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Appendix
APPENDIX I

THE LAW OF MARRIAGE AND DIVORCE AMONGST MUSLIMS

A. General

To whom does it apply?

A Muslim is governed by his personal law of marriage and divorce, unless he has been married or his marriage has been registered under the Special Marriage Act. This personal law, which forms part of the compendium known as ‘Muhammedan Law’, is uncodified law derived from the Quran and various judicial decisions.

What is a Muslim Marriage?

It is a civil contract—not as amongst professing Hindus, a sacrament. It follows that it must be made between parties who are of sound mind.

Proposal and Acceptance

As in all other contracts a formal proposal has to be made by or on behalf of one of the parties to the marriage and such a proposal must be accepted by or on behalf of the other in the presence and hearing of witnesses who must be Muslims and consist of either two males or one male and two females. The proposal and acceptance must occur at the same meeting.
II

Polygamous

A Muslim marriage can be polygamous-i.e., the man is entitled to have up to four wives. But a Muslim women has to be monogamous.

Consequence of its being a civil contract:

1. A wife becomes entitled to payment of dower, which is usually agreed upon.

Dissolution by Contract

2. The agreement to marry may provide that if the husband marries again the marriage will be void.

3. Again the agreement may provide for the marriage coming to an end on the happening of some event.

4. In what is known as a “Muta” marriage, the marriage stands automatically dissolved on the expiry of the agreed period.

Thus the agreement may itself provide for dissolution under certain circumstances.

B. Divorce of Dissolution of Marriage

Talak

Under traditional Muslim law the right to divorce rests exclusively with the husband who can divorce his wife by simply repetition the word ‘talak’ thrice. In fact the husband may delegate his power to pronounce ‘talak’ to another person. (The husband may even delegate this power to his wife).
III

Dissolution of Muslim Marriages Act

Under this Act the Muslim wife has acquired the right to win a divorce on the following grounds:

1. That the whereabouts of the husband have not been known for four years.
2. That the husband has failed or neglected to maintain her for at least two years.
3. That the husband has been sentenced to imprisonment for seven years or more for a criminal offence.
4. That the husband was impotent at the time of marriage and continues to be so.
5. That the husband has, without reasonable cause, failed to perform his marital obligations for a period of three years.
6. That the husband has been insane for 3 years.
7. That the husband suffers from leprosy or some virulent venereal disease.
8. That she was given in marriage before she was fifteen, that the marriage was not consummated and that she repudiated the marriage before she reached the age of eighteen.
9. That the husband treats her with cruelty viz.
   (1) he habitually assaults her or makes her life miserable by cruel conduct even if he does not physically maltreat her; or
   (2) he associates with women of bad reputation or leads an infamous life; or
   (3) he attempts to force her to lead an immoral life; or
   (4) he disposes of her property or prevents her exercising her rights over it; or
   (5) he obstructs her in the practice or religious observances; or
IV

(6) he has more wives then one and does not treat her equitably (fairly) as enjoined by the Quran.

(A false charge of adultery constitutes cruelty and is good grounds for a divorce.)

10. Any other ground for dissolution of the marriage.

Court

The Court to which such application must be made is the High Court of the State.

Procedure

All those persons who would be the husband’s heirs at the time of the petition is filed must be mentioned in the petition. Notice has to be given to all those persons and they have the right to be heard in the court proceedings.

C. Consequences of Dissolution of Marriage

These are laid down by Muslim law.

Re-marriage

1. If the marriage was not consummated the woman can remarry immediately on dissolution. If it was consummated she has to wait for execution known as the ‘iddat’.

2. Naturally, marital intercourse between divorced couples is unlawful and any children that may result are illegitimate.
3. The divorced couple can however remarry if they so desire. However, if the husband has pronounced ‘talak’ they cannot remarry unless the wife first marries someone else, that marriage is consummated, and has therefore ended owing to divorce or the death of that husband.

Where divorce is granted under the Act this rule will not apply.

Right to Dower
On dissolution the woman becomes entitled to immediate payment of dower (if it has not been paid already)- the full amount if the marriage were consummated before dissolution and half if it were not. If no amount of dower was agreed upon at the time of marriage she is only entitled to receive three articles of clothing. If an agreed dower is not paid, the divorced wife, and after her death, her heirs may sue for it in a court.

Inheritance
As soon as a marriage is dissolved the wife loses her right of inheritance.
To this rule there is only one exception, namely, where the husband divorces her by ‘talak’ during an illness which leads to his death. In such a case, if the husband dies during the period of ‘iddat’ the divorced wife is entitled to inherit but not if he dies after that period.
This is to prevent a man, on the verge of death, from finding an easy way to disinherit his wife in favour of his other heirs.
THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

An Act to protect the rights of Muslim Women who have been divorced by, or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the thirty-seventh year of the republic of India as follows:

(1) Short title and Extent:
(1) This Act may be called the Muslim Women (Protection of Rights on divorce) Act, 1986.
(2) It extends to the whole of India except the State of Jammu and Kashmir.

(2) Definitions:
In this act, unless the context otherwise requires:
(a) ‘Divorced woman’ means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from her husband in accordance with Muslim law;
(b) ‘Iddat period’ means, in the case of a divorced women (i)there menstrual courses after the date of divorce if she is subject to menstruation, (ii) There lunar months after her divorce, if she is not subject to menstruation, and (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.
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(c) 'Magistrate' means a magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides.

(d) 'Prescribed' means prescribed by rules made under this Act.

(3) **Mahr of other properties of Muslim woman to be given to her at the time of divorce:**

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband; (b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children; (c) An amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage according to Muslim law; and (d) All the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relative of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or that the properties referred to in the clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a magistrate for an order for
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payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the magistrate may, if he is satisfied that (a) her husband having sufficient means has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children, or (b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her;

Make an order, within one month of the date of the filling of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the need of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman.

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person for the whole
VIII

payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the magistrate may, if he is satisfied that (a) her husband having sufficient means has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children, or (b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her;

Make an order, within one month of the date of the filling of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may; determine as fit and proper having regard to the need of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman.

Provided that if the Magistrate finds if impracticable to dispose of the application within the said period, he may for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person for the whole
appear to the magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the provision to sub-section (1), the Magistrate may, by order, direct the state WAKF Board established under section 9 of the WAKF Act, 1954, or under any other law for the time being in force in a state functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

(5) **Option to be governed by the provisions of section 125 to 128 of Act 2 of a 1974:**

(1) If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of section 125 to 128 of the Code of Criminal Procedure, 1973, and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.
Explanation: For the purposes of this section, ‘date of the first hearing of the application’ means the date fixed in the summons for the attendance of the respondent to the application.

(6) **Power to make rules:**

(1) The Central Government may, by notification in Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for (a) The form of the affidavit or other declaration in writing to be filed under section 5, (b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties of such applications, dates of hearing of such applications and other matters; (c) Any of other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(7) **Transitional Provisions:**
Every application by a divorced woman under section 127 of the Code of Criminal Procedure, 1973 pending before a Magistrate on the commencement of this Act, shall not-withstanding anything contained in that code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.
APPENDIX II

Women in the Qur'an

Abu Lahab's wife is cursed along with her husband in QIII:4-5, but she is not named. She is reputed to be a wife of one of the Prophet Mohammed's uncle, both of whom showed an undistinguished hatred for Mohammad and his cause in the very early days of Islam. Abu Lahab's wife is even said to have strewn thorns in the dark for the Prophet to step on.

Asiya, Pharaoh's wife, is used as an example of outstanding virtue in womanhood (perhaps righteousness is a better word here) in Q66:II (p. 143) and she appears at the beginning of Q28:9 to save the Prophet Moses from death when he was abandoned in the Nile.

Eve (Hawa) is a faceless creature and is never specifically mentioned except in passing:

And We said: “O Adam, dwell you and your wife in the Garden…”

(Q2:35)

The general impression is that she was not created from Adam's rib, while it is never mentioned that she led Adam into temptation (see Q7:18-25). In fact, Q20:115-21 implies that Satan corrupted Adam directly, and it is taken for granted that the fate of his wife unquestionably follows that of his own— and as a matter of course.

Lot's wife is never named, but cursed in Q66:(10) for betraying her husband. She has her fate spelt out for her in Q11:81 where the angels urge her husband Lot to flee Sodom before it is destroyed by God:

“O Lot! We are messengers from your Lord! Your enemies shall never catch up with you! Move on now with your family while it is still night,
and let not one of you look back—but your wife shall remain; for what will befall the people of Sodom will befall her also...!”

Mary or Maryam, the mother of Jesus (Yasu), probably has the most appearances and references in the Qur’an—but very little personality, if any. The following extract is taken from the chapter of Maryam, considered, along with that of Joseph, to be the most beautiful and popular in the Qur’an:

And recall in the book the story of Mary when she parted from her family and went to a place in the east, where she secluded herself from them; and then We sent Our Spiritual Messenger to her to appear to her in the form of a man in all his respects. She said: “Truly I seek refuge in the Merciful Lord from you! Do not approach me if you fear God.”

He replied: “I am only a Messenger from your Lord, come to announce the bestowing on you or a holy son!”

She said: “How can I have a son when no man has ever touched me—and have I been a loose woman!”

He answered: “Thus will it be—your Lord says: “It is an easy thing for me, so that you might have a son whom We shall make as a Sign to Mankind and a Sign of Our mercy!”

And so the matter came to pass,

And she conceived him and then she secluded herself in a remote place, and the pains of childbirth made her come to the trunk of a palm-tree. She cried out: “Oh would that I had died before this happened, and would that I had become a thing forgotten!”
But then a voice called to her from under the tree: “Do not grieve! For your Lord has created a rivulet beneath you.

“And shake the trunk of the palm-tree in your direction so that it will drop fresh ripe dates upon you.

“So eat and drink and cool your eyes and be refreshed! And should you see any person, say: ‘I have vowed to fast to the Merciful god, and thus I will not speak this day with anyone!’”

In time she went to her people, carrying her baby boy, and they said:

“O Mary! Truly you have brought an amazing thing!

“O sister of Harun! Your father was not an evil man, nor was your mother a loose woman!”

And then she pointed to him... (Q19:16-29)

The mother of Moses (Musa) appears on few occasions, most notably at the beginning of Q28:7 onwards. There are touching scenes of her devotion to her son, who is eventually taken from her before Pharaoh’s men come to slaughter him as all the other Israelite male babies.

The wife of Noah (Nuh) is not named, but cursed along with Lot’s wife for betraying her own husband (she doubted him and traditionally is the first ‘nag’) in Q66:10.

Potiphar’s wife (‘Aziz’s wife or ‘the great man’s wife’)9 is not named, and she emerges as a strangely redeemable villainess as she attempts to seduce Joseph- a victim and slave to her passion:

And when Joseph attained full manhood, We bestowed upon him knowledge and the power of judgement- for thus do We reward those who do good.
But she in whose house he was living sought to make him yield himself to her, and she bolted the doors and she said: “Now come to me!” But he answered: “God forbid! Your husband is my lord and he has been good to me! Truly, those who do wrong come to an evil end!”

And with passion she desired him, and he desired her, and he would have succumbed to this temptation had he not seen in this evidence of his Lord God- and thus We commanded so that We might turn from him all evil and abominations, for he was one of Our true servants.

So they raced each other to the door, and she grabbed his shirt and ripped it from his back—and there suddenly they found her lord at the door! She said: “What is a suitable punishment for one who has formed evil designs on the virtue of your wife? What indeed, but prison or terrible torture?”

Joseph said: “It was she who sought to make me yield myself up to her!”

But someone from her household who was there made the suggestion: “If this shirt is torn from the front, then she is telling the truth and he is the liar! But if his shirt is torn from the back, then it is she who is the liar, and he who is telling the truth!”

So when her husband saw his shirt and that it was torn from the back, he said: “Behold! This is an example of your deception, O womankind! Truly your deception is great!

“O Joseph, let this pass! And O my wife, seek forgiveness for your sin, for truly you are one of the sinners!”

Now, the women of the city said: “The wife of the great man is seeking to seduce her slave and to make him yield himself up to her! Truly he has pierced her with a violent passion—we see that she has clearly gone astray!”
But when she heard of this malicious talk of theirs, she sent for them and prepared a feast for them, and to each one of these women she gave a knife. Then she called to Joseph: “Come out and reveal yourself to them!” And when they saw him, they marveled at his beauty and in their amazement, they cut their hands with their knives; they cried: “God preserve us! This is no ordinary man- this can only be a noble angel!”

Then she said: “Here before your eyes is the one about whom you did blame me! Indeed, I sought to make him yield himself up to me, but he resolutely saved himself without stain. But now, if he will not do whatever I bid him, he shall most assuredly be cast into prison and there find himself in the company of the vilest of people!”

And he replied: “O my Lord! More desirable to me is prison than to which these women are inviting me- for unless You ward their wiles from me, I shall yield to their allures and become one of the ignorant!”

And his Lord heard his prayer, and He warded their allures from him, for truly it is He who knows and hears all things!

Then it occurred to the nobleman and his household, even after they had seen the signs of his innocence, that it would be best to cast Joseph into prison for some time. (Q12:22-35)

Potiphar’s wife, however, repented and admitted finally that it was she who had tempted Joseph. Popular legend has it that, having seen the error of her ways, she at last became Joseph’s lover, and God remade her a virgin every night for his pleasure.

The Queen of Sheba is cool, clever and resourceful. She is summoned by Solomon (Sulaiman) to be subtly tested by him and put back onto the path to
righteousness in Q27:20-44. This includes the unusual and mildly erotic verse of her baring her thigh(s) to enter what she believes to be a shimmering pool of water.

There were two shepherdesses whom Moses helped, who were ‘quaint and shy’. His marriage to one of them that refers to his mother.