed or delegated divorce. The Muslim spouse has the option of charging his power of divorce to his wife or anyone else. He can delegate authority unconditionally or conditionally, for a limited time, or indefinitely. A permanent delegation of power, but not a temporary panel, can be revoked. This authorization must be made (clearly in favor of the person to whom the power is assigned) and explicitly express the delegation's objective. As Faizee points out, "this sort of delegated divorce is possibly the most formidable weapon in the hands of a Muslim wife to acquire independence without the intervention of any court and is now coming to be very prevalent in India." Prenuptial agreements frequently specify this type of delegated divorce. Even post-marriage arrangements might delegate the authority to divorce. As a result, an agreement that states that if her spouse fails to pay her support or marries a second woman, she has the right to divorce herself is valid. Such requirements are reasonable and do not violate public policy. It should be underlined that whether or not the power is to be employed in the case

of a contingency is up to the wife; she may prefer to apply it or not. Divorce does not always follow the occurrence of a contingency event.

### **Li'an**

Character slaying occurs when a man falsely accuses his wife of unchastity or adultery, and the wife has the right to divorce on those grounds. Li'an is the name for this type of divorce. However, it is only the husband's deliberate and proactive claim of adultery that, if proven to be false, entitles the wife to obtain a divorce decision on the grounds of li'an. When a wife's terrible behavior hurts her husband's feelings and causes him to accuse her of infidelity, nothing the husband says in reaction to the wife's bad behavior can be used as a false charge of adultery; no divorce is granted under li'an. According to Qur'anic teachings, the husband must "swear four times" in this type of divorce. Let's say a man charges a woman who isn't a relative of being his mistress. In that case, he must prove it with four eyewitnesses or face the penalty of qazf (false accusation), which entails being lashed with eighty strokes. There are three circumstances of Li'an:

- It is necessary to maintain the status of the marriage between the spouses.
- The marriage contract should be legally binding. Mula'ana, for example, is not used if there were no witnesses to the marriage.
- The husband must be willing to testify and must not have received qazf punishment ( false allegation).

### **Mahr in Divorce:**

Mahr is a consented monetary compensation for the lady that the husband must give before the act of intercourse occurs in Shia Islam. Several younger women have agreed to marry for substantial sums of money to divorce for a profit in recent years rapidly. Islamic jurisprudence provides specific counsel in different situations depending on who requests the divorce and whether the wife is still a virgin. If the husband seeks a divorce after the wife has had intercourse, he must pay foil mahr; if the husband desires a divorce while still a virgin, he must pay half the dowry. Further, if the wife demands a divorce while she is not a virgin, the husband must pay half the mahr; and if the wife requests a divorce while she is still a virgin, the husband must pay no mahr. Other financial responsibilities may arise, depending on the length of the marriage, the number of children and their ages, and the property they own together.

If the husband seeks a divorce after the wife has had intercourse, he must pay foil mahr; if the husband desires a divorce while still a virgin, he must pay half the dowry. Furthermore, if the woman seeks a divorce when she is not a virgin, the husband must pay half the mahr; if the wife seeks a divorce while still a virgin, the husband is not required to pay any mahr. Other financial responsibilities may arise, depending on the length of the marriage, the number of children and their ages, and the property they own together.

## **Other Financial Obligations in Divorce:**

Depending on the duration of the marriage, whether or not there was intercourse, whether or not harmed children, and both husband and wife's income levels, the husband may be required to provide monthly maintenance help for the children's well-being. Unlike American law, which requires the couple to divide assets acquired during the marriage, Islamic law mandates that the wife receive a portion of the husband's assets upon divorce (Bani, Pate, 2015).

## **Muslim Divorce: Procedure and Practice**

It's a prevalent misconception that 'Divorce under Islamic Law' is exceptionally lenient. However, a careful examination of the divorce procedure reveals that divorce is strictly prohibited in Islamic Law and should only be used in extreme circumstances. Without a doubt, a Muslim husband can divorce his wife unilaterally and without the court's intervention under all schools of Islamic law. Furthermore, such power is not required to be included in the marital contract; instead, the husband gets it from the legislation itself. This unilateral and extrajudicial power has been given to the husband with firm expectations. First and foremost, he will not use it unless necessary, and that if he does, he will use it with a sense of justice and rationality, which are the basic demands of Islam from every God-fearing person. It never intended to give either the husband or the wife unrestricted or arbitrary control (Mahmood, 1980).

Muslim law recognizes Talaqal-Sunna, which is based only on the Quran. No doubt, the Prophet and all the Caliphs have denounced Talaq-ul-Biddat from time to time. Tahir Mahmood is correct in stating that the rules of divorce in Islamic Law are fundamentally and essentially dissuasive, with the primary goal of preventing the husband from exercising his power without thorough and calm contemplation. The following are the rules for obtaining a divorce under Islamic Law:

Two judges must be selected, one from the husband's family and the other from the wife's family, and every attempt must be made to reconcile them. When a husband decides to divorce his wife, he must keep in mind that once the divorce is finalized, he will not be able to remarry his divorced wife. During her menstrual time, the husband should not divorce his wife. When his wife is free of menstruation, a husband who has decided to divorce his wife and believes there is no hope of reconciliation should announce talaq. Then he should wait until his wife's second menstrual cycle is through and make another proclamation when she is free of her third menstrual period. Only after the third proclamation is the divorce finalized.

At the moment of divorce, the husband must pay the unpaid dower to his wife. The divorcee is entitled to her support until she remarries. The divorcee is entitled to all presents she receives from her husband's family or her own family at the time of marriage or before marriage.

These laws are in place to ensure that Muslim marriages are only dissolved in extraordinary circumstances (Mehrajuddin, 1985).

## Conclusion & Suggestions

To summarise, Islam prohibits the use of divorce as a kind of mockery by either the husband or the wife, and it takes particular precautions to protect the wellbeing of wives. Justice Krishna Iyer, a former Supreme Court justice, stated, "A thorough study of the matter reveals a surprisingly sensible, practical, and modern law of divorce. A few inaccuracies appear to have seeped into the administration of justice in British India, including judgments of the Privy Council, which declared a Muslim husband's ability to divorce his wife on the spur of the moment.

Ill-educated moulvis who had previously served their clients with a poor grasp of the Quran of divorce gave credence to such misguided notions. The actual Islamic divorce law aligns with the divorce breakdown idea that there are no marital offenses mentioned in the Quran. The Prophet of Islam did not prohibit matrimonial relief. The Islamic lawgiver did not want the matter to go to court unless it became inevitable for a wife due to the long-standing male domination. The Prophet categorically declared divorce *abghad al mubah* at 91 and cautioned his people to avoid it. "Do not enter into a marriage that you will not be able to terminate. God despises men and women who switch partners in bed for pleasure." Prophet never divorced any of his wives, despite occasional provocation, to set an example. The rule of divorce derived from the teachings of the Prophet cannot thus provide arbitrariness in the dissolution of marital bonds either for a man or woman. Specific requirements imposed on the exercise of power by the husband have been stipulated by Muslim law schools that recognize the legality of *talaq* without the intervention of a court. In the interest of Muslim women, these conditions have been imposed (Ahmad, 2003).

As a result, the moral law holds that intention is a requirement for the validity of a *talaq*. *Talaq* cannot be declared genuine in the absence of intent, even if it was pronounced expressly. Courts have ruled that *talaq* said under false belief is lawful, as is a divorce pronounced under duress, in prank or omission, or by a simple slip of the tongue, both of which violate Islamic divorce law. The ultimate test of a law's soundness is whether it ensures maximum welfare and prosperity for the society it rules. Alama Shibli Numani, Mufti Kifayatullah, Maulana Ashraf Ali Thanavi, Maulana Hussain, Ahmad Madani, and Maulana Abdul Hai, Muslim scholars and jurists in India in the early twentieth century, were profound thinkers and fully conversant with the actual law of Islam. They made significant contributions to the development of Muslim rule in the country. Their tireless efforts will guide light in resolving the current debate over the status of Muslim personal law in India.

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