

CHAPTER III

Marriage

In Muslim law marriage is a civil contract and it also has religious significance because it is an act commended by the Prophet. According to the Shafii school the essential requirements of a marriage are:

a. offer (ijab) and acceptance (qabul) made by the two contracting parties in each other's presence and hearing, expressing consent on both sides in explicit terms with the intention of establishing conjugal relations.

b. consent of the woman to be married given by the wali or guardian for marriage.

c. witnesses consisting of two male, sane adult witnesses

d. the practice of Sunnah that requires a fixed dower called mahr or mas kawin. (In Johore the mahr is fixed at \$22.50.)

The state of Johore follows the school of Shafii as in other states of Malaya. Therefore the law regarding marriage like capacity, minimum age, consent, prohibited marriage is that of the law of the School of Shafii.

In Johore it is provided that a marriage between persons both of whom profess the Muslim religion, shall be celebrated by a Kathi or a Naib Kathi appointed under the Muslim Marriage Enactment¹. A marriage celebrated in contrvention of the provision shall not for that reason alone be deemed invalid, but any person other than a Kathi or a Naib Kathi celebrating such a marriage is liable to

I. Muhammadan Marriage Enactment No.17, s.6 (1)

punishment to a fine not exceeding \$50.

The Enactment provides for the registration of Muslim Marriages. Before making any entry of registration a Kathi will make an enquiry to satisfy himself as to the validity of the marriage, divorce or revocation of divorce which is sought to be registered. For this purpose, he may issue summons requiring any Muslim to appear before the court to give evidence or to produce documents. Such persons shall then be legally bound to comply with such summons and in default he will be liable to a fine not exceeding \$50². In the enquiry the Kathi will make reference on these matters:

- a. There is no objection as to both parties to be married.
- b. Witnesses for the girl are examined whether they have acquired the required status to be witnesses and the authority to do so.
- c. Consent of the girl to be married.
- d. Question of the amount of mas kawin or mahr.
- e. Conditions to be imposed on the contract of marriage.
- f. Verification of divorce in the case of a divorcee who is to be married.
- g. Ascertaining the period of idah for a divorcee.

Registration is compulsory. However, failure to register such marriages does not invalidate the marriages

2. Muhammadan Marriage Enactment No. 17, s.8 (ii).

because the marriage is valid according to 'Hukum Shara' or the Muslim law. But a penalty is inflicted on a person who fails to effect the registration with a fine not exceeding \$70.³ Registration of marriages can be effected at any convenient place, even in the Kathi's home. Section 9 allows for extended time for registration.

A Kathi may refuse to register a marriage but he has to record his reasons for doing so. An appeal against a Kathi's refusal to register a marriage lies with the Registrar, provided such appeal is presented to the Registrar within two months from the date of refusal. The Registrar may uphold, vary or reverse the Kathi's decision and the order passed by the Registrar on appeal shall be final.

Every Kathi's register shall be prima facie evidence in all courts in the state of the dates and facts set out in such register.⁴

2. Divorce.

In Johore in the case of every divorce or revocation of divorce the husband is required within seven days of the divorce or revocation of divorce to attend at the office of the Kathi or Naib Kathi of the district or place in which the divorce or revocation of divorce takes place or to which the parties belong or at the office of the Kathi or Naib Kathi of the nationality or sect to which the parties belong to furnish particulars for the registration of such divorce or revocation of divorce.⁵

3. Muhammadan Marriage Enactment No.17, s.7 (ii).

4. Muhammadan Marriage Enactment No.17, s.15.

5. Muhammadan Marriage Enactment No.17, s.7.

B. Statistics of Divorce in Johore 1975⁶

District	Taalik	Fasakh	Khula	Talak	Total	Rojok	Percentage
Johor Baru	25	-	1	277	286	63	11%
Segamat	13	-	-	54	67	14	11.64%
Mersing	13	-	-	65	78	18	30.35%
Batu Pahat	7	5	-	194	206	27	11.3%

There are basically four kinds of divorce in Muslim law. They are by Talak, Khula, Fasakh and Taalik. In Johore, there are no statutory provisions as to 'cerai taalik' but in such cases, the Kathi has jurisdiction to register a 'cerai taalik' in accordance with Muslim law. Similarly, there are no statutory provisions in Johore concerning Fasakh or Khula.

From this statistics it can be concluded that the most common divorce is by Talak followed by Taalik.

C. Causes of Divorce in Percentage, 1975⁷

District	Maintenance	Age	Incompatibility	Remarriage	Disease	No children	Parental Interference
Johor Baru	5%	-	35%	10%	5%	-	15%
Segamat	1%	-	99%	-	-	-	-
Mersing	63%	7%	10%	2%	4%	1%	2%
Batu Pahat	-	-	-	-	-	-	-

6. Sources obtained from the Johore State Religious Department

7. Ibid

Most divorces are caused by incompatibility of temperament of the parties.

It is found that divorce and maintenance cases form the bulk of the cases appearing in the Shariah Court. When the parties appear before a Kathi for divorce, it is the duty of the Kathi to advise the parties to reconcile and if that fails then the Kathi will register the divorce.
