

THE CONCEPT OF 'TALAQ AND IDDAT' UNDER MUSLIM LAW IN THE LIGHT OF UNIFORM CIVIL CODE

Dr. Mahendra Subhash Khairnar

Assistant Professor

Bharati Vidyapeeth's Yashwantrao Chavan Law College, Karad

a) Introduction :-

The concept of marriage and divorce under Muslim law is developed through ancient perspectives and from a historical point of view among Muslims. The source of development of these are personal laws, which happen to be the Quran (holy book of Muslim), Sunna (precedent), Ijma (consensus) and Kiyas (analogical deductions), among these four sources the Quran is the primary source.

It is considered to be fundamental and sacred in the Muslim world, that it is immutable according to Muslims. Marriage is considered a civil contract under Muslim law, unlike sacrament under Hindu law. It is necessary for the establishment of a family, which is considered a fundamental entity of society.

Under Muslim Law, marriage is only the halal or legal way for the intimate relationship between men and women and legitimacy of children. It is a social necessity that regulates social life through the creation of certain rights and duties which both the partners are required to fulfil.



Global Online Electronic International Interdisciplinary Research Journal's licensed Based on a work at <http://www.goeiirj.com>

b) Marriage under Muslim law :-

Muslim Law provides for simple ceremonies of marriage. All that is necessary for the performance of the marriage is that there should be a proposal of marriage made by, or on behalf of one of the parties to the marriage and accepted, by or on behalf of, the other, at one and in or at the same time. If the proposal is made in one meeting and the acceptance in another then it does not result in a valid contract of marriage.

The Sunni Law requires that the proposal and acceptance should be made in the presence and hearing of two adult male witnesses or one adult male witness and two adult female witnesses. The Shia Law does not require the presence of witnesses.

The nature of marriage under Muslim law is the same as a civil contract. It is entered into by both the parties by their free volition. In its formation it also takes the form of contract as there is

offer and acceptance between the parties, giving same right to husband and wife. Though generally marriage under Muslim law is considered a civil contract, some people also treat it as a religious sacrament.

In the case of Abdul Kadir vs Salima, it was observed that the character of Muslim marriage is similar to that of a civil contract, as like civil contract marriage under Muslim law requires of offer (Ijab) from one side and acceptance (Qubul) from another side, which must be out of the free will, without any coercion, undue influence and fraud on the part of both the parties.

c) Essentials of Muslim marriage :-

Capacity to marry –

According to the Quran, a person who is to be married must be of sound mind, attained the age of puberty. In Muslim society age of puberty for a man is considered to be 15 years. The Indian Majority Act 1875 does not apply to Muslims in case of marriage, dower or divorce, but The Prohibition of Child Marriage Act 2006 is secular and it is applicable to all, irrespective of religion, thus according to it, the age of majority for a girl is 18 years and for a boy is 21 years.

1. Offer and Acceptance –

There is an offer (Ijab) from one party and acceptance (qubul) from the other party, the acceptance is subsequent to the terms of the contract and both the offer and the acceptance must happen at one time on the same occasion. If an offer is made at a particular time and it is accepted after some days/months/years, it is not accepted.

Consent of the parties –

Both the parties must consent to the terms of the contract in the same sense without any fraud, undue influence, coercion or ill-will.

2. Mehr

It is a consideration payable to the wife during Muslim marriage, as a mark of respect to her from her husband. Mehr is one of the fundamental criteria for the legitimacy of Muslim marriage.

No legal impediment :-

For the validity of marriage, there should not be any legal hindrance, some of which are the following:

Absolute impediment:-

It renders marriage null and void.

Consanguinity :-

Prohibition to marry some of the blood relations, such as a male Muslim cannot marry his mother, grandmother, daughter, granddaughter, niece, aunt or great-aunt (mother and father side

both) and sisters full, consanguine or uterine.

Affinity -:

It prevents a man from marrying all relations of the woman with whom he married, such as once wife's mother, grandmother, grandmother's mother, etc.

Fosterage -:

It prevents relationships with relations of a foster mother, such as foster grandmother, foster mother's daughter etc.

Relative Impediments -:

These conditions render the marriage irregular; if irregularities are removed then the marriage becomes valid.

d) Divorce under Muslim Law -:

Despite the precept of the Prophet, "Oh, Allah the most detestable of all permitted things is divorce", divorce is the most copious and uninhibited aspect of Muslim matrimonial law.

Another remarkable feature of Muslim law of divorce is that in most cases no judicial or non-judicial authority is needed to effect dissolution of marriage.

Divorce by Husband -:

There are four ways a husband can give divorce.

Talaq-ul-Sunnat -:

This form of divorce is based on Muslim Personal Laws. It is further sub-divided into the following categories:

Ahsan -:

- Husband has to make an announcement of divorce in a single sentence when the wife is free from the menstrual cycle.
- After divorce women have to observe Iddat for a certain period of time, during which the husband cannot indulge in any form of sexual intercourse, if he indulges then revocation of talaq becomes impliedly revocable, otherwise, it becomes irrevocable.
- This type of talaq can be pronounced even when the wife is undergoing menstruation, but for that marriage must not be consummated between the parties.
- It is the most approved form of talaq.

Hasan-:

- It is a less approved form of Talaq Ahasan.
- There is a provision for revocation of divorce.

- The word talaq is to be pronounced three times simultaneously.
- Three announcements should be made in the three states of purity if the wife has not crossed the age of menstruation.
- If the wife has crossed the age of menstruation, pronouncement must be made at the 30 days interval between the successive pronouncements.
- During the period of three pronouncements, no sexual intercourse should take place, if it happens divorce is revoked.
- After completion of the iddat period, this type of divorce becomes irrevocable.

Talaq-ul-Biddat:-

- it is this disapproved/sinful form of divorce.
- It is also known as triple talaq, after pronouncing talaq three times it becomes irrevocable immediately.
- This form of divorce is only recognised under Sunni Law and not by Shias and Malikis.
- Parties can remarry only after performing nikah halala by the female partner, under which she has to marry another man and then get divorced from him.
- This type of divorce is unconstitutional in India, through the judgement of the Supreme Court in the case of Shayara Bano vs Union of India and Others.

Ila:-

- It is a form of divorce under which the husband has the power to pronounce that he would not indulge in sexual intercourse with his wife.
- Subsequent to this pronouncement, the wife is required to observe iddat.
- If the husband cohabits with the wife during this period, then the Ila is revoked.
- Once the period of iddat is over, divorce becomes irrevocable.
- This type of divorce is not practised in India.

Zihar:-

- It is also constructive divorce like Ila.
- In this form of divorce, the husband compares his wife with a woman who comes under a degree of prohibited relationship, such as his mother, sister etc, and pronounces that she is like his mother or sister.
- For doing this the husband must be of sound mind and above the age of eighteen years.
- The wife has the right to seek judicial remedies such as restitution of conjugal rights, cohabitation etc., but cannot seek judicial divorce.
- Husband can revoke such divorce by observing two months fast, feeding sixty people and

freeing a slave.

Divorce by Wife -:

Talaq-e-Tafweez-:

- It is also known as delegated divorce.
- The husband has the power to delegate such power to the wife, he must be of sound mind and above 18 years of age.
- This type of talaq is also called an agreement, which may be entered between the parties before or after marriage.
- If the terms of an agreement are not fulfilled, the wife can ask for a divorce.
- It is the only way through which a woman can ask for a divorce.
- The right of the husband to divorce his wife remains intact, it does not deprive the husband of his right to pronounce the divorce.

Divorce by Mutual Consent-:

Khula-:

- It means 'laying down', where the husband lays down the authority over his wife.
- This is done through mutual consent between husband and wife, where the wife pays the consideration from her property to the husband, for her release.
- Wife releases Mehr and other rights for the benefit of her husband.
- Thus, divorce is purchased from husband by wife.
- There is an offer from the wife, which is accepted by the husband.
- Women are required to observe iddat after Khula.

Mubarat-:

- It means 'release', it releases/discharges parties from marital rights.
- Divorce is with mutual consent among parties to become free from one another.
- Its formalities are the same as Khula, where there is an offer from one party and acceptance from another.
- Women are required to observe Iddat.

e) Iddat -:

Iddah or Iddat is an Arabic term which means period of waiting and is observed by Muslim women. It is a period of chastity which a Muslim woman is bound to observe after the dissolution of her marriage due to the death of her husband or by divorce before she can lawfully marry again. The reason behind observing iddat period is to ascertain whether the woman is pregnant or not and to

acknowledge the certainty of paternity.

Iddat period varies in different cases,

- a divorced woman observes it for 3 months whereas a woman whose husband has died observes it for four lunar months and ten days after the death of her husband, whether the marriage was consummated or not.
- Iddat period lasts for divorced woman who is pregnant till the time she gives birth or miscarriage.
- If a woman is pregnant at the time of husband's death, she observes iddat for a complete year consisting nine months for pregnancy and three months of iddat period.

Under Muslim law, the period of Iddha commences from the day of dissolution of marriage, even though the woman may come to know it later on and if she comes to know of it only after the termination of the period of Iddha, she is required to perform no iddha.

This period is considered as a balance by some Islamic scholars by providing sufficient time to mourn for the death of her husband and also protects the widow from criticism that she might be subjected for remarrying too quickly after her husband's death.

This period mainly helps in determining whether a woman is pregnant or not, since four and a half months is half the duration of a normal pregnancy if there is any. In Muslim law, husband shall make a will in favor of their wives for the provision of one year's residence and maintenance, unless the wives leave the house out of their own free will.

f) History of "Iddat" in India -:

The practice of Iddat in India has its roots in the historical context of Islamic law and traditions. The arrival of Islam in the Indian subcontinent during the medieval period brought with it various customs and practices, including the concept of Iddat.

During the medieval period, the Indian subcontinent witnessed the establishment of several Muslim dynasties, such as the Delhi Sultanate (1206-1526) and the Mughal Empire (1526-1857). These ruling powers played a significant role in shaping the religious and cultural landscape of the region, including the practice of Iddat.

The Quran, the central religious text of Islam, mentions the concept of Iddat in several verses. Chapter 2, verse 234 states, "And those of you who die and leave wives behind, they (the wives) shall wait (as regards their marriage) for four months and ten days". These verses laid down the foundation for the duration of Iddat for widows.

The practice of Iddat in India gained prominence during the reign of the Mughal Empire. The Mughals were devout Muslims and followed Islamic customs and laws. They established a

centralized legal system, known as the Fatawa-e-Alamgiri, which incorporated Islamic principles into the governance of the empire. This legal code provided guidelines on various aspects of Islamic law, including marriage, divorce, and the practice of Iddat.

Under the Mughal rule, the practice of Iddat became an established norm within the Muslim community. It was seen as a means to protect the rights and dignity of women, ensuring that their social and economic status was safeguarded during the period of mourning or separation. Iddat provided women with a dedicated timeframe to grieve, settle legal matters, and potentially reconcile with their spouses.

Over time, the practice of Iddat in India evolved and adapted to regional customs and cultural variations. Different Muslim communities in India, such as Sunni, Shia, and others, may observe certain specific customs or variations within the broader framework of Iddat.

In modern India, the practice of Iddat continues to be followed by many Muslim women, particularly those who adhere to conservative interpretations of Islamic teachings. However, it is important to note that Iddat, like other religious practices, is subject to individual interpretation and personal choices. Some Muslim women may choose not to observe Iddat or may observe it in a modified manner that aligns with their own beliefs and circumstances.

Overall, the history of Iddat in India is intertwined with the arrival and spread of Islam in the region, as well as the influence of Islamic legal codes and cultural practices during the medieval period. It has continued to be an important aspect of the religious and social fabric of the Indian Muslim community.

g) Place to Observe Iddat :-

1. It is compulsory to observe iddat period in the same house where the woman was residing permanently at the time of her husband's death or in case of dissolution of marriage.
2. If a woman receives the news of her husband's demise while she was on journey, she is supposed to immediately return to the place of her residence to observe her iddah, provided that her home is within the reach not beyond, else she could return back upon reaching the destination.
3. A woman who was sent to her parental home should return to the home of her husband, upon her husband's demise to complete her Iddat there because according to the rule, Iddat is completed in the house which is the permanent residence of a wife. Her parents' house is not considered as permanent residence.

h) Rules of Iddat :-

Certain things are forbidden to muslim women during the period of iddat. In Muslim Personal Law, the term ‘Haraam’ is used for strictly prohibited things such as –

- It is Haraam upon a woman to indulge into the activities of beautifying herself through makeups or any other ways during iddat.
- She is forbidden to wear silken clothes or other gaudy dresses. No particular colour is specified to wear during this period like black or white or any such, just a simple and plain clothing would suffice.
- She is not allowed to leave house till the completion of iddat period unless there is some emergency like requirement of basic needs or medical illness to such extent that it is not possible to arrange for a house-call by a physician.
- She is obliged to mourn for her husband by praying to Allah (God) and supplicating Allah-Subhanahu for her husband and for herself.
- There is no restriction of seeing the moon or the mirror as some people in the name of islam try to enforce these restraints.

i) Commencement of iddat :-

Iddah period starts right after the death of husband or after a divorce for muslim wife. Despite of her ignorance to observe iddah, it would not be held due or affected in anyway.

1. If she didn't receive the news on time of her husband's demise but got to know about it within the prescribed iddah period, then she is obliged to observe it for the remaining days of iddat period.
2. In case if she receives the news at later stage when iddah period has already passed, she is not bound to experience it. The time counts from the time of husband's demise or the time when divorce is given.

j) Statutory Provisions regarding Iddat in India :-

The statutory provisions regarding Iddat can be found in the Muslim Personal Law (Shariat) Application Act, 1937, which recognizes and governs matters related to personal law among Muslims in India. The specific provisions related to Iddat can be found in Section 2 of the Act.

Under the Act, Section 2 states that the Muslim personal law, including provisions related to Iddat, will apply to Muslims in matters of marriage, dissolution of marriage, maintenance, and succession. The Act does not provide detailed specifications regarding the duration or procedures of Iddat, as those are usually determined based on Islamic principles and customs.

It's important to note that the Muslim Personal Law (Shariat) Application Act, 1937, applies to Muslims specifically, and different communities and religions in India may have their own provisions regarding periods of mourning or waiting after a spouse's death or divorce.

Also, Section 2 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 talks about the period of 'Iddat'. At the point when a marriage is dissolved by death or by separation, the woman is disallowed from marrying again, inside a predetermined time. This predetermined time is known as Iddat.

k) Maintenance during Iddat :-

During the Iddat period, a muslim wife is not entitled to claim maintenance out of her husband's estate as she is herself an heir to it. This is because the liability of maintaining the wife lies only on the husband and not on the other heirs. If she did not receive her dower (Mehr) nor did she renounce it, she would be entitled to receive it as a first charge from his estate.

Also during the Iddat time, the divorced wife is entitled to fair and equitable maintenance from her husband. In the case of, Mohammed Ahmed Khan v. Shah Bano^[iv], the apex court bench of 5 judges headed by Justice Chandrachud held that if the wife is unable to support herself, a husband is obligated to pay maintenance to her even after iddah under section 125 of the Cr.PC, and if she is able to support herself, maintenance will cease after iddat.

The Supreme Court also interpreted the Quran, ruling that there is no dispute between Muslim personal law and section 125 of the CrPC since a husband is required to support his divorced wife even under Muslim law.

l) Uniform Civil Code and Iddat :-

Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, 'Uniform Civil Code' is explicitly mentioned in Part 4, Article 44 of the Indian Constitution. Article 44 says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

A UCC will encode all those personal laws within itself which will then apply to all citizens uniformly, regardless of their personal religion. India is a diverse country with a multi-religious and multicultural society. Currently, personal laws related to marriage, divorce, and inheritance are governed by religious customs and traditions specific to different communities, such as Hindu, Muslim, Christian, and others. These personal laws differ significantly from one another and can sometimes lead to inequalities and discriminatory practices, particularly against women.

The concept of a Uniform Civil Code has been debated in India for many years. The framers of the

Indian Constitution envisioned a UCC, but due to the sensitivity of the issue and concerns about religious freedom, it has not been implemented thus far. The Constitution of India provides the directive principles of state policy, which encourage the implementation of a UCC, but it does not make it mandatory.

In India, the application and regulation of iddat primarily fall under the Muslim Personal Law, which is based on Islamic principles and governs matters relating to marriage, divorce, inheritance, and other personal affairs for Muslims. Personal laws, including those related to iddat, are subject to interpretation and may vary based on different schools of thought and local customs. It's important to note that the implementation of a Uniform Civil Code would require extensive discussions, consultations, and consensus-building among various stakeholders, including religious communities, legal experts, and policymakers. The Indian government would need to navigate the complex social, cultural, and religious dynamics to ensure that the UCC respects the principles of equality, justice, and religious freedom for all citizens.

The UCC has been in talks due to various observations done by the Supreme Court in cases like *Sarla Mudgal & others. v. UOI*, 1995, *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985, and *Ms. Jordan Diengdeh v. S.S. Chopra*, 1985.

m) Conclusion -:

Iddat is a practice that Muslim women perform to ascertain pregnancy and parentage of a child born of such pregnancy. According to the Muslim Personal laws, a husband is required to maintain his wife only during the iddat period and after the commencement of iddat, the woman is on her own. In the *Shah Bano* case, the Supreme Court went against the convention and allowed for maintenance even after the iddat period.

Due to this, there was furore in the Muslim community and a new law, *Muslim Women Law*, 1986 was adopted to nullify the decision of the *Shah Bano* case. Further, this act had its controversy in the High Court but the Supreme Court settled the law by interpreting it in favour of the wife.

It can be seen that now under Muslim law it is clear that a husband has the responsibility to maintain his former wife even after the commencement of iddat period irrespective of the economic condition of women (even a step ahead of *Shah Bano* judgement). The status of women has been raised by the judiciary in a male-dominated society and it has been made clear that women also have equal status in a patriarchal society like India.

References :-

- 1) Family Law, Dr. Paras Diwan, Allahabad Law Agency
- 2) Family Laws in India, Dr. S. R. Myneni, Asia Law House
- 3) blog.ipleaders.in
- 4) legalserviceindia.com
- 5) myadvo.in

