

Book No.....16.....

Page No.....18.....



The Dissolution of Muslim Marriages Act, 1939

[Act 8 of 1939]

[17th March, 1939]

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie

Whereas it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie;

It is hereby enacted as follows:

Statement of Objects and Reasons.—There is no proviso in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi Jurists however, have clearly laid down that in cases in which the application of Hanafi Law causes hardship, it is permissible to apply the provisions of the Maliki, Shaft's or Hambali Law. Acting on this principle the Ulemas have issued fatwas to the effect that in cases enumerated in clause 3, Part A of this Bill [now see Section 2 of the Act], a married Muslim woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called "Heelatur Najeza" published by Maulana Ashraf Ali Sahib who has made an exhaustive study of the provisions of Maliki Law which under the circumstances prevailing in India may be applied to such cases. This has been approved by a large number of Ulemas who have put their seals of approval on the book.

As the Courts are sure to hesitate to apply the Maliki Law to the case of a Muslim woman, legislation recognising and enforcing the above mentioned principle is called for in order to relieve the sufferings of countless Muslim women.

* * *

One more point remains in connection with the dissolution of marriages. It is this. The Courts in British India have held in a number of cases that the apostasy of a married Muslim woman ipso facto dissolves her marriage. This view has been repeatedly challenged at the bar, but the Courts continue to stick to precedents created by rulings based on an erroneous view of the Muslim Law. The Ulemas have issued Fatwas supporting non-dissolution of marriage by reason of wife's apostasy. The Muslim community has, again and again, given expression to its supreme dissatisfaction with the view held by the Courts. Any number of articles have been appearing in the press demanding legislation to rectify the mistake committed by the Courts; hence clause 5 [now see Section 4] is proposed to be incorporated in this Bill.

Thus, by this Bill the whole Law relating to dissolution of marriages is brought at one place and consolidated in the hope that it would supply a very long felt want of the Muslim Community in India.

1. Short title and extent.—(1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of India ¹[* * *].

STATE AMENDMENT

PONDICHERRY.—In Section 1, after sub-section (2), *add*:

“Provided that nothing contained in this Act shall apply to Renoncants of the Union Territory of Pondicherry.”—[*Vide* Act 26 of 1968, S. 3(1) and Sch.].

CASE LAW ► Applicability.—The Act enabled Muslim women of all sects to seek dissolution of marriage by a decree of the court under the various grounds enumerated in Section 2. The 1939 Act introduced a very salutary principle into Muslim law as it is administered in India. This is the principle of applying beneficial provisions of one school to adherents of other schools as well, *Masroor Ahmed v. State (NCT of Delhi)*, 2007 SCC OnLine Del 1357.

2. Grounds for decree for dissolution of marriage.—A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from ²[* * *] a virulent venereal disease;
- (vii) that 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;
- (viii) that the husband treats her with cruelty, that is to say,—
 - (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical illtreatment, or
 - (b) associates with women of evil repute or leads an infamous life, or
 - (c) attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or

1. The words “except the State of Jammu and Kashmir” *omitted* by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

2. The words “leprosy or” *omitted* by Act 6 of 2019, S. 3 (w.e.f. 1-3-2019).

- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that —

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) 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; and
- (c) before passing a decree on ground (v) 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.

CASE LAW ▶ Solemnization of Marriage.—Marriage solemnised under a particular statute and according to one personal law cannot be dissolved according to another personal law on conversion of one of the parties to that religion, *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569.

▶ **Dissolution of Marriage.**—Consummation of marriage prior to wife attaining age of 15 years does not disentitle her to obtain decree for dissolution of marriage, *Akila v. Shafi Mohammed*, 1992 SCC OnLine MP 169.

A wife, who by her own act or conduct disentitles herself from maintenance, cannot be allowed to take advantage of her own conduct and claim dissolution of marriage, *Ahmed Abdul Qadeer v. Raffat Banu*, 1978 SCC OnLine AP 66.

The right of a Muslim girl married by a guardian other than her father or grand-father, before having attained puberty, was transformed, under Section 2 (vii) of the Act into a ground, on which a Muslim woman could obtain a decree for dissolution of her marriage, by institution of a suit for that relief, *Javed Hussain v. Khatiza Begum*, 1983 SCC OnLine All 400.

▶ **Limitation/Delay/Laches.**—The period mentioned in Section 2 (ii) & (iv) has to be counted going back to a point of time on and from the date of filing of a petition, *Kalim Uz-Zafar Shaikh Hasan v. Razia Kalim Shaikh*, 1999 SCC OnLine Bom 570.

▶ **Decree of dissolution of marriage.**—It is not necessary for a Muslim lady to obtain a decree for dissolution of her marriage after she exercises her option of puberty (Khyar-ul-Bulugh) upon attaining the age of puberty, i.e 15 years. If the factum of such revocation is proved before trial court even by oral evidence then it is sufficient satisfaction of requirement of Section 2 of the Act, *Khatiza Tul Qubra v. Iqbal Mohd.*, 2009 SCC OnLine Raj 271.

In the absence of any mechanism in the country to recognize the termination of marriage at the instance of the Muslim wife, when the husband refuses to give consent, then khula can be invoked without the conjunction of the husband, *X v. Y*, 2022 SCC OnLine Ker 5512.

► **Mode of effectuation of Divorce.**—If talaqnama drawn up and signed by parties bringing their marriage to an end during pendency of divorce petition then decree of divorce issued under petition is void as petition seeking divorce had already become infructuous because of talaqnama, *Nizamuddin Ibrahim Saheb Gabbur v. Rubina Nizamuddin Gabbur*, 1999 SCC OnLine Bom 528.

► **Ground for dissolution of marriage.**—Standard of proof in matrimonial disputes alleging cruelty as a ground for grant of decree of divorce, the court must be satisfied on a preponderance of probability that the ground set out is proved. Corroboration of the evidence of a spouse is not a matter of law but a rule of prudence adopted by the court, *A v. B*, 2012 SCC OnLine Raj 3721.

► **Rights on Divorce.**—Muslim lady divorced on the basis of “Talaqnama” is not required to produce any decree of the court as she has been divorced as per procedure prescribed in Shariat. Her case is required to be considered in the category of divorced woman. In case of any doubt, declaration under Section 34 of the Specific Relief Act can be obtained from the court, *Seema Nasib v. State of Rajasthan*, 2008 SCC OnLine Raj 182.

► **Mahr.**—Divorced woman is entitled to an amount equal to sum of “Mahr” or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim Law. The “divorced woman” under Section 2(a) to mean a Muslim woman who was married according to Muslim law and has been divorced by or has obtained divorce from her husband in accordance with Muslim law, entitled for the decree in respect of “Mahr” amount, *Appellant A (Husband) v. Respondent B (Wife)*, 2012 SCC OnLine Raj 3721.

► **Jurisdiction of Family Court.**—While it is open for a Muslim woman to exercise her inalienable rights to dissolve the marriage by Khula recognised under the Muslim Personal Law (Shariat) Application Act, 1937 by approaching a Family Court, it cannot be before Shariat Council, *Mohd. Rafi v. State of T.N.*, 2023 SCC OnLine Mad 471.

3. Notice to be served on heirs of the husband, when the husband’s whereabouts are not known.—In a suit to which clause (i) of Section 2 applies—

- (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
- (b) notice of the suit shall be served on such persons, and
- (c) such persons shall have the right to be heard in the suit:

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith.—The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in Section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

CASE LAW ▶ Apostasy.—Muslim marriage does not subsist after a Muslim becomes an apostate, *Krishna Das Choudhury v. Parbin Rahman Hazarika*, 2015 SCC OnLine Gau 474.

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.

6. Repeal of Section 5 of Act 26 of 1937.—³[* * *]

3. *Omitted* by the Repealing and Amending Act, 1942 (25 of 1942), S. 2 and Sch. I. Prior to omission it read as:

“6. *Repeal of Section 5 of Act 26 of 1937.*—Section 5 of the Muslim Personal Law (Shariat) Application Act, 1937, is hereby repealed.”

