LAW RELATING TO

MUSLIM MARRIAGES

With Special Emphasis on

"TRIPLE TALAQ"

Video Lecture

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Who is 'Muslim'?

- Any person who professes the religion of Islam.
- Any person who accepts **the unity of God (Allah)** and prophetic character of **Mohammed (saaw).**

……..According to Amir Ali

For the purpose of the application of Muslim Law, Muslims may be categorized under the following two heads namely….

1. **Muslim by origin**
2. **Muslim by conversion**
    i. Convert by profession of Islam
    ii. Convert by formal ceremonies

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Marriage

- 'Marriage is a socially acknowledged and sometimes legally ratified union between an adult male and adult female". -According to Collins Dictionary of Sociology.
- Malinowski defines "marriage is a contract for the production and maintenance of children".
- **Mulla** defined Nikhah (marriage) as "a contract, which has for its object, the procreation and legalizing of children".
- "Nikhah is a carnal conjucation, in its primitive sence"....**Hedaya**
- **Objects of Marriage**
  - Restraint of sexual intercourse
  - Regulation of domestic life
  - Increase of family
  - Legitimate children
  - Care and responsibility of own wife and children

Men marry women for their piety or their property or beauty but you should for piety.
Prophet Mohammed (pbuh).

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Essentials of Muslim Marriage

In a Muslim Marriage (Nikhah), no ceremony is compulsory.

The following conditions are the essentials of a Valid Muslim Marriage…

- **Proposal** (Ijab) and **Acceptance** (Qubul)
- **Presence in One Meeting**
- **Capacity of Parties** (Sound-mind & Puberty) /**Guardianship**
- **Free Consent**
- **Mehr** or Dower
- **No Prohibition**

Guardianship is the legal authority due to which a person can contract a **minor or mentally handicapped person** into marriage, without their consent.

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Mehr or Dower

- Mehr is a consideration provided by a man to his wife at the time of marriage.

OBJECT OF MEHR

- To provide a livelihood to the wife and children in the event of divorce.

FEATURES

- It may be a sum of **money or other property**.
- The amount of **Mehr** may be fixed and paid either
  - ***before marriage, or***
  - ***at the time of marriage, or***
  - ***after marriage***
- The wife is **competent to relinquish** her dower provided (if she has attained puberty at the time of relinquishment).
- It can be **increased** after the marriage.

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KINDS OF MEHR

Mehr-i-Musamma (Specified Dower)

1. **Muajjal Mehr (Prompt Dower)**
2. **Muwajjal Mehr (Deferred Dower)**

Muajjal Mehr:
It is the portion of dower, which is payable on demand. The prompt dower may be realized by the wife before or after consumption. In India, the wife has a right to refuse to live with her husband, till her prompt dower is paid.

Muwajjal Mehr:
The portion of dower, which is payable at the time dissolution of the marriage of marriage of woman is called deferred dower. Dissolution may be by the death of husband or by divorce. If it is not paid, wife or her legal successor can sue for it.

Mehr-i-Misl (Proper Dower/Customary Dower)

Mehr-i-Musamma:
When amount of Mehr is fixed and specified in document of marriage, then it is known as Mehr-i-Musamma.

Mehr-i-Misl:
When the amount of Mehr is not specified then proper dower is provided. Demand of proper dower depends upon wife. It is based on….

- ✓ Age of wife
- ✓ Beauty of the wife
- ✓ Family status
- ✓ Mehr provided to other members of family
- ✓ Social position of parental family
- ✓ Economic position of husband

Mehr or Dower

Maximum and Minimum Mehr

- In Sunni there is **no limit for Maximum Mehr** but it should not be less than **10 Dirhams** in Hanfi and **3 dirhams** in Maliki Schools.

Rights and Remedies of Wife on non-payment of Mehr

Muslim wife has these rights……

- A muslim woman may refuse to live with husband and to cohabit with him for non-payment of prompt dower.
- Right to take possession on his property in payment of Mehr.
- Mehr is a debt.

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PROHIBITION

Absolute Prohibition

1. Consanguinity (Qurabat)
2. Affinity (Musharat)
3. Fosterage (Riza)

Relative Prohibition

1. Marriage with fifth woman
2. Unlawful Conjunction
3. Marriage during Iddat
4. Absence of Witnesses
5. Difference of Religion
   - Incase of Woman
   - Incase of Man

Directory Prohibition

1. Marriage with pregnant woman
2. Remarriage with a divorce
3. Marriage during pilgrimage
4. Marriage with sick man

Polyandry

A married woman cannot contract a second marriage during the existence of the first marriage. (Sec-494 of IPC)
Offspring of such marriage - illegitimate

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PROHIBITION

- **Absolute Prohibition**
  1. Consanguinity (Qurabat)
  2. Affinity (Musharat)
  3. Fosterage (Riza)
- **Relative Prohibition**
- **Directory Prohibition**
- **Polyandry**

1. Consanguinity (Qurabat)

- X Mother and son
- X Grandmother (how high so ever) and grandson (how low so ever)
- X Brother and sister
- X Uncle and niece (how low so ever)
- X Nephew and aunt (how high so ever)

2. Affinity (Musharat)

A man should not marry……

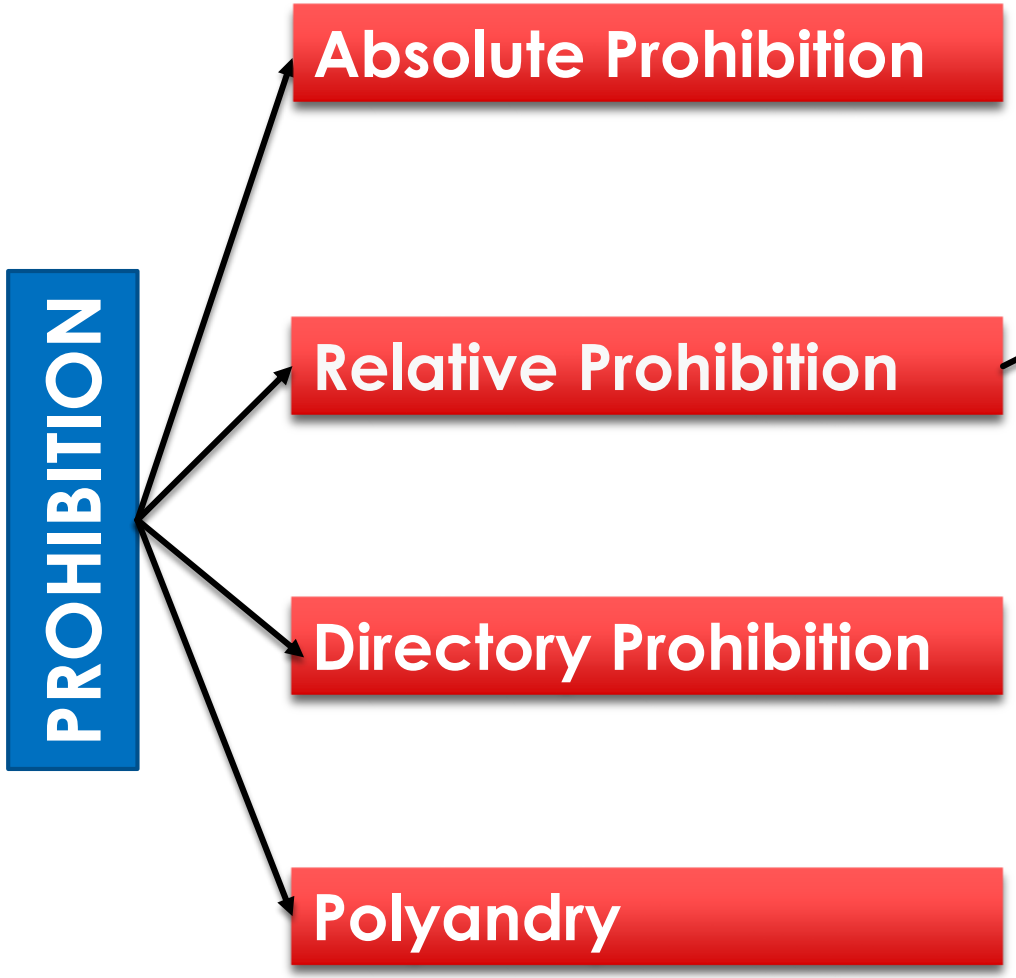
- X Wife's mother or grandmother (how high so ever)
- X Wife's daughter or granddaughter (how low so ever)
- X Wife of father or paternal ancestor
- X Wife of son or son's son or daughter's son (how low so ever)

3. Fosterage (Riza)

Same relation as consanguinity…..

- X If a woman suckles the child of another, foster relationship will be created.

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- Muslim Law permits polygamy upto **four wives.**

1. **Marriage with fifth woman**
2. **Unlawful Conjunction**
3. **Marriage during Iddat**
4. **Absence of Witnesses (2-M or 1-M & 2-W)**
5. **Difference of Religion**

- A Muslim is **forbidden to have two wives** at the same time so related to each other by consanguinity, affinity, and fosterage.
- Such marriage is **invalid** but the children born of them are **legitimate.**

- A **Muslim female** cannot marry a non-muslim, whether he is a Kitabi – Invalid – Valid – if he converts to Islam.
- A **Muslim male** can validly marry a Katabia.
- Marriage with idolatress or fire worshipper – invalid - Valid – if she converts to Islam.

- **Iddat** means a period during which **a wife must wait** after the dissolution of her marriage before she can marry again.
- Simply, it is **a period of waiting for remarriage.**
- Such marriage is **invalid** but not void.

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PROHIBITION

Absolute Prohibition

- It is unlawful to marry a woman who is pregnant **by former husband.**
- If **he himself** has caused pregnancy before marriage, he can marry her.

Relative Prohibition

- Where a marriage has been dissolved by the divorce, **re-union is prohibited.**
- Remarriage is valid only after consummating a new marriage with another and **after pronouncing divorce / death of that another spouse.**

Directory Prohibition

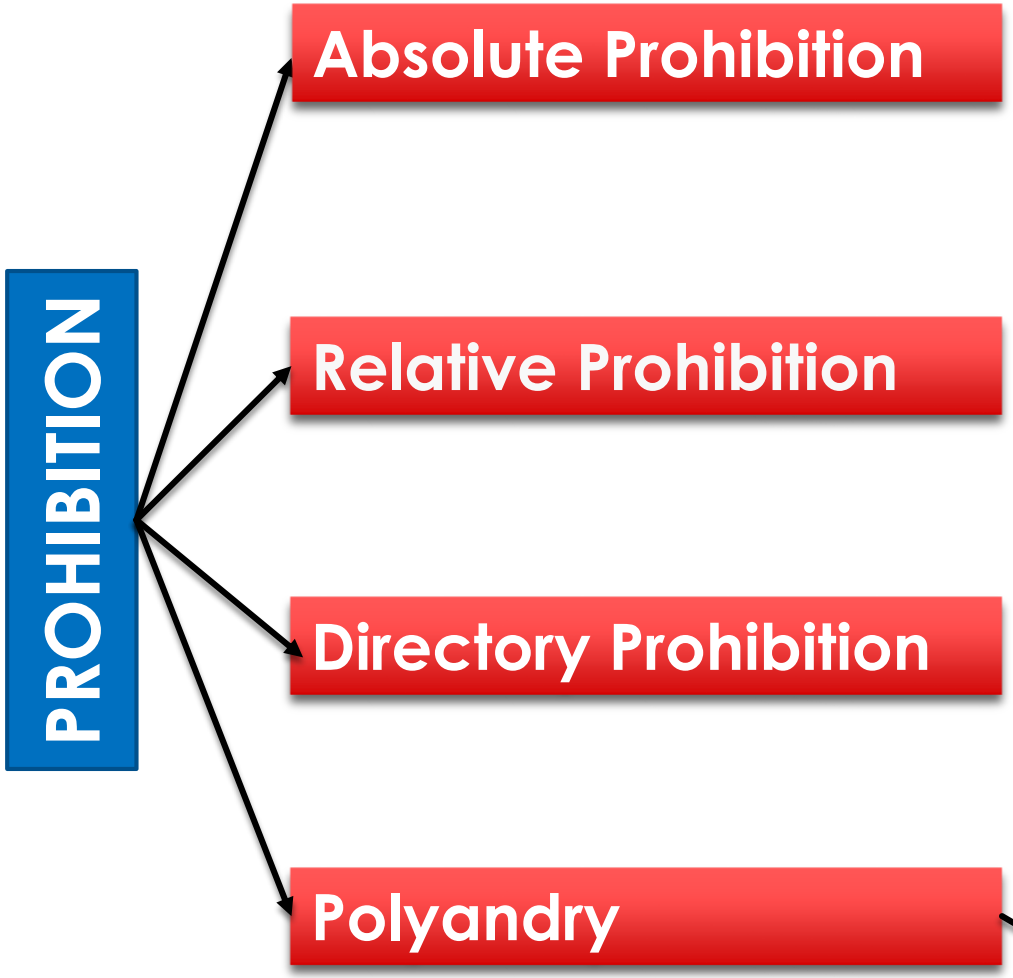
1. **Marriage with pregnant woman**
2. **Remarriage with a divorce**
3. **Marriage during pilgrimage**
4. **Marriage with sick man**

- If a marriage is contracted during pilgrimage to **the sacred precincts or Mecca.**
  - Hanfi School – perfectly legal
  - Hanbali School – Invalid
  - Shia School – absolute prohibition

Polyandry

- A marriage with a sick man of a fatal disease is **invalid**.
- If **he recovers** – valid

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A married woman cannot contract a second marriage during the existence of the first marriage. (Sec-494 of IPC)
Offspring of such marriage - illegitimate

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Why Muslim Marriage is a Civil Contract?

- The essentials of a civil contract are… PROPOSAL, ACCEPTANCE, CONSIDERATION, FREE CONSENT & LAWFUL OBJECT.
- Similarly, essentials of Muslim marriage are…
  - IJAB (Proposal)
  - QUBUL (Acceptance)
  - DOWER (Consideration)
  - As civil contract 'Free Consent' and 'Majority' (competency of the parties) are also essential for marriage.

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Kinds of Muslim Marriages

1. **Sahih or Valid Marriage**
2. **Batil or Void Marriage**
3. **Fasid or Invalid or Irregular Marriage**
4. **Muta Marriage**

Valid Marriage is the marriage, which confirms all legal requirements.

Void Marriage is the marriage, which has no legal results.

Invalid / Irregular Marriage is the marriage, which becomes valid after removing the incapacities.

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Results of a Void, Irregular and Valid Marriage

Valid Marriage

It creates these rights and duties between husband and wife.

- They become entitled to inherit one another
- Intercourse becomes legal
- Prohibited degrees created
- Wife becomes entitled to obtain Mehr

Void Marriage

No legal effect

Irregular marriage

Before Consummation

- No legal effect

After Consummation

- Iddat should be followed
- Woman is entitled to get Mehr
- Children should be legitimate.

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Iddat

- When a Muslim marriage is **dissolved** by death or divorce, the woman is **prohibited to remarry** for a specific period. This period is known as **"Iddat".**
- Simply, Iddat is a period between dissolution of one marriage to second marriage.
- The basic object of Iddat is **to confirm the parentage.**



- **Four months and 10 days**
- **Four months and 10 days or Till the delivery or miscarriage which is maximum**
- **If the woman is subject to menstruation – 3 courses**
- **If the woman is not subject to menstruation – 3 lunar months**
- **If the woman is pregnant – till the delivery or miscarriage, which is maximum.**
- **Before consummation – No Iddat**
- **After consummation - Iddat**

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Iddat

- The period of Iddat begins **from the date of the divorce or death of the husband** and not from the date on which the woman gets information of the divorce or of the death of the husband.
- Where the **husband dies in the period of Iddat** for a revocable divorce, the wife must observe **fresh Iddat for death.**
- **EFFECTS OF IDDAT**
  - ✓ The wife is not entitled to marry another person.
  - ✓ The wife is entitled to maintenance.
  - ✓ Husband cannot marry a fifth one, until the completion of Iddat of divorced wife.
  - ✓ A marriage performed during the period of Iddat is not void, but irregular.

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Presumptions of a Lawful Muslim Marriage (Proof of Muslim Marriage)

- A prolonged and continued cohabitation as husband and wife
- Acknowledgement (Khulasah) by the husband of the wife
- Acceptance of child (Iqrar)

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Differences between Muslim Marriage and Hindu Marriage

MUSLIM MARRIAGE (SUNNI)

- Conditions
  - Polygamy (male Muslim can marry upto four wives)
  - Capacity of Parties (Sound-mind &)
  - Age of the parties (Puberty)
  - Free Consent
  - Mehr or Dower
  - Parties are not within Prohibition
  - There is no concept of Sapinda Relationship
- Civil Contract
- Registration (Sir-Khazi)
- Marriage with a non-Muslim is possible
- Only husband can file application for Restitution of Conjugal Rights
- If a wife wants to get remarry, she should not consummate remarriage during the period of Iddat.
- Since - 7th Century AD
- Rights of females – in inheritance – males and females have equal rights. But the female gets half the male (Since - 7th Century AD)

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HINDU MARRIAGE

- Conditions
  - No Polygamy
  - Capacity of the Parties (Sound-mind)
  - Age of Parties (21y – m; 18y – f)
  - Free Consent
  - Dowry
  - Not within the Degrees of Prohibited Relationship
  - No Sapinda Relationship
- Sacramental Ceremony
- Registration(?)
- Marriage with a non-Hindu is not possible
- Both, wife & husband can file application for Restitution of Conjugal Rights
- After divorce, the party can remarry…
  - there is no right of appeal against the decree, or
  - if the time for appealing has expired
  - an appeal has been presented but has dismissed
- Since – 1955
- Equal rights to female in coparcenary property (Since 2005)

DISSOLUTION OF MUSLIM MARRIAGE



A valid marriage is dissolved or terminated at the death of husband or wife.

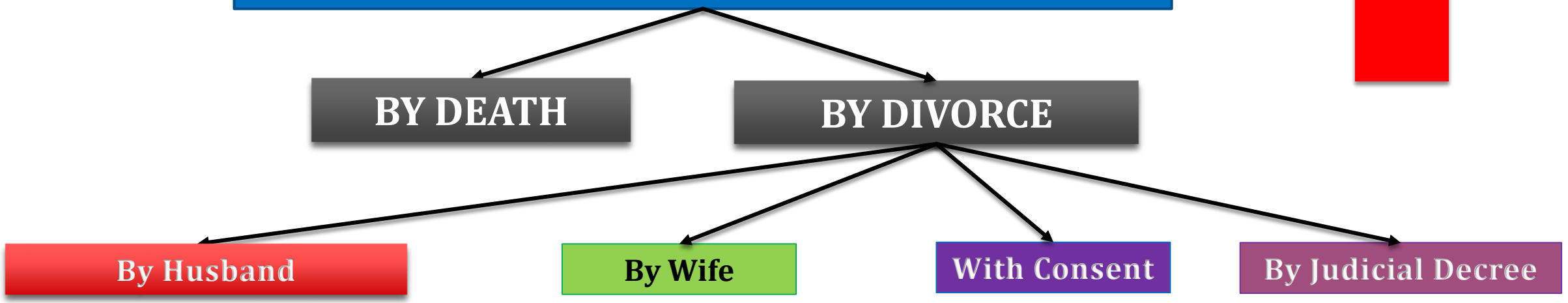
- If wife dies → husband is free to marry another woman immediately
- If husband dies → wife has to observe period of **Iddat**

  in case she is pregnant---until she delivers

  afterwards she can marry another man….

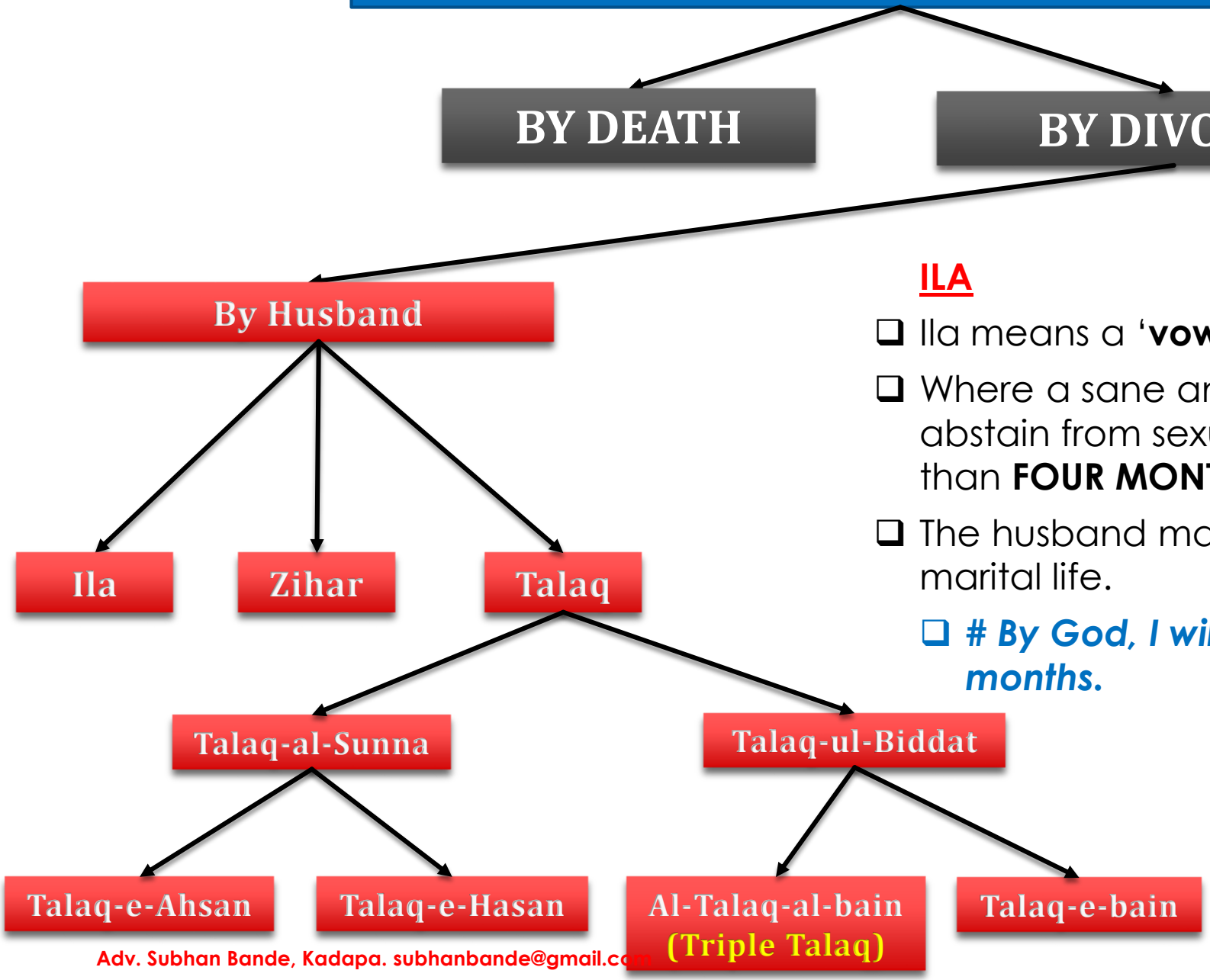
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DISSOLUTION OF MUSLIM MARRIAGE



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DISSOLUTION OF MUSLIM MARRIAGE

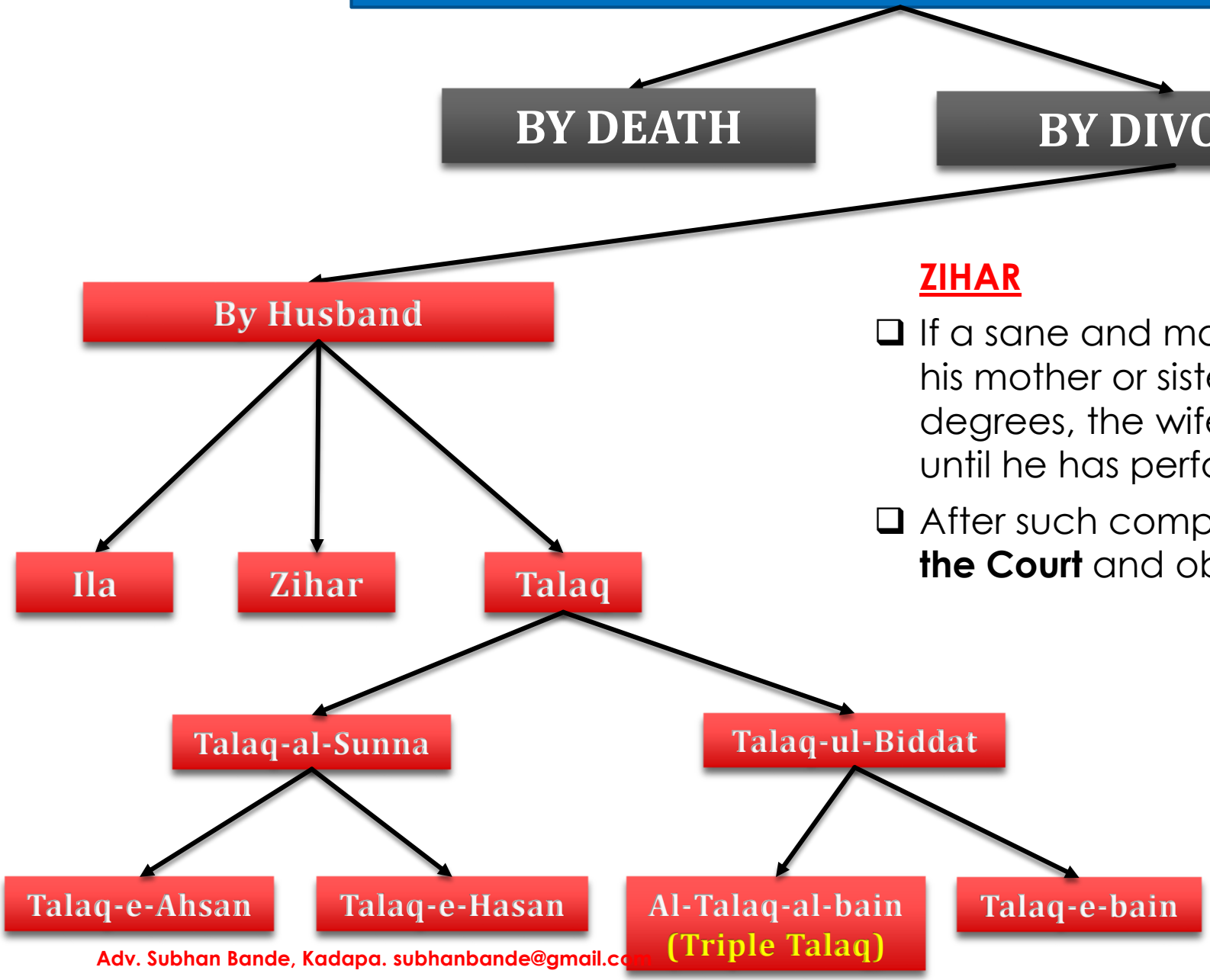


ILA

- Ila means a '**vow**' or '**oath**'.
- Where a sane and major husband takes an oath to abstain from sexual intercourse with wife for more than **FOUR MONTHS**, he makes an Ila.
- The husband may revoke the oath by resumption of marital life.
  - ***# By God, I will not cohabit with you for four months.***

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DISSOLUTION OF MUSLIM MARRIAGE

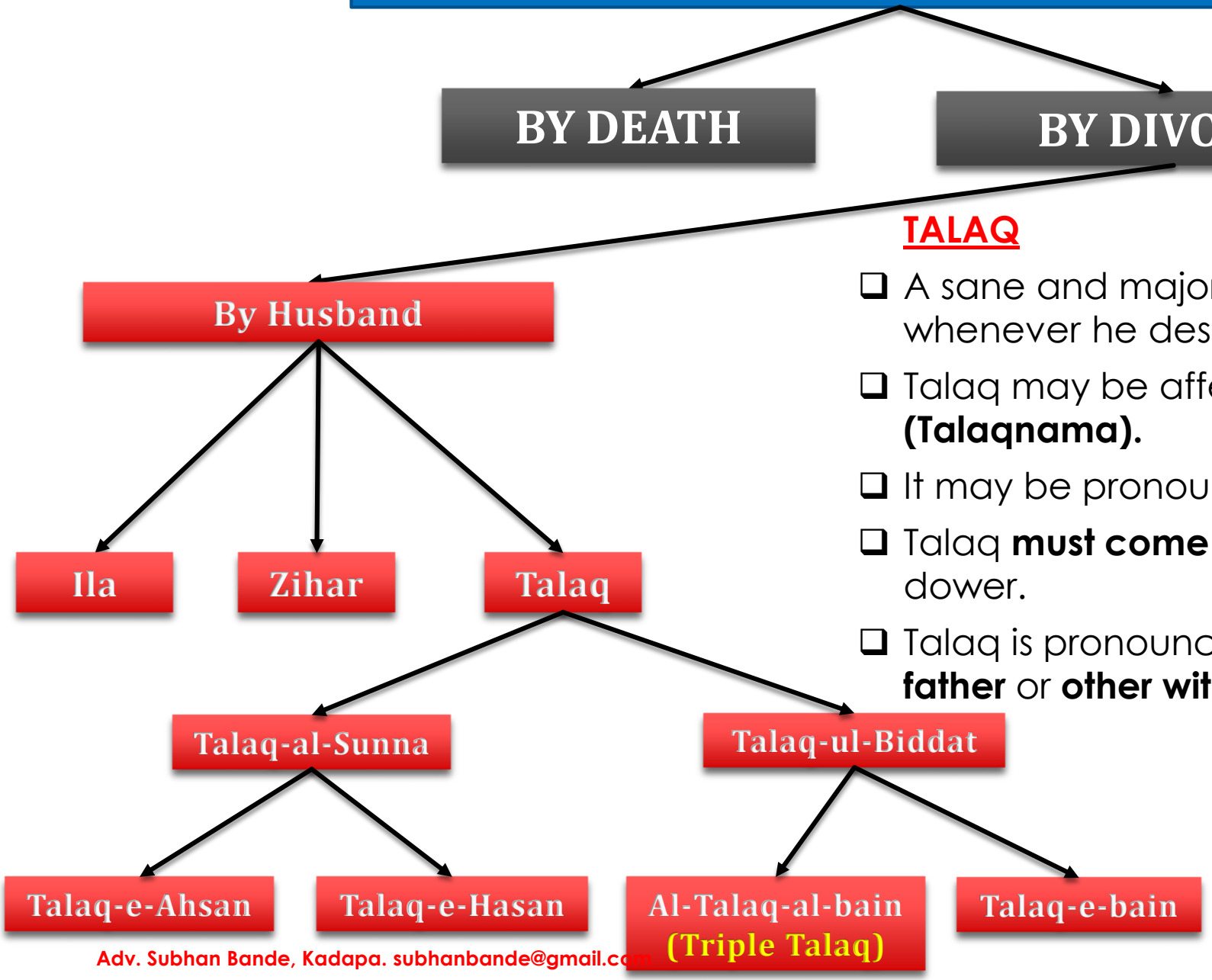


ZIHAR

- If a sane and major husband **compares his wife** to his mother or sister or any female within prohibited degrees, the wife has a right to refuse herself to him until he has performed penance.
- After such comparison, the **wife has a right to go to the Court** and obtain divorce.

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DISSOLUTION OF MUSLIM MARRIAGE

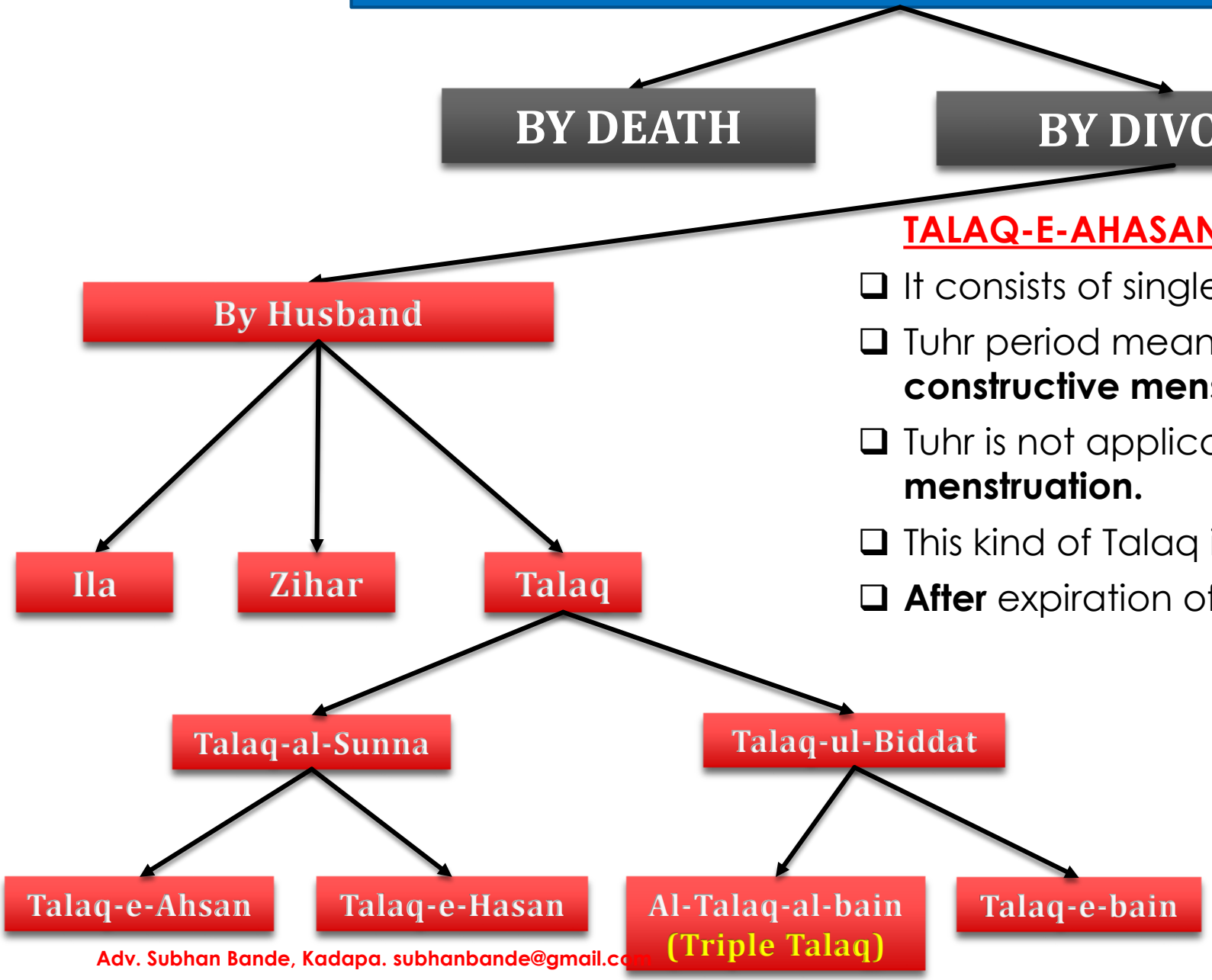


TALAQ

- A sane and major husband can divorce his wife, whenever he desires by pronouncing **"Talaq".**
- Talaq may be affected **orally**, or by **written** document **(Talaqnama).**
- It may be pronounced even **in wife's absence**.
- Talaq **must come to her knowledge** for the purpose of dower.
- Talaq is pronounced in the presence of **Khazi** or **the wife's father** or **other witnesses.**

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DISSOLUTION OF MUSLIM MARRIAGE

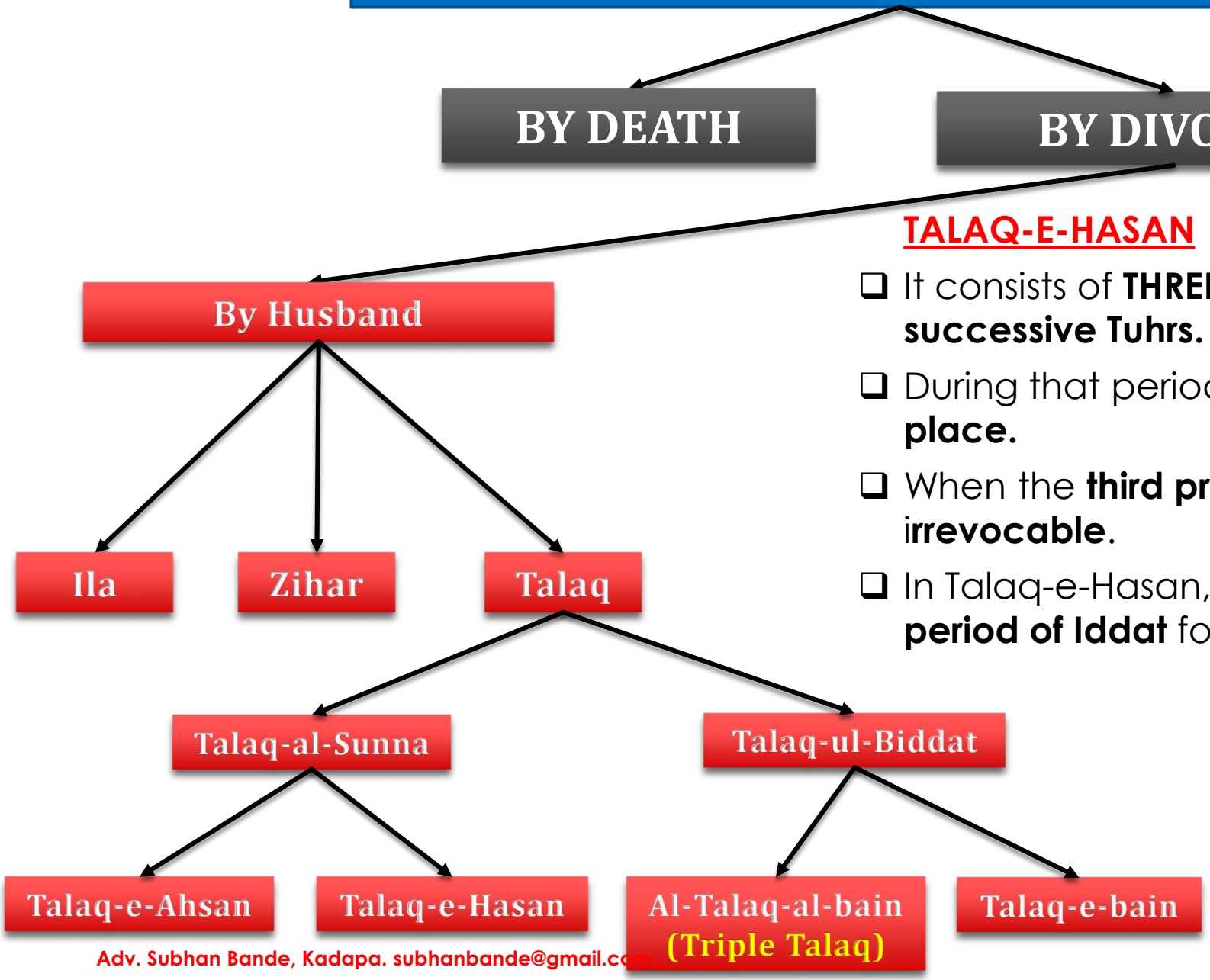


TALAQ-E-AHASAN

- It consists of single pronouncement during **'Tuhr'** period.
- Tuhr period means **a period of purity between two constructive menstruations.**
- Tuhr is not applicable if the wife has **passed the age of menstruation.**
- This kind of Talaq is **revocable during iddat period.**
- **After** expiration of **Iddat**, Talaq becomes **irrevocable.**

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DISSOLUTION OF MUSLIM MARRIAGE



TALAQ-E-HASAN

- It consists of **THREE** pronouncement of Talaq of **three successive Tuhrs.**
- During that period **sexual intercourse should not take place.**
- When the **third pronouncement** is made, Talaq becomes **irrevocable**.
- In Talaq-e-Hasan, it is **not necessary to wait for the whole period of Iddat** for the Talaq to become complete.

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DISSOLUTION OF MUSLIM MARRIAGE

- BY DEATH
- BY DIVORCE
  - By Husband
    - Ila
    - Zihar
    - Talaq
      - Talaq-al-Sunna
        - Talaq-e-Ahsan
        - Talaq-e-Hasan
      - Talaq-ul-Biddat
        - Al-Talaq-al-bain (Triple Talaq)
        - Talaq-e-bain

AL-TALAQ-AL-BAIN

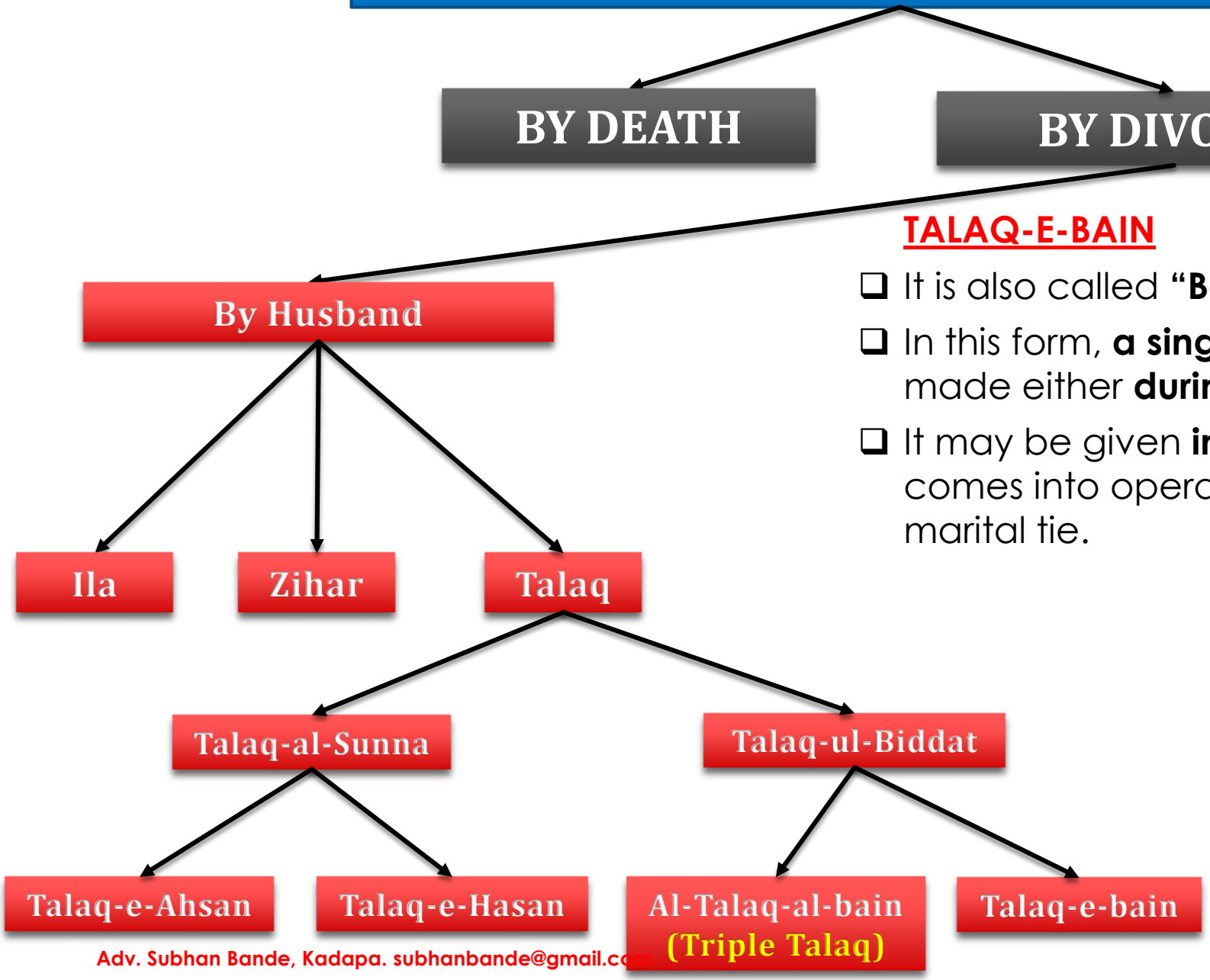
- It is also called **"Instant Triple Talaq".**
- In this form, **THREE pronouncements** are made **in a single Tuhr,** either in → **one sentence**
  or in **three sentences.**
- This form of Talaq was allowed by second Caliph of Islam, **Umar.**
- It becomes **irrevocable immediately.**

"I divorce you thrice."

"I divorce you, I divorce you, I divorce you."

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DISSOLUTION OF MUSLIM MARRIAGE

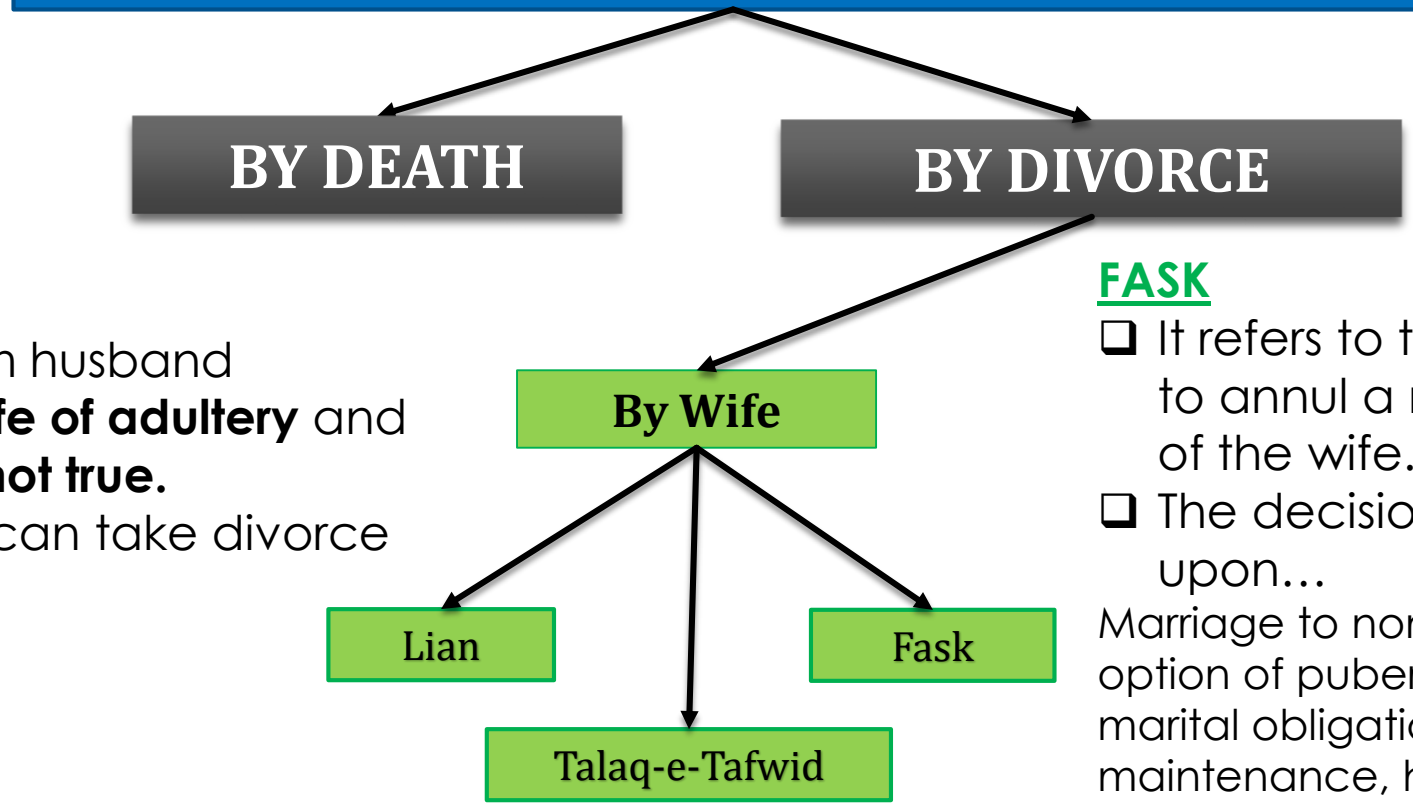


TALAQ-E-BAIN

- It is also called **"Bain Talaq".**
- In this form, **a single irrevocable pronouncement** is made either **during the period of Tuhr** or even **otherwise.**
- It may be given **in writing**. Such a '**bill of divorcement**' comes into operation **immediately** and breaks the marital tie.

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DISSOLUTION OF MUSLIM MARRIAGE



LIAN

- When a Muslim husband **charges his wife of adultery** and this charge is **not true.**
- Then the wife can take divorce **by Court.**

FASK

- It refers to the **power of the Muslim Qazi** to annul a marriage on the application of the wife.
- The decision of the Qazi is based upon…

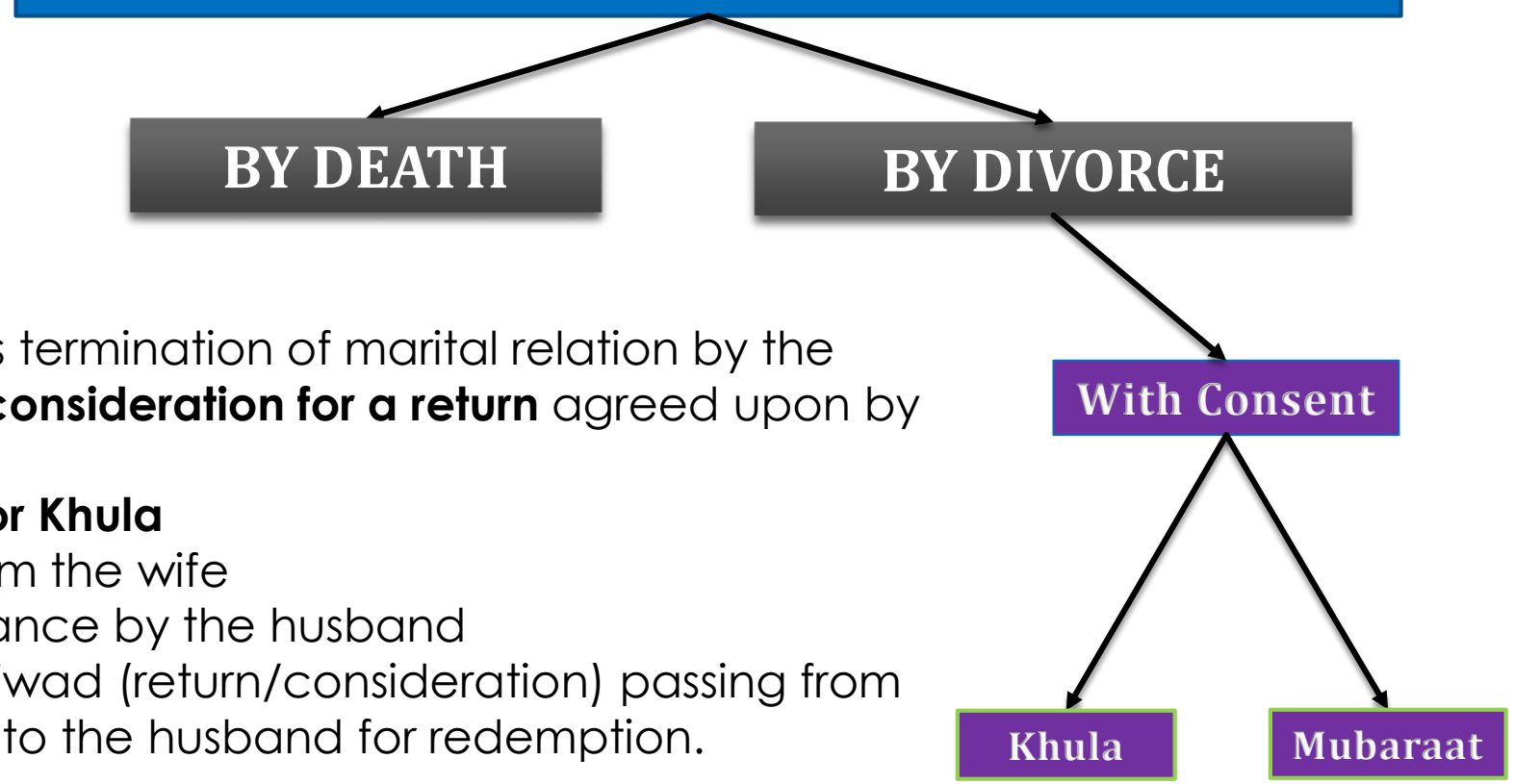
Marriage to non-equal, excessively low dower, option of puberty, husband's failure to fulfil marital obligations, to have sex, to provide maintenance, husband's insanity, husband's cruelty, marrying by deception…etc.

TALAQ-E-TAFWID

- According to Muslim Law, **husband has the power to delegate** his own right of pronouncing divorce to some third person, **to the wife herself**, it is called '**tafwid**'. It is also called 'Contingent Divorce' or 'Delegated Divorce'.
- According to **Ameer Ali**, the Talaq-e-Tafwid may be delegated by the husband to his wife through…
  1. **Iktiar** (Giving her the authority to talaq herself).
  2. **Amr Bi-yad** (Leaving the matter in her own hand), and
  3. **Mashiat** (Giving her the option to do what she likes).

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DISSOLUTION OF MUSLIM MARRIAGE



KHULA

- Khula means termination of marital relation by the husband **in consideration for a return** agreed upon by the parties.
- **Conditions for Khula**
  - Offer from the wife
  - Acceptance by the husband
  - With an iwad (return/consideration) passing from the wife to the husband for redemption.

H: I gave you Khula in return of dower.
W: I accepted.

W: Give me Khula in return for dower.
H: I gave Khula.

H:I divorced you in return for Rs. 2000.
W: I accepted.

MUBARAAT

- Mubaraat is the dissolution of marriage by **mutual consent.**
- Under Mubaraat, **more freedom** could be given to both wife and husband.
- In this case, both the parties desire to have a separation.
- If the wife and husband are convinced that the **marriage cannot go on, then they can mutually agree to separate.**
- **Proposal** may come from either side.
- After **acceptance** it becomes final.

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DISSOLUTION OF MUSLIM MARRIAGE

BY DEATH

BY DIVORCE

By Judicial Decree

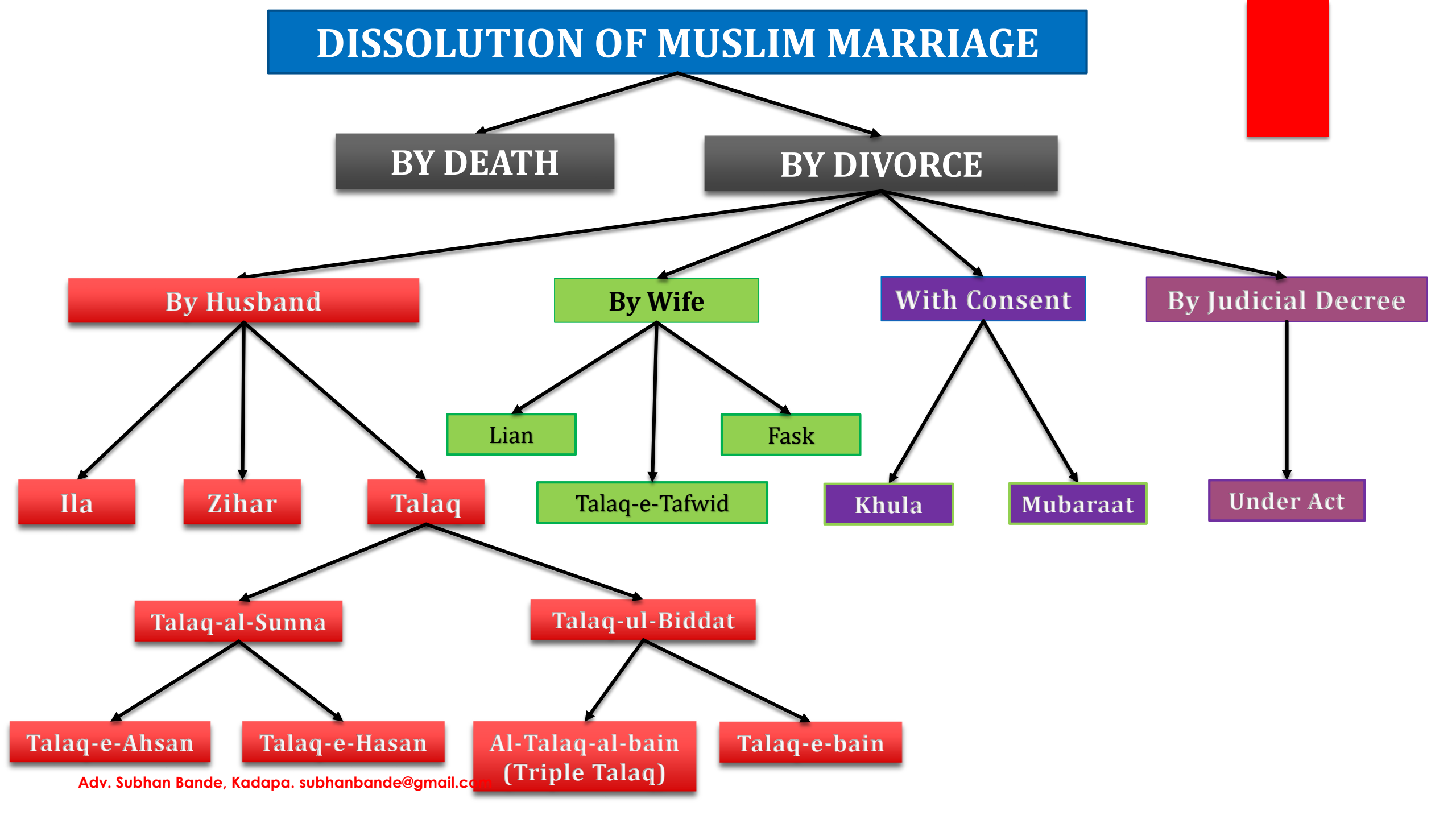
Under Act

UNDER "THE DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939"

Sec-2 of the Act-1939 provides various grounds for the dissolution of marriage by woman as follows.

1. **Absence of husband** (for FOUR years or more – Decree comes into force after 6 months)
2. **Failure to provide maintenance** (for TWO years or more)
3. **Imprisonment of husband** (sentenced to imprisonment for SEVEN years or more)
4. **Failure perform mutual obligations** (for a period of THREE years or more)
5. **Impotency of husband** (the decree is not operative if the husband proves that he is potent within ONE year)
6. **Insanity of the husband** (for a period of TWO years)
7. **Leprosy or venereal disease**
8. **Cruelty of the husband**
9. **Repudiation of marriage**
    1. If the marriage has not been consummated.
    2. If the marriage took place before she attained the puberty (age of 15 years)
    3. If the marriage is repudiated before she attained the age of 18 years
    4. If the marriage of a minor girl is contracted by any guardian other than the father or father's father.
10. **Any other ground recognized by Muslim Law.**

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Differences between Muslim Divorce and Hindu Divorce

MUSLIM DIVORCE (SUNNI)

- **GROUNDS AVAILABLE FOR BOTH HUSBAND & WIFE**
  1. Khula
  2. Mubaraat
- **GROUNDS AVAILABLE FOR "WIFE" ALONE**
  1. Lian
  2. Fask
  3. Talaq-e-Tafwid
  4. Absence of husband
  5. Failure to provide maintenance
  6. Imprisonment of husband
  7. Failure perform mutual obligations
  8. Impotency of husband
  9. Insanity of the husband
  10. Leprosy or venereal disease
  11. Cruelty of the husband
  12. Repudiation of marriage
  13. Any other ground recognized by Muslim Law
- **GROUNDS AVAILABLE FOR "HUSBAND" ALONE**
  1. Ila
  2. Zihar
  3. Talaq-ul-Sunna
  4. Talaq-al-Biddat

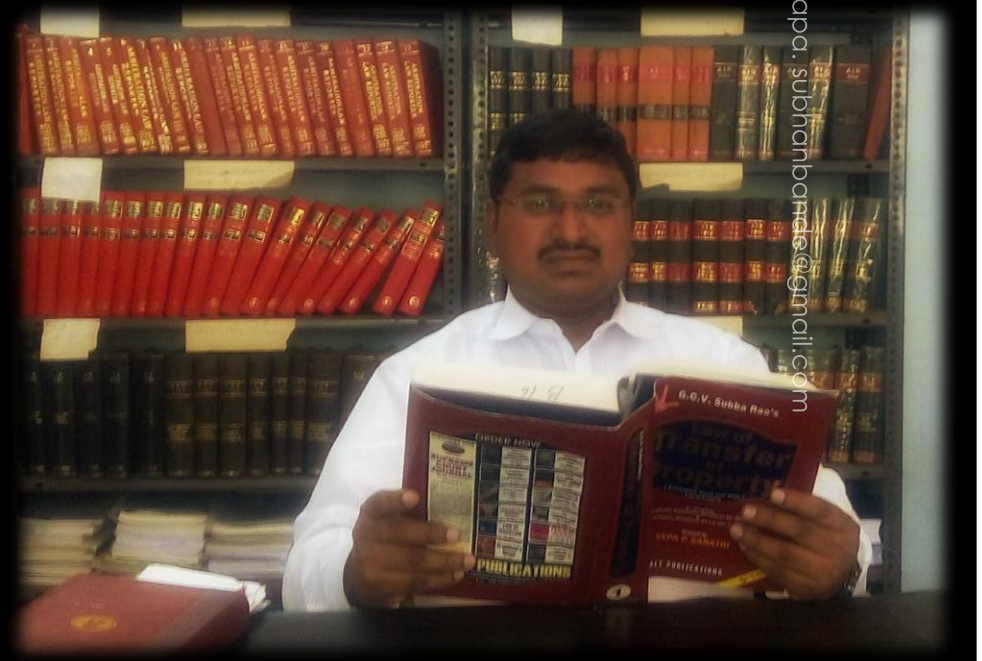
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HINDU DIVORCE

- **GROUNDS AVAILABLE FOR BOTH HUSBAND & WIFE (SEC-13 (1))**
  1. Adultery
  2. Cruelty – Physical & Mental
  3. Desertion
  4. Conversion
  5. Insanity
  6. Venereal Disease
  7. Renunciation of World
  8. Unheard for 7 years
  9. After decree of Judicial Separation
  10. After decree of Restitution of Conjugal Rights
- **GROUNDS AVAILABLE FOR "WIFE" ALONE (SEC-13(2))**
  11. Husband has been guilty of Rape, Sodomy or Bestiality
  12. Non-resumption of cohabitation after decree/order of maintenance for one year or upwards
  13. Her marriage solemnized before she attained 15 years of age

For Queries.....

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