

**Q-1 Describe the Muslim women's Right to maintenance. Also describe the Recent Law Relating to maintenance of Muslim widow or divorced wife.**

Under Muslim Law maintenance is known as nafqah. It includes food, reiment and lodging. Hedaya defines maintenance all those things, which are necessary to the support of life, such as food, clothes and lodging, many con fines it solely to food Fatwa-i-Alamgiri says that there are three causes for which it is incumbent on one person to maintain another-marriage, relationship and property. When Separation or during their proceedings, the Wife is granted an amount of maintenance it is known as alimony. When the amount is given during the pendency of the suit, it known as alimony *pendente lite*, and when it is given alter the proceedings separation or divorce is granted it is known as permanent alimony.

**MUSLIM LAW OF MAINTENANCE AND  
THE INDIAN MAJORITY ACT**

Under Muslim Law a person will cease to be minor when he or she has attained the age of puberty. Under the Hanafi and Shia schools a person attains puberty on the completion of the fifteen years. Any person who has attained puberty is entitled to act in matters affecting his or her status or property. This law has been materially altered the Indian Majority Act. At present, a Muslim is governed by his traditional law only in the matters of marriage, dower and divorce. In all other matters a Muslim will attain majority only after attaining eighteen years. It is not clear whether the provisions of Indian Majority Act have superseded the Muslim Law of maintenance or not.

Wilson says that since maintenance is not one of the exempted subjects, the age of majority for the purpose of maintenance must be deemed to have been extended until the age of eighteen years.

The following persons are entitled to maintenance

(i) wife;

(ii) children and grandchildren; and

(iii) aged parents and other relatives.

**Maintenance of the wife.**-Under the Muslim Law, this is the duty of the husband to maintain his wife. The obligation arises from the status of the marriage contracted. The duty of the husband is to maintain not only his wife, but it personal servants also. It is not necessary that the wife and the domestic servant must be Muslim. They may belong to any religion. Islamic Shariat is based on the Quran. It is mandatory provision of the Quran that a husband is bound to maintain his wife, irrespective of her being a Muslim, non-Muslim, poor or rich, young or old if not too young to be unfit for matrimonial intercourse. A wife whose marriage was performed according to Muslim Law and who has attained an age at which she can render conjugal rights to her husband is entitled to receive maintenance. Maintenance is due only to wife who has been regularly married. In the case of irregular marriage, a wife has no right to claim maintenance. A wife is entitled to receive maintenance only if she was obedient to her husband and allows him free access to herself at all lawful times. She must also obey all his lawful orders. A wife can claim maintenance only during the subsistence of marriage, and' immediately on the completion of marriage.

Under Muslim Law a wife will not be entitled to maintenance if she is too young for sexual intercourse or the wife refuses to live along with her husband. Under Shia Law, a wife can claim maintenance if two conditions are fulfilled. Firstly, there should be permanent marriage and secondly, the wife should allow her husband access at all times. A wife is allowed the right of maintenance even if she is on journey Where the wife has been taken herself to prayer or fasting, or religious retirement, he is obliged to maintain her though she could not have done so, without first asking his permission. In case the wife is sick, she is entitled to maintenance. Declaration of divorce is operative from the date of filing of written statement in proceeding for maintenance.

**Interim maintenance.**-In *Daniel Lathif v. Union of India,*" the Constitutional Bench of the Supreme Court held that the Muslim husband is liable to make reasonable provision for the future of the divorced wife which includes her maintenance. It was also declared that the divorced Muslim woman if not remarried, to maintain herself after the *iddat* period she can seek maintenance from the husband.

In *H. Sirajuddin v. Shazia alias Afsana etc.*, it was held by the Karnataka High Court that Muslim wife is entitled to maintenance. In this case the wife applied for interim maintenance. The husband raised the plea that he has divorced his wife.

**Kharcha-i-Pandan** -This is the duty of the husband to maintain his wife and children. The wife is also under the duty to be obedient towards her husband and allows him free access at all lawful times. Apart from this obligation, the spouses can enter into an agreement that the husband will pay special allowance to his wife." Such allowances are called *Kharcha-i-Pandan, guzara and mewa khori*.

**Maintenance of divorced woman.**-Ameer Ali says that the Hanafi Jurists recognize a right in the husband to talaq the wife, even though she may not be present and the proceeding may never come to her knowledge until sometime after. But they hold that in such a case the woman would be entitled to her full maintenance until she becomes aware of the talaq, and during the period of probation she has to observe iddat thereon.

If the woman be pregnant at the time of separation she may be entitled to get maintenance till she delivers a baby.

Under Shia and Shafei laws a woman will be entitled to maintenance only if the talaq be revocable and she will be entitled for maintenance during the iddat period, In the case of irrevocable divorce a wife will not have any right of maintenance. However, she may be entitled for maintenance during her pregnancy period. Tyabji' says that on the expiration of the iddat period after talaq, the wife's right to maintenance will be ceased.

The right of maintenance be based on the Muslim Law or on an order under the Code of Criminal Procedure.

Till the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986, it was presumed that under Section 125, Code of Criminal Procedure, a divorced woman was entitled to claim maintenance from her husband even after divorce. She was entitled for maintenance till her last breath subject to the only condition that she had not remarried or she had not become unchaste. In *M. A. Khan v. Shah Bano Begun*, the M.

P. High Court passed maintenance order in favour of the former wife, Shah Bano. Ahmad Khan and Shah Bano were married in 1932 by nikah. A mahr of Rs. 30,000 was settled between the parties. Three sons and two daughters were born. In the year 1946 Ahmad Khan married again. Six children were born out of the second marriage. The husband failed to provide equal treatment between his wives. Both the wives lived under the same roof. In 1915, Ahmad Khan drove Shah Bano out of the house. In August 1979 the Judicial Magistrate granted Shah Bano maintenance at the rate of Rs. 25/- p.m. In 1978 the marriage was repudiated by irrevocable triple talaq. It was pleaded by the husband M. A Khan that since he had already divorced her there was no question of paying maintenance to his first wife Shah Bano. This question became the main issue in this case. Reliance was placed on Section 127 (3) (b) of the Code of Criminal Procedure, 1973. Section 127 (3) (b) of the Code provides that where any order has been made under Section 125 in favour of a woman who has been divorced by or has obtained a divorce from her husband, the magistrate shall, if he is satisfied that the woman has been divorced by her husband and that she has received, whether before or after her divorce, the whole of the sum, which under any customary or personal law applicable of the parties, was payable on such divorce, cancel such order.

The appellant contended that the parties were governed by the Muslim personal law and the husband had already paid the sum of mahr to the wife. The husband contended that he had paid maintenance to Shah Bano at the rate of Rs. 200.00 p.m. during and upto the end of the iddat period of three months following the talaq pronounced by him and also deposited Rs. 30,000/- as mahr.

Following the earlier decisions" of the Supreme Court the magistrate ordered the husband to pay a sum of Rs. 25/- p.m. to Shah Bano. The M.P. High Court enhanced this amount to Rs. 179.20 p.m. It was against this order that the husband Ahmad Khan came upto the Supreme Court. The main contention of the husband before the Supreme Court was whether the payment of maintenance upto the end of the iddat period plus payment of mahr was sufficient for ending the responsibilities of the husband.

The Supreme Court held that under the Quran there is an obligation of Muslim husband to provide maintenance for their divorced wives

In Ahmedabad Women Action Group (AWAG) and others v. Union of India and others a writ petition was filed challenging the constitutional validity of the Muslim personal law providing for polygamy and unilateral Talaq by husband on the ground that violates-

(1) Articles 13, 14 and 15 respectively:

(2) that Shia and Sunni law of inheritance were discriminatory to ladies on the ground of sex alone;

(3) That keeping more than one wife constitutes cruelty under Section 2(vii)(f) of the Dissolution of Muslim Marriage Act. 13939;

(5) that Sections 2(2), 5(ii) and explanation to section 30 of Hindu Succession Act. 1956 and Section 2 of the Hindu Marriage Act, 1955 offends Articles 14 and 15;

(6) That Sections 3(2),6 and 9 of Hindu Minority and Guardianship Act read with Section 6 of Guardians and Wards Act are void;

(7) that discretion allowed to a Hindu spouse to make testamentary disposition without providing for ascertained share of his or her spouse and dependents as unfettered and absolute;

(8) that in view of these facts uniform civil code be made.

The Supreme Court held that these writ petitions do not deserve disposal on merit. The Court also said that the issue raised by the learned counsel involves issues of state policies. In such matter court will not ordinarily have concern. The court said in previous cases the court has already held that remedy lies somewhere else and not by knocking at the doors of the courts. It is submitted that the Supreme Court of India, in this case adopted a right approach. The solution to the problem rests with the community. It is hoped that in near future community will come forward for fresh interpretation of Muslim law keeping in view the change in the society.

**Maintenance available only to legally married wife-** it is the mandatory requirement of Section 125, Criminal Procedure Code that the wife must be legally married. In *Sidik Moulvi v. Nubesa*, it was said that the respondent wife was not a wife at the time of filing the petition. She was, therefore, not entitled to maintenance under section 488 (Now sec. 125) the Criminal Procedure Code.

PGS National College Of Law

**Q-2 How many kinds of Guardians are Recognized in Muslim Law? Discuss the powers of a Natural Guardian.**

Under Muslim Law, guardian means a person who has been legally authorized to have the custody and care of the person of a minor or of his and property.' Ameer Ali says that a guardianship comprehends the (a) direction of care of the person of the infant, and this arises when the *hizanat* and the guardianship are vested in one and the same person; (b) a simple supervisory direction over the infant, when the *hizanat* is vested in another person; and (c) the administration and care of the property of the minor.

**CLASSIFICATION OF GUARDIANSHIP**

Under Muslim law guardianship can be classified into following kinds

**I. Guardianship of person**

- (i) *Hizanat*;
- (ii) Natural guardian;
- (iii) Guardianship of Marriage;
- (iv) Testamentary guardian;
- (v) Guardian appointed by Courts; and
- (vi) De facto guardian.

**II. Guardianship of Property**

**II. Guardianship of Marriage.**

**GUARDIANSHIP OF PERSON**

Under this category of guardians, a person is required to keep all kinds or Supervision over the activities of the minor. Broadly speaking, under this category, a guardian is expected to take following decisions:

- (a) To take all important decisions. However, he has no right to take decision in respect of marriage and property on behalf of the minor;

(b) He is under a duty to maintain the minor and to do all real requirements of the minor.

**(i) Hizanat**

Under this category of guardianship, a guardian is entitled for physical custody (Tahwil) and upbringing (Tarbiyat or Parvarish) of the minor.

For sometime, there was confusion between hizanat and the guardianship of person. It was maintained that these two are the one and the same thing. However, the two things are different. The main difference between these two things is as follows:

The guardianship of person can be divided into two parts, i.e., physical custody and day-to-day upbringing of the minor. This is known as hizanat. All other matters regarding the person of the minor are outside the scope of hizanat. These will be governed under the head guardianship of person. These two guardianships take start simultaneously and end simultaneously. It may, however, be noted that the guardianship of person is the responsibility of the minor's father. However, minor's father is not responsible for hizanat.

**NATURAL GUARDIANS**

**Father.**-Under Section 19 of the Guardians and Wards Act, 1890, father was recognised as the guardian of his minor legitimate children of both, sons and daughters was factor in determining the The welfare of child is considered to be the primary guardianship.

If mother dies without appointing a testamentary guardian, then father's appointee will become guardian. However, if mother dies after appointing a testamentary guardian then mother's appointee will take over the guardianship of the child and the father's appointee will be ineffective. The Act also does not Recognise the principle of joint guardians. The position of adopted children is at par with natural born children.

**Mother.**-As regards the illegitimate children, the mother is the natural guardian of her child. In the case of illegiti mate child it is not material whether the father is alive not.



In the case of legitimate children, she is the natural guardian only if the father of the child is dead.

As regards step parents it was held that they are not entitled to guardianship, unless they are specifically appointed by the court.

**Husband.**-Section 19 of the Guardians and Wards Act, 1890, says that the court cannot appoint the guardian of a minor wife whose husband is not unfit. On the whole may be opined that our courts in interpreting this provision have all along subjected it to the welfare for the minor wife. It is ordinarily not in the welfare of an immature to live in the custody of her husband.

### TESTAMENTARY GUARDIANSHIP

The guardianship of property does not, like the guardianship of the person devolve upon all blood relations in succession. Quran specifically provides for the appointment a testamentary guardian. Under Islamic law, the father and the father there are competent persons to appoint by will a guardian or the property of their minor and grandsons respectively. No relation besides them can exercise the right of guardianship.

Under Shia law the testamentary guardian or executor must be major, sane, professor of Islam and of good character. Under Shia law a woman can be appointed an executrix or a testamentary guardian of minors. Under Shia law the testamentary guardian cannot delegate the guardianship to his own executor, unless expressly authorised by the testator.

The Guardians and Wards Act saves the rights to appoint a testamentary guardian from being affected by anything in the Act." Formerly, the Guardians and Wards Act made separate provisions for the appointment of a testamentary guardian for the parents of a minor who were European British subjects. Besides the courts, it is only the father and father's father who has got power to appoint a guardian of a minor. The right can be

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exercised by will or other instrument to take effect on the death of the person appointing and the guardians so appointed are called the testamentary guardians.

Persons other than Hindus (including Buddhists, Sikhs and Jains etc.) and Muslims are governed in the matter of testamentary guardianship by Section 60 of the Indian Succession Act, 1925. This section provides that a father, irrespective of his age, can appoint by will a guardian or guardians for his child during minority.

### **Powers, Rights and Duties of Guardians of Property**

among the various kinds of guardians, the guardian of property is most important. A guardian of property has to deal with the property of the minor. Looking to the importance, numerous rules have been framed. In India, the Guardians and Wards Act 1890 imposes on every guardian of property the duty to deal with the minor's property as carefully as a man of ordinary prudence would deal with it if it were his own,' and entitled every such guardian to do all acts (subject to statutory provisions) which are reasonable and proper for the realisation, protection or benefit of the property. The provisions of Section 66 of the Guardians and Wards Act, 1890, are applicable to all guardians. i.e.. testamentary or statutory determined by the rules of Muslim law.

Section 28 of the abovementioned Act says that a testamentary guardian of property cannot transfer the property against any restriction in this behalf imposed by the will under which he functions. However, the courts are competent to remove any of such restriction.

Section 28 of the above Act says that a statutory guardian of property cannot alienate the property in any form. Here also the courts are competent to accord permission for alienating property. However, a statutory guardian can give property on short term lease. For such purpose, courts permission is not necessary.

Section 30 of the above Act says that violation of these rules will, in either case, make the alienation voidable at the instance of any other person affected thereby. Under Section 34 of the Act, some additional duties have been imposed on statutory guardians with regard to the management of the property

A guardian of property is expected to act within legal limits. He is subject to the conditions of necessity or benefit relating to the minor. In *Imbandi v. Mutsaddi*, it was said that unless a mother is appointed by the father as the guardian of his minor children's estate, or is so appointed by the Judge she has no power to intermeddle with their immovable property. In case she has disposed of the property of the minor, such disposal of property will be ipso facto void. This restriction is not absolute. There is one exception to this general rule. She can dispose of the property in the case of necessity.

### DE FACTO GUARDIAN

The expression de facto guardian is used in contra distinction to de jure guardian. fact, Muslim law does not recognise the institution of de facto guardian. In the life of the minor, a time may come when he may have nobody to look after him and his property. Under such circumstances any person may come forward voluntarily to look after the property or the person of the minor. Such a person is merely the custodian of the child. under the modern law Under Muslim law, such a person is known as fuzuli (officious). Under the modern law, he is known as de facto guardian. But such a person is not the guardian of the property.

### APPOINTMENT OF GUARDIANS BY THE COURTS

In the ancient time this was the duty of the king to look after the interest of the minor and, therefore, he was given the power to appoint guardian. Under Islamic law the courts are empowered to appoint guardians.

After passing of the Guardians and Wards Act, 1890, the power of the king is exercised by the courts. Under Sections 4 and 7 of the Guardians and Wards Act, the District Courts and the High Courts may appoint a person as guardian whenever the court considers it necessary.

**Duty to support.**-This is the first duty of the guardian to support his ward. He should take full care of the health, education and such other matters as the law to which the ward's subject requires. Section 25 of the Guardians and Wards Act empowers the court

the have a ward arrested in order to prevent his leaving the custody of his legal guardian.

**Use of force to defend minor.-** This is the duty of the guardian to take all necessary steps to protect an infant child. He can use force to defend his ward.

**Duty to file suits.-** this is the duty of the guardian to file a suit on behalf of the minor. Order XXXII of the Civil Procedure Code says that where a minor has a guardian appointed or declared by competent authority, no person other than such guardian, shall act as the next friend of the minor;

**Q-3 What are various kinds of talaq? Explain difference between Talaq-ul-sunnat And Talaq-Ul-Biddat, can the Husband delegate the Rights of Talaq to his wife.**

It is well known through Hadith and holy Quran that divorce is acceptable only as a necessary evil. Justice V.R. Krishna Iyer in *Yusuf Rowthan v. Sowramma*,<sup>1</sup> said the since infallibility is not an attribute of judiciary, the view has been ventured by Muslim Jurists that the Indo-Anglican Judicial exposition of Islamic law of divorce has not exactly been just to the Holy Prophet or the Holy Book. Indeed a deeper study of the subject discloses a surprisingly rational and modern law of divorce. This statement of Justice Iyer has disposed of many queries which have been raised from time to time.

**Its meaning-**

The term "talaq" (Divorce) has been used in the following two senses (a) in a restricted sense it is confined to separation effected by use of certain appropriate words by the husband; and

(b) in a wide sense it means covering all separations for causes originating in the husband.

Talaq means repudiation of wife by the husband in exercise of the absolute powers which the law has conferred on him. It means dissolution of marriage or the annulment of its legality by certain words. According to Baillie the term "divorce" includes all separation originating from the husband and repudiation for talaq in the limited sense, namely, of separation effected by use of appropriate words. In Islam, the term "talag" means absolute power which the husband possesses of divorcing his wife at all times.

Under Muslim law divorce means all separations made by the husband. It also includes repudiation, Khula and Mubaraat. In *Asha Bibi v. Kadar*, it was said that the word divorce means dissolution of the marriage tie by a declaration of the husband.

Islam provides a modern concept of divorce by mutual consent. Today this is known as the break-down theory of divorce. The modern concept of break down theory of divorce does not want the court to go into the causes of break-down of marriage.

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**Talaq**-Either retain them with humanity, or dismiss them with kindness. When the marriage is terminated by the husband, it is called talaq. The power of the husband to terminate his marriage is absolute. But in practice it has been restricted.

The talaq can be pronounced by the husband without the intervention of court. Muslim law has imposed certain conditions on the exercise of the power by the husband. Islam recognized the mode of talaq in two categories, i.e., talaq recognized by Prophet Mohammed, and (ii) not recognized by Prophet. Formerly, it was assumed that Muslim ladies cannot ask for the dissolution of marriage even in genuine cases. Now Muslim ladies have also been given the right to get themselves free from marriage tie under certain circumstances.

### **Difference Between Talaq**

**(i) Ahsan form of talaq**-This mode of talaq prescribes certain conditions which must be performed by the husband. The following conditions shall be fulfilled.

- (i) the husband must pronounce the formula of divorce once, in a single sentence;
- (ii) he must do so when the woman is in a state of purity (tuhr),
- (iii) he must abstain from the exercise of conjugal rights after pronouncing the formula.

This form of repudiation is also referred to as a Sughra form being technically "Rajai" Or revocable and its legal after effect is that the man has the capacity to re-marry his wife after the period of iddat has expired and repudiation complete, without her to contract and consummate another marriage with a different man. During the iddat period, the husband is free to revert to his wife. Even on the expiry of iddat period he has option or taking her back by marriage, an option that is not available in triple divorce or three divorces in one sitting.

In case the parties were away from each other for a long time, it is not necessary to Pronounce during tuhr. In **Chandbi v. Bandeshah**, it was said that where the wife was old and beyond the age of menstruation the condition of tuhr was not necessary. For the validity of divorce it is necessary for the parties not to have sexual intercourse

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during iddat period; otherwise the divorce will carry no force at all. The husband can revoke the pronouncement of talaq at any time during iddat period. The revocation of talaq may be express or implied. Where the husband has resumed cohabitation the law says that it will be presumed that the divorce has been revoked. However, after the expiry of iddat period the divorce will become final. In **M. Shamsuddin v. N. Jahan**,<sup>1</sup> it was said that a Muslim wife, after divorce, is entitled to maintenance during that iddat and so also her child, in certain circumstances. If the husband or the wife dies during the period of iddat the other spouse will have the right to inherit the property of the deceased.

**(ii) Hasan mode of talaq : (Talaq-ul-hasan)**-Under this mode of talaq the husband is required to pronounce the formula three times during three successive tuhrs namely three periods of purity of the wife. When the last formula is pronounced, the talaq becomes irrevocable. Shias have also approved the ahsan and hasan form of talaq. For the purpose of the validity of this form of talaq no sexual intercourse should take place after pronouncing talaq and during iddat period.<sup>2</sup>

The main consequence of the last pronouncement will be that the marital tie will come to an end and the sexual intercourse will be prohibited. It is necessary for the wife to observe iddat period. If the same parties want to re-marry they cannot marry until and unless the divorced woman is married to another person and that husband has divorced her after the marriage was actually consummated.

Shia law.-Shia law has recognised only talaq-ul-Sunnat mode of talaq. talaq-ul-biddat has no place in Shia school. Under the Shia law if the husband has pronounced talaq during wife's courses, the talaq will be void. In such cases the presence or absence of the husband is immaterial. A talaq pronounced during a tuhr in which there had been

Connubial intercourse or three talaqs were pronounced without intermediate revocations, the talaq would be void and will not take effect,

The talaq-ul-Sunnat can be divided into following three kinds

- (i)-talaq-i-bain; i.e., irrevocable
- (ii) talaq-i-rajai; revocable and

(iii) talaq-ul-biddat.

As regards the talaq of pregnant wife, Abu Hanifa and Abu Yusuf said that the wife may be divorced in the regular way (i.e., by talaq-us – Sunnat) by three talaqs.

The ahsan form of divorce is most approved form because the husband is expected to treat his wife in a nice manner. Under the hasan form of talaq the messenger of God tried to introduce reform into the already existing cruel form of divorce. In *F.Hossein v. Janu*, it was said that a divorce pronounced in due form by a man again is in fact his wife dissolve the marriage, though he pronounces it under a belnet not his wife will be a lawful divorce.

#### (A) KHULA

Under Muslim law a marriage can be terminated either by the husband or by wife or under mutual agreement between the spouses. If the marriage is dissolved by the husband at his own accord, it is known as talaq. *Fatwa-i-Alamgiri* says that when married parties disagree and are apprehensive that they cannot observe the bounds prescribed by the divine laws, the woman can release herself from the tie by giving up some property in consideration of which the husband is to give her a Khula and when they have done this a talaq-ul-bain would take place.

**Mubaraat (Divorce by mutual agreement).** The word Mubaraat means an act of freeing one from another mutually. It is mutual discharge from marriage tie. The same conditions are necessary for the validity of Mubaraat as are necessary for talaq and Khula.

Under shia law, the parties can dissolve their marriage by way of Mubaraat if it is impossible for them to continue tie. the talaq must be pronounced expressly. The Wife may agree to pay to her husband some compensation.

#### LIAN (IMPRECATION)

#### (B) TERMINATION OF MARRIAGE THROUGH COURT

In Muslim law the right of the wife to get a divorce on the husband's imputing false unchastity to her fell under a doctrine is known as lian. The Quran and Hadith both guarantee dissolution of marriage by way of lian. A husband may be punished for making a False charge of adultery against his wife. If the husband has falsely and baselessly charged his wife of adultery, Islam guarantees to the wife a right to such

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dissolution of her marriage. In India, a Muslim wife can bring a suit for defamation as the ground of false charge of adultery. This is the duty of the husband to prove the allegation made by him against his wife. If he could not prove the charges the procedure of lian will be adopted.

### **TERMINATION OF MARRIAGE BY ILLA**

Illa is another recognized mode of divorce. Under this form of divorce husband swears not to have intercourse with the wife and abstains for four or more months. After the expiry of this period, the marriage may come to an end and it is not necessary for the parties to go into the court of law for taking its approval. During the period of abstention the husband may revoke the oath. This can be done by resuming sexual intercourse.

**Zihar.**- Zihar Zihar is another mode of divorce. In this form of divorce the husband may compare his wife with his mother. He may say the back of my wife is as my mother's back. The woman so addressed was thereby promoted from the subordinate status of a wife to the highly honorable position of an adoptive mother. During the time of ignorance (i.e., before the establishment of the Muslim faith) Zihar stood as a divorce; and the law afterwards preserved its nature (which is prohibition), but altered its effect to a temporary prohibition, which holds until performance of expiation but dissolving the marriage.

### **FASKH: (CANCELLATION OF MARRIAGE)**

Under Muslim law a woman can approach the Qazi requesting him to dissolve her marriage. The power of the Qazi or judge to pronounce a divorce is founded on the express words of the Prophet. If a woman be prejudiced by a marriage, let it be broken off. This is the duty of the husband to give proper treatment to his wife. The wife is also under duty to obey all lawful orders of her husband. If both the husband and the wife comes to the conclusion that they cannot live as husband and wife they can refer the matter to the Qazi who may terminate the marriage.

### **DELEGATED DIVORCE: (TALAQ TAEWEEZ)**

This is one of the most important form of divorce because it gives to the Muslim a right to dissolve their marriage without going to the court of law. Both the school of Muslim

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law allow the husband to delegate his power of repudiation to a third person or to the wife herself. Mulla' says that a divorce may be pronounced so as to take person, or to on the happening of a future event. Fyzee says that the husband has the power to effect on the own right of pronouncing divorce to the wife. A stipulation delegate his specified conditions the wife can pronounce divorce upon herself has been held to be valid provided first that the option is not absolute and secondly, that the conditions are valid necessary and not opposed to public policy.

The delegation of power to divorce is technically called *tafweez*. Tafweez means the making of another person owner of an act which appertains to the person making the tafweez. It is a delegation by the husband of power or talaq to the wife designing her too give the effective sentence. Tafweez is of three kinds, (i) ikhtiar, (choice) giving her the authority to talaq herself; (ii) amr-bi-ya, leaving the matter in her own hand, and (iii) mashiat (pleasure) giving her the option, to do what she likes. The wife and husband can enter into an agreement at the time of marriage that this shall be the duty of the husband to maintain his wife separately and if the husband fails to fulfil his promise, the wife will be at liberty to dissolve the marriage.

**Examples of delegation of divorce.**- The following are the few instances of delegation of power-

- (i) that the very curious one of a debtor permitting a creditor to repudiate his (the debtors) wife in the event of the debt remaining unpaid; the case contemplated being apparently that of a creditor coveting his debtor's wife. and proposing to marry her when divorced;
- (ii) the permission to one of two or more wives to divorce a rival wife:
- (iii) the permission to the father or other guardian of the wife to put an end to the he delegation of power of divorce can be given by a person who has attained marriage and take her home.

The delegation of power of divorce can be given by a person who has attained majority and is of sound mind. The majority for delegation of power of divorce is to be governed by the Muslim law and not by Section 3 of the Indian Majority Act. The power may be granted to any person including wife herself. The husband possesses the power to point another person as his vakil. He can also empower third person to divorce his wife is

behalf, Even after the delegation of power to the wife. the husband possesses the power to divorce his wife.

The Dissolution of Muslim Marriage Act. 1939, provides various grounds enabling the wife to seek divorce from her husband. Section 2 (ix) of the said Act says 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 mentioned in the Act. The Act further provides that it shall be lawful for a Muslim woman to claim her dissolution of marriage on any of the grounds recognised by Muslim law. A Muslim lady has no right to dissolve her marriage herself, it is necessary for her to apply to the court for the dissolution of her marriage on the grounds mentioned in the aforesaid Act. The marriage will stand dissolved only if the Court has passed the decree.