INTRODUCTION

WHAT DOES DIVORCE MEAN? GENERAL, AND LEGAL, EFFECTS

Meaning of Divorce:— "Divorce" as a verb, has been defined as meaning to "separate" and it has been held that "separation" or "dissolution" of marriage means divorce, but not every such separation or dissolution can properly be so designated. So, while the term "divorce" has sometimes been broadly defined or applied to include both decrees of nullity and decrees of dissolution of marriage, especially where the marriage was not vaid but only voidable at the option of the injured party, this has been declared to be not in accord with modern usage, and generally the term denots only dissolution or suspension of a marital relation. It does not mean annulment of an invalid marriage.

"Divorce is the dissolution in whole or in part of the tie of marriage". It includes both the complete abrogation of the marriage relation known as a divorce a vincula matrimonial which carries with it the power of re-marriage on the part of both the parties to the marriage and also that incomplete severance not involving powers to re-marry, which was formerly known as divorce a mensa et thoro, and is now termed "Judicial Separation". Less strictly, divorce is commonly understood to include Judicial declarations of nullity of marriage, which while practically terminating the marriage relation and proceed
in law on the basis of the marriage never having been legally established. (3)

In Hindu Religion, marriage being a sacramental union - an inviolable and immutable union thus even death does not dissolve the marriage. The Dharmashastra do not recognise divorce, and any attempt to reduce from stary Simiriti texts. (4) The Christian concept of marriage is intended to last for life, whereas under the Hindu Shastric law marriage is deemed to be a sacramental bond continuing up to heaven. The proposition that divorce recognised by some Smritikars is nothing but one's inability to comprehend the basic concepts that the Dharmashastra propounded. However, the Dharmashastra's adherence to the doctrine of indissolubility of marriage did not hamper the recognition of the people's need of divorce, and a particular section of Hindus say lower class did enjoy the right of divorce. This was under the custom which prevailed over the sacred law customary modes of divorce made easy. In some cases a marriage could be dissolved by mutual consent. (5) Some times divorce could also be purchased. (6) Very little formalities for dissolving a marriage were needed. Many time it was purely a private act of the parties. In some communities a forum was necessary in the shape of either a Panchayat or a family Council. (7) Customary divorce was the privilege of the lower castes and higher castes seldom had a custom with
Meaning of Divorce in Islam (Muslim Law):

Talaq "Divorce" is an Arabic word which means "Undoing of or release a Knot", It is used by Muslim jurists to denote the release of a woman from the marriage tie, and means a Talaq (divorce).

The term talaq is explained in the dictionary in the taking off of any tie or restraint. In the language of Law it is the taking off of the marriage tie by appropriate words. Talaq in its primitive sense means dismissal. In law it signifies the dissolution of a marriage by the annulment of its legality by pronouncing appropriate words. The term has acquired a clear and definite meaning as the dissolution of the marriage tie by a declaration of the husband. It is not only used in the sense in the Qur'an and the traditions of the Prophet (peace be on him) but habitually as a matter of usage although its root meaning is "setting free" or "letting loose". The word talaq and its grammatical variations are terms of art and the technical meaning which they have acquired by usage is "freedom from the bondage of marriage" and not from any other bondage.
"Divorce". The term "divorce" is somewhat ambiguous and has been often indiscriminately used as synonym with Talaq. The term "Talaq," in law is used in two senses
(1) a restricted sense in which it is confined to separation effected by use of certain appropriate words by the husband; and
(2) a wider sense, in which it covers all separations for causes originating in the husband.

Baillie uses the term "divorce" for all separations originating from the husband and "repudiation" for talaq in the limited sense, namely of separation effected by use of appropriate words. The term has got a still wider connotation in this thesis. Certain forms of dissolution of marriage Khula and Mubaraat are covered by the generic term "divorce",. The various forms can be enumerated as under:-

A valid Muslim marriage may be dissolved by divorce in the following forms as stated in the sections of this chapter noted below:-

(1) Talaq, or repudiation by the husband;
(2) Ila or the vow of continence by the husband;
(3) Zihar or injurious assimilation of the wife by the husband to certain prohibited relations;
(4) Khula or redemption by the wife;
(5) Mubarra or separation by Mutual consent;
(6) Li'an, or imprecation.

Divorce with and without intervention of Court:

A divorce may be made in some cases through the Court and in other cases without intervention of the Court. They may be analysed as below:

(1) Divorce without intervention of court:
   (a) by the husband by talaq, Ila or Zihar;
   (b) by the wife by talaq-e-tafweez;
   (c) by mutual agreement between the parties by Khula or Mubaraat.

(2) Divorce through the Court:
   (a) by the husband by li'an;
   (b) by the wife by claim under Act 8 of 1939.

(1) Pre-Islamic Period: Among the pre-Islamic Arabia, the power of divorce occupied by the husband was unlimited. He could repeat the word Talaq (divorce), divorce again as many times as he may prefer. He could, moreover, if he was so bent, swear that he would have no intercourse with his wife, though still living with her. He could arbitrarily accuse his wife of adultery, dismiss her and leave her with such notoriety as would deter other suitors; while he himself would go exempt from any formal responsibility of maintenance or legal punishment. (4)
According to Abdur Rahim, at least there existed four various types of dissolution of marriage known in Pre-Islamic Arabia. These were Talaq, Ila, Zihar and Khula. A woman if absolutely separated through any of these four modes was probably free to re-marry, but she could not do so until period called Iddat, had passed.

It was to ascertain the possibility of the child. But it was not a strict rule. Some times, pregnant wife was divorced and was married to another person under an agreement. It is interesting to note that the period of Iddat in case of death of husband then was one year.

**After the advent of Islam:** The Holy Prophat (PBUH) of Islam looked upon these customs of divorce with extreme disapproval; and regarded their practice as calculated to undermine the foundation of society. It was impossible, however, under the existing conditions of society to abolish such customs entirely. The Holy Prophet (PBUH) had to mould the mind of an uncultured and semi-barbarous community to a civilized society. Accordingly he allowed the exercise of the power of divorce to husbands under certain conditions. He permitted to divorce parties three distinct and separate periods within which he might endeavour to become reconciled; but should all attempts at reconciliation prove unsuccessful, then in the third period the final separation become effective.
Holy

The reforms of the Prophet Mohammad (peace be on him) marked a new departure in the history of Eastern legislation. He restrained the unlimited power of divorce by the husband, and gave to the woman right of obtaining the separation on reasonable grounds. He pronounced "talaq to be the most detestable before God of all permitted things" for it prevented conjugal happiness and interfered with the proper upbringing of children.

Effect of Dissolution of Marriage:

The dissolution of marriage either by talaq (divorce) or otherwise gives to the following results:

(1) The marriage becomes dissolved immediately in the case of an irrevocable divorce and in the case of a revocable divorce on the expiry of the wife's iddah.

(2) The parties become absolutely prohibited to each other on the pronouncement of triple divorce and cannot even remarry until and unless the wife marries another person and that marriage is dissolved after consummation. Section 7 of the Muslim Family Laws Ordinance, 1961 in force in Pakistan, has modified this rule to some extent. Thus it is laid down as under.

Talaq (i) Any man who wishes to divorce his wife, shall as soon as may be after the pronouncement of talaq in any form whatsoever give the chairman notice in writing of his
having done so, and shall supply a copy thereof to the wife.

(ii) "....a talaq, unless revoked earlier, expressly
expiration of ninety days from the day on which notice
under sub-section (1) is delivered to the Chairman of the
Union Council.

(iii) If the wife being pregnant at the time talaq is
pronounced, talaq shall not be effective until the period
mentioned in sub-section (3) or pregnancy whichever be
later, ends.

(iv) Nothing shall debar a wife whose marriage has been
terminated by talaq effective under this section from
re-marrying the same husband, without an intervening
marriage with a third person unless such termination is
for the third time so effection." Under the general Muslim
law the parties came remarry, without the necessity of an
intervening marriage only if the divorce has been
pronounced once or twice.

(3) Cohabitation between the parties becomes unlawful
from the time of the pronouncement of an irrevocable
divorce and in the case of a revocable divorce from the
time of expiry of the wife's 'iddah.

(4) The wife shall be entitled to contract another
marriage on the expiry of her 'iddah.

(5) The husband cannot marry after divorce, certain
women, prohibited to him on account of his marriage He
also cannot marry another woman during this period if the divorced wife was one of four living wives.

(6) The wife has to observe, 'iddah for the prescribed period unless she is exempted for its observance.

(7) The husband's liability for maintenance of the wife terminates on the expiry of the period of the wife's 'iddah.

(8) The wife's prompt dower becomes due in the case of revocable divorce on the expiry of the wife's 'iddah and immediately in the case of irrevocable divorce without any demand being made by the wife.

(9) The parties right to inherit to each other ceases immediately an irrevocable divorce is pronounced. In the case of a revocable divorce the right shall ceases on the expiry of the period of the prescribed 'iddah'.

(10) Nasab or Legitimacy of a child shall be established only if it is born within a certain period from the time of dissolution of marriage.

**General Effect of Dissolution of Marriage:**

From the above one can see that Talaq has been very much condemned who both in the Holy Qur'an and Hadith and thus is treated as most disfavoured act creating a number of problems for the parties involved. Not only the parties even the society is very much effected. Talaq, in the present time has an economic affect also. It affects the
children, their upbringing and around progress either without mother or father. In brief, the general effects of Talaq are very bad and far reaching in very rare case it becomes peace for the parties who are thus separated.

REFERENCES

(2) Encyclopaedia Britannia, heading "Divorce".
(3) Abid.
(4) Narada, XIII.93
(11) Al-Mabsoot, VI, p.2; Al-Lubab II, p.3.
(13) Ibid .  (14) Ibid.