

A. By the Wife

1. Option of Puberty

Meaning:

A minor whose marriage has been contracted by a guardian other than the father or grandfather, has right to repudiate such marriage on attaining puberty, without showing any cause as in case" of option of repudiation. This right of the minor is called "Option of Puberty".

Under the Shia Law, such a marriage is totally ineffective unless it is ratified by the minor or attaining puberty. The position of a minor male or female regarding the exercise of the option of puberty is different.

1. Option of puberty by a minor female:

Before the coming into force of the Dissolution of Muslim Marriage Act. 1939 a minor female contracted into marriage by a person other than her father or grandfather, had right to

repudiate the marriage on attaining puberty without showing any cause. There was no time-limit for the exercise of option on attaining puberty. The minor wife does not lose her option of puberty if she does not know that she lies the right after she has come to know of it.

Delay in the exercise of the option of puberty may be condoned even on account of non-acquiescence. There were two requirements for exercising the option of puberty by a female:.

(i) The option should be exercised immediately on attaining puberty. But the option continued till the time when she came to know of the marriage even though puberty was attained and the marriage had been consummated.

(ii) The marriage should not have been consummated. Here the consummation must have taken place with the consent of the wife. If marriage is consummated without the consent of the wife, the wife had the right to exercise her option of puberty. Such consummation would not amount to her ratification.

Under the Shia Law, in the case of marriage contracted by a guardian other than the father or grandfather, marriage is wholly ineffective unless ratified by the minor on attaining puberty.

Effect of Repudiation:

(i) In the case of exercising the repudiation as well as puberty, by a minor male, on his attaining puberty, but before his express or implied ratification the unconsummated marriage stands cancelled,

(ii) In the case of exercising the option of repudiation including the option of puberty, by a female before attaining the age of 15 years stands cancelled only if a decree of the Court regarding such repudiation is obtained according to the provisions of Section 2 (vii) of the Dissolution of Muslim Marriage Act, 1939.

Option Of Puberty (Exception):

If there is some custom prevailing among some Muhammad communities then that may be the force of law. Among some converts to Islam the custom of adoption still prevails, but the burden of proof that such custom is prevailing, is on the person who claims. But after coming into force of the Shariat Act, 1937, or such custom seems to be abrogated because custom will prevail over the provisions of Mohammedan Law, except to the extent to which they have been abrogated by Section 3(1), of the said Act, and if a declaration is made as required by it, the custom shall stand abrogated.

1. Talak-i-Tafweez (delegated divorce)

Talaki-i-Tafweez also known as Talak-i-Tawhid is delegated divorce. Literally, Tafweez means delegate. A husband can delegate his right of pronouncing Talak to his wife or any other person. But such power does not deprive the husband of his own right to pronounce a Talak.

Capacity to delegate:

A husband:

- (a) Who is of sound mind, and
- (b) Who has attained puberty,

May delegate his right of -pronouncing Talak, if a husband becomes insane after delegating his power, the delegation will not be invalidated. It is not compulsory that the wife or any other person to whom, power is delegated, should, also have attained puberty.

Time for delegation:

Delegation of the right of pronouncing Talak by the husband to his wife or any other third person, may be made at the time; of the marriage. It may also be made after the marriage. Such delegated power may be exercised by the wife at the same meeting in which she becomes aware of the power.

Dissolution of marriage:

The agreement by which the delegation of power to pronounce Talak by the husband is made will be binding on the husband and such Talak, though made by the wife under her delegated power, is a Talak by the husband and has the same effect of Talak as a Talak-pronounced by the husband himself. After such dissolution of marriage if the woman is married to some

other person, there will be no offence under Section 494 of the Pakistan Penal Code, 1860.

Conditional Delegation.

The delegation of the right of pronouncing Talak may be absolute or conditional. Delegation of power may be contingent whether the agreement for delegating the power is pre-marriage agreement or post-marriage agreement.

The only requirement for the conditional delegation of power is that condition must be reasonable and not against public policy or against provisions of the Mohammedan Law. The condition must be clearly established. A condition that the husband will be living with wife in her father's house, failing which she would be entitled to pronounce Talak, is opposed to the policy of Mohammedan Law and so is void.

Some of the reasonable and valid conditions are:-

- (i) That the husband would forsake the community.
- (ii) That the husband will pay some dower on demand.
- (iii) That the husband would lead a respectable life and would maintain his wife and would live in house approved by her parents.

- (iv) That the husband should give separate maintenance to the wife for specified period.
- (v) That the husband does not give mental pain to wife and does not misconduct the wife.
- (vi) That the husband would not abuse or assault the wife and would stay in her parent's house for three years during minority.
- (vii) That the wife would be entitled to exercise the power of Talak in the event of dissensions.
- (viii) That the husband would deliver some gold ornaments on demand.

The happening of the event or non-fulfillment of the condition does not result in an automatic divorce. Divorce comes into effect only when the wife exercises her delegated power, it is entirely on her whether to exercise the power or not.

Purpose of Delegation must be clear:

The purpose of delegation must be clearly expressed. For example if a husband says, "choose thyself" or "choose a repudiation", and if the wife answers, "I choose" or "I have chosen myself" or "I have chosen a Talak", the purpose of delegation is clearly stated, but if the husband merely says "choose" and the wife replies,

“I have chosen the purpose of delegation is not clearly stated and there is no delegation of pronouncing Talak,

Revocation of Tafweez:

The delegation of the power to pronounce Talak by the husband to his wife is irrevocable. The wife can exercise her delegated power even after the husband files a suit for restitution of conjugal rights, and if she does, it will result in a divorce.