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Review Document

THE DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939

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Significance

In dissolution of Muslim Marriage Act, 1939 there are only two ways in which a Muslim woman is allowed to seek separation from her husband, which is either through mutual agreement between the husband and the wife which is known as 'Khula'; or secondly, by filing a suit and getting a formal judicial decree against the husband in a court of law which is called 'Fask' and which falls under the category of Table-i-tafwid. Thus, unlike her male counterpart, the Muslim woman cannot release herself from marriage easily and unilaterally.

Qazi Mohammad Ahmad Kazmi had introduced a bill in the Legislature regarding the issue on 17th April 1936. It however became law on 17th March 1939 and thus stood the Dissolution of Muslim Marriages Act 1939.

Objective

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.

Important Provisions

Section 2 of the act provides the various grounds by which women can obtain a decree of divorce. Those grounds are:

i. Absence of Husband– whereabouts of the husband are not known from the past four years. Dissolution of marriage decree on this ground will take effect after six months from the date of such decree is passed, and during that period if the husband appears in person or through an authorized agent. Court if satisfied from same may set aside the said decree.

ii. Failure to maintain- If a husband fails to provide maintenance to his wife for two years. There is no defense available before husband on the ground of poverty, failing health or unemployment.

iii. Imprisonment of a husband- If the husband is imprisoned for seven years or more.

iv. Failure to perform marital duties- If, without any reasonable cause, the husband is unable to perform his marital obligations for three years.

v. Impotency of husband- husband was impotent at the time of marriage and continues to be so. If the husband satisfies the Court within one year from the date of the order obtained by wife for dissolution of marriage on the grounds of impotency, then no decree shall be passed on this ground.

vi. Insanity, leprosy or venereal disease- If the husband is insane or suffering from leprosy, or any venereal disease from a period of two years, judicial divorce by wife can be claimed on the same ground.

vii. Repudiation of marriage by wife- If a girl is married before the age of 15 years by her father or guardian, then under Muslim law she has been provided with a right to repudiate such marriage after attaining the age of 18 years provided that marriage is not consummated. She is entitled to a decree of divorce for same.

viii. Grounds of dissolution recognized by Mohammedan Law- Wife is also entitled to obtain a divorce on the ground recognized valid under the law.

ix. Cruelty by husband- if the husband treats his wife with cruelty, then she can approach the Court and claim for a decree of judicial separation on the same ground.

Section 5 clarifies that the wife's right to obtain dower from her husband would not be affected upon the dissolution of marriage.

Recent Amendment

THE PERSONAL LAWS (AMENDMENT) BILL, 2018- A Bill further to amend the Dissolution of Muslim Marriages Act, 1939 in which section 2 (vi), the words "leprosy or" shall be omitted. That is, it is no more a ground for divorce and is ineffective.

Legal implications of divorce

The following implications would arise by divorce between a muslim husband and wife

1. Sexual intercourse becomes unlawful after the finality of divorce between husband and wife and the child born out of such intercourse is considered to be an illegitimate.
2. When the marriage is consummated, the wife has to wait till the expiration of iddat period (till then she cannot re-marry)
3. The wife is entitled to whole dower if the marriage had consummated and if the marriage had not consummated then only half of the specified dower becomes payable.
4. The husband is required to maintain his wife during the iddat period.
5. Mutual rights of inheritance exist till the divorce become revocable and these rights cease once the divorce has become final.

Conclusion

Parliament brought many changes in the law of divorce by keeping in mind the heinous position of Muslim women. Islam restricted the unlimited number of pronouncements of talaq to three. Therefore, she can resort to so many specified Kinds of extra judicial as well as judicial divorces. The Dissolution of Muslim Marriage Act, 1939 passed by the parliament in order to provide a relief of release from an unhappy marital tie is a welcome change that should be appreciated.

Reference

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About the Author



I'm Pritika Nagpal from Jims School of Law, Noida. It was an immense pleasure to work with LegalEagle Law Forum as a part of one month internship. I felt quite amazed after reviewing six different bare acts as a part of my task. I personally had gained a vast knowledge about the sections of the bare act. Indeed, it was such a good experience for me as I have seen a different scenario of work apart from my other previous online internships. Thanks to LegalEagle Law Forum for providing such a tremendous platform and giving me a wonderful opportunity to be a part of BARE ACT REVIEW PROGRAM INTERNSHIP.

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