

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 5TH AUGUST, 2016

**Bill No. XL of 2016**

THE DISSOLUTION OF MUSLIM MARRIAGE BILL, 2016

A

BILL

*to consolidate and clarify the law relating to dissolution of marriage by men and women married according to Muslim law.*

WHEREAS the Convention on Elimination of All Forms of Discrimination Against Women, adopted by United Nations in 1979 and ratified by India on 9th July, 1993 requires that all forms of discrimination against women be condemned and States must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men;

AND WHEREAS it is imminent that India joins the league of other nations which have codified the law related to dissolution of marriage in order to bring uniformity and certainty in the application of personal laws without infringing on the right of communities to be governed by their own personal laws;

NOW, THEREFORE, it is expedient to re-enact the Dissolution of Muslim Marriage Act, 1939 in order to ensure that Muslim women have equal opportunities to dissolve a marriage and that they are not discriminated against or made to suffer because of unilateral

pronouncement of divorce by their husbands and to provide for timely settlement of their rights and dues before dissolution of marriage.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

Short title and extent.	1. (1) This Act may be called the Dissolution of Muslim Marriage Act, 2016 (2) It extends to the whole of India except the State of Jammu and Kashmir.	5
Definitions.	2. In this Act unless the context otherwise requires,—  (a) "arbiter" means an adult of either gender who has either been requested by the parties or directed by the court in a dissolution of marriage proceeding initiated under this Act to attempt reconciliation between the parties;  (b) "court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;  (c) "dower" means the consideration for marriage as agreed upon at the time of solemnization of marriage between the parties which is meant for the financial security of the bride and can be in terms of money or property or both and becomes payable to wife at the time of solemnization of marriage;  (d) "maintenance" includes any gross sum of money or such monthly or periodical sum for a term, not exceeding the life of the wife, in accordance with the lifestyle the parties have enjoyed during the marriage and the economic status of the husband;  (e) "witness" means an adult of either gender with an address and identity proof.	10 15 20

## CHAPTER II

### DISSOLUTION OF MARRIAGE THROUGH COURT

Ground for decree of dissolution of marriage by wife.	3. (1) A woman marrieds under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely,—  (i) the whereabouts of the husband have not been known for a period of two years;  (ii) the husband has neglected or has failed to provide for her maintenance for a period of two years;  (iii) the husband has been sentenced to imprisonment for a period of two years or more;  (iv) the husband was impotent at the time of the marriage and continues to be so;  (v) the husband has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;  (vi) the husband has, after the solemnization of marriage, treated her with cruelty;  (vii) the husband has maintained, after solemnization of marriage, voluntary sexual relations with persons other than his own wife;  (viii) due to irretrievable breakdown of marriage, life together has become impossible or intolerable;	25 30 35 40
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(ix) she, having been given in marriage by her father or other guardian before she attained the age of eighteen years, repudiated the marriage before attaining the age of twenty one years;

(x) the husband has more wives than one:

5            Provided that a woman may file a petition on this ground, notwithstanding that she had knowledge of or had consented to the subsequent marriage:

             Provided further that a woman who marries a man already married may file a petition on this ground only if, she did not have knowledge of a previously subsisting marriage:

10           Provided also that—

             (a) a woman may be permitted to file petition for divorce, within such reasonable time period which is shorter than the time periods provided in clauses (i), (ii), (iii), and (v) of sub-section (1) if, the court is satisfied that the same is expedient in the interest of justice and equity;

15           (b) no decree shall be passed on ground specified in clause (iii) of sub-section (1) until the sentence has become final;

             (c) a decree passed on ground specified in clause (i) of sub-section (1) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within  
20           that period and satisfies the court that he is prepared to resume conjugal relations, the court shall set aside the said decree; and

             (d) before passing a decree on ground specified in clause (iv) of sub-section (1) the court shall, on application by the husband, make an order requiring the husband to satisfy the court within a period of one year from the date of such  
25           order that he has ceased to be impotent, and if, the husband so satisfies the court within such period, no decree shall be passed on the said ground.

**4.** A man married under Muslim law shall be entitled to obtain a decree for the dissolution of his marriage on any one or more of the followings grounds, namely:—

Grounds for  
decree of  
dissolution of  
marriage by  
husband.

30           (i) the whereabouts of the wife have not been known for a period of two years;

             (ii) the wife has been sentenced to imprisonment for a period of two years or  
more;

             (iii) the wife has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;

             (iv) the wife has, after the solemnization of marriage, treated him with cruelty;

35           (v) the wife has maintained, after solemnization of marriage, voluntary sexual relations with persons other than her own husband;

             (vi) due to irremediable breakdown of marriage, life together has become impossible or intolerable;

40           (vii) he, having been given in marriage by his father or other guardian before he attained the age of eighteen years, repudiated the marriage before attaining the age of twenty one years:

             Provided that—

             (a) a man may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in the

clauses (i), (ii), and (iii) of this clause 4, if the court is satisfied that the same is expedient in the interest of justice and equity;

(b) no decree shall be passed on ground provided in clause (ii) until the sentence has become final;

(c) a decree passed on ground provided in clause (i) shall not take effect for a period of six months from the date of such decree, and if the wife appears either in person or through an authorised agent within that period and satisfied the Court that she is prepared to resume her conjugal relations, the Court may set aside the said decree. 5

Notice to be served on heirs of the spouse, when the spouse's whereabouts are not known.

**5.** In a suit to which clause (i) of sub-section (1) of section 3 clause (i) of section 4 applies:— 10

(1) the names and addresses of the persons who would have been the heirs of the spouse under Muslim law if, they had died on the date of the filing of the plaint shall be stated in the plaint,

(2) notice of the suit shall be served on such persons, and 15

(3) such persons shall have the right to be heard in the suit.

Procedure to be followed before granting decree of divorce.

**6.** Upon receiving the application for decree of dissolution of marriage from either of the parties to marriage on any of the grounds mentioned above, the Court shall:

(i) appoint three arbiters—one arbiter each from the family of both parties as nominated by the parties themselves and one member from a welfare organisation registered as per the provisions of this Act for the purpose of attempting reconciliation between the parties within thirty days of the date of application: 20

Provided that at least one arbiter should be a woman.

(ii) direct the parties to attend and fully participate in the reconciliation proceedings to be commenced by arbiters within two weeks of their appointment. 25

(iii) direct the arbiters to conduct their duties in a fair, just and impartial manner;

(iv) direct the arbiters to submit their report to the court within a period of three months from the commencement of reconciliation proceedings indicating the conclusion of the reconciliation process and the reasons for reaching that conclusion; 30

(v) after receiving the report of the arbiters, send a copy each to both the parties;

(vi) direct both the parties to submit objections, if any, to the report within a period of thirty days from the date of receiving the report;

(vii) if, the parties have reached an agreement and differences are resolved, dismiss the suit or if, the parties fail to reach an agreement, continue the procedure for the suit for decree of dissolution of marriage: 35

Provided that the Court may make such interim orders, notwithstanding anything contained in any other law for the time being in force, for maintenance of the wife and children, if any, as appropriate for the whole or part of the duration of the procedure laid down in this section. 40

Registered Welfare Organisations.

**7.** After coming into force of this Act:—

(i) any organization, registered under any law for the time being in force in India, and working for the welfare of men, women, children, youth, aged, disabled and the likes, and providing counseling services and other psycho-social support in their day to day activities, may register themselves with the District Legal Services Authority of the district in which they have a functional office; 45

(ii) the District Legal Services Authority shall verify the credentials of these organisations and require these organisations to send forth names of members

associated with their organization who are counsellors or psycho-social workers in the filed of gender or human rights, are well versed with Muslim personal laws and can offer their services as arbiters for the purpose of this Act;

(iii) after receiving such names, the District Legal Services Authority shall make available in its office and on its website an updated list of such organisations along with their members registered as arbiters.

**8. (1)** Notwithstanding any proceeding initiated under this Act, every woman shall have the right to institute any proceedings, simultaneous or on conclusion of proceedings under this Act, under any or all of the following legislations—

Settlement of rights of the parties before final decree.

25 of 1986 10 (i) the Muslim Women (Protection of Rights on Divorce) Act, 1986.

43 of 2005. (ii) the Protection of Women from Domestic Violence Act, 2005.

2 of 1974. (iii) the Code of Criminal Procedure, 1973.

(iv) Any other law for the time being in force, applicable to her.

Provided that it shall be the duty of the Court to ensure that the woman is aware of this right.

(2) The court may pass such interim orders or make such provisions in the decree as may deem just and proper, when so petitioned, related to maintenance, inheritance, custody and education of children, consistent with their wishes wherever possible and in accordance with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937 and any other applicable law for the time being in force. The Court may, even after the decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as may deem just and proper to the court. The court may also from time to time vary any such orders and provisions previously made:

25 Provided that the application with respect to the interim maintenance and education of the children, pending the proceeding for obtaining such decree, shall as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

### CHAPTER III

#### DISSOLUTION OF MARRIAGE OUTSIDE COURT

30 **9.** Dissolution of marriage proceedings, by whatever name called, initiated by either or both the parties to a marriage without the intervention of a court shall be concluded through the following procedure if:—

Procedure for dissolution of marriage.

(1) if there are signs of marital discord, both the husband and wife shall reason with each other through discussion;

35 (2) if differences persist, both husband and wife shall abstain from Sexual Intercourse with each other temporarily;

(3) if the parties still do not resolve the discord, then both husband and wife shall make another attempt at reconciliation;

40 (4) if there is still no resolution, the parties shall place the matter before two arbiters, one each from family of each spouse for their assistance in achieving reconciliation:

Provided that, either or both parties, individually or through mutual agreement may also engage a third arbiter from a registered welfare organization as provided under section 7:

Provided further, that at this stage, it shall be the duty of the arbiters to ensure that, if needed, there is adequate provision made for maintenance of wife and children, if any, while reconciliation proceedings are going on.

(5) if reconciliation by arbiters also fails, then the arbiters may make the first pronouncement of dissolution of marriage in clear terms in the presence of each other and before two witnesses;

(6) the first pronouncement of dissolution of marriage shall follow a waiting period of three menstrual cycles (three months for menopausal women) which is to be calculated from the day of first pronouncement of dissolution of marriage;

(7) the wife is pregnant at the time of first pronouncement of dissolution of marriage, then the waiting period shall be termination of pregnancy or three months whichever is later;

(8) during the waiting period, the parties are at liberty to revoke the pronouncement and resume conjugal relations without contracting fresh marriage;

(9) after the waiting period is over, the parties may request the arbiters to make a second pronouncement of dissolution of marriage which shall again be followed by a period of waiting as enumerated above;

(10) the waiting period after the second pronouncement of divorce has ended, the parties may contract fresh marriage or request the arbiters to make a final and third pronouncement of dissolution of marriage;

(11) before making the third and final pronouncement of marriage, the arbiters shall ensure that all matters related to dower and maintenance of the woman as well as inheritance, custody, education of children, have been amicably and fairly settled, consistent with their wishes wherever possible and in accordance with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937.

(12) once the third and final pronouncement of dissolution of marriage has been made, the parties are not longer married to each other.

Rights of women not to be affected.

**10.** (1) Notwithstanding that the dissolution of marriage proceedings have been initiated at the behest of the wife, it shall not affect any of the rights to dower and maintenance that the wife is otherwise entitled to.

(2) Notwithstanding the dissolution procedure as prescribed in section 9 the wife shall be entitled to institute any proceeding in the appropriate Court under any or all of the following legislations—

(i) The Muslim Women (Protection of Rights on Divorce) Act, 1986. 25 of 1986

(ii) The Protection of Women from Domestic Violence Act, 2005. 35 of 2005

(iii) the Code of Criminal Procedure, 1973. 2 of 1974

(iv) Any other law for the time being in force, applicable to her.

Dissolution of marriage outside court through any other procedure to be invalid.

**11.** After coming into force of this Act, dissolution of marriage, by whatever name called, initiated outside court shall be concluded only through the procedure mentioned under section 9 and the dissolution of marriage concluded through any other procedure, in contravention of the procedure mentioned under section 9 shall be invalid and without any legal effect.

Refusal of spouse to cooperate.

**12.** If in a proceeding initiated under section 9 by one spouse, the other spouse refuses to cooperate or refuses to participate in the reconciliation or dissolution of marriage proceedings initiated at the behest of one spouse, it shall amount to cruelty of conduct and may be a ground for approaching the Court for dissolution of marriage under section 3 or section 4 respectively.

13. (1) If the parties married under Muslim Law have concluded a dissolution of marriage by following the procedure provided under clause 9, then they shall approach the court for a decree of dissolution of marriage.

Decree of dissolution of marriage concluded outside court.

(2) Each of the party shall submit an application along with affidavits to be submitted by each of the parties and the arbiters stating that the procedure mentioned under clause 9 has been followed and the right of the parties have been amicably and fairly settled:

Provided that it shall be the duty of the Court to ensure that the woman is aware of her right as prescribed under sub-section (2) of clause 10 before passing the final decree of dissolution of marriage under this Act.

(3) After satisfying itself of the veracity of the affidavits and that the procedure outlined in section 9 has been followed, the Court shall either pass a decree of dissolution of marriage, in accordance with the other provisions of this Act, or dismiss the petition directing the parties to first comply with the requirements of this Act:

Provided that if any party objects to any settlement related to dower and maintenance of wife or maintenance, custody, inheritance, education of children as reached under section 9 of this Act, the Court may deem such an objection as non-fulfillment of procedure outlined under section 9 and may dismiss the petition, requiring the parties to reach a settlement first and then file a fresh application for decree of divorce.

CHAPTER IV

JURISDICTION AND PROCEDURE

14. Every petition under Chapter II or Chapter III shall be presented to the Court within the local limits of whose original civil jurisdiction.—

Court to which petition should be made.

(i) the marriage was solemnized; or

(ii) the respondent, at the time of the presentation of the petition resides; or

(iii) the parties to the marriage last resided together; or

(iv) in case the wife is the petitioner, where she is residing on the date of the presentation of petition, or;

(v) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends or has not been heard of as being alive for a period of two years by those who would naturally have heard of him if he was alive.

15. Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

Application of Act 5 of 1908.

5 of 1908.

CHAPTER V

MISCELLANEOUS

16. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Effect of conversion to another faith.

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 3:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

Remarriage  
between  
parties who  
have  
concluded  
dissolution of  
marriage.

**17.** (1) Parties who have concluded dissolution of marriage either before or after the coming into force of this Act and who intend to remarry each other without any compulsion, force or threat may do so by contracting a fresh marriage after the waiting period as prescribed under this Act is over.

(2) No woman shall be compelled through coercion, force, threat or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage before she can remarry a man with whom she was married earlier but that marriage was dissolved. 5

(3) Any person who compels a woman through coercion, threat, fraud or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage in order to remarry a man with whom she was married earlier but that marriage was dissolved shall be punishable with an imprisonment of six months or fine or both. 10

(4) Any person who solemnizes or acts as a witness to a marriage knowing that the marriage is being contracted for the sole purpose of consummation and subsequent dissolution in order to compel a woman to remarry a man she was earlier married to shall be punishable with an imprisonment of three months or fine or both. 15

(5) Any offence punishable under this Act shall be deemed to be bailable and non-cognizable, within the meaning of the Code of Criminal Procedure, 1973 and will be triable by a Magistrate, as provided in the Code. 2 of 1974

Automatic  
dissolution of  
marriage after  
lapse of a  
certain period  
of time.

**18.** Notwithstanding anything contained in any contract to this effect, any dissolution of marriage which takes place automatically after lapse of a certain period of time prescribed in the nikahnama or otherwise will be invalid and without any legal effect unless such dissolution follows the procedure laid down in this Act. 20

Application  
of the Act.

**19.** (1) Except where otherwise provided, for matters concerning dissolution of marriage between parties married according to Muslim Law, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force. 25

(2) Nothing contained in this Act shall be deemed to affect the provisions contained in Special Marriage Act, 1954 with respect to marriages solemnized under the Act, in which either or both parties are Muslims, whether before or after the commencement of this Act. 43 of 1954

Overriding  
effect of the  
Act.

**20.** (1) All the proceedings for dissolution of marriage, in whatever form, initiated after the coming into force of this Act, shall be governed by the provisions of this Act irrespective of the date on which the marriage was contracted. 30

(2) Any other law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect in so far as it is inconsistent with any provision contained in this Act. 35

Power to  
make rules.

**21.** The Central Government may by notification in Official Gazette make rules for carrying out the purposes of this Act.



#### STATEMENT OF OBJECTS AND REASONS

There is a call, especially from Muslim women, to bring reforms within the space of Muslim personal laws as certain laws, like the law related to divorce or talaq, are heavily prejudiced against women. With the Supreme Court, taking up the cudgels to look into whether the practice of triple talaq is a violation of fundamental rights of Muslim women, this Bill strives to draw heavily from settled legal jurisprudence in this regard and relies on credible interpretations of the Holy Quran to codify the Quranic injunctions with regard to talaq, in full letter and spirit. This will not only ensure that there is no discrimination between men and women in circumstances of dissolution of marriage, but also ensure that there is no infringement of the rights of the Muslim community to practice their religion and conduct their lives as per their faith.

India must join the league of many other Muslim countries like Iraq, Turkey and our neighbours Bangladesh and Pakistan which have codified the law related to divorce thereby bringing certainty and removing discrimination in the application of personal laws.

Hence, this Bill.

HUSAIN DALWAI

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only. The delegation of legislative power is of normal character.

RAJYA SABHA

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**BILL**

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*(Shri Husain Dalwai, M.P.)*