

This marriage”. the  
concept of void  
marriage



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This seems to be the reason that the Muslim law-givers and the text book writers discuss the subject of this Chapter under the caption, " Divorce" or " Dissolution of Marriage".

The concept of void marriage (batil) did exist in Muslim law, but the law of nullity of marriage was practically unknown. When a marriage was void, it was treated as such, and no petition or suit was necessary to get it declared null and void. This continues to be the position even in modern India, though a party may seek a declaratory decree under the provisions of the Specific Relief Act, 1963. Something akin to annulment of marriage existed: in cases where a minor has a right to repudiate the marriage or to exercise the option of puberty, an annulment of marriage could be sought from the kazi. The term faskh means annulment or abrogation, it seems, it is submitted, that it could have been used in all those cases where an irregular marriage was avoided. But, what actually has happened is that the term has been given the meaning of dissolution or rescission of the contract of marriage by a judicial decree. In India, it has been mostly used in cases of imprecation or apostasy. The matrimonial reliefs of restitution of conjugal rights and the judicial separation were totally unknown.

The remedy of restitution of conjugal rights, by way of a civil suit, was made available by the British Government in India at an early date of Muslims as it was made available to others, and, in modern India, a Muslim spouse can still seek restitution of conjugal rights by a civil suit. The matrimonial remedy of judicial separation is not yet available to the Muslims. It appears that a Muslim couple can separate from each other as any other couple by a separation agreement under the general law of contract. Unlike Hindu law,

death dissolves a marriage under Muslim law. But on the death of her husband, a Muslim wife cannot re-marry before the completion of the period of idda.

The reliefs available are: (I) Dissolution of marriage, (II) Restitution of conjugal rights, and (III) Declaratory suits and annulment of marriage.