

TALAQ.

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INTRODUCTION :-

The most heated topic at present in India is Talag. in Islam. The main source of Islamic law is the Holy Book of Quran and it is a strong belief of every Muslim that it contains nothing which can be termed as a social evil as it is a book not written by a human being but a revelation from God (Allah). for the benefit of entire mankind. Muslims believe that the Quran was verbally revealed by God to Muhammad through the angel Gabriel. It becomes necessary to bring out what the holy book Quran says about Talag.

MEANING :-

The word 'Talag' carries the literal significance of 'freeing' or 'the undoing of Knot'. Talag means divorce of a woman by her husband. Under the Muslim law marriage is a civil contract. Yet the rights and responsibilities consequent upon it are of such importance to the welfare of the society. that a high degree of sanctity is attached to it.

CONDITIONS FOR A VALID TALAQ

Capacity

Free Consent

Express Words

Capacity → * Every Muslim husband of sound mind, who has attained the age of puberty, is competent to pronounce talaq, even without assigning any cause.

According to Tyabji, guardian of a husband of unsound mind, may pronounce Talaq on behalf of such insane husband if such Talaq is in the interest of the husband.

* When husband has no guardian, the kazi or a judge has right to dissolve the marriage in the interest of such husband.

Free Consent → * Except under Hanafi law (pronounced under compulsion, coercion, undue influence) etc. is valid and dissolve the marriage), the consent of the husband in saying Talaq must be a free consent.

FORMALITIES UNDER SUNNI LAW :-

- 1) Talag may be oral or in writing.
- 2) No specific formula or use of any particular word is required to constitute a valid Talag. Any expression which clearly indicates the husband's desire to break the marriage is sufficient to dissolve the marriage through Talag.
- 3) No need of presence of the witnesses. It is considered to be valid.

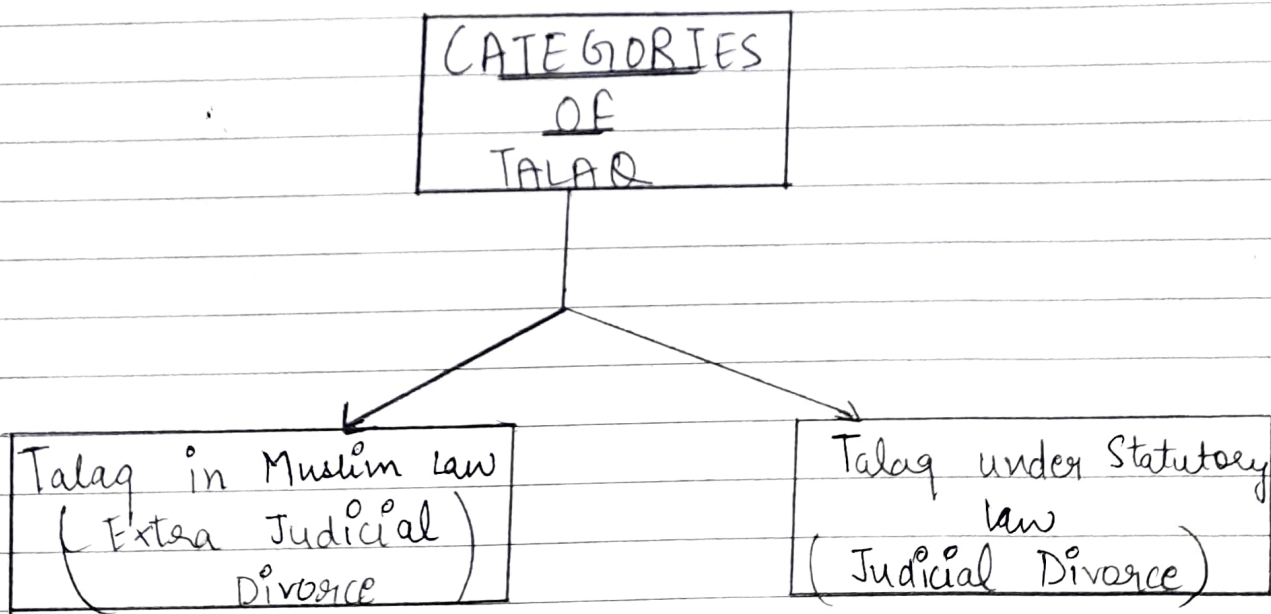
UNDER SHIA LAW :-

- 1) Talag must be orally, except where unable to speak. If husband has capacity to utter the words but gives it in writing, it is void and ineffective.
- 2) Must be pronounced in the presence of two competent witnesses. Every male Muslim sound minded and attained the age of Puberty act as witness. However, in place of one male, two adult female Muslim can act as witness. Without the presence of sound minded and competent person it is considered to be void.

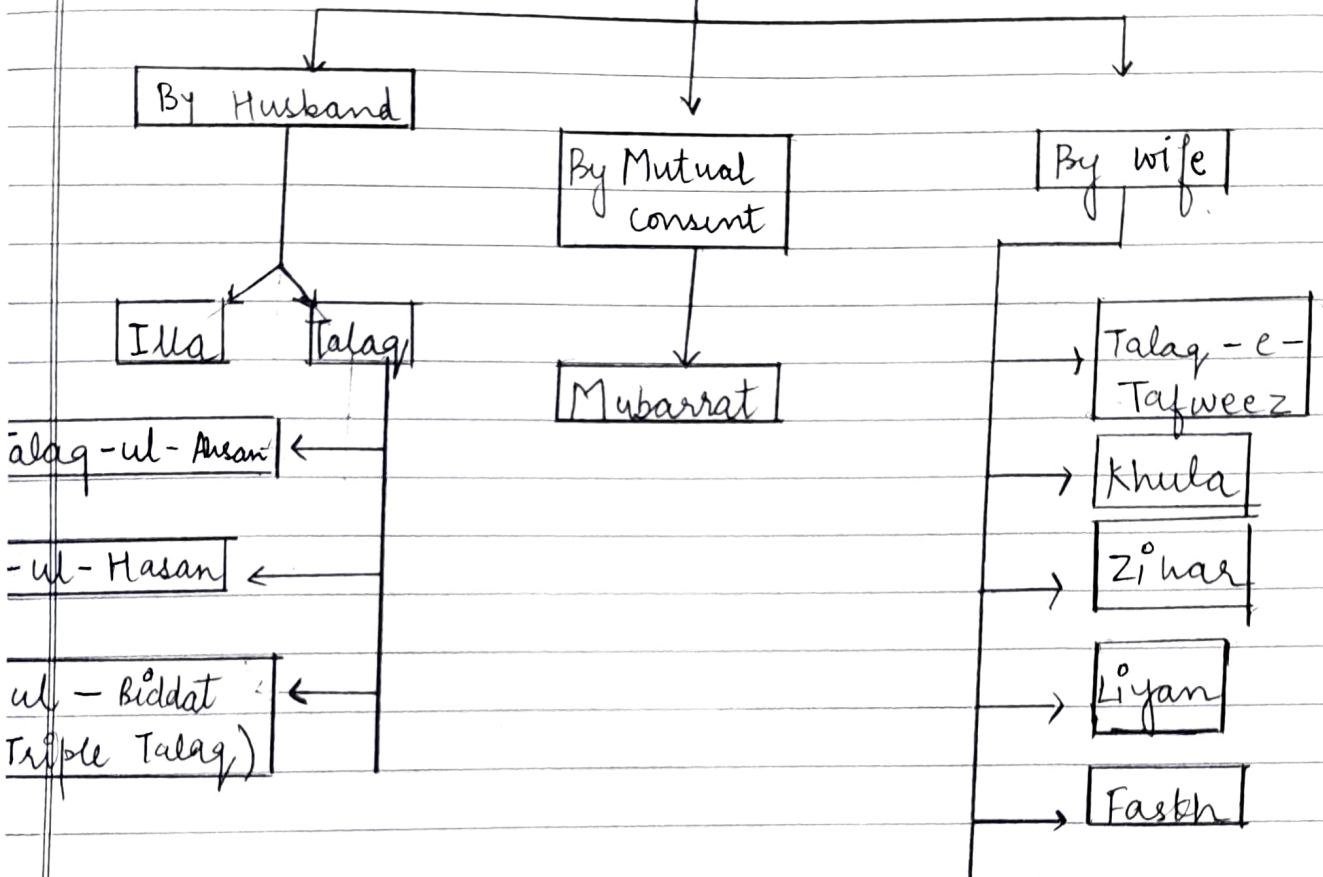
3) It requires the use of specific Arabic word in the specific formulae in the pronouncement of Talag.

Express words :- The word of Talag must be clearly indicate the husband's intention to dissolve the marriage. Therefore, it should be express. If Talag is in express, proof regarding the husband's motive & intention is not necessary.

But, if the pronouncement is not expressed or makes any confusion then it is necessary prove the husband his actual intentions towards marriage.



DIVORCE IN ISLAM



Talag-ul-Ahsan :- This is the most proper form of repudiation of marriage. The reason is twofold. The first possibility of revoking the pronouncement before expiry of the Iddat Period. Secondly, the evil words of Talag are to be uttered only once. Being an evil, it is preferred that these words are not repeated.

Procedure to follow :-

- 1) The husband has to make a single pronouncement of Talag during the Tuhr of the wife. Tuhr is the period of wife's Parity i.e. period between two menstruations. As such, the period of Tuhr is the period during which cohabitation is possible. But if a woman is not subjected to menstruation, either because of old age or due to pregnancy, a Talag against her may be pronounced any time.
 - 2) After this single pronouncement, the wife is to observe an Iddat of three monthly courses. If she is pregnant at the time of pronouncement the Iddat is, till the delivery of the child. During the period of Iddat there should be no revocation of Talag by the husband.
- Revocation may be express or implied. Cohabitation with the wife is an implied revocation of Talag. If the cohabitation takes place even once during this period, the Talag is revoked and it is presumed that the husband has reconciled with the wife. When the period of Iddat expires and the husband does not revoke the Talag either expressly or through consummation the Talag becomes irrevocable and final.

Talaq Hasan :- This Talaq is also regarded to be the proper and approved form of Talaq. In this form too, there is a provision for revocation. But it is not the best mode because evil words of Talaq are to pronounced three times in the successive Tuhrs. The formalities required under this form are as under :

The husband has to make a single declaration of Talaq in a period of Tuhr.

In the next Tuhr, there is another single pronouncement for the second time.

It is significant to note that the first and second pronouncements may be revoked by the husband. If he does so, either expressly or by resuming conjugal relations, the words of Talaq become ineffective as if no Talaq was made at all.

But, if no revocation is made after the first or second declaration then lastly the husband is to make the third pronouncement in the third period of purity. As soon as this third declaration is made, the Talaq becomes irrevocable and the marriage dissolve and the wife has to observe the required Iddat.

It may be noted that the important feature of Talag Hasan is its revocability before the third pronouncement and its irrevocability after the third. In order to make an effective Talag, the words must be uttered three times in three consecutive periods of purity.

Talag - ul - Bidaat :- This Biddat means sinful. It is a sinful and disapproved mode of divorce; also known as Talag - ul - Baid. Under the Shia law, an irrevocable Talag is not recognized. It is recognized only under Sunni law. A Sunni husband who wants to divorce his wife irrevocably, may do so in any of the following manner:

The husband may make three pronouncements in a period of purity.

The husband may make only one declaration in a period of purity expressing his intention of divorcing the wife irrevocably.

CASE :- SAIYAD RASHID AHMAD V. ANISA KHATUN

In this case, the Privy Council recognized triple divorce pronounced at one time validly effective. In this, the husband gave triple talag in absence of her but in presence of witnesses.

after 4 days executed talagnama later started living together without any proof of compliance of the doctrine of Halala fine children born and husband treated them as legitimate privy council agreed with the observation of the lower court that triple talag broke the marriage then and there.

Case :- YOSUF V. SWARAMMA

In this they view that the Muslim husband enjoys an arbitrary unilateral power to inflict instant divorce does not accord with Islamic injunction. It is a popular fallacy that a Muslim male enjoy under the Quranic law unbridled authority to liquidate the marriage. The whole Quran expressly forbids a man to seek pretexts for divorcing his wife. So long as she remains faithful and obedient to him.

Case :- SHAMIM ARA V. STATE OF UP

The supreme court in its landmark judgement in this case has derecognized

the husband's dicate to divorce in any manner from any date past or future and without any proof. The Apex court approving the views taken by Justice Baharul Islam further observed that the condition precedent for effectiveness of divorce which has to be proved on evidence. When the husband failed to prove the pronouncement of talaq, order of court negatively plea of divorce would be proper.

BY MUTUAL CONSENT

MUBARAT :- • It is also a form of dissolution of marriage contract. It signifies a mutual discharge from marriage claims. In Mubarat, the aversion is mutual and both the sides desire separation. Thus, it involves an element of mutual consent. In mode of divorce, the offer may be either from the side of wife or from the side of husband. When an offer Mubarat is accepted, it becomes an irrevocable divorce and Iddat is necessary.

Consequences :- 1) Mutual release from the marital tie.

- 2) Any party may make the offer, the other side accepts.
- 3) No question of consideration
- 4) Mutual Aversion

BY WIFE :-

(1) Talag - e - Tafweez | Delegated Divorce :-

- A Muslim husband has unrestricted right to divorce his wife whenever he pleases and this right is so absolute that he may exercise it either himself or may delegate his right to another person, including his own wife. Divorce by such other person, who act as agent of the husband under his authority is called Talag - e - Taweez. The authority is given to the wife under an agreement at the time of marriage or anytime after it. The delegation of power of divorce to the wife may either be permanent or temporary. The delegation may be conditional or unconditional, but the conditions must not be opposed to the principles of Islam and public policy.

KHULA :- Redemption :- At request of wife

Khula or redemption literally means to lay down. In law, it means laying down by a husband of his right and authority of his wife.

It was been defined by their lordships of the Judicial Committee in the case of Moonshee - Buzlu - ul - Raheem v. Lateefutunnissa.

ESSENTIALS :-

There must be an offer from the wife and the offer must be accepted with the consideration for the release by the husband,

consideration, all agree that it can be everything and anything that can be given as dower.

Capacity, under Shia law, the condition necessary for the effectuation of a valid Talaq are also requisites for the performance of Khula accordingly : that is, the husband must be :- (1) Adult
(2) Sound mind

3) free agent

4) Have Intention to divorce her

Under Sunni law, only two are essentials
i.e. husband must be :-

(1) Adult

(2) Sound Mind

Case :- Mst. Bilquis Iqbal v. Najmal Iqbal

It was said that under the Muslim law the wife is entitled to Khula as of right if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union.

Legal Consequences :-

1) The legal effect of a valid khula or Mubarat are the same as that of a divorce by any other method i.e. Iddat, maintenance during the period of Iddat and after completion of khula or Mubarat, the marriage dissolves and cohabitation becomes unlawful.

LIAN (FALSE CHARGE OF ADULTERY)

Where a husband charges his wife of adultery and the charge is false, the wife is entitled to sue for and obtain the divorce.

FEATURES :-

Husband charges wife of adultery or, denies the paternity of her child. Such charge is false. If such charge is proved to be true, decree for the dissolution of marriage would not be granted in favour of wife.

Such false charges does not dissolve the marriage, it only give an opportunity to the wife to move to the court to dissolve the marriage.

She must file a regular suit for the dissolution of marriage. No such suit will lie if the marriage was irregular. The judicial separation due to Lian is irrevocable.

Lian is applicable only to Shariat marriages not to Farid ones.

Retraction of charge :-

The muslim law permits the man to retract

charge but the retraction must be :-

- (i) Bona-fide
- (ii) Unconditional
- (iii) Made at or before the commencement of hearing and not after the close of evidence

Conditions necessary for valid retraction :

Husband's admittance of charge being made
Admittance of false charge
Must retract before the end of trial.

FASKH (Judicial Divorce) :-

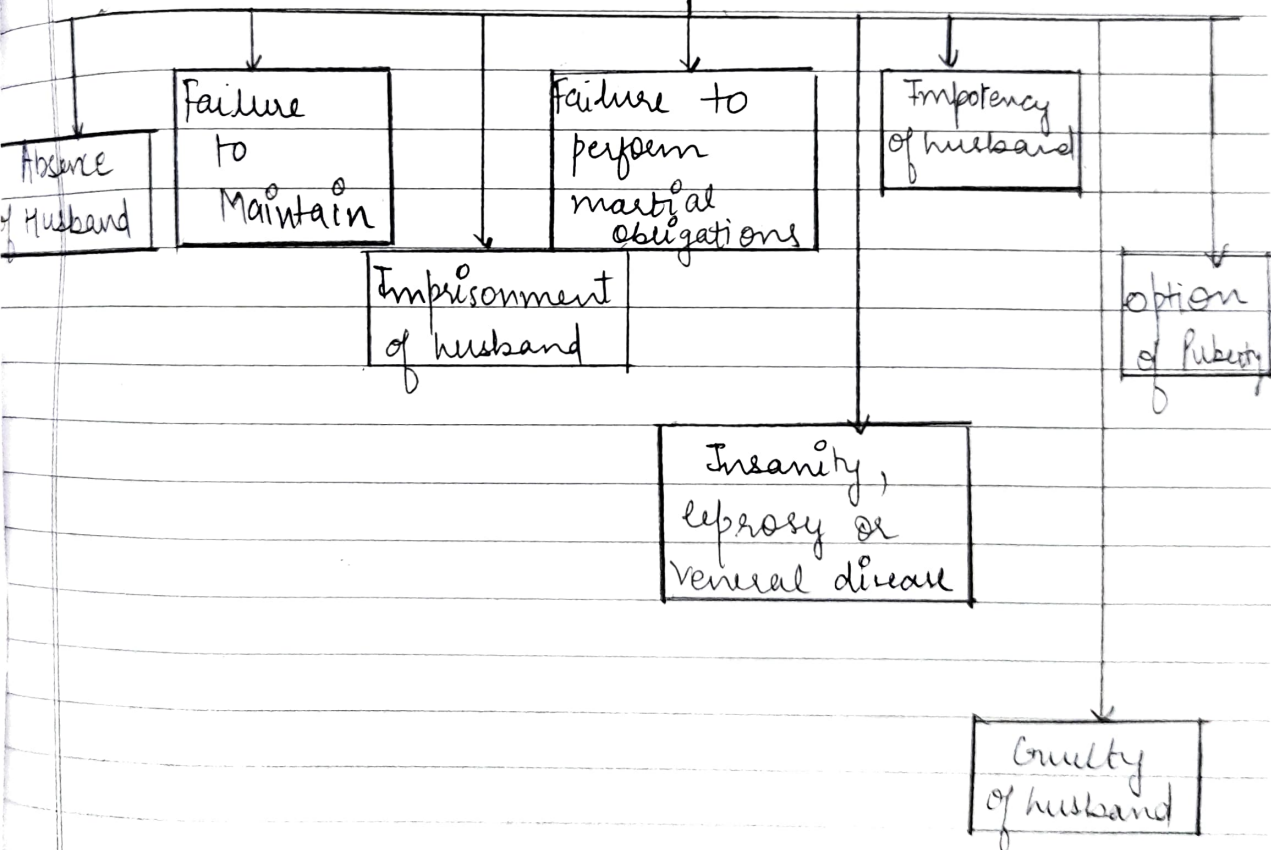
Despite the Quranic injunctions and the traditions of the Prophet, the Anglo-Indian Courts had denied to Muslim women the rights of dissolution available to them under shariat.

Before 1939, a Muslim wife could seek her divorce by a judicial decree only on the ground of :-

- (a) Option of Puberty (Khyar-ul-Bulugh)
- (b) Impotency of the husband
- (c) Lian i.e. false charge of adultery by the husband

The ground for matrimonial relief under section 2 of Act are available only to the wife not to the husband. This is because the Muslim law has already given an absolute right to the husband to divorce his wife without judicial intervention and without any reason.

GROUNDS UNDER SECTION-2



Absence of Husband :- In this the husband are not known for period of four years a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage. But, a decree passed on this sound will not take effect for a period of 6 months from the date of such decree, for the husband appears either in person or a person as authorized agent within this period appears and make sure that he is prepared to perform his conjugal duties, the court must set aside the said decree.

Failure to Maintain :- If the husband has neglected or has failed to provide for her maintenance for a period of two years, a married Muslim woman can obtain a decree for the divorce.

Imprisonment of Husband :- If the husband has been sentenced to imprisonment for a period of seven years or upward the wife is entitled to decree the court dissolving her marriage, but no decree can be passed on this ground unless the sentence has become final.

Failure to perform marital obligations :-

If the husband has failed to perform without reasonable cause, his marital obligation for a period of three years, the wife can get her marriage dissolved by means of a decree.

Impotency of husband :-

If the husband was impotent at the time of the marriage and continues to be so, the wife is entitled to Judicial divorce for the dissolution of her marriage. Before passing such a decree on this ground the Court shall on application by husband, make an order requiring the husband, make the order requiring the husband to satisfy the court within a period of one year from the date of such order that he ceased to be impotent, if he does a Satisfy, no decree shall be passed on this ground.

Insanity, Leprosy or Venereal disease :-

If the husband has been insane for a period

of two years or is suffering from leprosy or a violent venereal disease, the wife may claim a judicial divorce under the act. It is to be noted that leprosy and violent disease need not be two years old, it may even recent.

i) Option of Puberty :- If she, having been given in marriage by her father or other guardian before attaining the age of 15 years repudiated the marriage before attaining the age of 18 years and the marriage is not consummated, she is entitled to a decree of divorce.

Cruelty of husband :- Judicial divorce may also be claimed by a Muslim wife, if the husband treats her with cruelty that is to say:

Habitually assaults her or makes her life miserable by cruelty or bad conduct even if such conduct does not amount to physical ill-treatment.

Associates with women of ill-repute or leads an infamous life or attempts to force her to lead an immoral life or disposes of her property or prevents her from

- e) exercising her legal right over it, or 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.

x) Grounds of dissolution recognized by Muslim law :-

The wife is also entitled to a decree for the dissolution of her marriage on any as other ground which is recognized as valid for the dissolution of marriage under muslim law. for example:- under this clause, a wife may seek her divorce by judicial decree on the ground of false charge of adultery against her.

LEGAL CONSEQUENCES OF DIVORCE :-

The parties become entitled to contract another marriage - If the marriage was consummated the wife may marry another husband after the completion of her Iddat, if the marriage was not consummated, she is free to marry

immediately.

If the marriage was consummated, and the husband had four wives at the date of divorce including divorced wife, he may marry another wife after completion of Iddat of the divorced wife.

Dower becomes immediately payable, if the marriage was consummated, the wife is entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred.

If the marriage was not consummated, and the amount of dower was specified in the contract, she is entitled to half of that amount, if no amount was specified all that she is entitled to is a present of three articles of dress.

Mutual right of inheritance ceases after the divorce becomes irrevocable.

Cohabitation becomes unlawful after the divorce has become irrevocable and the children born of such an intercourse are illegitimate and cannot be legitimated by acknowledgment.

BIBLIOGRAPHY

I have taken help from the following sites

Sites :-

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3. Tripaksha Litigation
4. Indian Kanoon
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