

TALAAQ-UL-SUNNAT AND ITS CURRENT STATUS

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ABSTRACT

This research paper focuses on Talaq-ul-Sunnat, a form of revocable divorce that can be initiated by the husband, and discusses the Islamic law of divorce as outlined in the Holy Quran. Studying Talaq-ul-Sunnat and pertinent cases, as well as figuring out its current events and controversies, are the goals of this research. The research shows that talaq, which is governed by Muslim personal law, is the husband's legal divorce. Based on the Sunna of the Prophet Mohammad, Talaq-ul-Sunnat is a type of revocable divorce that was used during his lifetime with the possibility of reconciliation during the iddat period. The discussion of the two types of Talaq-ul-Sunnat, talaq Ahsan and talaq Hasan, serves as the conclusion to this article. Overall, this study provides a thorough overview of Islamic divorce law and how it affects Muslim marriages.

Keywords: Talaq, Talaq-ul-Sunnat, Muslim Law

INTRODUCTION

The Holy Book of Quran is the major source of Islamic law, and every Muslim firmly believes that it contains nothing that can be characterised as a societal evil because it was revealed by God (Allah) for the good of all humanity. Muslims hold that God spoke the Quran to Muhammad through the angel Gabriel. It is vital to present what the holy book Quran says regarding Talaq as a result.ⁱ

Muslim marriage is a contract. It can last until one of the parties passes away, but it can also be terminated earlier. Divorce is not always the best option when there is discord between the spouses. The Quran encourages reconciliation, either directly between the spouses or through the employment of family members as arbitrators. If "mutual good treatment" cannot be achieved, there should be a friendly breakup. As a result, the Quran views divorce as something that is legal but not praiseworthy. This feeling is echoed by the Prophet Muhammad's alleged statement that divorce is God's least favourite of all things that are permitted.ⁱⁱ

Talaq is seen as a sin that is impermissible in the sight of Allah, and it is abundantly obvious from the Quran that Allah forbids divorce and promotes the continuation of marriage. Nonetheless, the Holy Quran itself specifies the procedure to be followed for the amicable dissolution of marriage with the possibility of reversal of the same if it becomes difficult to reconcile disagreements between the husband and wife.

RESEARCH OBJECTIVES

The research objectives are:

1. To study what Talaq-ul-Sunnat is
2. To study relevant cases
3. To determine its current affairs and controversies

FINDINGS

What is Talaaq?

Talaaq originally meant dismissal. "setting free" means "letting loose" or "ties or restraint" Muslim law defines it as freedom from marriage only. It's husband's formal divorce. Talaaq is the husband's legal divorce. In everyday speech, "divorce" and "talaaq" two names are interchangeable, but under Muslim law, if a person seeks "divorce," he is bound by the rules of the Dissolution of Muslim Marriage Act, 1939. "Talaq" proceedings, on the other hand, are controlled by Muslim Personal Laws.ⁱⁱⁱ

What is Talaaq-ul-Sunnat?

Major types of divorce include divorce by husband, wife or mutual consent. Talaaq-ul-Sunnat is a type of divorce that can be done by the husband in the marriage. It is also called Talaaq-ul-Raje.^{iv} Talaaq-ul-Sunnat is a type of revocable divorce unlike Talaaq-ul-Biddat.^v

One of the most abhorrent practises permitted in Islam, according to the Prophet Mohammed, is talaq. Prophet did, however, permit two types of talaq, giving couples enough time to ponder and reconcile their divorce. Talaaq-ul-sunnat, which is based on the Prophet Mohammad's Sunna and was practised during his lifetime, is seen as being in conformity with his edicts. Revocable talaq, or talaq-ul-sunnat, stipulates a time frame within which the judgement may be overturned. The declaration of talaq does not become permanent right away; there is always a chance that the husband and wife would disagree.^{vi}

Types of Talaaq-ul-Sunnat

Talaq-ul-Sunnat is separated into two types further:

1. Talaq Ahsan, I (Most Proper)
 2. Talaq Hasan II (Proper)^{vii}
- Talaq Ahsan

This kind of talaq is regarded as the most appropriate because there is always a chance that it will be revoked during the Iddat period, and only one decree of divorce should be issued during the tuhr (purity, between two menstruations), or at any time if the wife is menstruation-free.^{viii}

Following that proclamation, you must refrain from having any sexual relations for the next iddat. Only an oral divorce is subject to the need that the pronouncement be made during a time of tuhr; talaq in writing is exempt from this requirement. Similarly, when the wife is past the menstrual age, the parties have been apart for a long period, or the marriage has not yet been consummated, this requirement is not applicable. The benefit of this form is that divorce can be annulled at any point before the end of the iddat term, preventing quick, careless divorce. Revocation may be expressly or implyingly effected.

The talaq may be rescinded explicitly or subtly. If a husband and wife cohabit during the Iddat time, there will be a presumption that they will reconcile. But, if the talaq is not rescinded during that time after the completion of Iddat, it will be regarded as final.

- Talaq Hasan

The talaq hasan is merely a legal yet acceptable form of talaq. In this kind of talaq, the word must be said three times throughout the wife's three subsequent tuhr (purity) periods. If the wife is not menstruating, it must be stated after a month or thirty days have passed between the previous pronouncements. Every talaq pronouncement must be made during the purification period, and no sexual activity should be performed. The first talaq must be spoken out loud throughout the tuhr time. After the second time, the husband will once more pronounce the talaq, which forbids any sexual activity throughout the purification period. By cohabiting with his wife first and second, he once more revoked it. Again, before any sexual activity occurs and the wife enters her third time of purity, the husband makes the third proclamation. When the husband makes this third declaration, the marriage is officially and forever over, regardless of Iddat.^{ix}

In this, the husband must say the talaq formula three times over three consecutive tours. If the wife has reached menstrual age, the announcement of it may be made one month or thirty days after the previous announcements. The talaq becomes definitive and irrevocable after it has been issued. Each of the three announcements must be made at a moment when there hasn't been any sexual activity during the tuhr. Example: W, a wife, is undergoing her period of purity and there have been no sex acts. Her spouse H now utters the word "talaq" on her. The first statement made with explicit words is this. Then again, he makes the second proclamation before engaging in sexual activity, when she enters the subsequent stage of purity. He revokes

it once more. Again, before any sexual activity occurs and the wife enters her third time of purity, the husband makes the third proclamation. When H makes this third declaration, the marriage is officially and forever over, regardless of iddat. Before the third declaration, this form of talaq can be reversed; nevertheless, once the third pronouncement is made, the talaq is final.^x

Case Analysis

- Shamim Ara v. State of U.P. & Anr. (2002)

The Supreme Court of India ruled in the case of **Shamim Ara v. State of U.P. & Anr.** in 2002. The plaintiff Shamim Ara sued her husband Abrar Ahmad in 1979, claiming he had abandoned her and stopped providing for her. In 1990, Ahmad stated that since he had legally divorced Shamim Ara in 1987 using triple-talaq, he was not required to provide for her.

The legal issue was when, if ever, Ahmad's talaq went into force. It either took effect at the time of his first declaration in the presence of witnesses but not in the presence of his wife, it took effect when he notified Shamim Ara in writing in 1990, or it did not take effect because neither action constituted a legal divorce. The Court ruled in favour of a third choice, coming to the conclusion that talaq, which is given to a Muslim wife later in writing and outside of her presence, is unfair as to be unenforceable. This Note examines how, by requiring that this once private transaction be sanctioned by the courts before validation, the Court's approach to this conclusion "judicializes" Islamic divorce.^{xi}

According to Dixie Morrison in their Research Paper “Shamim Ara v. State of U.P. & Anr (Supreme Court of India, 2002) and the “Judicialization” of divorce” Judge R.C. Lahoti claimed that the practise of instant divorce, unfairly favoured Muslim husbands and was not in accordance with Islamic injunctions. The true law of talaq, as established by the Holy Quran, demanded that divorce be for a fair cause and that attempts at reconciliation be made first, according to the judgement. What the Judge has failed to realise is the Honourable Judge's interpretation is unorthodox and unsupported by historical data. The context for Lahoti's understanding of Islamic divorce law comes from alterations made to the way courts interpret Islamic law, which largely eliminated the flexibility in terms and negotiation power given to Muslim wives under conventional Islamic legal interpretations. Additionally, by granting

courts the jurisdiction to grant or deny divorce, the court's decision in the case furthered the consolidation of state power and moved Muslim family law from the private to the public sphere. Marriage and divorce were "judicialized" by this ruling, which placed them under the state's purview as "public matters" that must be governed.^{xii}

- Delhi High Court Plea

Two women filed a plea in the Delhi High Court on the topic of Talaq-ul-Sunnat. One woman argued that since the husband was allowed to divorce the wife without any reason was a misuse of the rules and the process. She wanted Talaq-ul-Sunnat to be abolished on the grounds of the mere fact that it can be misused by husbands. Another woman who was divorce contested the latter by saying that the practice of talaq and Talaq-ul-Sunnat is an "essential religious practice" and should not be struck down. The divorced woman stated that she was able to get out of a bad marriage because of the functioning of the Islamic law.

Arguments that were forwarded against the abolishment of Talaq-ul-Sunnat were that the women have power to regulate matrimonial engagements, and it tries to empower women and disempower men. Khula is an option as well which encourage empowerment of Muslim women.^{xiii}

- Talaq-ul-Sunnat being unlawful plea

On October 8, 2021, the Delhi High Court sent a notice to the Central Government to review the petition of talaq-ul-Sunnat being unlawful. It was made for the reasons that the husband can without reason, prior notice or unconditionally divorce his wife which was barbaric and discriminatory.^{xiv} It was first filed by a woman who was pregnant 9 months and was divorced by her husband without any advance notice and clear grounds.^{xv}

This plea was rejected by the court by quoting that it was a plea without merit and noted Section 3 of Muslim Women (Protection of Rights and Marriage) Act, 2019 which read that any pronouncement of Talaq by a husband in forms of words, voice or electronically is void.^{xvi}

CONCLUSION

The Quran promotes reconciliation and views divorce as a permissible but undesirable alternative. The husband's legal divorce is known as talaq, which also means freedom from marriage. The husband can also initiate a reversible divorce known as talaq-ul-Sunnat. Based on the Sunna of the Prophet Mohammed, the Talaq-ul-Sunnat is thought to be in accordance with his teachings. It establishes a deadline for when the verdict may be overturned, making it a more careful and thoughtful process. There are two varieties of Talaq-ul-Sunnat: Talaq Ahsan and Talaq Hasan. The former is said to be the most acceptable because it permits revocation during the Iddat era. Through various recent cases we find that people think it is unconstitutional and barbaric but these are meritless arguments and all have been turned down.

ENDNOTES

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