

# Jurisprudence on Concept of Talaq-e-Tafweez: A Mode of Dissolution of Muslim Marriage

Shafaq Farooq<sup>1</sup>

## Abstract

*Muslim women in Pakistan have recourse to a form of dissolution of marriage other than the usual court process - khula. That very form is called talaq-e-tafweez. This article tends to explore the concept of talaq-e-tafweez, a form of dissolution of a marriage contract. An in-depth study of jurisprudence on talaq-e-tafweez has been taken into account while digging into the existing practices of dissolving marriage via talaq-e-tafweez i.e., delegating the right of divorce to the wife at the time of nikkah or even afterwards during the nuptial agreement. A detailed analysis with help of precedents has been made in order to indulge into the discussion of whether talaq-e-tafweez is a revocable right or not. It includes a discussion on all the applicable legislation pertaining to deal with delegation of the right to divorce under the Shari'a. Also provides a fruitful comparative analysis of how this concept is being practiced in different jurisdictions around the globe and how this concept has been interpreted by courts in Pakistan. The article also elucidates on whether a woman can retain her dower if she exercises talaq-e-tafweez. Moreover, reasons including but not limited to those mentioned, have been discussed at length, why it is beneficial for women to seek delegation of right to divorce (e.g., less costly, saves time, dower retained, no recourse to courts needed). The importance of delegated divorce for women and what issues it can help resolve in marriage have also been highlighted. Furthermore, the steps of pronouncing talaq-e-tafweez and the procedure of execution of divorce deed have been thoroughly explained with the help of judicial precedents.*

**Keywords:** Talaq-e-tafweez, dissolution of marriage, delegated right to divorce.

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<sup>1</sup> The author is a recent B.A LLB graduate from Kinnaird College for Women, University. She has been working as an associate at Four Golf Road Chambers. She has sufficient experience of participating in moot courts and debating competitions. She bagged the winning trophy at PCL 2022 moot court. She secured the runner-up, best speaker and best memorial awards at Roots International Millennium moot competition 2021. She qualified for the Jean-Pictet Competition 2021 in Duress, Albania. She also was in the top four teams for Philip C. Jessup 2020, where she qualified for international rounds in Washington D.C. Her writing and researching skills have also led her to publish various articles on different platforms. Author can be contacted at [shafaqfarooq@gmail.com](mailto:shafaqfarooq@gmail.com).

## 1. Introduction:

There exist multiple ways of dissolution of a muslim marriage under the Islamic law.<sup>2</sup> Different countries exercise different practices according to their religion, culture and norms when it comes to dissolving a marriage contract.<sup>3</sup> It is intriguing to mention that in Pakistan, when divorce proceeds from husband, it's is called talaq; but when it is affected from mutual consent it is called, khula or mubara'at, according to the terms of contract between the parties.<sup>4</sup> Other recognized means and modes of dissolution of a marriage contract includes illa (read as, eela), zihar, li'an, talaq-e-tafweez, contingent / conditional and judicial divorce.<sup>5</sup> Amongst all the forms of dissolution of marriage - a special focus has deliberately been made on one form of dissolution i.e., talaq-e-tafweez.

## 2. Jurisprudence on the concept of talaq-e-tafweez:

Under the Mohammadan law, the husband enjoys an absolute power of divorce to his wife.<sup>6</sup> He may delegate his power of divorce to his wife by way of a contract.<sup>7</sup> This delegation of right to divorce can be made to the wife or to a third person either absolutely or conditionally, and either for a particular period or permanently.<sup>8</sup> The person to whom the power is thus delegated may pronounce the divorce accordingly and such divorce is known as talaq-e-tafweez.<sup>9</sup> The word tafweez literally means delegation / to delegate.<sup>10</sup>

The option of delegation - tafweez by the husband to the wife, confers on woman the power to divorce herself.<sup>11</sup> The right to divorce so delegated refers to the notion of dissolution of the marriage contract in form of talaq by husband to the wife.<sup>12</sup>

As per the existing jurisprudence, tafweez is of the following three kinds: <sup>13</sup>

- a. Ikhtiar, giving her the authority to divorce herself;

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<sup>2</sup> Lubna Khalid, 'The Methodology of Divorce' *The News International* (2 February 2016)

<sup>3</sup> Gavin Willis Jones, 'Modernization and Divorce: Contrasting Trends in Islamic Southeast Asia and the West' (Jstor, March 1997) 95-114

<sup>4</sup> Dinshah Fardunji Mulla, *Principles of Mahomedan Law* (Ch. XVI, 1905) 312-325

<sup>5</sup> Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law* (2008) 163

<sup>6</sup> Roland Knyvet Wilson, *Anglo-Muhammadan Law* (Edn. VI, 1908) 254-59

<sup>7</sup> [1995] PLD 187 (Lahore HC)

<sup>8</sup> [2013] CLC 1625 (Peshawar HC)

<sup>9</sup> Ibid.

<sup>10</sup> Mulla (n 4)

<sup>11</sup> Shagufta Omar, 'Dissolution of Marriage: Practices, Laws and Islamic Teachings' (Jstor, April 2007) 91-117

<sup>12</sup> Neil Baillie, *Digest of Mahomedan Law* (1980) 19

<sup>13</sup> [2006] YLR 335 (Lahore HC)

- b. Amr-ba-yed, leaving the matter in her own hand;
- c. Mashiat, giving her the option to do what she likes.

All these when analyzed strictly, resolve themselves into one, viz, leaving the option on woman i.e., the wife, to dissolve the marriage contract in the way she prefers after the right to divorce has been delegated to her by the husband.<sup>14</sup>

The concept of talaq-e-tafweez has been recognized by all Muslim school of thoughts except one i.e., the Fiqh-e-Jaferia.<sup>15</sup> In this Fiqh, such type of delegation of power to wife, is not permissible. In their point of view, which equally holds an authentic juristic opinion, the divorce becomes effective only when it is uttered by a husband in presence of witnesses.<sup>16</sup>

Sunni jurists interpret the following Quranic verse to mean that a woman can be delegated the right of divorce and that she may exercise it at her discretion.<sup>17</sup> Meanwhile, others construe the verse below in its literal meaning, which does not devolve the power of divorce to a woman but instead gives her the “option” since it mentions that if they - the Holy Prophets’ (PBUH) wives, do not want to live with Him (PBUH), he could divorce them.<sup>18</sup>

**Surah Al-Ahzab (Verse No. 28):**

*“O Prophet (Muhammad PBUH)! Say to your wives: If you desire the life of this world, and its glitter, then come! I will make a provision for you and set you free in a handsome manner (divorce)” (33:28)*

Muslim schools of thought are not unanimous in respect of talaq-e-tafweez, therefore, it falls under the category of muslim personal law.<sup>19</sup> It is important to mention that when a woman is given the right of talaq-e-tafweez by her husband, she can exercise this power and repudiate marriage herself, under the law of her sect. Meaning thereby, if she belongs to suni sect, the suni law will apply to her case and if she belongs to shia or other sect the law peculiar to that sect shall apply to the person of that sect and whenever a notice of such delegated power of

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<sup>14</sup> [2013] CLC 1625 (Peshawar HC)

<sup>15</sup> Allama Syed Hashim Maroof al-Hasni, *Tareekh Fiqh-e-Jafri* (10 April 2018) 124-132

<sup>16</sup> Ibid

<sup>17</sup> Muhammad Munir, ‘Stipulations in a Muslim Marriage Contract with Special Reference to Talaq Al-Tafwid Provisions in Pakistan’ (Yearbook of Islamic and Middle Eastern Law, Vol. 12, 2005-2006) 243

<sup>18</sup> Ibn Hajar Al-Asqalani, *Fath al-Bari* (Vol. 9, 1997) 303

<sup>19</sup> Balraj Puri, ‘Muslim Personal Law: Questions of Reform and Uniformity be Delinked’ (Jstor, 1985) 987-989

divorce is given to the Chairman, he is under the bounden duty of law to constitute Arbitration / Reconciliation Council and initiate proceedings in the same manner and mode as it is a talaq by the husband to his wife.<sup>20</sup>

Important to mention, talaq-e-tafweez is not a Shari right of a wedded woman and has to be delegated by the husband to the wife under column 18 of the Nikahnama.<sup>21</sup> For a woman to be able to effectively use this right, there should be clear expression of words delegating the right explicitly either in yes or no, without any ambiguity.<sup>22</sup> Conclusively, the nikah khawans / ulemas are bound not to use evasive entries against column 18 to avoid critical situations.<sup>23</sup>

### **3. Applicable laws under Shari'a:**

Marriages in Pakistan are dissolved in accordance with the following legislation:

- Dissolution of Muslim Marriage Act (1939)
- Muslim Family Laws Ordinance (1961)
- Muslim Family Law Rules (1961)
- Conciliation Courts Ordinance (1961)
- The West Pakistan Muslim Personal Law, Shariah Application Act (1962)
- West Pakistan Family Courts Act (1964)
- West Pakistan Family Courts Rules (1965)

Amongst the above-mentioned laws, the section 8 of the Muslim Family Law Ordinance (MFLO), 1961, specifically deals with talaq-e-tafweez. It provides the wife, the prerogative to divorce herself whenever she desires to do so after delegation of right to divorce by the husband. The section 8 of MFLO provides:

*8. Dissolution of marriage otherwise than by talaq. – Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than*

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<sup>20</sup> [1995] PLD 187 (Lahore HC)

<sup>21</sup> [2010] YLR 1632 (Islamabad HC)

<sup>22</sup> Ibid

<sup>23</sup> Hooria Hayat Khan & Azmeh Khan, 'Women's Rights and the Nikkah Nama in Pakistan' (April 2019) <[https://www.cerp.org.pk/updata/files/files/41\\_20200504004625.pdf](https://www.cerp.org.pk/updata/files/files/41_20200504004625.pdf)>

by talaq, the provisions of section 7 shall, mutatis mutandis and so far, as applicable, apply.

#### **4. Talaq-e-tafweez: An irrevocable right**

Once the right to divorce has been delegated to the wife by the husband, at the time of marriage or even later during the marriage, this right becomes irrevocable / absolute.<sup>24</sup> Which means, the right cannot be repudiated.<sup>25</sup> The same point of law has repeatedly been quoted in various judgments. For example, in the case of *Qambar Murtaza Bokhari v. Zainab Bashir*, it was held that according to the Muhammadan law, once a person to whom the power of divorce is delegated, the power so delegated becomes irrevocable and this will operate as talaq of the wife by husband.<sup>26</sup>

In this context, in *Umer Naseem v. Additional District and Sessions Judge Lahore*, it was held that once the power to divorce is delegated, the power becomes irrevocable.<sup>27</sup> Similarly, in the case of *Khawaja Muhammad Shoaib v. Nazim Union Council*, it was held that the right to divorce once granted cannot unilaterally be revoked.<sup>28</sup>

Furthermore, in *Khawar Iqbal v. Federation of Pakistan*, it was recommended therein that the right of pronouncement of divorce by the wife granted to her by the husband in the marriage contract or after the marriage at any time is technically called ‘Tafweez’ and is accepted as lawful by all Muslim jurists except those belonging to Fiqh-e-Jaferia.<sup>29</sup> Tafweez (delegation) may be granted and exercised by the wife on certain conditions, but if no conditions are mentioned it is taken as an unconditional right.<sup>30</sup> If the husband at the time of marriage or at any time during the married life says to his wife that you can divorce yourself whenever you like, this right of the wife becomes absolute for the whole of her life.<sup>31</sup>

#### **5. Difference between khula and talaq-e-tafweez:**

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<sup>24</sup> Lucy Carroll, ‘Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Muslim Wife’ (Cambridge University Press, April 1982) 277-279

<sup>25</sup> Lubna Khalid (n 2)

<sup>26</sup> [1995] PLD 187 (Lahore HC); [2013] CLC 1625 (Peshawar HC)

<sup>27</sup> [2016] CLC Note 117 (Lahore HC)

<sup>28</sup> [2010] YLR 1 (Lahore HC)

<sup>29</sup> [2013] MLD 1711 (Federal Shariat Court)

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

Talaq-e-tafweez and khula are two different concepts under the domain of Family Law.<sup>32</sup> When the power of talaq is transferred to the wife it is known as talaq-e-tafweez, and upon such delegation, the woman (i.e., the wife) gets the prerogative to divorce herself unilaterally, whenever she wants to end the marriage contract.<sup>33</sup> Whereas, in the latter one i.e., the khula, the parties agree to separate by way of consent usually upon terms such as the wife agreeing to repay her Mehr (dower) to the husband upon him agreeing to grant talaq.<sup>34</sup>

To elucidate further, it is worth-mentioning that in the case of *Sajid Hussain Tanoli v. Nadia Khattak*, it was held that talaq-e-tafweez is a delegated right, therefore, it cannot be termed as khula by making the wife liable to return her dower.<sup>35</sup>

There is much difference between the prayer of khula and the exercise of delegated right of divorce. Under talaq-e-tafweez, wife can repudiate marriage herself, while in former, wife has to seek divorce from her husband or from the Court.<sup>36</sup> Hence, in such a state of affairs, dissolution of marriage cannot be considered as divorce by khula.

#### **6. Pronouncement of talaq-e-tafweez and procedure of execution:**

Divorce is a sensitive issue which cannot be finalized verbally since verbal divorce has no legal value and a divorce is only finalized after completion of due process.<sup>37</sup> The power of right to divorce i.e., talaq-e-tafweez, is either delegated unconditionally to the wife or with certain contingencies.<sup>38</sup> In both circumstances, if right to divorce has been delegated, a formal pronouncement of talaq is necessary for divorce to operate as talaq of the wife by husband.<sup>39</sup>

The next step after the pronouncement of divorce by the wife - if she has been given the delegated right of divorce, the wife sends a notice of divorce to the concerned Arbitration Council which primarily tries to hold reconciliation between the spouses. Upon failure to do

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<sup>32</sup> Mubarak Ansari, 'Know the three practiced modes of talaq (divorce) amongst Muslims' (The Bridge Chronicle, 22 August 2017)

<sup>33</sup> Siddique Patel, 'Talaq, Khula, Faskh and Tafweedh: The different methods of Islamic separation – Part 1' (Lexis Nexis, 10 November 2014) >

<sup>34</sup> Siddique Patel, 'Khula – the Islamic non-fault divorce' (Lexis Nexis, 31 July 2014)

<sup>35</sup> [2013] CLC 1625 (Peshawar HC)

<sup>36</sup> Ibid.

<sup>37</sup> Shafi Baloch, 'Verbal divorce has no legal value, SC tells petitioner' *Dawn* (13 March 2018)

<sup>38</sup> [1995] PLD 187 (Lahore HC)

<sup>39</sup> Ibid

so, the Chairman of the Arbitration Council issues a “*Certificate of Effectiveness of Talaq*” after expiry of 90 days from the date of filing of the written notice of divorce by the wife.<sup>40</sup>

The woman (i.e., wife) exercising her delegated right to divorce has to file the notice in the Union Council within whose jurisdiction the wife herself resides, or where the husband resides or where the nikah was registered.<sup>41</sup> Once after filing of notice in the Union Council, after expiry of 90 days, the marriage becomes void unless revoked by either of the spouses.<sup>42</sup> To further elaborate, in the case of *Khawar Iqbal vs Nadia Khan and others*, it was observed that where the wife exercises the right of divorce delegated to her, the provisions of section 7 of the Muslim Family Laws Ordinance, 1961 would apply mutatis mutandis as provided under section 8 of the Ordinance *ibid*.<sup>43</sup> No formal mode for exercise of the right of talaq-e-tafweez exists and the only requirement is that a notice in writing must be given to the Chairman of the Arbitration Council about exercise of the right to divorce.<sup>44</sup>

Moreover, in the case of *Mehnaz Mehboob vs Ishtiaq ur Rashid*, it was observed that divorce once pronounced, would be effective after a period of 90 days, unless it is revoked by the husband or by the wife exercising her right of talaq-i-tafweez.<sup>45</sup> The same principle was upheld in the case of *Shema Farooq v. Chairman Union Committee*, where it was held that talaq ipso facto becomes effective on expiry of 90 days of the receipt of notice of talaq-e-tafweez under s. 7 of the Muslim Family Law Ordinance, 1961.<sup>46</sup>

### **7. Importance of delegation of right to divorce:**

The female gender has been a victim of oppression since ages.<sup>47</sup> However, Islam – being a religion, has always empowered women in every sphere of life. For example, when a muslim woman enters into a marriage contract, it is obligatory for the man (husband) to give his wife, a mutually agreed amount in form of her haq mehr, in order to give her a sense of

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<sup>40</sup> [2018] CLC 1125 (Islamabad HC)

<sup>41</sup> [2010] YLR 1 (Lahore HC)

<sup>42</sup> [2007] CLC 1009 (Lahore HC)

<sup>43</sup> [2011] PLD 265 (Lahore HC)

<sup>44</sup> *Ibid*

<sup>45</sup> [2006] YLR 335 (Lahore HC)

<sup>46</sup> [1996] CLC 673 (Lahore HC)

<sup>47</sup> Kelly Hazel & Kerry Kleyman, ‘Gender and sex inequalities: Implications and resistance’ (Journal of Prevention and Intervention, 2022)

financial security and independence.<sup>48</sup> Similarly, it is notable to mention that Islam has given woman the right to divorce, which is delegated to her by husband with his free will and consent.<sup>49</sup> Such delegation of right to divorce is termed as talaq-e-tafweez and is perhaps the most potent weapon in the hands of a muslim women which can provide her freedom from a toxic, hideous marriage.<sup>50</sup> Other important benefits include:

### **7.1 Wife's dower retained**

One prime advantage that the wife gets as a result of delegation of right to divorce i.e., talaq-e-tafweez, on her is that she does not have to let go of her right to dower.<sup>51</sup> Instead, quite fortunately, this mode of dissolution of marriage allows the woman to retain her Haq Mehr (dower), which in the contrary is not granted when a woman seeks khula.<sup>52</sup>

### **7.2 Serves as a check on man**

Talaq-e-Tafweez serves as a check on man who refuses to maintain her wife in the appropriate manner, one who neglects his children / wife, or is away for a very long period of time without providing his wife with the finances required for the maintenance, and the one who does not agree to give khula or divorce to his wife at any cost.<sup>53</sup>

### **7.3 Dissolution without court intervention**

Another benefit of talaq-e-tafweez is that it facilitates woman in exercising her right and saves her from getting entangled in legal and procedural formalities in approaching different forums and Courts of law for redressal of her grievance.

### **7.4 Less costly**

As the concept of talaq-e-tafweez refers to the notion of dissolution of marriage contract without resorting to Courts, it is therefore, considered to be less costly mode of dissolving marriage than other means i.e., judicial divorce, khula etc.

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<sup>48</sup> Noor ul Ain Ali, 'Ladies, you can divorce your husbands' *Daily Times* (09 October 2022)

<sup>49</sup> Leena Nishtar, 'Women's rights under family law' *The Express Tribune* (14 July 2018)

<sup>50</sup> Noor ul Ain Ali (n 36)

<sup>51</sup> [2013] CLC 1625 (Peshawar HC)

<sup>52</sup> [2016] CLC Note 117 (Lahore HC)

<sup>53</sup> [2013] MLD 1711 (Federal Shariat Court)



### **7.5 Saves time**

A very common perception often endorsed by the general public is that dissolving marriage is a lengthy and costly procedure. Therefore, a vast number of women despite being unhappy in their marriage, prefer not to seek talaq / khula from the Court because they feel that dissolving marriage would take a lot of time, would require hefty sums of money and would cause unwanted hassle. However, on the contrary, it is worth-mentioning that talaq-e-tafweez as a form of dissolution of muslim marriage is not only less costly but also saves time, since it does not require intervention of Court and the woman can herself repudiate the marriage.<sup>54</sup>

### **8. Challenges in exercise of right of talaq-e-tafweez:**

The right of talaq-e-tafweez has been granted by Islam to muslim women with the consent of her husband in order to provide her protection in her legitimate contract of marriage. However, such right has been consistently misconstrued and denied for the below mentioned reasons. Therefore, challenges in exercise of right of talaq-e-tafweez along with possible solutions have been highlighted as under:

#### **8.1 Lack of awareness in nikkah khawans**

The lack of awareness in the Nikkah Khawans i.e., one who solemnizes a nikkah, about the delegated right to divorce and its implementation is the biggest barrier faced by women towards exercising their right of talaq-e-tafweez.<sup>55</sup> In the nikahnama, the chief right of a married woman pertains to be the right to divorce, which is routinely omitted by moulvis / nikkah khawans without consulting the bride and her family.<sup>56</sup>

#### **8.2 Intervention of Union Councils**

There have been multiple cases wherein the Union Councils have deliberately intervened on the issue of validity of the delegated right to divorce, notwithstanding the fact that they do not have such authority under the law. In the case of *Mehnaz Mehboob v. Ishtiaq ur Rashid*, it was observed that the Chairman is duty bound to constitute Arbitration Council

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<sup>54</sup> Shagufta Omar (n 9)

<sup>55</sup> Hooria Hayat Khan & Azmeh Khan (n 19)

<sup>56</sup> Hira Fareed & Mehreen Ovais, 'Decoding: The Nikahnama' *The Express Tribune* (23 February 2015)

and he has no right to declare right of divorce through Tafweez as un-Islamic, unlawful and against Injunctions of Qur'an and Sunnah.<sup>57</sup>

Moreover, in the case of *Mst. Nazir Fatima v. Nazim Union Council*, one of the conditions of marriage between parties was that the husband had delegated the right of divorce to wife. The wife in exercise of said right pronounced divorce upon herself and a notice was sent to concerned Nazim of the Union Council.<sup>58</sup> However, the Nazim intimated wife that husband being not ready to pronounce divorce and sent the case to Family Court. It was held that the Union Council's Nazim was oblivious of his legal position - as right of divorce could be lawfully delegated by husband to wife.<sup>59</sup> In this regard, another case is *Shema Farooq v. Chairman Union Committee*, in which it was further clarified that the Arbitration Council has no authority to decide on the law or merits of the case.<sup>60</sup> Instead their legal duty is solely to try and bring about reconciliation between the parties to the marriage contract, and not to declare delegation of right to divorce to be a concept repugnant to Islamic injunctions.<sup>61</sup>

### **8.3 Inconsistent statements within the nikahnama**

Inconsistent statements within the nikahnama creates hurdles in the enforcement of the delegated right to divorce.<sup>62</sup> For example, in the case of *Ali Abbas Khan v. Palwasha Khan*, the Court refused to interpret the words, “*sharia haqooq hasil hay*” (rights granted by Shariah will apply) in clause 18 of the nikahnama as sufficient for delegating the right to divorce to the wife.<sup>63</sup> Moreover, in *Abdul Haseeb v. Chairman Arbitration Council*, it was held that right to divorce is not a Shari right of a wedded woman and must be delegated explicitly to wife in column 18 of nikahnama in clear words.<sup>64</sup>

### **8.4 Provisions crossed without consulting bride**

In Pakistan, it is quite unfortunate that a common practice exists according to which the male members of the family including father, brother etc. cancels the provisions in

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<sup>57</sup> [2006] YLR 335 (Lahore HC)

<sup>58</sup> [2004] PLD 77 (Lahore HC)

<sup>59</sup> Ibid.

<sup>60</sup> [1996] CLC 673 (Lahore HC)

<sup>61</sup> [2005] PLD 358 (Sindh HC)

<sup>62</sup> Areesha Jawad Butt, 'Reforming the Procedure of Nikkah Proceedings in Pakistan' (LUMS Law Journal, Vol. 8, 2021)

<sup>63</sup> [2010] YLR 1632 (Islamabad HC)

<sup>64</sup> [2000] CLC 202 (Lahore HC)

column 18 of the nikahnama without consulting the bride at the time of marriage.<sup>65</sup> The option of talaq-e-tafweez is rarely availed by women, mostly due to ignorance in properly reading the nikahnama and also for the reason that it is considered a bad omen to talk about modes and means of dissolving marriage at the beginning of a marital life.<sup>66</sup>

#### **9. Possible solutions to overcome challenges faced by women in the exercise of delegated right to divorce:**

Firstly, it is important that awareness campaigns must be organized from time to time, at different levels i.e., in schools, colleges, universities and the Government for public at large, in order to educate every sector of society especially those who are directly involved in the process of solemnizing a marriage contract - the Nikkah Khawans.

Secondly, in today's time, in the presence of a number of precedents and in light of current trends / practices being followed, it is evident that Union Councils are exploiting their legal powers to make decisions. Hence, it is the pressing need of time that Nazims of Union Councils should not only be educated about the permissibility of talaq-e-tafweez but also needs to be educated about their legal capacity or directive i.e., make attempt to bring about reconciliation between the parties to marriage contract.

Thirdly, it is to be understood that talaq-e-tafweez is not a Shari right of a married woman and has to be delegated by the husband to the wife under column 18 of the Nikahnama.<sup>67</sup> Therefore, there should be clear expression of words delegating the right to divorce explicitly either in yes or no. The Nikah Khawan who conducts the nikkah should not use evasive entries against column 18 to avoid critical situations in the course of exercise of such right.

#### **10. Comparative analysis of talaq-e-tafweez in different jurisdictions:**

Different countries around the globe practice the concept of talaq-e-tafweez within their own jurisdictions. It is a well-recognized form of dissolving the marriage contract in a

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<sup>65</sup> Lubna Khalid (n 2)

<sup>66</sup> Rafia Zakaria, 'Marriage and exit' *Dawn* (21 November 2018)

<sup>67</sup> [2010] YLR 1632 (Islamabad HC)

relatively less stressed, easier and quicker manner.<sup>68</sup> Following countries have been analyzed to draw a comparative analysis:

### 10.1 Singapore

In Singapore, regardless of the fact, there is no specific legislation dealing with talaq-e-tafweez - as a form of dissolution of marriage, there have been cases in which the concept of delegation of right to divorce has been practiced in family cases.<sup>69</sup>

For example, a case was reported in Singapore Syariah Appeal Reports (SSAR) as *AQ v AR*, in which the parties married each other in 2009. Later, due to problems the wife decided to leave her matrimonial home and applied for a divorce from the husband. The court decided that the marriage will be dissolved by husband's pronouncement of talaq al-tafwid.<sup>70</sup> In this case, the husband specifically pronounced 'I hereby authorise my wife to divorce herself by one talaq'. The wife, on the other hand, pronounced 'I accept the authorisation given by my husband to divorce myself. I hereby divorce myself from my husband with one talaq'.<sup>71</sup>

Similarly, in the case of *Hosairi bin Kalil v. Zaliha bt Othman*, the divorce was affected by talaq al- tafwid after the husband agreed to transfer the right to divorce to the wife.<sup>72</sup> Again, in this case the wife said 'I accept the authorisation given by my husband to divorce myself. I hereby divorce myself from my husband with one talaq'.

### 10.2 Bangladesh

The concept of delegation of right to divorce to wife i.e., talaq-i-tafwid is quite common in Bangladesh and has been practiced from a long time.<sup>73</sup> Like other South Asian women, Bangladeshi women have been into abusive marriages which made them realize that it is important for them to be given the power to nullify or repudiate the nuptial contract whenever escape is the only option left to them.<sup>74</sup> Therefore, they rightly starting demanding

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<sup>68</sup> Yakare-Oule Jansen, 'Muslim Brides and the Ghost of Shari'a: Have the Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make it Stick?' (Northwestern Journal of International Human Rights, Vol. 5, 2007) 187-188

<sup>69</sup> Muhammad Ifzal Mehmood, 'A study of Talaq Al-Tafwid in Islamic Law and Contemporary Legislations: Should Malaysia Follow Suit?' (International Islamia University Malaysia, 4 December 2019)

<sup>70</sup> [2012] 6 SSAR 235

<sup>71</sup> Ibid

<sup>72</sup> [2009] 2 SSAR 187

<sup>73</sup> Sufia Khanum, 'Talaq-i-Tafwid and Its Application in Context of Bangladesh: An Analytical Approach' (IOSR Journal of Humanities and Social Science, Vol. 21, July 2016) 34-41

<sup>74</sup> Nusrat Ameen, *Wife abuse in Bangladesh: an unrecognized offence* (2005) 70-78

delegation of right to divorce in section 18 of their nikahnama – specifically dealing with talaq-i-tafwid.<sup>75</sup> Case laws on the subject matter refers to the notion that right to divorce once delegated becomes irrevocable and can be exercised in absence of husband and witnesses.

For example, in the case of *Aklima Khatun v. Mahibur Rahman*, it was held that the right to divorce may be delegated absolutely or conditionally and it may be for once only or for a lifetime (permanently).<sup>76</sup> Moreover, in the case of *Tahazzad Hussain Sikdar v. Hossneara Begum*, it was observed that once the right to divorce has been delegated, the wife can exercise her right of talaq-i-tafwid and the pronouncement of talaq by wife does not need to be in presence of husband or witnesses.<sup>77</sup>

### 10.3 Egypt

Egyptian legal practice recognizes the following three forms of dissolution of marriage:<sup>78</sup>

1. Dissolution at the demand of husband (talaq)
2. Wife-initiated judicial divorce (tatliq)
3. Divorce by agreement

This third form of dissolution of marriage is divided into two categories:<sup>79</sup>

- a. Delegated repudiation - in which the husband delegates the right of repudiation / divorce to his wife (tafwid al-tallq).
- b. Divorce by mutual consent (khul).

The Qadri Pasha Code after codification in 1875, in its article 260 provided that the husband can delegate to his wife the right to divorce.<sup>80</sup> In Egypt, even though the right of tafwid al-tallq was considered acceptable by the Sharia Courts in the medieval Cairo during the 19th

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<sup>75</sup> Sufia Khanum (n 41)

<sup>76</sup> [1963] PLD 602 (Dhaka HC)

<sup>77</sup> [1967] PLD 421 (Dhaka HC); [1965] PLD 274 (Dhaka HC)

<sup>78</sup> Nadia Sonneveld, 'Divorce Reform in Egypt and Morocco: Men and Women Navigating Rights and Duties' (Brill, 1 January 2019)

<sup>79</sup> Ibid

<sup>80</sup> Lama Abu-Odeh, 'Modernizing Muslim Family Law: The Case of Egypt' (Oxford Journal of Legal Studies, Vol. 24, Spring 2004)

century, it is to be mentioned that the concept of delegated repudiation was less practiced as compared to the concept of khul.<sup>81</sup>

As Egypt evolved into a modern state, there was a need to revise laws and set practices that empower women and therefore, the Courts started giving more importance to right of wife to repudiate marriage via delegation of right by husband.<sup>82</sup>

#### 10.4 India

Talaq-e-tafweez is not an alien concept in India and has been practiced for more than decades now.<sup>83</sup> It is safe to say that women in India are aware of their right to divorce, delegated to them by their husbands at the time of marriage or afterwards during marriage. There have been multiple cases where women themselves took the initiative to end their toxic marriages via exercising their right of talaq-e-tafweez.<sup>84</sup> In the case *Baffatu Bibi v. S.K Abdur Salim*, it was held that the husband can authorize his wife to divorce herself and the wife can clearly exercise her delegated right.<sup>85</sup>

In *Sainuddin v. Latifunnessa Bibi*, the husband had a post-nuptial agreement in which it was written that if he would marry a second woman, the right to divorce would be delegated to his wife.<sup>86</sup> The husband subsequently did marry another woman and the wife divorced herself in accordance with the agreement.<sup>87</sup>

Moreover, in *Saifuddin Sekh v. Mst. Soneka Bibi*, an ante-nuptial agreement arose, where a man's third wife stipulated that if he ever brought any of his other two wives to live in the same house she shared with him - without her consent, she would automatically gain the right to exercise the delegated power of divorce.<sup>88</sup> The court accepted this provision since it did not, in any way, serve as an impediment to the marital relations between husband and his wives and viewed it as one to ensure peace and domestic happiness.<sup>89</sup>

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<sup>81</sup> Ron Shaham, 'Judicial Divorce at the Wife's Initiative: The Sharia Courts of Egypt, 1920-1955' (Jstor, Vol 1, 1994) 240-257

<sup>82</sup> Lama Abu-Odeh (n 77)

<sup>83</sup> Mohammed Wajihuddin, 'Talaq, the way women want it' *The Times of India* (30 August 2009)

<sup>84</sup> Priyangi Agarwal, 'Meet Muslim women who divorced their husbands' *The Times of India* (1 July 2018)

<sup>85</sup> [1950] AIR 304 (Calcutta)

<sup>86</sup> [1918] ILR 141 (Calcutta)

<sup>87</sup> Ibid

<sup>88</sup> [1955] AIR 153 (Assam)

<sup>89</sup> Ibid

## **11. Conclusion:**

Conclusively, the concept of talaq-e-tafweez stems from Qur'an - in which Allah Almighty asked Prophet (PBUH) to give choice to his wives to decide if they want to dissolve marriage. This means that talaq-e-tafweez originated from the original source of Shari'a i.e., the Quran and the sunnah of Holy Prophet (PBUH).

Talaq-e-tafweez is considered a viable mean of dissolving marriage because it helps the husband and wife in ending their nuptial agreement in a dignified manner. In a country like Pakistan, where patriarchy dominates, it is important for every woman to read her nikahnama at the time of marriage and should vigilantly ask for her delegated right to divorce.

Delegation of right to divorce to woman is also important because such right once delegated - either conditionally or absolutely, becomes irrevocable and saves women from lengthy, daunting court procedure of seeking divorce. Another prime benefit of exercising talaq-e-tafweez is that the wife can retain her dower even after dissolving the marriage contract upon her will. Therefore, it is pressing need of time that every woman, should be taught about her marital rights including one i.e., talaq-e-tafweez, which provides a sense of security, protection and most importantly gives her the freedom to escape a toxic relationship whenever she so desires.

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