Islamic Law of Divorce

India • Pakistan • Bangladesh • Sri Lanka

August 2003

LL File No. 2003-14953
LRA-D-PUB-002194
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Islamic mode of divorce is practiced in India, Pakistan, Bangladesh, and Sri Lanka. However, except in India, completion of such divorce is subject to compliance with the statutory enactments. Without such compliance, no divorce may become effective and a subsequent marriage, if solemnized, may be deemed bigamous. Specifically, answers to the following three questions have been requested by the Immigration and Naturalization Service –

1. **Revocability of divorce** Does a revocable divorce automatically become an irrevocable divorce if neither party does anything to stop it? Or does a revocable divorce lapse if no action is taken?

2. **Three utterances required for divorce** Can the three statements be made at the same time and place or must they be separated by some interval?

3. **Divorce certificate** In order to be valid, must the certificate of divorce mention a financial settlement or dowry?

**Revocability of Divorce**

All the schools of Muslim law allow revocation of a divorce; that is, a husband who has suddenly and under inexplicable circumstances pronounced the formula against his wife, may revoke any time before the expiration of three *tuhurs* (the period between menstruations). When the power of revocation is lost, it is irrevocable; while it continues, the divorce is simply revocable.¹

**Three Utterances of Divorce**

The Hanafis recognize two kinds of divorces: 1) divorce that is effected in accordance with the mode or rules laid down in the traditions (the *sunnat*) handed down from the Prophet or his principal disciples, and 2) heretical or irregular divorce, introduced later by the Ommeyyade monarchs to relieve the rigors of checks imposed by the Prophet on the power of the man to repudiate his marriage.

The traditional form of divorce may be *ahsan* or *hasan* – “very proper” or simply “proper.” In the *ahsan* form, the husband must submit the following conditions: 1) pronounce the formula of divorce once, in single sentence; 2) do so when the woman is in a state of purity or *tuhr* and there is no bar to marital intercourse nor has there been any during that state; 3) the husband must abstain from the exercise of conjugal rights, after stating the formula of divorce for the space of three *tuhurs*.²

In the *hasan* form, the husband is required to pronounce the formula three times during three successive *tuhurs*, namely three periods of purity of the wife. Upon pronouncement of the last formula, the

¹ A. Ali, II Mohammedan Law 435 (1965 6th ed.).

² *Id.*
divorce becomes irrevocable.\textsuperscript{3}

The Shiahs recognize these two forms alone. They do not recognize a written form of divorce unless the husband is incapable of pronouncing it orally. Moreover, there must be two competent witnesses of the pronunciation.

In the heretical mode, 1) there must be three pronouncements made during a single \textit{tuhr}, either in one sentence, or in separate sentences, or 2) there must be a single pronouncement made during a \textit{tuhr} indicating clearly an intention of irrevocably dissolving the marriage.

**Irrevocability**

- A divorce in the \textit{ahsan} mode becomes complete and irrevocable on the expiration of the \textit{iddat} which is three lunar months to ascertain pregnancy.
- A divorce in the \textit{hasan} mode becomes irrevocable on the third pronouncement, regardless of the \textit{iddat}.
- A divorce in the heretical mode becomes irrevocable immediately when it is pronounced.

**Divorce Certificate**

Under the Islamic personal law, there is no requirement for the issuance of a divorce certificate, nor is there need to mention settlement of property or dowry (except in Sri Lanka as described below). Even under the Pakistan and Bangladesh statutory enactment, the Muslim Family Laws Ordinance, 1961, the statute does not prescribe the issuance of a divorce certificate.\textsuperscript{4}

**Divorce Law in Applicable Countries**

**India**

A Muslim divorce in India may be completed by its pronouncement in accordance with the formula of divorce applicable to the person’s sect. The divorce is then deemed effective in compliance with the provisions of the Islamic personal law.

**Pakistan and Bangladesh**

In order to make a divorce complete and effective, the spouses must comply with the mandatory procedure of notice and reconciliation between them through the agency of a Union Council.\textsuperscript{5} If the notice and conciliation proceeding, in accordance with prescribed procedure, are not followed, the divorce never becomes effective or complete, and the marriage is deemed subsisting.

\textsuperscript{3} \textit{Id.} at 436.

\textsuperscript{4} No. 8 of 1961.

\textsuperscript{5} The Muslim Family Laws Ordinance, No. 8 of 1961, §§ 7-8.
Sri Lanka

Sri Lanka requires registration of a Muslim divorce. A husband, intending to divorce his wife, is required to give notice of such intention to the local Quazi’s Court whose duty is to try to bring about a reconciliation between the parties with the help of their relatives within 30 days thereof. Absent a reconciliation between them, if the husband still wishes to proceed with the divorce thereof, he shall pronounce the divorce in the presence of the Quazi and two witnesses which shall be recorded by the Quazi and a notice thereof shall be served upon the wife.

If there is no reconciliation within 30 days, the Quazi shall recover, in the prescribed manner, from the husband the dower payable to wife, whether or not demanded by her, and deposit the amount in a local court in the wife’s name. After service of the stated notice of divorce on the wife, the Quazi shall fix a date on which the husband must appear before him to register the divorce. If the husband does not appear on the date fixed, the Quazi, after the expiration of 3 months of the pronouncement of divorce, examine the wife on oath with regard to the failure of the husband to appear and record the causes for failure of the reconciliation and then register the divorce.

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August 2003

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7 Id. Second Schedule.