



Comparative analysis of divorce laws: A look into the divorce laws of Islamic world

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Abstract

To annul the institution of matrimony is always a tough task. Each country has had its own stint in devising the legal mechanism for separation of partners who have indulged in marital relations. In this day and age, dynamic shifts have taken place within the institution of marriage and questions have crept up regarding the necessity of the same. It takes considerable social observation coupled with pragmatic analysis of contemporary situations to expound the law regarding divorce. This work attempts to analyse the various national laws regarding divorce and compare them with the Indian laws. The authors seek to investigate the modus operandi, institutional framework, the substantial provisions and the jurisprudence that has gone into the making of the respective national legal constructs. The authors have indulged in mapping divorce laws across borders for the purpose of this analysis. The importance is given to the historical background, status of the divorce proceedings, time constraint, grounds for divorce, jurisdiction of the courts, unique features and procedures that exist in each country. The above mentioned crucial elements are positively compared and discussed in this article. The authors feel such works are necessary to make a SWOT analysis of legal regimes that deal with similar problems with their own context driven law-making and jurisprudence. This paper does not dwell on ethnocentricity nor is it judgmental of the various legal regimes. It merely seeks to compare by drawing out commonalities and citing out differences.

Keywords: divorce laws, interpretation, comparative analysis

1. Introduction: Comparative analysis of divorce laws between India and Egypt

Egypt is the country where the population consists of a majority of Muslims who comprise 88% of the total population. Out of the population of 80 million in Egypt around 86.8% are Sunni Muslims, 10.2% are Christians, 2.9 are Shia Muslims, and the remaining 0.1% follows the other faiths.

1.1 Sources of Islamic Law in Egypt

Law of Sharia which was the principal law in Egypt for a long time also follows the rule of Khula when it comes to divorce and custody of children. The Khula rule being followed in Egypt makes its civil code controversial and different from a lot of other Arab countries.

When it comes to divorce in Egypt, discrimination starts long before a woman files a divorce petition. While marriage contracts in Egypt may provide for conditions such as certain rights and a woman's equal access to divorce, in general, most women are not informed about their right to negotiate on those conditions and are mostly not present during the process of the negotiation.

The autonomy of women and their choices are still restricted if they decide to terminate their marriages. While men who seek for a divorce do not need to resort to the court, women have to navigate a complex, costly and time-consuming divorce system to terminate their marriages.

Thus, the women must either choose a judicial separation or fault-based divorce which permits them to retain their

financial rights or a divorce established on the abandonment of their rights (Khula).

1.2 Divorce Initiated By Men

Men in Egypt have a unilateral, absolute and unconditional right to divorce without resorting to legal proceedings which are known as "Talaq" unlike the Egyptian women. They can just repudiate the marriage with their wives by uttering "you are divorced" three times; in three different circumstances making the divorce irrevocable. Registering the divorce within thirty days period with one of the religious notary would make it official. They do not have any other procedure. A woman whose man has repudiated their marriage has to observe a waiting period known as "Iddah" which is not exceeding one year, during which she is not permitted to marry any other man. Any divorce which has been uttered less than three times is considered to be revocable (raji'i), meaning that the husband still has the right to return the wife to his household during the period of Iddah against her will and even without having to sign any another marriage contract.

A woman who is repudiated by her man, in Egypt, is entitled to the deferred dowry or "maintenance" which is known as "nafaqa" during her "Iddah" period, and she is also entitled to compensation (mut'a) of at least two years maintenance. However, many Egyptian women seeking a divorce are usually willing to forfeit these financial rights to avoid these court proceedings which are not certain. Instead, they ask their spouses to divorce them in return for their forfeiting of the rights.

1.3 Divorce Initiated By Women

Usually women who seek divorce in Egypt are given two options,

- Fault-based divorce and
- No-fault divorce or “Khula”

Regardless of the fact that whichever system they choose, a lot of procedures are involved in the process of these divorces. The couples before seeking remedy through the court of law need to mandatorily have a mediation process, thereby trying to settle the matter themselves without the intervention of courts. For both fault-based and no-fault divorce initiated by women, public prosecutors often serve the judge with advisory opinions as to whether the divorce could be granted in the particular case or not. While these opinions were usually required by the judges themselves on a case-to-case basis before the establishment of the Family Court System, now such advises are made mandatory in all those personal status cases heard by the courts in the new system.

1.4 Fault-Based Divorce

To initiate a traditional fault-based divorce proceeding, a woman is required to obtain legal counsel, provide any proper evidence of harm, which is often accepted through an eyewitness testimony, and submit to mediation process which is mandatory. A woman must be able to prove to the court that it is practically impossible for her to live with her husband anymore to obtain a divorce.

The following are the grounds accepted by the court for fault-based divorce:

- Illness of husband which includes mental illness, venereal disease, and even impotence;
- Husband not providing financial support to the wife;
- Imprisonment of the husband; and
- Causing “injury which includes various forms of physical and mental injuries or harm.
- The last form of judicial divorce which is on the ground of injury is established in general terms and can include reasons such as:
 - Physical or verbal violence on the wife
 - Attempting to take control of the wife’s private property causing damage to the “honour” of the wife or her family
 - Deprivation of marital intercourse

The law has given judges considerable discretion by not stating explicitly the degree of harm required is sufficient to grant a fault-based divorce. According to Egyptian law, a woman who was aware of these grounds for divorce before her marriage and tolerated the acts of the husband for several years during their marriage will not be granted divorce since her knowledge makes her request for divorce inadmissible.

This law provides men a considerable leeway to rectify the harm they have caused. For example, if a woman files a divorce suit for impotence, the judges usually wait for one year before they decide to grant the divorce so that they can see if the condition has improved. Similarly, if a man decides to spend money on the household after a woman has filed the suit for harm based on failure to provide financial support the case can be dismissed on the ground that the man has retrieved the harm by supporting her now.

The substantial burden of proof of “injury” rests with the woman because she is the party filing for the divorce. To file divorce on the grounds of physical violence, a woman has to provide the court with a medical certificate issued by a government hospital outlining her condition to be worse and produce two eye-witnesses (who are preferably not related to her) who saw the abuse happening to her.

It is usually believed in all other court cases in Egypt that a woman’s testimony is worth half that of a man. Hence, a battered woman would be required to give testimonies from either two men, four women, or one man and two women. The need for presenting witnesses by women stands as a huge barrier to obtaining a divorce by physical abuse.

1.5 No-Fault Divorce (Khula)

Then President of Egypt Mubarak signed a new law on 29 January 2000 which granted Egyptian women the right to file divorce on ‘incompatibility’ without providing evidence of the harm caused. To file a “no-fault” divorce or “Khula”, a woman is not required to provide grounds for filing the request, but she has to agree to forfeit her rights to alimony and her maintenance or “mu’akhar” as well as repay her advanced dowry or “muqaddam”. For some women, Khula has proved to be relatively faster than the process of fault-based divorce, since they are not required to present evidence of harm or find any witnesses, and men in Egypt do not have the right of appeal for the no-fault divorce or Khula to a higher court.

While no-fault divorces have helped some of the women to have easy access to divorce, it has often not adequately been a remedy to the fundamental inequality present in the process of divorce. Human Rights Commission interviews have revealed that due to the need to forfeit the right to their marital assets and their right to any support in the future, this option has been limited to women who hail from a family with significant financial resources.

1.6 Comparison with India

Usually, the process of divorce in India involves a process of a mediation session, order of judicial separation and later, divorce, which makes it tiring, burdensome and lengthy process. This may ultimately offer no solution to the woman who is compelled to preserve a marital relationship which she no longer desires to be a part of.

On the other hand, incorporation of the provisions of the law relating to Khula is recognized as facilitating a comparatively more instant solution for women who wish to annul their marriage. The provisions of Khula, if traced, go long back in Egyptian law, since several laws passed earlier to this, have included provisions relating to Khula indirectly.

The process of a normal divorce in India making it a tiresome, long process is perceived by many women as far from easy and also unreasonable. Contrary to this complex process, a divorce through Khula, as mentioned in the new Egyptian law, makes it easier for the wife as she is not obliged to prove any matter in Court and she only needs to confirm or state her inability to endure a life with her husband. If in a particular case, it is observed by the judge that the limits of God will not be rendered and a peaceful married state will not be possible, as stated by Islam, then an irrevocable divorce in way of

'Khula' is granted.

2. Comparative analysis of divorce laws between India and Indonesia

The Indonesian constitution recognizes six religions namely, Islam, Protestants, Catholics, Hinduism, Buddhism and Confucianism^[1]. Indonesia has a large population of Sunnis and a minority of Shias.

2.1 Sources of Islamic law in Indonesia

Nagly, is the source of the law in which a mujtahid has no role in its formation because *nagly* is the source of the available law. *Agly*, is the source of law where a mujtahid can play a role in its constitution. For example *Qias*, *Istishan*, *Istislahmuslahat* and *Istishab*.

There are few additional sources of Islamic law: Ashlih's Law in which the Qur'an and Hadith/ Sunnah and Tarbaiyah's legal sources cover *ljma*, *Qual*, *Sahabat*, *Qias*, *Istishan*, *Muslahat*, *Urf*, *Shariat Umda* and *Istishab*.

2.2 Persons authorized to file a divorce petition

Authorized parties to file for annulment petition are

- Lineal ascendants such as parents and siblings;
- Husband or wife;
- Authorized officers responsible for supervising the performance of marriage as governed by law;
- Others parties who are aware of any marriage defect regarding marriage requirements as mandated by the prevailing law.

2.3 Competent Authorities to Grant Divorce

There are two types of Dissolution of Marriage in Indonesia – through court or Religious court (*Moslem*)

The grounds for filing for divorce have been regulated by the Marriage Law. When either of the spouses:

- Has committed adultery, is an alcoholic, is addicted to drugs, is a gambler or exhibits other vices which are difficult to cure;
- Has left the other spouse for two consecutive years, without consent and legitimate reasons;
- Has been sentenced to imprisonment for five consecutive years;
- Has resorted to cruelty or severe ill treatment, endangering the life of the other spouse;
- Has developed a disability or disease, prevents them from discharging the duties of husband or wife; or
- Has irreconcilable difference

2.4 Procedure to Divorce

The court proceeding is under Article 164 of Indonesian Civil Procedural Code. The Notion use in District Court is Divorce Claim and in religious court Divorce Application. The proceeding to grant divorce claim or application is similar in District court and Religious court.

When a husband or wife passes away, their marriage is automatically terminated. When a wife passes away, her husband can remarry immediately. But, when a husband passes away, his wife has to wait for four months and ten days before she marry another man.

Khula is a type of divorce where the man has the privilege of

paying the dower to terminate the marriage contract. *Li'an* is termination of marriage, where husband denies to have a child, and this termination is irrevocable. If either of the spouses intends to divorce through the Court, Lian and khula are valid.

2.5 Comparison with India

Divorce procedure in Indonesia is similar to India, but religious divorce is not valid in India.

In India, while drafting the UCC, the parliament has to bear in mind that the code should give equal grounds for divorce. Though talaq is allowed in Indonesia it limits the rights of the husband; he should obtain the divorce decree only through courts.

3. Comparative analysis of divorce laws between India and morocco

Morocco is a constitutional, democratic, parliamentary and social monarchy according to Article 1^[1] of the Constitution of Morocco. ISLAM is the religion of the State, and it provides the freedom and liberty to exercise Islamic beliefs [Article 3].

Morocco was successful in framing a UCC, which is known as Family Code of Morocco/Mudawana/Moudwana

3.1 Divorce law in Morocco

The minimum legal age of marriage to 18 for men and women, establishing joint responsibility for the family among men and women, limiting the terms of polygamy and divorce, and granting women more rights in the negotiation of marriage contracts, among other provisions, were the reforms brought under the new Moudwana^[2].

In the Islamic world, basic rights in family law constitute a major dimension of gender equality and good family practices. Without these rights, women are vulnerable to the whims of their husbands and sometimes their male relatives^[3]. Now Morocco is the second country in the Arab world which recognises gender equality and provides equal rights to women^[4]. Divorce by repudiation was given over to the control of a judge, and the right to divorce by mutual consent was established. In the case of divorce, the woman automatically receives custody while the husband is required to pay child support^[5].

3.2 Grounds for Divorce

The Family Code of Morocco is divided into books and articles. The BOOK 2 of the Moroccan Family code deals with the dissolution of marital bonds and its effects. Article 70^[6] provides that a marriage can be dissolved in exceptional circumstances by considering the rule of least harm and by considering family dislocation and harmful effects on children. The marriage can be dissolved by five modes namely: (Article 71)

- Death,
- Annulment,
- Divorce,
- Repudiation or
- Khol (divorce in exchange for compensation by the wife)

Divorce is one of the modes for dissolution of marriage. There

are two major modes of divorce: (1) Divorce sought by either spouse for irreconcilable differences: [Articles 94-97] and (2) Divorce of other causes: [Articles 94 -112] which include (a) Non respect by the husband of one of the conditions in the marriage contract and Harm; (b) non maintenance; (c) absent from the conjugal home [for more than one year]; (d) Latent defect (disease which may endanger the life of the other spouse); (e) Abstinance or Abandonment; (f) Divorce suits ^[7].

3.3 Time Taken For Divorce

- Annulment or repudiation: 30 days (Examination of witnesses)
- Divorce sought for Irreconcilable differences: 6 months
- Divorce sought for abstinence or abandonment: 4 months
- Divorce Suits: Decisions shall be rendered in divorce suits within a delay not to exceed six months, barring exceptional circumstances. The court shall also rule on the vested rights of the wife and children.
- The wife has the right to obtain the divorce decree fifteen days after the divorce has been certified, and the husband may also obtain a copy. [Article 140] ^[8].

3.4 Iddah

It has to be undergone only when the marriage is consummated and the Muslim woman has to reside in the marital home or another home during that period. It starts from the date of death, annulment, divorce or repudiation. In case of non-pregnant woman, it's maximum of 9 months and in case of pregnant woman, its one year maximum.

3.5 Procedure to Get Divorce

The court shall submit a summary of the repudiation decree, the "resumption document," the divorce decree, the marriage contract annulment, or its invalidation to the Civil Status Officer at the birthplace of both spouses, along with the certificate of submission of a copy of it within fifteen days after it has been certified or after the issuing of divorce decree by the court, or the annulment or invalidation. The Civil Status Officer must mention the summary's content in the margins of the birth certificate of both spouses. If both or either of the spouses was not born in Morocco, the summary shall be remitted to the Attorney General at the Court of First Instance in Rabat. The information that must be included in the summary cited in the first paragraph above shall be determined in a decree by the Minister of Justice. [Article 141] ^[9].

3.6 Controversies

The judiciary is not independent and they are under the control of the monarch. There is a huge pendency of cases and there was a problem of legal illiteracy which hindered implementation of New Moudawana. A 2003 report to the CEDAW Committee emphasized that despite the progress of the Moudawana, "*a number of constraints and difficulties have emerged, including in particular difficulties attributable to inadequate infrastructure and logistic resources, a lack of awareness and training among officials responsible for enforcing the Code, and the persons in charge of publicizing it and propagating an understanding of it throughout Morocco's social fabric*" ^[10]. Delay in disposing a case, disinterest of

advocates and magistrates in understanding Moudawana Reforms has earned distrust of Muslim women. As a result of these shortcomings in the judicial system, many women fear failure or harbour mistrust that prevents them from seeking out judicial resolutions ^[11]. Various research articles and statistics show that the controversy lies with the legal illiteracy of the citizens and the failure on the part of the government to impart legal education which hinders the effective implementation especially in rural areas ^[12].

3.7 Comparison with India

India is a secular country where different religions are being practised. While enacting a law, stress cannot be laid on a particular religion but should address and answer the problems in an amicable way. Another problem is that there are no proper codified Muslim personal laws and the customs take the force of law. The personal laws are discriminatory and favour men. In India, the talk of UCC arose because of discriminatory personal laws and customs. In India, Dissolution of Muslim Marriages Act, 1939 governs dissolution of Muslim Marriage and specifies the grounds. The grounds for divorce in India and Morocco are similar except Khol which is not practised in India. Article 70 of Title 1 Book 2 of Moudwana, 2004 lays down that a marriage can be dissolved in exceptional circumstances by considering the rule of least harm and by considering family dislocation and harmful effects on children. The salient feature is that when a woman applies for divorce, she need not have any specific motive except irreconcilable indifferences with her husband and she can make a claim for reconciliation. But in India, The Muslim women could not approach Courts to claim divorce and maintenance before Shah Bano Begum Case ^[13]. Then in Daniel Latifi ^[14] case and Shamima Farooqui ^[15] case, the Supreme Court reassured the validity of Shah Bano case and nullified the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that every Muslim woman is entitled to maintenance. But in reality none of these judgments proved effective as there is no proper codified law. Another problem is legal illiteracy which is still incurable, among people. This is a vicious cycle and only government can spread awareness among the people by organising campaigns and programmes with the help of NGOs, law students and socio-legal researchers and activists. Implementation and reaching public domain will make any legislation successful. Morocco succeeded in its attempt in bringing a uniform code because of two reasons:

- People co-operated in implementation and it was successful as it reached the public domain.
- As there was no legal illiteracy every person came to know about it and was aware of it.

4. Comparative analysis of divorce laws between India and Pakistan

The status of divorce in Pakistan is clear: Marriage is a civil contract that can be executed and dissolved like any other contract but will be automatically dissolved on the death of either of the spouse. Also, the legal right of either spouse to terminate this contract is recognized by Islam. Thus, it is evident that both parties to the marriage are entitled with a religious right to end the marriage. However, the technicalities

behind the husband's or wife's power to exercise this right vary exceptionally. These will be discussed in the following subtopics.

4.1 Modes of Divorce in Pakistan

There are a couple of ways through which divorce can be done, namely that of Khula or Talaq. Talaq is known as the unilateral right of divorce. This can be exercised by both the husband and wife but is subjected to certain conditions. The husband's right of talaq cannot be waived off but can be restricted using the nikahnama. The wife's unilateral right to end the marriage only arises if such right has been given to her by the husband through the nikahnama. Apart from this unilateral right of talaq, other means to dissolve the marriage can be done by way of khula and judicial divorce. Such methods can be carried out in Family Courts.

4.2 Dissolution of Muslim Marriages Act 1939

Judicial Khula may be granted without the husband's consent if the wife is willing to forgo her financial rights. The grounds for judicial divorce, whereby a woman may seek khula include

- Desertion by husband for four years,
- Failure to maintain for two years
- Husband contracting a polygamous marriage in contravention of established legal procedures,
- Husband's imprisonment for seven years,
- Husband's failure to perform marital obligations for three years,
- Husband's continued impotence from the time of the marriage
- Husband's insanity for two years or his serious illness
- Wife's exercise of her option of puberty if she was contracted into marriage by any guardian before the age of 16 and repudiates the marriage before the age of 18 (as long as the marriage was not consummated),
- Husband's cruelty (including physical or another mistreatment, unequal treatment of co-wives),
- Any other ground recognised as valid for the dissolution of marriage under Muslim law
- The Family Court will issue a decree and send a notification to Union Council which proceeds as if it received the notice of Talaq and once the iddat period is over the khula becomes effective.

4.3 Comparison with India

In the Muslim culture, divorce is not much appreciated, and so girls may be brought up not to consider divorce or worry about their dowry. Due to this cultural factor, a woman may find it extremely difficult to obtain a divorce or information about her rights according to the relevant laws^[16].

Indian Muslim women's rights have always grabbed the spotlight concerning debates about *talaq* (divorce). Shah Bano, who holds an advanced degree in sociology, filed a petition before the Indian Supreme Court last year to rule on the constitutionalism of triple-*talāq*, in which a Muslim husband may divorce his wife by simply saying "*talāq*" three times with or without her consent^[17]. After she suffered fifteen years of mental and emotional abuse from her husband, he surprised her with a divorce, leaving her with little recourse

for arguing terms. This case^[18] acts as a precedent in other divorce cases, thereby progressing women's rights. Pakistan editor Zubair Abbasi notes that this is not unique to India; Pakistani judges have also "tried to ensure gender equality under Islamic divorce law, but adopted entirely different approaches."

Different judgments on various landmark cases highlight these approaches. Citing the Qur'an, the Indian Supreme Court^[19] ruled that a Muslim man may not divorce his wife without reasonable cause, in effect limiting a Muslim husband's prerogative to divorce. In comparison, the Lahore High Court^[20] chose an opposite approach by expanding Pakistani Muslim women's judicial right to *khul'* (a woman's limited right to divorce).

The Supreme Court of Pakistan^[21] agreed with this reasoning nearly a decade later, citing the Qur'an to emphasize a husband and wife's mutual rights and obligations. Both approaches advance the cause of gender equality, but Abbasi emphasizes the unequal results. For women such as Shah Bano, the Pakistani approach would have provided her with the option to declare a definite divorce, which would have been much preferred and more effective when compared to forced reconciliation. While the cases above enumerate the controversies, the following explains the comparison between both legislations regarding the issue of the reform of Islamic divorce law in India and Pakistan. Superior courts' judges of both countries led the reform efforts. Indian and Pakistani judges tried to ensure gender equality under Islamic divorce law but adopted entirely different approaches. Whereas the Pakistani judges *extended* women's limited right to divorce (*khul'*), Indian judges *restricted* husband's unlimited right to divorce (*talāq*)^[22]. The Indian Supreme Court has already removed gender discrimination under Islamic divorce law. Shah Bano's husband cannot unilaterally divorce her without establishing that he has a "reasonable cause."

There should be reconciliation efforts initiated by two arbiters from either side, which has to be effectively evidenced as a formal declaration by the husband. This is the Indian model of gender equality under Islamic divorce law. In contrast to the Indian model of gender equality, Pakistani judges did not limit a husband's unilateral right to divorce by requiring a "reasonable cause" for divorce. Instead, they recognised a similar right for a Muslim wife. In the judgment of the *Balaqis Fatima* case, the Lahore High court observed that it does not seem reasonable that only a husband should be given a right to divorce in a marriage contract. The Court also acknowledged the Muslim wife's right to obtain a judicial *khula* without the consent of her husband.

5. Comparative analysis of divorce laws between India and Saudi Arabia

Saudi Arabia, a conservative Muslim country in the Gulf follows the strict guidelines of Wahhabi Islam, has one of the highest percentages of divorce rates in the world. The courts deal with about 127 divorce cases per day. According to a report by the Saudi Ministry of Justice^[23], It is observed that the divorce rates have increased by 50% since 2015 in Jeddah. Saudi Arabia bases much of its legal system on Sharia (Islamic law), which is grounded in the Qur'an, and on the teachings of the Prophet Muhammad, also known as Sunnah.

According to Sharia, men are allowed to practice polygamy and are permitted to have up to four wives at any given time.

5.1 Modes of divorce and its grounds

There are two types of divorce in Saudi Arabia depending upon who initiates it; the husband by using Triple Talaq and the wife, by proving some conditions.

Women have no right to a unilateral divorce. Women must have a right to apply for a Khula divorce. The other alternative is to apply to the courts for a fault-based divorce. Under this type of divorce, a woman must prove at least one of the few available grounds for divorce, which includes mistreatment by the husband. Due to a lack of codified family law, judges are not clear as to what constitutes mistreatment. Neither physical nor verbal abuse is taken into consideration even with a medical report; because it is believed that she probably did something to provoke her spouse. There are only 2 cases wherein a woman is likely to get a favourable outcome, firstly when it is proved by her that her husband is a drug addict and secondly if he is diagnosed with AIDS.

5.2 Time period for getting a divorce

In Saudi Arabia, if the divorce is initiated by the husband it is effected immediately. The man does not need to inform his wife that he intends to divorce her. She needn't be present in court in order to obtain a divorce decree. Both Khula and fault-based divorce have a lengthy legal processes. Before being granted a judicial divorce, a woman must undergo mandatory mediation, usually run by two or more male religious leaders. Men seeking divorce do not have the same requirement.

5.3 Legal procedure to get Khula

- The woman must go to a Personal Status Court and file a Khula case there. She should submit sufficient evidence that support her claims ^[24].
- The judge will examine the grounds and determine whether they should be taken into consideration the Khula plea ^[25].
- If the judge is convinced that she has valid reasons to ask for a Khula, he will grant her one, in which case the husband will have to be given monetary compensation by the wife ^[26].
- The judge sometimes estimates the amount of money the wife should pay the husband. It happens when the grounds or reasons for divorce are very strong and there is no hope in the marriage ^[27].
- According to statistics released by the Ministry of Justice, there was an increase in the number of Khula cases last year (2016). The number of cases all over the country totalled 2,033 cases.

5.4 Jurisdiction of courts under special circumstances

According to Article 27 of Law of Procedure before Sharia courts, the courts shall have jurisdiction over cases filed against alien Muslims who have no general or designated place of residence in the Kingdom in the following circumstances: If the case is for divorce or annulment of a marriage contract and is filed by a Saudi wife or one who has lost her citizenship by reason of marriage if either one is

residing in the Kingdom, or a non-Saudi wife residing in the Kingdom, against her husband who has a place of residence therein if her husband abandoned her and took residence abroad or if he was deported from the Kingdom's territory.

5.5 Iddah

"Iddah" is obligatory upon every woman who leaves her husband or whose husband leaves her, if the cause is Talaq, annulment of the marriage or the death of the husband. With regard to the Iddah following Khula, the Iddah period is one menstrual cycle, as is indicated by the Sunnah whereas, with regard to Talaq the Iddah period is three menstrual cycle and in case of a pregnant woman is until the delivery of the child. The divorced husband is obliged to maintain his ex-wife during the Iddah in case of Talaq.

5.6 Bizarre cases on divorce

The Family Court of Saudi Arabia approved a request for a divorce submitted by a Saudi woman because of her husband's smoking habit. In a complaint submitted to the Court, the wife stated that she was diagnosed with a lung ailment as a result of inhaling the second-hand smoke from her husband's cigarettes. The Court ordered the immediate separation of the couple. The Court decided that the husband's smoking habit inflicted great harm on the marital relationship, and this constituted sufficient grounds for divorce. The Court also foresaw extreme difficulty for the wife in continuing to live with a husband who smokes, especially after she had been diagnosed with lung disease ^[28].

There are few weird grounds for Divorce in Saudi Arabia they are:

- Saudi Man Divorces Wife For Buying a Beverage ^[29]
- Saudi Man Divorces Wife For Earning a Scholarship Abroad ^[30]
- Saudi Man divorces his wife after seeing her face for the first time ^[31]

5.7 Comparison with India

The applicability of personal laws to an Indian depends on his/her religion whereas in Saudi Arabia a Muslim country, the personal laws are based on the principles laid in Quran. Saudi has an un-codified law and on the other hand, Indian divorce laws are codified with respect to each religion but the Muslim divorce is based on Quran regulated by the Dissolution of Muslim Marriage Act, 1939. The existence of a male guardian is compulsory for a women in Saudi to get divorce but, it is not so in India. Divorce through Triple Talaq valid in Saudi but it is unconstitutional in India. The Process of divorce and time period to get the decree is different for both men and women in Saudi whereas it is not so in India (except Muslims).

6. Comparative Analysis of divorce laws between India and Turkey

Turkey was the first Muslim country that had encountered the modern West and its civilization and made an attempt to respond to the challenges posed by the Western power and civilization ^[32]. Turkey had the strength to conceive a secular code and was able to make a departure from the orthodox tenets prescribed by Islamic Law.

The process of secularization of civil law succeeded in 1926 with the adoption of the Swiss Civil Code. During the Ottoman Empire, however, as early as 1451 the process of supplementing the Shari'a began with edicts known as *kanfinames* and *vetra* (religious tribunals) ^[33]. This was the beginning of the reception of secularist law in Turkey.

6.1 UCC in Turkey

In modern thinking, it is widely believed that traditional law does not serve as an instrument of change. Traditional law is accused of keeping people from acting in compliance with the law that aims for the development of the state. In contrast, modern state law is believed to transform the society. The ideological role of law is of central importance in legal modernity. Law is used as an instrument of social control, and as a mode of organizing beliefs and values ^[34]. Turkey was the first Islamic country to attempt on a complete secularist code. The elite had conceived religion as a threat to their modernist movement and revolutions and felt that religion should stay in conscience and places of worship and should not veil the matters of material life ^[35].

The cultural change was not possible until the Ottoman Family Law was enacted in 1917. This was an eclectic law, which reflected and amalgamated the views of different juristic schools of Islam. The law tried to give marriage a more official character by stating that the unilateral *talaq* (statement of divorce) in the presence of two witnesses did not suffice to terminate a marriage. The presence of a judge or a deputy was required by the law. Moreover, every marriage and divorce had to be legally organized according to state procedures. The law also granted a wife two new grounds for divorce. For the first time, age limits for marriage were set. The new law also allowed women, at the time of betrothal, to write into the marriage contract that if the husband takes another wife, her marriage will become null and void.

Radical reforms were introduced in family law matters. The law of Islam was abolished for matters of personal status in 1924. It was replaced by a civil code taken from Swiss models. The adoption of the Swiss Civil Code and Swiss Code of Obligations in 1926 represented a profound attempt to change the social life of Turkey ^[36]. This enactment was aimed to achieve a complete separation between religion and law. In this process the secularist code became the cornerstone of the modern Turkish state. This Civil Code is applicable throughout the territory of Turkey.

6.2 Marriage and Nikkah

Art. 174/4 of the Turkish Constitution mandates that only Civil marriages conducted by authorized civil authorities are valid. Art. 16 of the Civil Code further states that the parties to the marriage shall commence their celebration with the submission of the necessary documents in the marriage office. Art 108 of the Code further states that the religious marriage shall commence only after the completion of the civil marriage and contrary act done by the *inams* is a punishable offence under the Turkish Code. An earlier study found in the 1970s that 35.4% of all marriages in Turkey were civil, 49.2% were mixed civil-religious (concluded in the presence of civil authorities and later, an imam), and 15.0% were only religious and hence carried no official legal weight ^[37].

6.3 Polygamy

The Turkish Code differs from the traditional Muslim law. Thus a man is not allowed to marry up to four wives in Turkey. The Civil Code states that no person shall marry again unless he proves that the earlier marriage had been dissolved by death or by divorce or by a decree of nullity and that a second marriage shall be declared invalid by the court on the ground that a person had a spouse living at the time of marriage. In other words, the second marriage is not only void, it is void *ab initio* ^[38]. Art: 237/5 prescribes a punishment up to three years for polygamy and this provision is made applicable to women also.

6.4 Divorce

The sacrosanct feature of the Turkish Code is that the traditional method of divorce is inapplicable and in secular Turkey, the sole method of obtaining the divorce is by way of judicial intervention on the ground of irretrievable break down of marriage. In an earlier case, the Court of Cassation did not recognize a *talaq*, stating that there is only one type of dissolution of the marriage under the Civil Code. Muslim laws' dissolution of the marriage after three *talaqs* between the couple was refused on the ground that there is no such rule in the Civil Code ^[39]. The Civil Code also recognizes divorce by mutual consent ^[40].

6.5 Significant changes

The TNGA Justice Commission envisioned further changes in the civil code and it was successful in implementing the following radical changes. The 2001 amendment redressed the biases which relegated women to a secondary position within marriage. Articles which declared the husband to be the head of the household, expected him to earn for the family, and expected the wife to be his helper were deleted. The minimum age of marriage which was 17 for men and 15 for women was raised to 18 for both men and women. Equal rights of inheritance were extended to children born outside wedlock also. Perhaps most radically, women's unremunerated labour at home was finally recognized when the property regime changed from one based on separate ownership of property to one based on the sharing of property acquired during marriage. In cases of divorce, women could thus claim a share of property registered in their husbands' names if the property was acquired during the marriage ^[41].

6.6 Comparison with India

The creation and working of the secularist Turkish Code was possible because the Turks did not default their trust with destiny. India should take great inspiration from Turkish civil code to draft its very own UCC.

7. Conclusion

Any exercise that seeks to bring homogeneity at times ends up bringing on plurality and diversity. This interpretation of Islamic law has been no exception to this statement. The legal flavours of Islam has blended with the aroma of each cultural group that it came in contact with and has ended up becoming a unique group on each such contact. We are able to see that even though attempts have been made to bring on uniformity amongst the Islamic community to formalise divorce

proceedings. The very fact that the final seal of the prophet affords legal scholars the discretion to act upon the conscious when there is a difference of opinion between their interpretations of the holy Quran and the hadith. Such differences of opinion are bound to occur when a literary source is read out of its historic context by multiple generations at varied confluences of time and space. In post-modern world, a truth dictated by context and notions of absolutidity of norms have become obsolete ideas. In the days to come the way ahead would only be sensible rational understanding of religion within the dimensions of modernity and civility.

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