

Muslim Divorced Women's Right to 'Mata'a': A Sri Lankan Perspective

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Background

In the event of the dissolution of marriage, the maintenance of a Muslim divorced woman by the husband is a contentious issue in Sri Lanka and other countries¹. Although Muslim Law in most countries, including Sri Lanka, recognizes that a divorced wife should be maintained by her husband till the end of idda (waiting) period or if such a woman is pregnant, until she delivers the baby, and till the end of the nursing period of the offspring, this obligation does not extend beyond this stage. Thus, a divorced Muslim woman is worse off than her non Muslim counterpart who is entitled to alimony.² This issue should be considered carefully in the context of Muslim marriage, because a Muslim wife is under an obligation of obedience to the husband, which makes most wives dependants on their husbands.³ Not only that, this position also leaves divorced Muslim women in a vulnerable position in the community and challenges the sustainability of Sri Lankan Society.

Objective of the Study and Methodology

The objective of this research is to shed new light on the understanding of the concept of 'Mata'a (compensation for a divorced woman under Islamic law) and to find out the extent to which the Islamic concept of 'Mata'a' has been incorporated and interpreted in the Muslim Law of Sri Lanka. It seeks to explore avenues to strengthen the right to Mata'a by investigating its definitions. Moreover, the research explores the efficacy and adequacy of a circular issued in 2005 by Ministry of Justice, giving powers to Quazis enabling them to order for mata'a.

This is a normative/Qualitative research based on secondary data analysis. Therefore, the author will mainly focus on the Holy Quran and Sunnah, statutes, cases and academic findings related to this issue.

Discussion

Islam discourages divorce. The pronouncement of divorce by the husband was condemned by the prophet as 'the most detestable before God of all permitted things'. However, a man is not prevented from exercising his right to divorce. Therefore the Holy Quran, in

¹ For example, India and Bangladesh.

² Justice Saleem Marsoof, *The Quazi Court System in Sri Lanka and its impact on Muslim Women*, Muslim women's Research and Action Forum/ women Living under Muslim Laws, 2001 (2011- reprint), Colombo.

³ Maintenance of a wife may be forfeited or suspended due to actions on the part of the woman. Mainly, such actions include, 'Nushuz' or disobedience of the wife, 'Riddah' or apostasy of the wife. Some writers argue that disobedience may even consist in the wife's leaving of the marital home without the permission of the husband. Hence the wife's decision-making about her occupation is also limited.

several places, commands the man's obligation towards his divorced woman.⁴ In Sura 2 verse 241 Quran particularly states that, "for divorced women maintenance (should be provided) on a reasonable (scale) [mata um bil rna'roof]. This is a duty on the righteous." Hence it is apparent that the Holy Quran commands husbands to make provision before releasing divorced women in an honourable way (33:49) with kindness (2:229). Accordingly general ruling⁵ could be drawn that under Islamic law (Shari'a) divorced women are entitled to maintenance as a way of reasonable compensation in the event of dissolution of marriage, though Islam does not recognize the concept of alimony.

As mentioned above, though Quran commands for maintenance of divorced women, jurists have adopted various interpretations for the verse 2.241⁶. Therefore, the recognition and definition varies in respect of the term 'Mata'a'. Some countries have recognized the payment of Mata'a in the event of dissolution of marriage, and have incorporated these provisions in their positive laws.⁷ However, there are some other countries, namely, India and Bangladesh, where maintenance of divorced wife under Muslim law has not been recognized as a positive rule, and progressive attempts made by the courts to recognize the concept of 'Mata'a' have been unsuccessful.⁸

In Sri Lanka, even though the concept of 'Mata'a' has not been recognized by Muslim Marriages and Divorces Act of Sri Lanka (MMDA)⁹ there are several interpretations which explain the recognition of concept of 'Mata'a' within the Act. One argument is that since the Act does not specify the imposition of 'Mata'a', the order for payment of Mata'a is illegal, Another argument is that, even though the Act does not specify the imposition of 'Mata'a', it also does not prohibit it, therefore the principle "What is not permitted is

⁴ In Sura Al-Baqarah states; "you will not be blamed [for not paying the dower money] if you divorce women when you have not yet consummated the marriage or fixed a dower money upon them, but make fair provision for them, the affluent according to his means and the straitened according to his means; this is binding on righteous men."(2:236).

⁵ This general rule is debated. There are two interpretations for these sections one is that maintenance for a divorcee could not be paid beyond the period of iddah, which is three months or three menstrual cycles. Any maintenance beyond that period would be illegal. The second interpretation is that the holy Quran has not fixed any time limit for maintenance. Neither the amount of maintenance nor the period has been mentioned. Therefore if a husband does not maintain his wife she can get her maintenance allowance fixed through a court. This fixed maintenance allowance will not only be paid to her as a wife but also after divorce. See A.A.Engineer at pp. 130 & 131.

⁶ The Holy Quran (edited by Abdullah Yusuf Ali). But it should be noted that other scholars have translated the word 'maintenance' in different ways. They have translated 'mata'a' as 'provision', 'something' etc. They suggest that Mata'a is only a parting gift given voluntarily by the divorcing husband to the divorced wife before she departs, this being considered as an expression of kindness and piety and deemed most laudable. Therefore, these scholars argue that there cannot be a compulsion to husband to pay maintenance since it is a voluntary gift.

⁷ Tunisia, Indonesia, Philippines and Egypt are among these countries.

⁸ See Mohd. Ahmed Khan v. Shah Bano Begum & others [1985] INSC 99; AIR 1985 SC 945, Hefzur Rahman v Shamsunnahar Begum (DLR 1995, 54, Vol.47)(Decision of Supreme Court of Bangladesh), in Sri Lanka the position of the Board of quazi in confirming the award of 'Mata'a' has been recognized in several cases for examples; in case No.3969 (M.S.S. fawziya vs. J. Mohideen Order dated 06.08.2005),

⁹ The Muslim Marriage and divorce Act, No 13 of 1951 as amended by Act No 31 of 1954, Act No.22 of 1955, Act No. 1 of 1965, Act No. 5 of 1965, Act No. 32 of 1969 and Law No. 41 of 1975.

prohibited and what is prohibited, is not permitted” will not apply.¹⁰ Third position is that the concept of ‘Mata’a’ could be recognized within the scope of the Act. Because where the Act is silent the Quazis have the margin of appreciation of Islamic Law as per section 98 (1) & (2) of the Act which clearly state that the rights of the Muslims according to the Muslim Law governing the sect to which the parties belong are not affected by any provision of the Act. There are many cases where ‘Mata’a’ has been ordered based on second and third interpretation mentioned above.¹¹ Despite the above arguments a circular issued in 2005 by Ministry of Justice gave powers to Quazi’s which enabled them to order for “Mata’a”¹².

Conclusion

As discussed above, despite the non-incorporation of ruling of divorced Muslim women’s right to claim ‘Mata’a’ in the MMDA, divorced women’s right to ‘Mata’a’ could be protected by Muslim Law of Sri Lanka within the scope of the Act. But the 2005 circular justifies the ordering for ‘Mata’a’. But there are inherent problems, as the circular does not introduce any substantive law with regard to Mata’a, contrary views prevail¹³ and definition of mata’a is not clear. Since circulars could be challenged and consequently changed, their strength as law is also doubtful. There are other concerns which have been raised with regard to payment of ‘Mata’a’. Firstly, there is no guideline as to how this compensation is given and who is entitled to it. Secondly, with respect to procedural aspects, i.e. since Quazis are not allowed to record the reasons for the ‘Thalak’ (divorce by husband)¹⁴ it is difficult to decide whether all divorced women are entitled to this compensation regardless of their fault. Finally, the assessment of compensation and method of payment have not been uniform, and therefore leaves Quazi with unfettered discretion.

Therefore, the author suggests the following recommendations in order to ensure the rights of divorced women according to Islamic law without violating the rights of the husband: a substantive provision in recognizing the concept of ‘Mata’a’ should be introduced either by a fresh provision to the existing Act or by a new Act to order ‘Mata’a’ in the event of the dissolution of marriage. This compensation should be treated

¹⁰ *Fawziya v. Mohideen* BQ/3969 QC Gampaha 179/T, the Board of Quazi’s Law Reports (BQLR) Vol:III (2009),pp.70.

¹¹ *Haleema v. Rizly* (BQ/3862 QC Colombo West 080/T, the Board of Quazi’s Law Reports (BQLR) Vol:II (2008),pp.45. It was held that though provision for ‘Mata’a’ is not enshrined in the MMDA, the concept is enshrined in the Holy Quran and should be prevailed. Further it ruled that the economic status of the husband should be taken into account in ordering ‘Mata’a’.

¹² In Sri Lanka the position of the Board of Quazi in confirming the award of ‘Mata’a’ has been recognized in several cases for examples; in case No.3969 (M.S.S. fawziya vs. J. Mohideen Order dated 06.08.2005), *Zulfiqqar v. Fathima Muneera*, decided on 1.12.2007. Board of Quazi, Case No 1769/Mata’a. The Board of Quazis’ Law Reports Volume IV- 2010. MWRAF.

¹³ *Razik v. Ummu Sareena* BQ 4074/QC Kuliypitiya 8114/Main, the Board of Quazi’s Law Reports (BQLR) Vol:III (2009),pp.138. it was held that Quazi’s doesn’t have jurisdiction to order for ‘Mata’a’ on Fasah divorce

¹⁴ See section 3 of 2nd Schedule, The Muslim Marriage and divorce Act, No 13 of 1951 as amended by Act No 31 of 1954, Act No.22 of 1955, Act No. 1 of 1965, Act No. 5 of 1965, Act No. 32 of 1969 and Law No. 41 of 1975.

as a right of a divorced woman who is divorced unreasonably¹⁵ and t given even in ‘fas’ah’ divorce where husband’s misconduct is proved. In the event of ‘Thalak’ by husband, since Quazi cannot record the reasons of ‘Thalak’, a woman should be given an opportunity to prove her innocence to claim compensation. Where the misconduct of either party is not an issue to ‘Thalak’, compensation should be ordered by the Quazi even if the wife defaulted in claiming it. The assessment of the compensation should be determined according to the means of the husband and guidelines for Quazis should be made available. This compensation should be provided as monthly installments or at once, since this has to be considered by taking into consideration the best interest of the divorced wife.

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¹⁵ See Fawziya v. Mohideen BQ/3969 QC Gampaha 179/T, the Board of Quazi’s Law Reports (BQLR) Vol:III (2009),pp.70.