

## **Dissolution of Muslim Marriages Act, 1939**

Section 2 of the Dissolution of Muslim Marriages Act, 1939, provides that 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 grounds enumerated therein.

It is to be noted that benefits of this section may be given to a wife whether her marriage was solemnised before or after the commencement of the Act. That is to say, the provisions of Section 2 may be given retrospective effect. The specified grounds are as under:

### **(i) The Husband is missing for Four Years:**

Section 2(i) provides that if the husband is missing and his whereabouts are not known for a period of four or more years, the wife may file a petition for the dissolution of her marriage. The husband is deemed to be missing if the wife, or any such person who is expected to have knowledge of the husband, is unable to locate the husband.

Section 3 provides that where a wife files petition for divorce on this ground, she is required to give the names and addresses of all such persons who would have been legal heirs of the husband upon his death. Paternal uncle and brother of the husband must also be included even if they are not legal heirs. The court issues notice to all such persons to appear before it and to state if they have any knowledge about the missing husband.

If it is fully established that nobody knows about the whereabouts of the husband for the last four or more years, the court passes a decree for dissolution of the marriage. The decree passed by the court on this ground becomes effective only after the expiry of six months, from the date of such decree.

If before expiry of six months the husband reappears in person or communicates to the court through his agent and satisfies the court that he is prepared to perform his conjugal duties, the court shall set aside the said decree and the marriage is not dissolved.

### **(ii) Husband's failure to maintain the wife for Two Years:**

Section 2(ii) provides that if the husband has neglected or failed to provide maintenance to the wife for two (or more) years, the wife is entitled to obtain a decree for the dissolution of her marriage. It is a legal obligation of every husband to maintain his wife. If he fails to maintain the wife, she may seek divorce on this very ground.

A husband may not maintain his wife either because he neglects her or because he has no means to provide the maintenance. In both the cases, it amounts to failure of the husband to maintain which entitles the wife to seek dissolution of her marriage. If the husband is unable to maintain his wife due to poverty, unemployment, imprisonment, ill-health or any other misfortune, even then the wife has a right to get the decree for dissolving her marriage.

It is to be noted that husband's obligation to maintain his wife is subject to wife's own performance of matrimonial obligations. Therefore, if the wife lives separately without any reasonable excuse, she is not entitled to get a judicial divorce on the ground of husband's failure to maintain her because her own conduct disentitles her for maintenance under Muslim law.

The faulty conduct of the wife due to which she is not entitled to get maintenance under Muslim law is a very good defense against her suit for judicial divorce. Thus, if a wife leaves the matrimonial home after a minor quarrel and does not come back for two years, she cannot get judicial divorce under this clause. In

other words, if the wife remains away from the husband without any reason and after two years files a petition for divorce under Section 2(ii) the divorce cannot be granted.

But, if the wife is living separately because of some reasonable excuse e.g. completing her studies at another place) and husband does not provide her maintenance for two years, she has a right of judicial divorce under this clause.

**(iii) Imprisonment of the husband for Seven Years:**

Section 2(iii), read with provision (a), lays down that a wife is entitled to get her marriage dissolved by an order of the Court of law if her husband has been sentenced to imprisonment for a period of seven or more years.

The wife's right of judicial divorce on this ground begins from the date on which the sentence has become final. Therefore, the decree can be passed in her favour only after the expiry of the date for appeal by the husband or after the appeal by the husband has been dismissed by the final court.

**(iv) Husband's failure to perform marital obligations for Three Years:**

Under Section 2(iv) a wife is entitled to the dissolution of her marriage if her husband fails to perform his marital obligations for a period of three years without any reasonable excuse. The Act does not define 'marital obligations of the husband'.

There are several matrimonial obligations of the husband under Muslim law. But for purpose of this clause husband's failure to perform only those conjugal obligations may be taken into accounts which are not included in any of the clauses of Section 2 of this Act.

It is submitted, that where the husband deserts the wife or does not cohabit with her without any reasonable excuse, it amounts to failure of the husband to perform marital obligations. Such failure of the husband without reasonable justification for at least three years entitles the wife to get a decree for dissolution of the marriage.

But, if the husband does not cohabit with wife for three years due to some reasonable excuse e.g. illness, or remains away from her because of his business or studies etc., the wife cannot get the decree of dissolution of marriage under this clause.

**(v) Husband's Impotency:**

Under Section 2(v) of the Act a wife may sue for dissolution of her marriage on the ground of husband's impotency. But, for getting a decree, the wife has to prove the following two facts:

- (i) that the husband was impotent at the time of the marriage, and
- (ii) That he continues to be impotent till the filing of the suit.

The wife can get divorce on this ground only if both the above mentioned facts are fully established. Before passing a decree of divorce on this ground, the court is bound to give to the husband one year's time to prove his potency provided he makes an application for it. If the husband does not give such application, the court shall pass the decree of divorce without delay.

Where the husband is successful in proving his potency within the period of one year, the decree of divorce cannot be passed. But if he fails to contradict the allegation of the wife, a decree dissolving the marriage is passed.

**(vi) Husband's insanity, leprosy or venereal disease:**

Section 2(vi) entitles a wife married under Muslim law, to obtain a divorce on the ground that her husband is insane or is suffering from leprosy or venereal disease. The husband's insanity must be for two or more years immediately preceding the presentation of the suit. But the Act does not specify whether unsoundness of mind should be curable or incurable. However, it is submitted that the insanity of the husband must be incurable.

Leprosy may be white or black or cause the skin to wither away. -It may be curable or incurable (permanent). The Act neither specifies the form of leprosy nor its duration. It is submitted, therefore, that courts have discretion to give any meaning which does justice to the spouses.

Venereal disease is a disease of the sex-organs. The Act provides that this disease must be of virulent (permanent) nature i.e. incurable. It may be of any duration. Moreover, even if this disease has been infected to the husband by the wife herself, she is entitled to get divorce on this ground.

**(vii) Option of Puberty by wife:**

This ground for the dissolution of marriage is not based on any 'fault' of the husband. It is an independent provision under which a marriage is voidable at the option of the wife. Under Section 2(vii) a wife can obtain a decree for dissolution of her marriage if her marriage was contracted by her father or any other guardian during her minority.

Thus, this clause gives her the option to repudiate the marriage before attaining the age of eighteen years, provided the marriage has not been consummated.

**(viii) Cruelty by the Husband:**

Section 2(viii) provides that a wife can sue for divorce if her husband treats her with cruelty. Cruelty of the husband was recognised as sufficient ground for divorce also before 1939. But its scope was limited only to physical tortures; mental cruelty by husband was not a sufficient ground for dissolution of marriage. The Act has now enlarged the scope of the term. Cruelty now includes also mental torture. The Act defines cruelty by laying down following acts of the husband which are regarded as cruelty against the wife:

**(a) Habitual assault on the wife or making her life miserable by cruelty of conduct if such a conduct does not amount to physical ill treatment:**

Any conduct of the husband, which may not be a physical ill-treatment, but is of such a nature which makes the life of the wife miserable, is also a cruelty against her.

If the husband stops talking to his wife for a considerably long period, or deliberately ignores her, it may make her life miserable although there is no physical assault in it. Similarly, if the husband habitually abuses the wife or repeatedly makes insulting statements against her character, the conduct of the husband may be regarded as mental cruelty against the wife.

Moreover, the cruelty by husband was also established by the fact of deliberate withholding of money and facilities needed by the wife for her education when the husband had the means necessary to provide for the same. Accordingly the divorce was given to the wife and husband's suit for the restitution of conjugal rights failed.

As regards mental cruelty as a ground for judicial divorce, two significant points must be noted. First, mental cruelty cannot be defined. Therefore, any type of husband's conduct which causes mental tension and hurts the feelings of the wife is a cruelty against her under this clause.

Secondly, any single incident of assault or use of insulting language by the husband will not be regarded as a cruelty by the husband under this clause. Decree for the dissolution of marriage on the ground of mental cruelty is to be given only when the husband frequently ill-treats the wife, and the court is satisfied that due to malicious behaviour of the husband it is impossible for the spouses to live together.

**(B) Association of the Husband with Women of Evil Repute or that he leads an Infamous Life:**

Here again, we find that a single incident of the association of husband with any bad woman (e.g. prostitute or call-girl) will not attract the provision of this clause. The husband's conduct is cruelty against his wife only when he habitually associates with women of bad character or prostitutes.

**(C) The Husband Attempts to Force His Wife to Lead an Immoral Life:**

It would be a great mental torture for a chaste and pious wife if she is compelled by her husband to live in corruption and immorality against her wishes. Where a husband compels his wife to lead an immoral life, his conduct is obviously a mental cruelty against his wife.

**(D) The Husband Disposes of her Property or Prevents her from Exercising her Legal Rights over it:**

This conduct of a husband is regarded as cruelty only where he sells or otherwise transfers a substantial portion of his wife's property without her consent and this disposal hurts the feelings of the wife. It would be wrong to say that the husband's conduct is cruel where he sells a nominal property (say valuing Rs. one or two) or where he sells the ornaments of the wife for medical expenses in the wife's illness or for the advancement of her career.

However, it is submitted that the test whether a disposal of wife's property is cruelty against her is neither the valuation of the property nor the circumstances in which it has been disposed off. The real test is, whether the disposal hurts the feelings of the wife or not. For example, if a husband sells the wedding-ring of the wife against her wishes, then although its value may be small, but it may be sufficient to hurt her sentiments.

Mulla rightly observes that "sub-clause (d) should be read with the opening words of Section 2(viii) and the disposal by the husband of wife's property must be of such a nature as to amount to cruelty to the wife. This is a question of fact in each case."

**(E) The Husband Obstructs her in the Observance to her Religious Profession or Practice:**

But under this clause the husband's restrictions on wife's religious practice must be of such nature which affects the fundamental religious belief of the wife. A direction restraining the wife not to follow blindly the orthodox rituals may not be cruelty.

**(F) If the Husband has more Wives than One and he does not treat her equitably in Accordance With Injunctions of Quran:**

The Quranic provision regarding equal treatment to two or more wives has already been discussed. If a husband, having two wives, favours one and ignores the other, the wife so ignored may sue for divorce on the ground of mental cruelty.

Where one of the wives left the husband because of his ill-treatment, and the husband made no efforts to persuade her to come back, inequality was established and the wife was entitled to the judicial decree on the ground of cruelty.

Regarding the husband's cruelty as a ground for dissolution of marriage, it may be concluded that cruelty under the present Act means not only physical assault by the husband which endangers the life of the wife, but it also includes the mental torture. What amounts to mental torture has clearly been defined in Section 2(viii) of this Act.

But the courts are, it is submitted, free to include any other conduct of the husband as 'mental cruelty' against the wife. The court is not bound to interpret the word cruelty only under the defined instances of Section 2(viii) of the Dissolution of Muslim Marriages Act, 1939.

Law does not recognise various types of cruelty such as 'Muslim cruelty', 'Christian cruelty', 'Hindu cruelty' and so on, and that the test of cruelty is based on universal and humanitarian standards; that is to say, conduct of the husband which would cause such bodily or mental pain as to endanger the wife's safety or health.

**(ix) Any other Ground which is recognised as Valid for the Dissolution of Marriage under Muslim Law:**

Section 2(ix) a residuary clause under which a wife may seek dissolution of her marriage on any ground which could not be included in this section, but is recognised under the Muslim personal law. As discussed earlier, before 1939, a false charge of adultery by the husband against his wife (Lian) was a sufficient ground for judicial divorce under Muslim law. This ground of divorce may be invoked by a wife under this clause.

**Lian (False charge of adultery against the wife):**

If a Muslim husband accuses his wife of adultery and of being unchaste, he has to prove it if the husband fails to prove the charge of adultery and his allegation is found to be false, and then wife is entitled for the dissolution of her marriage on the ground of Lian. It is to be noted that mere false allegation of the adultery by a husband does not dissolve the marriage; the wife has to file a suit for it.

Where a wife files suit in a court of law, the husband is called upon to confirm his allegations on oath. At this stage, the husband has two alternatives. He may either withdraw his charges or confirm on oath that his allegations are true. If the husband withdraws his allegation the wife cannot get divorce. The husband may withdraw his allegations any time before the end of the trial.

If the husband does not withdraw his charges, he has to establish it in the court. If he is successful in establishing that his wife is actually guilty of adultery, the wife's suit for divorce fails. But, if the husband is unable to prove the charge, a decree for the dissolution of her marriage is passed by the court.

However, it is only a 'voluntary and aggressive charge' of adultery made by the husband which, if false, would entitle the wife to get decree of divorce on the ground of Lian. Where a wife hurts the feelings of husband with her behaviour and the husband hits back an allegation of infidelity against her, then what the husband says in response to the bad behaviour of the wife, cannot be used by the wife as a false charge of adultery and no divorce is to be granted under Lian.

**Clause (ix): A Residuary Clause:**

It is significant to note that clause (ix) of Section 2 of the Dissolution-of Muslim Marriages Act is not limited to Lian. The wife may seek the decree for dissolution of her marriage “on any other ground which is recognised as valid under Muslim law” but could not be included in the above-mentioned clauses of Section 2 of this Act.

This has been interpreted to mean that if a wife finds that it is impossible for her to continue the marriage and that her marital life has totally been broken down then she should not be compelled to live with the husband for want of any defined ‘ground’ for divorce.

Where the court is satisfied that marital-relations between the spouses have actually been broken-down beyond reasonable doubt, the court may include any reason or ground for giving relief to wife.

Section 2 (ix) has been regarded as the ‘residuary clause’ because it is the last clause which entitles a wife to seek decree for dissolution of her marriage in absence of any of the grounds expressly provided under the Act. This clause has been interpreted by courts to give new dimensions to ‘mental cruelty’ in the light of changing socio-economic changes in the Muslim community of the modern sensibility.

Under this clause complete ‘break-down’ of matrimonial relations or total mental incompatibility in itself, has been regarded as a ‘reasonable ground’ for dissolution of the marriage. Such interpretation of this clause would not only be rational, realistic and modern approach but generally it would also be in consonance with Islamic policy of dissolution of marriage.

### **IX) Apostasy:**

Apostasy means renouncing or giving up one’s religion. Before 1939 if either of the party to a marriage renounced Islam, the marriage dissolved immediately whether the renunciation of Islam was by husband or by the wife.

But after the commencement of the Dissolution of Muslim Marriages Act, 1939 law on this point has been modified by Section 4 of this Act. The present law relating to the effects of apostasy by husband or wife may be summarised as under:

#### **(1) Apostasy by Husband:**

If a Muslim husband renounces Islam the marriage dissolves immediately. Section 4 of the Dissolution of Muslim Marriages Act, 1939, does not apply to apostasy by a husband. The result is that apostasy by the husband is still governed by the old law under which renunciation of Islam by the husband operates as immediate dissolution of the marriage.

Where a Muslim husband converts to another religion (say Christianity), his marriage is immediately dissolved and the wife ceases to be a Muslim wife of that husband. As such, the wife is not governed by Muslim law and is free to marry another person (immediately) without waiting for the Iddat period.

#### **(2) Apostasy by Wife:**

If a Muslim wife renounces Islam, the marriage is not dissolved. In other words, the apostasy by a Muslim wife does not operate as immediate dissolution of the marriage. She continues to be a wife married under Muslim law. Moreover, even after renouncing Islam, if the wife wants, she may obtain a decree for the dissolution of her marriage on any of the grounds specified in Section 2 of the Act.

#### **(3) Exception:**

The provision given in (2) above, does not apply if the wife was not a Muslim by birth. That is to say, where the wife was a converted Muslim at the time of her marriage, and such converted Muslim wife renounces Islam and again embraces her original religion, and then the marriage dissolves immediately. Thus, an apostasy by a converted Muslim wife results in the immediate dissolution of her marriage.