

Her Right to Divorce: No Court, Nor he!

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Several personal laws based on different religions have been promulgated as a result of India's secular mindset. Hindus, Christians, and Muslims in India have various marriage laws and their own personal law, which is primarily based on their religious beliefs, which govern divorce reasons; also marriage and inheritance. With the passage of time and increasing public awareness, the government has enacted a number of laws aimed at making India's current divorce procedure more progressive in terms of gender concerns and other sensitive topics. A new legal issue that came up for decision at the High Court of Kerala was regarding the right of a Muslim wife who declared unilateral divorce by Khula against her husband without a judicial order when she determined to go away from the marriage on grounds she believes are proper.

Keywords: *Khula, unilateral divorce, Talak by wife*

Introduction

Divorce is the most distressing event that a couple can experience. If an annulment of marriage is challenged in India, it becomes a time-consuming and expensive process. The couples that consent to divorce shall also have to prove that they have been living apart for one year, and then the courts shall take the case for hearing.

According to Muslim law, marriage happens as a legal contract that does not require a religious ceremony. The spouses must

exchange *ijab* (offer)¹ and *Kabul* (acceptance)² in the presence of both and with consideration of each other as well as the witnesses. A unique element of a Muslim marriage is that the wife receives money or other gifts from her husband, who accepts the offer of marriage, known as *Mahr*³.

A Hindu marriage is an everlasting bond, as per the Vedas. It is defined as a union of “bones with bones,” “flesh with flesh,” and “skin with skin” between the husband and wife⁴. The Hindu Marriage Act of 1955 includes, anyone who observes Hinduism in any of its forms, and at any phase of its development. Two Hindus who have the same beliefs and religion⁵ can marry in a Hindu ceremony. In Hinduism, marriage is monogamous⁶.

The Indian Christian Marriage Act 1872 governs all Christians, including native Indians who are converted Christians and the descendants of Christians⁷. This legislation regulates the forms and ceremonies of a Christian marriage. In India, the Parsi Marriage and Divorce Act 1936⁸ regulates marriage and divorce amongst Parsis; the spouses are in a monogamous relationship. The formulation and legality of a Jewish marriage contract are completely governed by the Jewish faith’s religious customs; and legislation has no bearing. Indians residing within and outside India, regardless of the religion or faith followed by either party can get married according to the procedure prescribed under the Special Marriage Act, 1954. Personal laws do not govern marriages formalized following the provisions of the Special Marriage Act.

Thus, marriage is sacred relationship or contract or a bond entered into between two people. Since people still view marriage as a sacramental relationship, divorce and separation were once disfavored. People who are having problems in their marriage nevertheless don’t want to be bound by the obligations or limits of marriage. With the passage of time and a shift in perspective, people began to think more broadly, and legal changes enabled marriage annulments in India. Divorce is basically described as the termination of a marital contract, resulting in the termination of all marriage-related duties.

Forms of Divorce in India

A couple is entitled for divorce with a mutual consent, or partner may initiate for divorce through court without the consent of the spouse. Either of them can commence a legal notice for divorce to the other half before concluding marital relationship.

Divorce rules in India are linked to religion, as they are with other personal affairs. It is the process of separating through legal means. Because the marriage has been dissolved, a divorce decision issued by the family court or local district court enables the parties to be separated. When a divorce is confirmed, both parties are free to remarry if they so desire. The Hindu Marriage Act, 1955 regulates divorce between Hindus. The same law is applicable to Buddhists, Sikhs, and Jains. Muslim women could seek divorce as per the provisions of the Dissolution of Muslim Marriages Act, 1939 (“the 1939 Act” hereafter); the Parsi Marriage and Divorce Act, 1936, determine divorce among Parsis; the Indian Divorce Act, 1869, governs overseas divorce among Christians. The Special Marriage Act, 1956 applies to all civil marriages and inter-community marriages. Divorce law is effective in some cases but not in all.

Divorce granted through Courts

Adultery⁹, cruelty¹⁰, desertion¹¹, conversion¹², mental disorder¹³, leprosy¹⁴, venereal disease¹⁵, renunciation¹⁶, not heard alive¹⁷ no resumption of co-habitation¹⁸ are the grounds for divorce in India under the Hindu Marriage Act, 1955. Divorce by mutual consent is approved when both the partner mutually make a decision to separate. The husband and wife shall be staying separately for over one year and then eligible to file case before court for divorce by mutual consent¹⁹. They have to be estranged for two years and could file case for divorce by mutual parting²⁰.

Adultery, changing religious convictions through conversion, the domestic partner being of unsound mind or partner having communicable venereal disease or leprosy for minimum two years prior to date of moving the petition for divorce, the spouse is not heard of or seen alive for at least seven years, willful refusal to consummate marriage, spouse failed to observe the decree of restitution of conjugal

rights for at least two years²¹, trying to inflict cruelty and causing emotional distress that can be harmful to one's health and life²² are the reasons of divorce declared as per the Indian Divorce Act, 1869.

The Parsi Marriage and Divorce Act, 1936, amended in 1988, provides for grounds of divorce as continuous disappearance of partner for seven years, non-consummation within one year of marriage, being unaware that the other partner was of unsound mind at the time of marriage and pregnancy by another man. Being bigamous, committing rape, cruelty, or fornication, suffering from venereal disease, or forcing the wife into prostitution, being sentenced to prison for seven years or more, desertion for two years or more, and non-resumption of cohabitation after passing an order of maintenance or a decree of judicial separation and any sort of perverse sexual acts or adultery committed by the spouse are all grounds for divorce.²³

Forms of divorce in which only the wife can file a petition

If a female's marriage was ordained before the Hindu Marriage Act was enacted, and if her husband was married prior to it, or any other wife of her husband was alive at the time of the confirmation of her marriage, she could apply for a divorce, citing bigamy and proving their innocence in the matter.²⁴ If the partner is guilty of rape, bestiality and sodomy the wife is capable of seeking for a divorce²⁵. If there has been no cohabitation for a year and the spouse fails to pay the wife's court-ordered maintenance, the wife can file case for divorce²⁶. Whenever a girl was married even before age of fifteen and revokes the marriage before the age of eighteen, she is entitled to a divorce.²⁷

A wife is entitled for divorce under the Special Marriage Act, if husband commits rape, sodomy or bestiality²⁸ and for not resuming cohabitation after an order of maintenance²⁹.

Under the Act, 1939 grounds for divorce are provided for wife alone³⁰. A woman married under Muslim Law³¹ shall be entitled for a divorce decree if the whereabouts of the male partner are not known for a period of four years³². If she is neglected or if the husband fails to pay financial support for two years³³; if he has been sentenced to imprisonment for seven or more years³⁴; if he has failed to perform,

without reasonable cause, his conjugal obligations for a period of three years³⁵; if the husband is impotent during marriage or later³⁶; if he is insane for two years or he suffers virulent venereal disease³⁷; if the marriage was held before fifteen years of age for the girl and make a decision to conclude the relationship before she turns eighteen (option of puberty)³⁸; also if the husband indulges in acts of cruelty³⁹ a woman married under Muslim personal law is entitled to a decree dissolving her marriage.

Mutual Consent Divorce

When both the partners agree to separate, the court grants divorce under mutual consent. A mutual divorce helps to save time and money in comparison to a contested divorce. For such a divorce, the Hindu Marriage Act demands⁴⁰ that spouses live apart for at least a year and have mutually agreed to be allowed to petition for divorce by mutual consent if they are unable to cohabit. So are the provisions under Special Marriage Act⁴¹. To seek a divorce by mutual separation, Christian spouses must be separated for two years.⁴² And this tenure of separation was matter of heated discussion before several high courts⁴³ and “two years” was now to be read down as “one year”.

The husband and wife need to have been apart for at least a year in order to be eligible for a divorce by mutual consent. There must be free consent from both spouses and no evidence of force, fraud, or undue influence in order to get a mutually accepted divorce. There won't be any chance for the husband and wife to reconcile or make adjustments.

When the parties have not cohabitated for a year after receiving a judgment for judicial separation or restitution of conjugal rights, the husband or wife can file a divorce petition on the grounds that the marriage has irretrievably broken down, which serves as proof of the failure of the marriage.⁴⁴

Muslims can enter a mutual consent divorce by Mubaarat, which means both husband and wife mutually decides to go for a divorce. Either of the spouses can initiate it, and if the other partner accepts the proposal, the dissolution of the marriage becomes irrevocable.

Divorce without Intervention of Court

Only under Muslim personal law is divorce possible without the intervention of the Courts. According to Islamic Law, husband and wife may dissolve their marriages through Talak and Khula, respectively, without the assistance of a Court.

a) By Husband.

If it becomes difficult to resolve disagreements between husband and wife, the Holy Quran specifies the procedure to be followed for the amicable nullity of marriage, as well as the possibility of revoking the same. A husband can dissolve a marriage, without stating to his wife the cause by denouncing the marriage. It is sufficient for him to say certain phrases that indicate his intention to divorce his wife. This is usually done using *talak*. He may, however, divorce by *ila*⁴⁵ and *zihar*⁴⁶, for which the difference is only in appearance and not in essence from *talak*. A genuine *talak* must meet certain criteria like – a Muslim husband of reasonable intelligence who has reached puberty is capable of pronouncing *talak*. He is not required to provide any justification for his statement. It is unpronounceable by a husband who is minor or mentally ill. *Talak* by a minor or someone who is mentally ill is null and invalid. If a spouse is insane, however, *talak* pronounced within the “lucid interval” is valid. In lieu of a minor husband, the guardian may not pronounce *talak*. When a husband is mad and a guardian is absent, the Qazi or moderator is the person who has the authority to dissolve the marriage in the husband’s best interests. Except under Hanafi law, the husband’s consent in pronouncing *talak* must be given freely. A *talak* declared under duress, coercion, undue influence, deception, or voluntary intoxication, for example, is legitimate and dissolves the marriage under Hanafi law. A *talak* can be given orally or in writing, according to Sunni law.

Triple *talak* is an instantaneous, irrevocable divorce that was normally recognized till 2018 when the Muslim Women (Protection of Rights on Marriage) Act, 2018⁴⁷ was passed with the intention of declaring triple *talak* (*talak-e-bidat*) void and illegal. Pronouncing triple *talak* is now a non - bailable, cognizable offence that carries a

fine and a sentence up to three years. Muslim women can approach the court for survival allowance for her minor children and herself.

b) By Wife

Until recently, a Muslim woman could not divorce her husband unless she could prove that he had committed adultery, illness, or impotency. The Act of 1939, on the other hand, sets forth a number of unique arguments for a court to approve a Muslim wife's divorce decision.

It was believed that if a husband had a contract giving the wife the right to divorce him by mutual consent, a process known as Mubaaarat, then she may do so without any need for court intervention. The wife has the option to divorce her husband by khula, in which event she chooses to terminate the marriage.

c) Kerala High Court on *Khula*

The Kerala High Court⁴⁸ through its recent landmark judgment affirms the right of Muslim women to initiate divorce. The legal question before the court was whether a Muslim woman has the authority to unilaterally grant extrajudicial divorce against her husband through khula after making the decision to do so for reasons she considers fit. The High Court asserts that the right to declare dissolution by Khula, or dissolution of marriage initiated by wife, is absolute and that there are no specified justifications for doing so.

Without the assistance of the courts, a Muslim woman can undoubtedly divorce her husband unilaterally if, she declares her willingness to dissolve the marriage, return the gift and after an attempted mediation. A Muslim woman's right to divorce through Khula, in which she chooses to end her marriage is also regarded as Talak initiated by the wife.

The Kerala High Court believes that forcing the wife to appear in court for Khula violates her right to privacy under personal law, founded primarily on Quran and Sunnah, the sources of law. The court compares the husband's right to unilaterally proclaim Talak to state that both are of comparable nature, but that the husband's approval as a prerequisite in Khula is incorrect. The decision goes on to say that the right to pronounce Khula is an "absolute right" granted

on Muslim women, and that no specific cause is required to invoke it once the wife has declared denunciation or dissolution of the marriage.⁴⁹ The wife is merely required, prior to the pronouncing of Khula, to engage in reconciliation efforts, just as a man is required to do prior to pronouncing Talak.

She could approach the court under the 1939 Act, which, according to this judgment, is only for annulment or dissolution of marriage by a judicial or quasi-judicial authority.

After pronouncing Khula, the wife seeks relief under the Family Courts Act, 1984 rather than the 1939 Act, the judgments states. The court process will be a simple one in which the wife's rights will be declared. If the spouse wishes to challenge the legality of such an invocation, he may do so through a separate legal procedure. However, the grounds for dissolution of marriage under the 1939 Act are mixed in character and not primarily for annulment, especially since it states that other grounds are recognized as lawful for dissolution of marriage by Muslim law. This is significant since the terms "annulment" and "dissolution" has different legal implications in legal language.

Regarding the return of gifts and the mahr (dower), the court states that Khula would not rely on the wife to fulfill such responsibilities because they are simply "procedural issues." Quran grants a Muslim wife the right of Khula to terminate her marriage without specifying a procedure, and that "fairness is a matter relative consideration in a context to be followed when such a path is chosen by a wife," according to the court.

The court ruled that the right of Khula is a woman's unconditional right, based on relevant Quran verses. It referenced a well-known hadith in which a wife contacted the Prophet and expressed her desire to divorce her husband. The Prophet enquired of the woman if she would restore the mehr to her husband. "Yes," answered the wife. The Prophet then asked the husband to divorce her and take the garden that had been provided to her as mehr. This appears to be the motivating element for ulemas to read the identical verses of the Quran as forcing the husband to comply with the request and making the return of gifts and the mehr a necessary part of the Khula process.

Both these concepts are recognised as distinct forms of divorce under the Muslim Personal Law (Shariat) Application Act, 1937.

This discussion of Khula becomes an introduction for Muslim women to exercise the right to divorce without moving to court because, in the *K. C. Moyin v. Nafeesa*⁵⁰ case, the Muslim women were annulled of their right to seek extrajudicial divorce in spite of the 1939. It was decided *K.C. Moyin* case that a Muslim marriage could not be invalidated at the request of the woman unless the terms of the Act were followed. In this case, a woman filed a divorce petition alleging that her husband was impotent and nasty to wife, and the Family Court gave her a divorce decree. The Court remarked that while the Holy Quran provides clear instruction in the fields of family law, it does not create a system in and of itself. While it granted spouses the right to divorce, it did not specify an exhaustive procedure for putting the dissolution of marriage into action. This approach clearly indicates that sectors relating to divorce are open to adjustment in terms of method and process without jeopardizing a spouse's ability to separate or dissolve the marriage.

As a result of the *K.C. Moyin* case, in which the Court said unequivocally that outside of the criteria of the 1939 Act, a Muslim wife could refuse a marriage, a legal snag has arisen. The Single Judge concluded that the 1939 Act and its arbitrary denunciation of marriage without the intervention of the court was against the law of the land, and that once a portion of law is established, it is impossible to go beyond and decide the parties' rights.

To determine the legitimacy of the *K. C. Moyin* ruling, the Bench in the recent case looked into the reasons and goals of the 1939 Act. The Court noted that Shariat Act, 1937⁵¹ clearly accepted all types of extrajudicial divorce, with the exception of Faskh, which required the participation of a Qazi. A District Judge can dissolve a matrimony based on a case brought by Muslim wedded women under Section 5 of the Shariat Act⁵². It is thus indicated that the objective of Shariat Act, 1937 was to cede to the courts the power to dissolve marriages through Faskh.

Muslim women, with the exception of Faskh, preserved their right to all types of extrajudicial divorce recognized under their special law under the Shariat Act. Later, discovered, notwithstanding the Shariat Act, 1937 Hanafi women were not permitted to get a court decision to terminate their marriage. As a result, the Act of 1939 was adopted to codify and clarify Muslim law concerning married Muslim women filing for divorce. Section 5 of the Shariat Act, 1937⁵³ was repealed by the s1939 Act, which consolidated the law dealing to Faskh alone, and the Act of 1939 never intended to abolish the practice of extra judicial divorce.

It was decided that on the whole analysis of the scheme of the Shariat Act as well as the 1939 Act, the 1939 Act restricts Muslim women to dissolve their marriage bring in Faskh apart through the involvement of the Court. Any other forms of extra-judicial divorce are accessible to Muslim women⁵⁴. The Court held that it was not a good law confirmed in the *K.C.Moyin's* case.

The right to invoke *khula*, which is granted to women who are married under Muslim law, is an absolute right, analogous to the right to *talak*, which is granted to married Muslim male. The *Amicus Curiae* argued that, unlike *talak*, there are no defined phases or procedures that the wife must follow before using *khula* to seek divorce. The Bench held that the Quran's concept of justice is based on fairness, it refers to mutual obligation, and must be read into the wife's authority to invoke *khula*. In unambiguous terms, the Quranic passage alluded to in verses 228 of Chapter II confers on the wife the absolute power to annul the marriage with her husband. As a result, the approval of the husband is not a need. Therefore, there is no need of the consent of husband as a precondition for *khula* pronounced by wife to be valid.

a. What Happens If the Wife doesn't Return Dowry?

The Bench opined that the Prophet's command to the woman to return or make recompense to the husband had to be comprehended in *Hadith* in order to maintain justice's fairness. The husband's right to regain what was provided in marriage can never be interpreted to suggest that *khula* can only work if the husband agrees to the offer

made by wife. Such an approach would categorically deny the wife the right granted by the Quran. The procedural equity that must be observed, the Bench stated, cannot trump such a significant entitlement. . Husband has a legal right to seek repayment for what he is owed as a result of wife's arbitrary utterance of *khula*, and he can do so in a court of law. The Supreme Court's decision in *Juveria case*⁵⁵, held that, when considering extra-judicial divorce of *khula*, *khula* need not be accompanied by her agreement to give something as repayment. The wife could be willing to relinquish her claim to *Mahr* (dower). The *khula* is a form of dissolution initiated by the woman, which the husband cannot deny given only to reasonable bargaining over what the wife has proposed to give him in exchange.

b. *Khula* Validity in the Absence of Reconciliation Attempts

Human minds are prone to attack. Humans are described as fallible in the Quran. A wife's decision to invoke *khula* may be motivated by discernible disparities in her relationship with her husband. As a result, the Quran emphasises conciliation as a means of resolving disputes before making a final decision. Because giving a Muslim woman unrestricted freedom to call *khula* could result in immense misery and hardship for both parties.

The Supreme Court in *Union of India v. ShayaraBano*⁵⁶ held that the use of triple *talak* without any attempt at reconciliation is arbitrary and a violation of Article 14 of the Constitution. As a result, the Court decided that, while no specific reasons are required to declare *khula*, the process of reunion itself qualifies as a justifiable reason because it reflects an attempt to resolve disputes amicably between parties. As a result, the courts deemed any *khula* utterance without an endeavor of reconciliation illegal.

c. In Cases of Extra-Judicial Divorce, the Family Court has Jurisdiction

The scope of inquiry before the Family Courts in cases of unilateral dissolution of marriage, using *khula* and *talak*, is limited. Following sufficient notice to the other party, the family court must confirm the *khula* or *talak* to announce the status of marriage of the

parties. As a result, unless it is brought to do so in a proper manner, Family Court will refrain from judging on such extrajudicial divorces.

Conclusion

Not only is marriage an important aspect of human lives, it is also considered a very sacred institution. While it is considered a sacrosanct one, divorce is not the mandate of any religion. However, as times have changed, people have begun to accept that divorce is not a sin, but rather a remedy available to an individual in situations where a couple is unable to move forward with their marriage.

Dissolution of marriage through the court of law involves numerous procedures and processes that are both time-and money-consuming, as they involve issues such as property delivery, custody of children, alimony, child support, and so on. Extrajudicial divorce or separation may remedy this situation if done with reasonable procedures.

The Muslim women's right to extrajudicial unilateral termination of marriage, *khula*, is their personal law. This right was in an eclipse for half a century due to the Kerala High Court's Single Bench verdict in the *K.C. Moyin* case. This has now been removed by the Division Bench decision of the same court. In the background of criticism regarding the unilateral divorce rights of men in Muslim personal law, it is hoped that this Division Bench decision, which allows women's right to unilateral divorce, will now largely resolve the situation.

End Notes

1. Ijab (offer) - the marriage is offered by or on behalf of other party thereto with dower/mahr specified.
2. Kabul (acceptance) – the offer should be accepted for the dower specified by or on behalf of other party.
3. Mahr or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement.
4. Dr. P.V.Kane, History of Dharmashastras, Vol. II, part I, pp.427-428.
5. See Section 2, (a) to any person who is a Hindu by religion in any of its forms or developments of the Hindu Marriage Act, 1955.
6. See sections 5 and 17 of the Hindu Marriage Act, 1955. This Act, 1955, introduced monogamy for the first time among Hindus. Bigamy is now punishable as per the Indian Penal Code, 1860. The necessities and requirements of a valid marriage are basically specified.
7. Part I and II of the Indian Christian Marriage Act, 1872.

8. The Parsi Marriage and Divorce Act, 1936
9. The act of indulging in any kind of sexual relationship including intercourse outside marriage is termed adultery. Adultery is counted, as a criminal offense and substantial proof are required to establish it. An amendment to the law in 1976 states that one single act of adultery is enough for the petitioner to get a divorce.
10. A spouse can file a divorce case when he/she is subjected to any kind of mental and physical injury that causes danger to life, limb and health. The intangible acts of cruelty through mental torture are not judged upon one single act but series of incidents. Certain instances like the food being denied, continuous ill-treatment and abuses to acquire dowry, perverse sexual act etc are included under cruelty.
11. If one of the spouses voluntarily abandons his/her partner for at least a period of two years, the abandoned spouse can file a divorce case on the ground of desertion.
12. In case either of the two converts himself/herself into another religion, the other spouse may file a divorce case based on this ground.
13. Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity and therefore cannot be expected from the couple to stay together.
14. In case of a 'virulent and incurable' form of leprosy, the other spouse based on this ground can file a petition.
15. If one of the spouses is suffering from a serious disease that is easily communicable, the other spouse can file a divorce. Sexually transmitted diseases like AIDS are accounted to be venereal diseases.
16. A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.
17. If a person is not seen or heard alive by those who are expected to be 'naturally heard' of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she is interested in remarriage.
18. It becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.
19. Section 13B of the Hindu Marriage Act, 1955; Section 28 of the Special Marriages Act, 1954
20. Section 10A of the Indian Divorce Act, 1869
21. See sec 10. Clauses (i) to (x) of Indian Divorce Act, 1869 as amended in 2001.
22. Christian women under the Indian Divorce Act, 1869 could not apply for divorce on grounds for cruelty, till 2001, Cruelty and adultery had to be raised together as a ground for divorce, and hence lot of women were not able to apply for a divorce. A lot of women were deprived of divorce by the court or they simply could not apply for divorce because of the technicalities raised and they are not fitted in. The amendment to the India Divorce Act in 2011, allowed Christian women to apply for divorce on grounds of cruelty alone.
23. Sec 32 of The Parsi Marriage and Divorce Act, 1936
24. Sec. 13 (2) (i) the Hindu Marriage Act, 1955
25. Sec. 13 (2) (ii) the Hindu Marriage Act, 1955
26. Sec. 13 (2) (ii) the Hindu Marriage Act, 1955
27. Sec. 13 (2) (iv) the Hindu Marriage Act, 1955
28. Sec. 27 (1A)(i) The Special Marriage Act, 1954
29. Sec. 27 (1A)(ii) the Special Marriage Act, 1954

30. The Dissolution of Muslim Marriage Act, 1939
31. As per the Shariat Application Act, 1937
32. Sec 2 (i) the Dissolution of Muslim Marriage, 1939
33. Sec 2 (ii) the Dissolution of Muslim Marriage, 1939
34. Sec 2 (iii) the Dissolution of Muslim Marriage, 1939
35. Sec 2 (iv) the Dissolution of Muslim Marriage, 1939
36. Sec 2 (v) the Dissolution of Muslim Marriage, 1939
37. Sec 2 (vi) the Dissolution of Muslim Marriage, 1939
38. Sec 2 (vii) the Dissolution of Muslim Marriage, 1939
39. Sec 2 (viii) the Dissolution of Muslim Marriage, 1939
40. Section 13B, the Hindu Marriage Act, 1955
41. Section 28 of Special Marriages Act, 1954
42. Section 10A of India Divorce Act, which governs Christian marriages in India
43. Saumya Ann Thomas v. Union of India (2010 (1) KLT 869; ILR 2010 (1) Kerala 805); Shiv Kumar v. Union of India (Karnataka High Court in Writ Petition No. 13112/2012 <https://indiankanoon.org/doc/190152989/>); Lancy Leo Mendonca & Ors v. Union of India (Bombay High Court Writ Petition No. 9985/2014 <https://www.casemine.com/judgement/in/58117e7c2713e17947892f02>)
44. Section 13(A) of The Hindu Marriage Act, 1955, Section 27 of The Special Marriage Act, 1954, has the provisions regarding irretrievable breakdown of marriage.
45. In Ila, the husband takes an oath not to have sexual intercourse with his wife. Followed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve.
46. In this mode the husband compares his wife with a woman within his prohibited relationship e.g., mother or sister etc. The husband would say that from today the wife is like his mother or sister. After such a comparison the husband does not cohabit with his wife for a period of four months. Upon the expiry of the said period Zihar is complete.
47. Shayara Bano v. Union of India is a famous case, also known as triple talak case in which Shayara Bano was given talak by her husband instantaneously which is called Talak-e-biddat. She filed a writ petition contending that Triple talak, and polygamy violate the constitutional rights of Muslim women.
48. Mat. Appeal Nos. 89/2020, 72/2021 & O.P.(FC).Nos.372/2020, 124/2021 & 133/2021 decided on 09-04-2021 on many cases that came up for hearing
49. Shamim Ara v. State of U.P. & Anr., (2002) 7 SCC 518, at p.4
50. 1972 KLT 785
51. Sec.2 the Shariat Application Act, 1937
52. Id at Sec.5
53. Ibid
54. Ibid Sec.2
55. Abdul Majid Patni v. Atif Iqbal Mansoori (2014) 10 SCC 736
56. (2017) 9 SCC 1

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Quran Translations

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