

A **A study of Talaq Al-Tafwid in Islamic Law and Contemporary
Legislations: Should Malaysia Follow Suit?**

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E **Abstract**

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When spouses find that their marriage can no longer subsist due to many different reasons, divorce might be one of the reasonable ways out for them. In the case of a man, he may pronounce talaq to his wife, while for a woman there are variety of ways to dissolve the marriage depending on the reasons and circumstances, including khulu', fasakh and ta'liq. However, these types of divorces require many conditions to be fulfilled and are also time consuming. Talaq al-tafwid, therefore, in some situations, can become another convenient alternative to dissolve the marriage by both man and woman. This article discusses the status of talaqal-tafwid according to Islamic Law and explores whether it is appropriate to be included in the statutes in Malaysia as another alternative way to dissolve the marriage. The research also investigates other jurisdictions which have adopted and implemented talaq al-tafwid ie Pakistan and Singapore.

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Keywords: Talaq (divorce), Talaq Al-Tafwid (delegated right of divorce), Ancillary rights, Singapore law, Pakistani law

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I **INTRODUCTION**

Talaq al-tafwid is not well known in Malaysia, most probably due to its little exposure to the public. Nevertheless, it is a way to dissolve marriage as provided by the Quran, hadith and various opinions of the jurists. This type of divorce may address the issue where in some cases the husband is rather reluctant to

divorce his wife (using *talaq*) for various reasons but prefers to leave it to the wife to decide on her own, whether to continue the marriage or to end the marriage. At the same time, the wife can no longer tolerate the relationship and thinks that divorce might be the best alternative, what more if she is not in the situation to apply for other types of divorce due to many reasons. In this type of situation, *talaq al-tafwid* might solve the situation.

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TALAQ AL-TAFWID IN ISLAMIC LAW

Literally, *tafwid* means 'to delegate'. Technically, it means the delegation by the husband to his wife the right to pronounce *talaq* on his behalf.¹ In contrast to a husband's unilateral right to terminate a marriage at his will, Islamic law also grants right of divorce to the wife in the form of *talaq al-tafwid*. Islamic jurists (*fuqaha*) have divided the delegation of the power to divorce by the husband into three classes, namely, *tafwid* (that is delegation), *tawkil* (agency) and *risalah* (messenger-ship).²

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In the first type ie *tafwid*, the wife to whom the power is delegated exercises it in respect of her own person and has the discretion to exercise the power. In the second class *tawkil*, the husband appoints an agent to divorce his wife on his (the husband's) behalf. The agent exercises the power delegated to him in respect of another, that is, the wife. He has no authority to continue the marriage, as such power has not been given to him, but can only divorce the wife. While in the third case *risalah* the husband appoints a person, as his messenger, to convey the message to the wife that she has been divorced by her husband.³

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TALAQ AL-TAFWID IN THE QUR'AN

The doctrine of the delegation of the power of divorce is based on an incident mentioned in the *Quran* wherein the Prophet (SAW) told his wives that they were at liberty to live with him or to get separated from him as they chose.

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'O Prophet! 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 reward'.⁴

Ibn Kathir interprets the above verse as:

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'Allah commands His messenger (SAW) to give his wives the choice of separating from him so that they must go to someone else with whom they could find what they want of the life of this world and its attractions, or patiently bearing the

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1 Al Dar al Mukhtar, (Beirut: Dar Ehia Al-Tourath al-Aarabi, 1998) 4, 414.

2 Ahmad bin Muhammad bin Abi Sahal Al Sarakhsi, Al-Mabsut, (Beirut: Dar Al-Kutub Al-ilmiyah, 2001), 6,244.

3 Ibn 'Abidin, Radd al-Mukhtar, (Cairo, 1318 A.H), 2, 487.

4 Al-Qur'an 33:28.

A straitened circumstances with the Prophet for which they will have reward from Allah. They chose Allah and his messenger and the hereafter'.⁵

The majority of Sunni jurists interpret this verse meaning that a woman can be delegated the right of divorce and she may exercise it at her discretion.⁶

B Meanwhile, others construe the above verse in its literal meaning, which does not devolve the power of divorce to women but instead gives them the option, since it mentions that if they [the Prophet's (SAW) wives] do not want to live with him (SAW), he could divorce them.⁷ Subsequently, it may be argued from the said verse that it allows a man to delegate the right of divorce to his wife.⁸

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TALAQ AL-TAFWID AND HADITH LITERATURE

Al-Bukhari narrated from A'isha (ra) that the Prophet (SAW) came to her when Allah commanded him to give his wives the choice. She said, 'the Prophet (SAW) started with me, and said,

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'I am going to tell you about something and you do not have to hasten to respond until you consult your parents'.⁹

Then he narrated the verse of the *Quran* where 'Allah says: O Prophet (SAW) 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 reward'.¹⁰The Prophet (s.a.w) recited the two verses. Aishah said to the Prophet (SAW) :

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'Concerning what do I need to consult my parents? I choose Allah and His prophet and the Home of Hereafter'.¹¹ He also narrated it without a chain of narrators, and added, "She said, then all the wives of the Prophet (SAW) did the same as I"¹²

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It is clear from the abovementioned *hadith* that a husband can lawfully delegate to his wife the power to dissolve the marriage if she so wants.

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TALAQ AL-TAFWID AND JURISTIC OPINIONS

5 Abu al Fida Ismail IbnKathir, *TafsirIbnKathir*, (Riyadh, Darussalam Publishers, 2003), 7, 672.

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6 Muhammad Munir, Stipulations in a Muslim Marriage contract with special Reference to *Talaq Al tafwid* Provisions in Pakistan, *Social Science Research Network* (2011). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1797046 (Last accessed 6 October 2015)

7 IbnHajar, *Fath al-Bari...*, 9, 303

8 Muhammad Qadri Basha, *Al-Ahkam Al Shari'ah fi al-Ahwal al-Shakhsiya*, (Cairo: Darul Salam, 2006), 2, 631-635.

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9 Sahih Bukhari, 3:309, Alsunan Al kubralilbaihaqi, 7:344. also see Badruddin Abu Muhammad al-aini, *Umdatul Qarisharabsahih al-Bukhari* (Cairo: Idaratul al-tabat al Muneria, 1930), vol 2, at p237.

10 Al-Quran 33:28.

11 *Fath Al- Bari* 8:379.

12 *Ibid.* 8:380.

The majority of Islamic jurists allow the man to delegate his right of divorce to his wife. Kasani elaborates that 'a man is free to delegate the right of divorce to his wife or predetermined proxy. The former is *tafwid* and the latter is *tawkil*'.¹³ The main difference between the two is that in *tawkil* the delegate acts for his principal, while in *tafwid* the wife acts for herself. Moreover, in *tawkil* the principal can terminate at his will the agency of his agent, while in *tafwid* the husband cannot revoke the delegation.¹⁴

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Marghanani elaborates that 'if a husband says to his wife, 'divorce yourself when you please', she is at liberty to divorce herself either on the spot or at any future period, because the word extends to all times; and it is the same as if he were to say divorce yourself at whatever time you like'.¹⁵

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According to Imam Shafii, if a husband delegates divorce to his wife, it is the same as in contract of transaction. In an agreement, the two parties agree on a deed. The position is the same in case of *talaq al-tafwid*, in which the husband agrees to transfer his authority of divorce to his wife.¹⁶ Imam Malik is of the opinion that if a man delegates his right of divorce then the woman is free to use her right or not.¹⁷ Imam Ahmad Bin Hanbal is also of the same opinion.¹⁸ In sum all the four schools of thought (Hanafis, Shafi'is, Malikis and Hanbalis) are of the view that *talaq al-tafwid* is permissible in Islam.

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CAN THE HUSBAND REVOKE THE TALAQ AL-TAFWID?

According to the Hanafis, if the husband once delegates his right of divorce to the wife, he would not be able to revoke back. This rule has been justified on the ground that once a person makes another the owner of a certain thing then his

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13 'Alauddin Abu Bakr al-Kasani, *Bada' i al-sana'I* (Beirut: Dar Ihya al-Turath al- Arabi, 200), 3, 195-196.

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14 *Ibid.* 194; Marghinani, *Hidayah*, 1, 240. Abu Zahrah, *Al-Ahwal al-Shakhsiyah*(Beirut: Dar al- Fikr, al-'Arabi, 1957), 379; Muhammad Ala-ud-Din Haskafi, *Durr-ul-Mukhta*, trans. and edited by B.M. Hayal, reprint of 1913 edn.,173. It should be noted that only chapters on family law are translated into English and not the whole book. The latest decision in *MehmazcMehboob v. Ishtiaqur Rashid* reported as 2006 YLR 335, is very surprising, because the learned judge of the Lahore High Court, Muhammad AkhtarShabbir, J has stated at page 337 (*obiter*) that 'A temporary delegation of the power [to divorce herself] is irrevocable *but a permanent delegation may be revoked*' [italics are mine]. The learned judge has, however, not cited any authority for his opinion.

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15 Burhanuddin al-Marghanani, *Hedaya*. Translated by Charles hemilton, 1790; Grady edn., 1870, 92.

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16 Ali bin Yousaf Al Ferozabadi, *Al Muhazab fi Fiqh Imam Shafi*, (Beirut: DarulMgriya, 2003), 3, 29.

17 Muhammad bin Abdullah Bin Ali Al-Kharshi, *Hashiya Al-kharshi*, (Beirut: DarulKutub Al gilmiya, 1998), 4, 338-39.

18 Ibn Qudamah, *Al-Mughni*.10,381.

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A power to revoke is not with him and he is no longer competent to cancel it.¹⁹ But if the husband empowers a third person to divorce his wife on his behalf then this power can be revoked at any time before it has been exercised.²⁰ Kasani gives reasons for this:

B 'Firstly, if a person willingly transfers his possession to another, the latter will of course become the rightful owner and the former will not be able to revoke the transfer after its completion. Similarly, once a man has delegated his right of divorce to his wife, he cannot go back on his words and terminate the condition'.

C 'Secondly, delegating the power of divorce makes it dependent upon the wife's discretion which is similar to *tal'iq al-talaq* (conditional repudiation). Thus, making repudiation conditional and dependent (on the wife's will) is automatically irrevocable that is analogous to taking an oath (which is also irreversible)'.

D According to the Shafi'is, the husband can revoke the power (*tafwid*) at any time before it is exercised by the wife.²¹ Imam Malik is of the opinion that the husband cannot revoke the power which is already delegated to the wife but he can do so in the case of *tawkil* or agency.²² While under the *Hanbali* law, the husband can revoke the power whether it is delegated to the wife or to a third person.²³

E **TALAQ BY WAY OF TALAQ AL-TAFWID IS RAJI' OR TALAQ BA'IN?**

F There is difference of opinion about the nature of separation effected under the doctrine of delegation. Abu Hanifa says that the separation effected under delegated divorce will be irrevocable. He further explains that if it be held to be revocable then it can serve no purpose and the wife gains no advantage from the delegation.²⁴ The Malikis say that when a husband authorises his wife to divorce herself, he shall be deemed to have empowered her to effect an irrevocable divorce (*ba'in*).²⁵ Shafi'i has two opinions, according to one report the separation effected in the case of delegation amounts to a cancellation of marriage. But according to his later opinion, the nature of separation shall be divorce, and its nature shall depend on the intention of the husband. If he wanted the separation to be irrevocable, the divorce effected shall be

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19 Al-Kasani, *Bada' al Sana'i'* (Cairo, 1327 A.H), 3, 60

20 *Ibid.*

21 Mohammad Ibn Ahmed Al-Shirbini, *Mughni Al-Muhtaj*, (Egypt: SharkahMaktabah, 1933), 3, at p 285.

I 22 *Ibid.*, 59

23 Al- Mughni with Al-Sharah al-Kabir, ... 8, 287-288.

24 Imam Fakharuddin Hassan Bin Mansur al Uzjandi al Farghani, *Fatawa-i-Kazee Khan*, translated by Moulvi Mohommed Yusof Khan, (reprinted Lahore: Law Publishing Co, 1977), 2, 257.

25 Ibn Rushd, *op.cit.*, 2.,60.

irrevocable. On the other hand, if he wanted only a revocable divorce then only a revocable divorce shall result.²⁶

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In a nutshell, according to Abu Hanifa and Imam Malik, the delegated right of divorce will be irrevocable (*ba'in*) while Imam Shafi is of the opinion that the nature of separation depends on the intention of the husband. If the husband has the intention of revocable divorce, then the divorce will be deemed revocable and if he intends to delegate irrevocable divorce then the divorce will be deemed irrevocable.

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TALAQ AL-TAFWID IN PAKISTAN

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The practice in Pakistan is that the husband delegates *talaq al tafwid* to the wife at the time of marriage and this agreement is incorporated in *nikahnama* which is the marriage contract. Section 8 of the Muslim Family Law Ordinance (MFLO) 1961 provides:

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'Where the right to divorce has been duly delegated to the wife and she wishes to exercise the right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq*, the provision of section 7 shall, mutatis mutandis and so far as applicable'.²⁷

If a wife wants to exercise her right of *talaq al-tafwid*, she should follow the proper procedure, that is, by sending a notice to the chairman in writing and one copy to the husband. The chairman will then constitute an Arbitration Council within 30 days of the receipt of such notice. The function of the Arbitration Council is to effect conciliation between the parties.²⁸ Divorce will not become effective until the completion of 90 days whether the marriage is consummated or not.²⁹

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Unfortunately, it seems that many husbands are not fully aware of the consequence of *talaq al-tafwid* which they have made at the time of the marriage and therefore challenge the validity of its existence when the wives want to exercise their rights as illustrated in the cases below. In the case of *Aklima Khatun v Mahibur Rahman*³⁰, the husband delegated the right of divorce to his wife at the time of marriage. Subsequently, a dispute arose between the parties and the wife filed a case for dissolution of marriage by *talaq al-tafwid*. In response the husband filed a suit for restitution of conjugal rights and alleged that her right of delegated divorce is illegal. He further denied the

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26 Mughni al-Muhtaj, at p 285.

27 The Muslim Family Laws Ordinance 1961, s 8.

28 Muhammad Munir, Stipulation in a Muslim Marriage Contract with Special Reference to *Talaq Al-Tafwid* Provisions in Pakistan, *Yearbook of Islamic and Middle Eastern law*, 12 (2006), 248.

29 Section 8, Muslim Family Law Ordinance 1961.

30 [1963] PLD 602 (Dacca).

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A right given to his wife and added that he granted her the right of delegated divorce by negligence. After examining the matter, the learned judge decided the matter in favour of the wife and clarified that the unconditional delegation of divorce granted to the wife was according to Islam.

B In the case of *Dr Razia v Mushir Ahmad*³¹, the wife was granted the delegated right of divorce and she used her right of *talaq al-tafwid* by sending notice of divorce to the chairman under ss 7 and 8 of the Muslim Family Laws Ordinance. After 90 days of the notice the wife claimed that their reconciliation had failed, and therefore a divorce should be granted to her. The husband alleged that the right of delegated divorce is illegal and objected to the authority of the chairman of the council by saying that he is not authorised to proceed with the divorce. The court argued that after completing 90 days of the notice for divorce, the chairman is authorised to decree the divorce deed. The court decided the matter in favour of the wife and a divorce decree was issued by the chairman of the union council.

C Similarly, in *Mehnaz Mehboub v Ishtiaq Ur Rashid*³², the issue of legality of the delegated right of divorce was brought to the court. At the time of marriage, the husband delegated the right of divorce to his wife. After some time, the wife was mentally tortured by the husband and his family by making illegal demands against her. She therefore, decided to use her delegated right of divorce and sent divorce notice to the union council. An arbitration council was formed but the reconciliation failed. The husband produced a fatwa from an Islamic jurist which declared that the delegated right of divorce was un-Islamic. The judge, however, held that according to the Qur'an and sunnah of the Prophet (SAW), *talaq al-tafwid* was recognised and declared the divorce initiated by the wife as legal.

D The case of *Tahazzad Hossain Sikandar v Hossneara Begum*³³ further discussed the right of a woman to exercise *talaqal-tafwid* and whether this exercise was reasonable or opposed to public policy. In this case the woman used her delegated right to divorce her husband as he had not paid her the prompt dower consisting of ornaments and clothes. In the court, the husband argued against the validity of *talaq al-tafwid*. The court decided in his favour, but the district judge reversed the decision and held that the marriage was dissolved. The husband then appealed to the High Court, where he also contended that 'the delegated right of divorce could not be utilised in relation to non-payment of prompt dower and that such an exercise was unreasonable and against public policy'. The High Court, however rejected this argument and held in favour of the wife.

31 [1988] CLC 467 (Karachi).

32 [2006] YLR 335 (Lahore)

33 [1967] PLD 421 (Dacca)

From the above discussion, it may be concluded that the practice of delegating the power of *talaq* as early as at the beginning of marriage might not be good for both parties husband and wife. On the part of husband, he might not be fully aware and understand the consequence of such delegation as it is made at the very early stage of marriage. This can be seen from the cases illustrated above where the legality of such delegations was challenged by the husbands. There is also no recorded practice of the Prophet or companions to delegate such power to the wife at the time of marriage. On the part of wife, such delegation might induce her to ask for divorce thoughtlessly or hastily even without reasonable reasons.

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TALAQ AL-TAFWID IN SINGAPORE

There is no specific legislation which provides for *talaq al-tafwid* in Singapore, unlike in Pakistan. Nevertheless, there are cases to show that *talaq al-tafwid* has been practised in Singapore.

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In the case of *AQ v AR*³⁴, the parties married on 29th May 2009. After some time, there were problems in the marriage and as a result, the wife left the matrimonial home. The wife later applied for a divorce from the husband. The court decided that the marriage be dissolved by the husband's pronouncement of *talaq al-tafwid*. 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'.

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Similarly, in the case of *Hosairi bin Kalil v Zaliha bt Othman*³⁵, the divorce was affected by *talaq al-tafwid* after the husband agreed to transfer the right to divorce to the wife. 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*'.³⁶

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WILL THE WIFE STILL BE ENTITLED TO ANCILLARY RIGHTS AFTER DIVORCE?

Another interesting issue that arises pertaining to *talaq al-tafwid* is whether a wife is entitled to ancillary rights after divorce including maintenance during '*iddah* and *mut'ah*'. With regard to maintenance during *iddah*, according to the majority of jurists including Shafiis, the type of divorce will play an important factor in determining whether a wife is entitled or not. In the case of revocable divorce (one or two *talaqs*), a wife is entitled to maintenance during *iddah*. In

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34 (2012) 6 SSAR 235.

35 (2009)2 SSAR 187.

36 See also *BG v BH* [2011] 6 SSAR 135.

A the case of irrevocable divorce such as in the case of triple *talaq, khulu'* and *fasakh*, a wife is not entitled to it except in the case where the wife is pregnant.³⁷ Nevertheless, according to the Hanafis, the wife is still entitled to maintenance during *iddah* period in all types of divorce regardless whether it is revocable or irrevocable.³⁸

B Thus, if the view of Imam Shafii is followed, whether a wife will be entitled to maintenance during *iddah* actually depends on the intention of the husband while delegating the divorce to the wife. This can be seen in the Singapore case of *AQ v AR*³⁹ where in this case the husband argued that a wife was not entitled to maintenance during '*iddah* in the case of *talaq al-tafwid*. The Syariah Appeal Board, nevertheless, relying on the case of *Mehrunnisha bte Peer Mohamed v Abdul Rahman bin Mastan*⁴⁰ held that the wife was still entitled to maintenance during *iddah*. In this case the court ruled that:

D Here, the [husband] had not proved that the wife was *nusyuz*. She had applied for divorce and, after a consensual arbitration, the [husband] had agreed to authorise her to divorce herself by one *talaq*, which she did. This constitutes a *raj'i* or revocable divorce. Hence *nafkah iddah* was payable. The fact that it was the wife who applied for divorce should not disentitle her from claiming *nafkah iddah*.

E In the case of *AQ v AR*⁴¹, the husband stated clearly that he agreed to authorise his wife to divorce herself with one *talaq* which is a revocable divorce and hence she was entitled to maintenance during '*iddah*.

F With regard to *mut'ah*, it is clearly mentioned in the verse pertaining to *talaq al-tafwid* that a wife will be entitled to *mut'ah*.⁴² In the Singapore case of *Hosairi bin Kalil v Zaliha bte Othman*⁴³, the wife was entitled to it. The Syariah Appeal Board concluded that:

G We agree with the reasoning of the learned President and his decision that a divorce by *tafwid* on its own does not inevitably negate the appellant's obligation to pay *mut'ah*. In our view, the obligation of a husband to pay *mut'ah* upon divorce as stated by Allah in the above surah of the Holy Quran is not discharged by the mere fact that he had transferred or delegated that right to his wife. It was still open for the

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37 Al-Shirazi, Abi Ishaq Ibrahim ibn 'Ali ibn Yusuf al-Fairuzabadi, *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'I*, vol. 2, Dar ihya al-Turath al'Arabi, Beirut, Lebanon, 1994, at pp 210-211; Ibn Qudamah, Abi Muhammad Abdullah ibn Ahmad ibn Muhammad ibn Qudamah al-Maqdisi, *Al-Mughni 'ala Mukhtasar al-Kharaqi*, vol. 7, Beirut, Lebanon, Dar al-Kutub al-'Ilmiah, 1994, at p 405.

I 38 Al-Kasani, *Badai' al-Sanai' fi Tartib al-Sharai'*, vol 4, at p 23.

39 (2012) 6 SSAR 235.

40 Singapore Syariah Appeal No 3 of 2010.

41 (2012) 6 SSAR 235.

42 See Al Quran 33, 28 where Allah clearly mentions 'I will make provision for you.'

43 (2009) 2 SSAR 187.

Syariah court to determine whether on the facts of the case an order for mut'ah [was] appropriate.⁴⁴

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SHOULD MALAYSIA ADOPT TALAQ AL-TAFWID IN ITS LEGISLATION?

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Should Malaysia adopt *talaq al-tafwid* as a way to dissolve the marriage? *Talaq al-tafwid* may become a good and viable alternative to dissolve the marriage by both husband and wife. This is especially so in the case where the husband is rather reluctant to divorce the wife but at the same time he does not want to force the wife to stay with him. Thus, the best alternative is to let the wife herself decides what is best for her by delegating the power of *talaq* to her. In other words, it can be said that *talaq al-tafwid* is a dignified way of dissolving the marriage. Unlike in the case of *fasakh*, where the procedure is time consuming, *talaq al-tafwid* is much simpler. The wife also does not have to pay anything to the husband contrary to *khulu'*. This type of divorce might also contribute to lessen the number of backlog cases due to its simple procedure.

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In view of the above reasons, it is submitted that *talaqal-tafwid* should be introduced into Malaysian law as it can provide a convenient alternative to both husband and wife to dissolve their marriage. Specific provisions relating to *talaq al-tafwid* should be embodied in various enactments in Malaysia.

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The next issue is, the best time for the husband to delegate power of divorce to the wife. Based on the practice in Pakistan and Singapore as highlighted in the above discussion, the practice in Singapore seems to be more practical compared to Pakistan. In Singapore, the husband delegates the power of divorce to the wife only at the time of divorce and not long before that as happens in Pakistan where it is made by the husband at the time of marriage. The practice in Pakistan might not be followed in Malaysia as it is feared that there might be misuse of the power given. There is a possibility that during the marriage, a wife might opt to utilise the power given to her hastily or emotionally even though the reason for the divorce is rather petty and the marriage can actually still be saved.

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Thus, the practice in Singapore is more practical where the power is delegated to the wife just before divorce takes place and not at the time of marriage. Delegating the power at the time of marriage is very different from delegating the power just before the divorce. In the former, there are more possibilities of misuse compared to the later. In the later situation, usually the wife has seriously contemplated over her marital problems and she strongly believes that divorce is the best alternative to solve her predicament. As a result, she comes to the court to apply for divorce and if her husband is rather

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⁴⁴ *Ibid*, at p 191.

A reluctant to divorce her using *talaq* for whatever reason (while the court finds out that there is no possibility of reconciliation), then to delegate the power of divorce to her wife at this juncture might become a good alternative.

B With regard to effect of divorce, the opinion of the Shafis seems to be reasonable to be followed as what is practised in Singapore. Accordingly, the right to maintenance during *iddah* will follow suit. Thus, if the husband delegates the divorce to the wife with the intention to divorce her once or twice (*talaq raj'i*), she will be entitled to maintenance during *iddah*. As regards to entitlement of *mut'ah*, it does not depend much on the type of divorce and therefore the wife will be entitled to it as mentioned in surah *al-abzab* verse 28 and illustrated in the Singapore case of *Hosairi bin Kalil v Zaliha bte Othman*.⁴⁵

CONCLUSION

D The principle of *talaq al-tafwid* exists in the Quran and *sunnah* of the prophet (SAW). In the Quran, Allah commands the prophet (SAW) to give choice to his wives, if they want to dissolve their marriages, which shows that *talaq al-tafwid* originates from the original source of *shari'ah*. Based on this original source, Islamic jurists allow a woman to get the right of divorce from her husband in the form of *talaq al-tafwid*.

E Thus, it is submitted that *talaq al-tafwid* may become a good and viable alternative to dissolve the marriage by both husband and wife. *Talaq al-tafwid* can be considered as a dignified way of dissolving the marriage and the procedure is less time consuming and much simpler compared to the other types of divorce. Thus, it might contribute to lessen the number of backlog cases which is one of the factors that hinders justice to be carried out effectively.

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G Pakistan and Singapore are among the countries that have accepted *talaq al-tafwid* as a form of divorce. Both countries have their strengths and weaknesses in terms of the law and application. In Pakistan, the law clearly provides regarding *talaq al-tafwid*, whereas Singapore has no legal provision regarding it. Nonetheless, in term of application of *talaq al-tafwid*, the practice in Singapore perhaps is better, especially with regard to the appropriate time to delegate *talaq al-tafwid* to the wife. Malaysia also might follow Singapore as regards to the effect of *talaq tafwid* ie to depend on the intention of the husband when he delegates the power.

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I Finally, it is submitted that the law regarding *talaq al-tafwid* should be introduced and implemented in Malaysia in view of the many advantages that can be benefitted by concerned parties in Malaysia.

45 (2009) 2 SSAR 187.