

Talaq through Electronic Medium under
Islamic and Malaysian Law: The Impact on
'Iddah and Ruju'

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INTRODUCTION

- Marriage is a sacred institution in Islam mainly to legalize sexual relationship between man and woman as well as to achieve a successful family institution
- Islam discourages divorces unless the marriage subsistence leads to hardship that defeat the purpose of marriage.
- Divorce is allowed through several ways which include talaq.

TALAQ, 'IDDAH AND RUJU' UNDER ISLAMIC LAW

- Talaq generally means the dissolution of a valid marriage.
- According to Al-Zuhayli, talaq literally means untying the marriage knot. Technically talaq means untying the marriage contract ('aqad) by using the word talaq and other words that carry the same meaning of talaq.

The Position of Talaq through Electronic Medium under Islamic Law

- The Muslim jurists discussed should talaq be pronounced in writing:
 - According to the jumhur al-fuqaha (Shafi'is, Maliki and Hanbali), talaq in writing is an indirect (kinayah) form of talaq as it is not pronounced. Therefore, it should be coupled with the intention to constitute a divorce.
 - Hanafi school of law view that if the writing pronouncement is very clearly addressed to the wife, then it is considered as a sorih pronouncement and does not require intention.

- Through the advance of technology, talaq can be pronounced through phone calls, video conferencing, skype etc.
- Talaq in writing can also be done in many ways including messaging through Facebook, WhatsApp, telegram, email and so forth.
- By applying the principle of divorce by writing in cases of talaq through an electronic medium in writing, we can infer that divorce through electronic mediums can be effective if coupled with intention based on the view of the majority of the Muslim jurists.

Meaning of 'Iddah and Ruju'

- 'Iddah literally means to count and technically it means a waiting period of a woman to observe due to marriage dissolution, separation or death of the husband.
- Ruju' literally means to return and technically it means to return to the previous marital relationship after a revocable divorce (talaq raj'i), i.e. the first talaq and the second talaq
- The husband may ruju' the wife back so long as she is still in 'iddah period using a simple word of ruju' such as 'I ruju' you back'.

TALAQ, 'IDDAH AND RUJU' UNDER THE STATUTORY PROVISIONS OF ISLAMIC LAW IN MALAYSIA

- As regards divorce through talaq, section 47 of the Islamic Family (Federal Territories) Act 1984 (the IFLA) requires that either party apply for the divorce through talaq.
- There is no direct provision on 'iddah of a divorced woman other than the provision that follows a pronouncement of divorce under section 47 (revocable divorce).

- As regards ruju', the IFLA scet 51(1) defines ruju' as a resumption of a conjugal relationship after the wife is divorced with a revocable talaq.
- (1) In this section "revocable divorce" means a divorce by one or two *talaq* not followed by completion of '*iddah*, and "recohabit" means resume conjugal relations within the period before the divorce has become irrevocable.

Talaq through Electronic Medium under the IFLA

- There is no direct provision on divorce through an electronic medium in the IFLA.
- s. 55A and s. 124 of the IFLA provide for any talaq that is pronounced against the law or talaq pronounced outside court;
 - a divorce pronounced outside the court is an offence and subject to a certain penalty. (Pendakwa Mahkamah Melaka v Ismail bin Jaafar)
- Thus, divorce through email, WhatsApp, Skype, video conferencing, etc. is considered an offence and the husband will be subject to a penalty if the divorce is held to be effective.

- In addition, a fatwa issued by Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam 2003 states among others that;

1) Talaq in writing that is specifically addressed to the wife through SMS, fax, email etc. is a kinayah form of talaq and can be effective if coupled with intention. Divorce through SMS will follow the principle of talaq in writing as viewed by the Muslim jurists.

2) If such kind of talaq is pronounced, the parties have to refer to Syariah Court who will decide whether it is effective or not.

3) Talaq through an electronic medium is a kind of talaq which is not in line with ethics (adab) that is recognized in Islam.

The Impact of Talaq through Electronic Medium to 'Iddah and Ruju'

- 'Iddah of a divorced woman will begin immediately upon the pronouncement of talaq being effective.
- As the divorce through an electronic medium is a kind of divorce outside court, the parties might not aware of the duration of 'iddah and when it will begin especially if the parties are laymen and have no knowledge about divorce law under Islamic law as well as the law in Malaysia.

- If the divorce is a revocable divorce (talaq raj'i) the parties might be ignorant on the possibility of reconciliation (ruju') when to reconcile as well as when the duration of reconciliation.
- So far, Islamic Development of Malaysia has provided a guideline for divorced women to observe their 'iddah.
- The Office of the Ministry of Prime Minister Department, Islamic Religious Department and Islamic Judiciary Department of Federal Territories have also published a book on the guideline for registration of ruju' in the Syariah Court.
- There is no further guideline for any divorce pronounced outside the court other than the above provision on registration of divorce outside court and penalty.

- Reported cases seem to suggest problems among the couple who is ignorant of the law on divorce to the extent that they proceed with the marriage without knowing that the divorce pronounced is effective.
- *Abdul Rahman bin Ishak v Sharliza binti Zainal Abidin* [2005] 4 ShLR 165;
 - where the court held that the divorce was effective in 1994 but the case was only brought to the court after the divorced wife gave birth to three children.
- *Ramli v Salleh & Anor* (1982) 7 JH 40;
 - the husband went to register the ruju' only after the third pronouncement of talaq outside the court in which he was not allowed to ruju' for the third time as talaq is considered major irrevocable (bain kubra).

CONCLUSION

- Talaq is one of the solutions to resolve marital conflict. Even though the husband is given the authority to pronounce talaq, he should not simply exercise such authority anytime he likes what more in an unjust manner.
- Cases on talaq that is pronounced against the law are rampant and digitalization may also contribute to this kind of talaq especially when the couple opts for a fast solution to their marital problem.
- As it is not administered, talaq through an electronic medium would affect the wife's period of 'iddah as well as the time to reconcile (ruju').

- Therefore, it is proposed that;
 - 1) further guidelines are prepared for divorce pronounced outside court especially divorce through electronic medium.
 - The guidelines should consist on the possibility of such divorces to be effective and what are the procedures of registration of such divorces when it is pronounced.
 - The guideline should further provide clearly on the provisions of 'iddah to be observed by the divorced wife and its duration, as well as the possibility of ruju' by the husband. This guideline can be provided as annexed to the Islamic Family law statutes or at least published in the Islamic Religious offices website like JAKIM or MAIS as previously done.

- It is also proposed that provision on divorce outside court is further extended to provide certain situation that leads to divorce pronounced outside court and punishable under the law such as divorce through electronic medium.
- This seems to be significant as the layman will have clear idea on what is termed as divorce pronounced outside court and that it is considered an offence under the law. This will also provide a precaution and alert to the parties that divorce through electronic medium is an offence and subject to penalty under the law.



Thank you