



# A Comparative Study Between Extrajudicial and Judicial Processes

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**Abstract**— This paper presents a comparative study between extrajudicial and judicial processes.

**Index Terms**— extrajudicial, judicial processes.

## 1. Introduction

By distancing himself from his wife without providing a cause, a husband might file for divorce. It is sufficient to pronounce such phrases that indicate his decision to disown the wife.

It is not possible for a wife to file for divorce on her own. She can only file for divorce from her husband if he grants her such a privilege or if they come to an agreement.

As per the agreement, the woman has the option to file for divorce through Khula or Mubarat. Prior to 1939, a Muslim wife could only file for divorce if her husband was falsely accused of infidelity, insane, or impotent.

However, the Dissolution of Muslim Marriages Act, 1939 establishes a number of additional reasons upon which a Muslim wife may get a divorce decree by the order of the court.

## 2. Dissolution of Marriage Under Muslim Law

Muslim law's view on marriage dissolution.

A nikah marriage ends with a divorce or the passing of one of the parties.

The legal phrase for ending a marriage with a court decree is divorce by the involved parties. The prophet Muhammad had declared that divorce was the most abhorrent of all things and that it ought to be avoided.

### A. Non-Judicial Divorce

#### 1) Outside of Court Divorce

The husband may unilaterally pronounce Talaq, but he must use discretion when doing so. The Quran outlines a series of obligations that obeyed without exception. When he is bestowed with this power, it is expected that he will, first and foremost, refrain from using it and steer clear of it whenever feasible.

Second, he will act justly and rationally if he decides that it is unavoidable. Islamic law prohibits a husband from divorcing his wife in an arbitrary, unreasonable, or unfair way. One of the following methods may be used by the spouse to offer Talaq which are as follow:

- a) Talaq-e-Ahasan
- b) Talaq-e-Hasan
- c) Talaq-e-biddat
- d) Ila
- e) Zihar

*Talaq – e – Ahasan:* A single pronouncement of divorce made during the Tuhr era (purity, between two mensurations) or at any time if the wife is free of menstruation makes up Talaq-e-Ahasan.

Abstains from having intercourse throughout the Iddat time. The word "Ahasan" is Arabic in origin and means "best" or, in Wilson's words, "very proper." Hedaya claims that this divorce procedure is most acceptable because the Prophet's companions approved of it.

The greatest benefit of this kind of Talaq is that it can be reversed, which keeps a hurried divorce from occurring. So, the divorce is canceled if the husband says, "I HAVE RETAIN THEE," or if he and his wife move back in together before the end of Shawwal. Additionally, the revocation of a divorce is brought about by the resumption of sexual relations before the end of the iddat period.

*Talaq – e hasan:* "Hasan" means "good" in Arabic. Although it is less accepted than Talaq-e-Ahasan, this is also referred to as a form of Talaq-e-sunnat. Here, the spouse needs to utter Talaq three times.

Three times in a row on Tuhrs. The Talaq must be recited by the spouse three times in three hours. The announcement may be made after a month or thirty days have gone between the prior announcements if the wife has reached menstrual age. Once the final declaration is made, the Talaq is irrevocable and cannot be undone. All three announcements have to be given at a time when there hasn't been any sexual activity.

*Talaq – e biddat:* Sunnis recognize it, but it is a rejected type of Talaq. It is also recognized as Triple Talaq. It was held unconstitutional by the Supreme Court in Shayara Bano Vs. Union of India. Muslim Women (Protection of Marriage Rights) 2019. The 1998 law was passed shortly after that court ruling nullifying all declarations of triple talaq by a Muslim man. In case of violation of one of the provisions of the law, the law provides for a maximum of three years' imprisonment and a fine..

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*Zihar*: If a man compares his wife to a mother or another woman to a prohibited extent, she has the right to refuse her until she repents.

Legal Divorce in 1939 under the Islamic Marriage Distribution Act by court order: Lian When a man falsely accuses his wife of adultery, this type of divorce takes place. According to the Muslim Divorce Act 1939, she can go to court for divorce. The reason for divorce must be a false accusation of infidelity by the spouse, who must be healthy and over 18 years of age. A marriage is not dissolved until the court has issued a divorce decree. The Islamic Marriage Act, 1939 sets out the grounds on which a woman can sue for divorce. The Islamic Marriage Act, 1939, Section 2 According to Islamic law, a married woman has the right to a decree of divorce for one or the other more of the following reason.

- i. If the whereabouts of the husband are not known for four years, he is entitled to obtain a decree for the dissolution of his marriage.
- ii. If the whereabouts of the husband are not known for four years, he is entitled to obtain a decree for the dissolution of his marriage.
- iii. If the husband is sentenced to imprisonment for seven years or more, the wife is entitled to a decree of dissolution, but the decree cannot be issued thereunder unless the judgment is final.
- iv. If the husband was without reasonable cause for three years failed to fulfill his marital obligations without reason, the woman has the right to divorce. Regarding *Veeran Sayvu Ravuthar vs. Beevathumma* the court decided that if a woman lives in the family home away from her husband and the man never tried to marry or took steps to restore conjugal rights, therefore the man did not fulfill marital obligations. If the husband was impotent at the time of the marriage.
- v. If the spouse was impotent at the time of marriage and continues to be so, the wife is entitled to judicial divorce.
- vi. If the husband has been insane for two years or is suffering from a serious or virulent venereal disease. The leprosy or virulent disease must not last for two years, it can even be recent.
- vii. If a woman who married her father or other guardian

before she was 15 years old, left him. Marriage before the age of 18, provided that the marriage is not terminated. This "puberty option", known as *Khyar-ul-bulugh*, was available to Muslim women even before this law.

- viii. If the husband treats her cruelly, such as forcing a physical skin, making defamatory statements affecting her reputation, trying to force her to lead an immoral life, etc., the wife has the right to divorce. marriage Regarding *Itwari v. Asghari* ruled Allahabad High Court that Indian Islamic law regards polygamy as an institution tolerated but not encouraged and that a man has no fundamental right to compel the first wife to dissolve his marriage. under no circumstances with another woman. Therefore, Indian law does not recognize different types of atrocities such as "Islamic" atrocities, "Christian" atrocities, "Hindu" atrocities and so on, and the test of atrocity is based on universal and humanitarian standards. In the late year of Muhammad Nishath, the court noted that even under extraordinary circumstances, Islamism is permitted under Islamic law. One must also consider situations where it is permitted. Currently there are no such situations. Not only that, a man must meet special requirements to obtain a wife, including financial conditions, physical ability and the ability to handle more than one wife without discrimination.

### 3. Conclusion

There are few legislations for Muslim women divorce e.g. Divorce Act 1939, Protection of Rights of Muslim Women Act 2019 other than personal legislation. A law of 1939 gave Muslim women the right to divorce independently. The 2019 law protects Muslim women from the most sinful form of Talaq, ie. triple talaq, but the consequences of imprisoning a man are still visible. We hope for solutions to the issue of income support for her and her dependent children during her husband's imprisonment. We celebrate the Day of Muslim Women's rights on August 1, because on that day the law prohibiting triple talaq came into effect. The answers to the questions whether this legislation gives rights to Muslim women or not, whether it is a misunderstanding, whether it leads to abuse, will be clarified soon.

### References

- [1] <https://lawbeat.in/articles/comparative-analysis-confessional-procedure-under-indian-and-us-federal-laws>