

Salient ground
already available
under pure muslim



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Salient features of the Dissolution of Muslim Marriages Act, 1939, may be summarised as under: (a) Section 2 of the Act contains certain grounds on the basis of any one of which a wife married under Muslim law, may file a petition for divorce. There are nine grounds in Section 2, out of which seven grounds are matrimonial guilt's (or faults) of the husband which entitle a wife to get her marriage dissolved by a court of law. Clause (vii) entitles the wife to exercise the right of option of puberty through a judicial decree. The ninth ground in Section 2 Clause (ix) is a residuary clause. Under this clause a wife may seek divorce on any other ground recognised under Muslim law which could not be included in the first eight grounds. For example, under this clause, a wife may seek her divorce by judicial decree on the ground of false charge of adultery against her (Lian).

Thus, while giving some additional grounds of divorce to a Muslim wife, the Act has not affected her right of divorce on the ground already available under pure Muslim law. (b) The grounds for matrimonial relief in Section 2 of the Act are available only to the wife, not to the husband. This is obvious because Muslim law has already given an absolute right to the husband to divorce his wife without judicial intervention and without any reason. (c) For filing a petition for divorce under this Act, formerly there was a controversy as regards the age of the wife, but now there is no controversy.

The Civil Procedure Code now provides that parties to a suit must be of eighteen years in all the cases including those relating to marriage, dower, divorce, etc. Thus, although under Muslim law the age of majority is fifteen years (age of puberty) for purposes of marriage, dower and divorce but after this amendment, a Muslim wife cannot file petition for divorce without a ‘
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next friend' if she has not attained the age of eighteen years. (d) Section 4 of the Act provides that if the wife renounces Islam and ceases to be a Muslim, the marriage does not dissolve ipso-facto. This is a new provision because before 1939 the law on this point was different.

At present, therefore, even after renouncing her religion, the wife is entitled to exercise her rights of divorce etc., under this Act. The grounds of divorce are available to a " woman married under Muslim law," therefore, at the time of filing of petition under this Act, she need not be a Muslim wife. Thus, a non- Muslim can also invoke the provisions of this Act if she was married under Muslim law. (e) The Act extends to the whole of India except Jammu and Kashmir.

It applies to Muslim wives of any sector school. It has, therefore, made a uniform law in respect of judicial divorce by a wife in any part of the country.