

The Dissolution of Muslim Marriages Act, 1939

[Act No. 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 suit 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:

Law

CASE NOTES

The relevant portion of the statement of Objects and Reasons of the Act of 1939, which may be extracted thus:

“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, Shafii 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.

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

Before the enactment of the Act of 1939 a woman under pure Mahomedan law had no right to get a decree for divorce from the husband if he refused to divorce her. This was unboubtedly the fundamental concept of divorce as laid down by the Mahomedan law.

As, however, some of the Muslim Jurists and Theologists were of the view that where a husband becomes important or disappears for a large number of years or treats his wife with great cruelty, the wife should have some right to approach the Qazi for dissolving the marriage.

Relying on these authorities the legislature intervened and passed the Dissolution of Muslim Marriages Act, 1939 under which the wife was conferred a legal right to move the civil court for a decree for dissolution of marriage on the grounds specified in s. 2 of the Act of 1939.

[*Mst. Zohara Khatoon vs Mohd. Ibrahim*, AIR 1981 SC 1243, 1981 SCR (2) 910]

Under strict Hanafi Law, there was no provision enabling a Muslim women to obtain a decree dissolving her marriage on the failure of the husband to maintain her or on his deserting her or maltreating her and it was the absence of such a provision entailing 'inspeakable misery in innumerable Muslim women' that was responsible for the dissolution of the Muslims Marriages Act, 1939. (*See Statements of Objects and Reasons of that Act*).

If the legislature could so alter the Hanafi Law, we fail to understand the hallabalcoo about the recent judgment of this court in the case of *Mohd. Ahmed Khan v. Shah Bano Begum & Ors.* interpreting the provisions of sec. 125 of the Criminal Procedure Code and the Muslim Law.

It is also necessary to add that Mohammedan Law provides for a decree for divorce known as Khula and mubara' at by agreement of parties. It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform.

Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irrevocable break down of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied.

There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage

and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have find themselves in.

We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take. [*Jordan Diengdeh v. S.S. Chopra*, AIR 1985 SC 935 : 1985 SCR Supl. (1) 704]

The above Act applies to Muslim women married under Muslim Law. Section 2 of the Act lays down the grounds on which a muslim wife may seek a divorce. Such grounds takes in cruelty and desertion as independent grounds among several other grounds. It is relevant to note in this connection that there was no provision enabling a Muslim woman to obtain a decree dissolving her marriage on the failure of the husband to maintain her on his deserting her or maltreating her and it was the absence of such a provision entailing 'inspeakable misery in nnumerable Muslim women' that was responsible for the Dissolution of Muslim Marriage Act, 1939 (See statement of objects and reasons). [*Mary Sonia Zachariah v. Union Of India, II (1995) DMC 27*]

1. Short title and extent

(1) This Act may be called the Dissolution of Muslim Marriage Act, 1939.

(2) It extends to the whole of India ²[except the State of Jammu and Kashmir].

STATE AMENDMENT

Pondicherry.—In section 1, after sub-section (2), add the following:—

“Provided that nothing contained in this Act shall apply to Renoncants of the Union territory of Pondicherry”, vide the Pondicherry (Extension of Laws) Act, 1968, sec. 3 and Sch.

1. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for “Part B States”.
2. Subs. by Act 48 of 1959 sec. 3 and Sch. I, for certain words (w.e.f. 1-2-1960).

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 leprosy or 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 ill-treatment, 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

(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 Quran;

(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.

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 be 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.

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

Repealed by the Repealing and Amending Act, 1942 (25 of 1942) Sec. 2 and Sch. I.

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