

Dissolution Of Muslim Marriages Act, 1939

8 of 1939

[17th March, 1939]

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"There is no proviso in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi Jurists however, have clearly laid down that incases in which the application of Hanafi Law causes hardship, it is permissible to apply the provisions of the "Maliki, Shafi's or Hambali Law." Acting on this principle the Ulemas have issued fat was to the effect that in cases enumerated in clause 3, Part A of this Bill [now see section 2 of the Act], a married Muslim woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called "Heelatun Najeza" published by Maulana Ashraf Ali Sahib who has made an exhaustive study of the provisions of Maliki Law which under the circumstances prevailing in India may be applied to such cases. This has been approved by a large number of Ulemas who have put their seals of approval on the book. As the Courts are sure to hesitate to apply the Maliki Law

to the case of a Muslim woman, legislation recognising and enforcing the above mentioned principle is called for in order to relieve the sufferings of countless Muslim women. One more point remains in connection with the dissolution of marriages. It is this. The Courts in British India have held in a number of cases that the apostasy of a married Muslim woman ipso facto dissolves her marriage. This view has been repeatedly challenged at the bar, but the Courts continue to stick to precedents created by rulings based on an erroneous view of the Muslim Law. The Ulemas have issued Fatwas supporting non-dissolution of marriage by reason of wife's apostasy. The Muslim community has, again and again, given expression to its supreme dissatisfaction with the view held by the Courts. Any number of articles have been appearing in the press demanding legislation to rectify the mistake committed by the Courts, hence clause a [now see section 4] is proposed to be incorporated in this Bill Thus, by this Bill the whole Law relating to dissolution of marriages is brought at one place and consolidated in the hope that it would supply a very long felt want of the Muslim Community in India....." -Gaz. of Ind., 1936, Pt. 5, p. 154.

1. Short title and extent :-

(1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

¹ [(2) It extends to the whole of India except the State of Jammu and Kashmir].

1. Substituted for the old sub-section (2) by the Miscellaneous Personal Laws (Extension) Act, 1959 (98 of 1959), S. 3 and Sch. I (1-2-1960).

2. Grounds for decree for dissolution of marriage :-

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable

cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,-

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) 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 Qoran;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law; Provided that-

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband when the husbands whereabouts are not known :-

In a suit to which clause (i) of section 2 applies,-

(a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
(b) notice of the suit shall be served on such persons, and
(c) such persons shall have the right to be heard in the suit:
Provided that the paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith :-

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage: Provided that after such renunciation, or conversion the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned, in section 2 : Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Rights to dower not to be affected :-

Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

6. Repeal of section 5 of Act 26 of 1937 :-

[Repealed by the Repealing and Amending Act, 1942 (25 of 1942), S. 2 and Sch. I].