BLOGS

Dissolution of Marriage under Muslim Law

Indrasish Majumder · 04 May 2023

Edit TABLE OF CONTENTS Introduction Modes of Dissolution under Muslim Law Conditions to be met for a Valid Divorce Modernization of Muslim Personal Law Procedure for Dissolution of Marriage under Muslim law The Legal Debate surrounding Triple Talaq Conclusion Important Notes on Muslim Law

Introduction

The dissolution of marriage is a legal process by which a marriage is terminated and the parties are no longer bound to each other as husband and wife. Muslim law recognises several modes of dissolution of marriage, including divorce, annulment, and khula.

Modes of Dissolution under Muslim Law

The various modes of dissolution of marriage under Muslim law are:

Divorce

Divorce is the most common mode of dissolution of marriage under Muslim law. The Quran permits divorce in certain circumstances, such as incompatibility between spouses or irreconcilable differences. All Muslims in India are subject to the Muslim Personal Law (Shariat) Application Act, 1937, which sets forth the divorce process. The Act recognizes two types of divorce: talaq and judicial divorce.

Talaq

Talaq is a unilateral mode of divorce **[*Also Read:* *Concept of Talaq under Muslim Law*]** in which the husband pronounces talaq three times in a single sitting or over a period of time. This form of divorce is considered to be the easiest mode of divorce in Islam, but it is also the most controversial. The practice of triple talaq has been a subject of much debate and criticism in India, and in 2017, the Supreme Court of India declared it unconstitutional and void.

Judicial Divorce

On the other hand, judicial divorce is a type of divorce that a court of law will grant. It can be granted on the grounds of cruelty, desertion, impotency, or any other grounds recognized by Muslim law. The procedure for judicial divorce is similar to that of any other civil suit, and the court has the power to grant alimony, maintenance, and custody of children.

Annulment

Annulment is another mode of dissolution of marriage under Muslim law. It is a legal process by which a marriage is declared null and void, and the parties are considered to have never been married. Annulment can be granted on the grounds of fraud, force, or non-consummation of marriage. Unlike divorce, which terminates a valid marriage, annulment is concerned with the validity of the marriage itself.

Khula

Khula is a method of dissolution of marriage that the wife starts. It is a contractual mode of divorce in which the wife agrees to pay compensation to the husband in exchange for the dissolution of marriage. Khula is recognized under Muslim law, and it is a right that is available to the wife, provided that she can prove that her husband has treated her with cruelty or that the marriage is irretrievably broken.

Faskh

In addition to these modes of dissolution of marriage, Muslim law also recognizes the concept of faskh, which is a form of judicial divorce that is initiated by the wife. Faskh is granted on the grounds of cruelty, desertion, impotency, or any other grounds recognized by Muslim law. It is a right that is available to the wife, but it is subject to certain conditions.

Conditions to be met for a Valid Divorce

There are additional requirements that must be satisfied in order for a divorce to be valid under Muslim law in addition to the recognised modes of divorce.

Talaq

For example, in the case of talaq, the husband must have the capacity to divorce, the pronouncement must be made in a state of sanity, and it must be done in the presence of witnesses. If any of these conditions are not met, the divorce may be considered invalid.

Khula

Similarly, in the case of khula, the wife must have a valid reason for seeking divorce, such as cruelty or desertion, and must offer to return the mahr ***[Also Read: Concept of Mehr under Muslim law]*** or bridal gift received from her husband. If these conditions are not met, the khula may not be considered valid.

It is significant to note that depending on the Islamic school of jurisprudence that the parties involved follow, the divorce process can vary under Muslim law. While the Hanafi school requires a specific procedure for divorce, the Shafi'i and Maliki schools recognize divorce even if it is not done in a specific manner, as long as the essential elements are present.

Moreover, the concept of reconciliation is also an important aspect of the dissolution of marriage under Muslim law. Before a divorce is granted, the parties are encouraged to reconcile and resolve their differences through mediation or counselling. This is in line with Islamic principles of preserving the family unit and avoiding the breakdown of marriages.

Modernization of Muslim Personal Law

Efforts to modernize and reform Muslim personal law, including laws relating to divorce, are aimed at making the laws more equitable and just, particularly for women, and at bringing them in line with contemporary legal and social norms. The Muslim community, Islamic scholars, and the government should work together to find solutions that are fair, just, and in line with the principles of Islamic law.

For example, the Muslim Women (Protection of Rights on Divorce) Act, 1986, provides for the rights of Muslim women to maintenance and alimony after divorce. Similarly, the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizes the practice of triple talaq and provides for the protection of Muslim women against arbitrary divorce.

Procedure for dissolution of marriage under Muslim law

The procedure for dissolution of marriage under Muslim law is relatively simple and straightforward. In the case of talaq, the husband can pronounce talaq in the presence of two witnesses, and the divorce is considered to be final. In the case of judicial divorce, the wife can file a suit for divorce in a court of law, and the court will hear the case and grant a divorce if it is satisfied that the grounds for divorce are valid. In the case of khula, the wife can initiate the process by sending a notice to her husband, and if the husband agrees to the terms of the khula, the marriage is dissolved.

It is important to note that while Muslim law recognises several modes of dissolution of marriage, the process can be complicated and emotionally charged. The parties involved may have to deal with issues such as property division, child custody, and financial support. It is therefore advisable to seek legal advice and guidance to navigate the process of dissolution of marriage under Muslim law.

The Legal Debate surrounding Triple Talaq

In recent years, the issue of triple talaq has been the subject of much debate and controversy in India. Triple talaq refers to the practice of pronouncing talaq three times in a single sitting or over a period of time, which allows the husband to unilaterally divorce his wife. The practice has been criticized as being arbitrary, discriminatory, and unfair to women, and there have been calls for its abolition.

In 2017, the Supreme Court of India declared triple talaq e biddat to be unconstitutional and void ab initio and called on the Indian government to legislate on the matter. The government subsequently passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalizes the practice of triple talaq and provides for a jail term of up to three years for offenders.

The passing of the Zct has been met with mixed reactions from the Muslim community in India. While some have welcomed the move as a step towards gender justice and equality, others have criticized it as being anti-Islamic and infringing on the rights of Muslims to practice their religion.

Conclusion

In conclusion, the Muslim Personal Law (Shariat) Application Act, 1937 governs the complex and multifaceted process of dissolving a marriage under Muslim law. Muslim law recognizes several

modes of dissolution of marriage, including divorce, annulment, and khula, and also recognises the concept of faskh.

The issue of triple talaq has been a subject of much debate and controversy in recent years, and the Indian Government has taken steps to abolish the practice through legislation. While the passing of the Muslim Women (Protection of Rights on Marriage) Act, 2019, has been welcomed by some as a step towards gender justice and equality, it has also been criticized as being anti-Islamic and infringing on the rights of Muslims to practice their religion.

It is important to strike a balance between the principles of Islamic law and the need for gender justice and equality. The Muslim community, Islamic scholars, and the Government should work together to find solutions that are fair, just, and in line with the principles of Islamic law.

Here are a few more posts that you may like!

1. Iddat under Muslim Law
2. Concept of Talaq under Muslim Law