



Islamic Legal Remedy about dissolution: A Study of Maududi's View

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Abstract

Maulana Maududi was a great scholar. He wrote a number of books on different topics. Huqooq-al-Zojain is one of them. He drew attention of the muslims on the importance of the Ijtihad role of Qazi and problem of the women regarding the dissolution in the subcontinent. Hanfi jurisprudence was followed in his era. Maududi recommended that we should scan all the jurisprudence. And under the British rule, system of the Panchayat can be used as a remedial measure. Misries of the woman, impotency of the husband, and madness are the major areas of the contribution of the article.

Keywords: Maududi, Huqooq-al-Zojain, Woman Rights, Jurisprudence.

Role of Maulana Maududi:

As mentioned earlier, Dr. Allama Iqbal's name stands out among the few thinkers who were able to sort out the problems of society in the twentieth century. He had critical thinking regarding philosophy, problems of society, and thinking of society. That is why Iqbal felt that Syed Abu al Ala Maududi as an emerging religious scholar could pursue his plow of reconstruction of Islamic thoughts, he invited him for this important task and suggested to migrate towards Punjab from Dakan.¹

Both scholars were interested in the plan of Darul Islam in Pathan Kot. They wanted to provide a platform for research, in Islamic thought and culture on 8th March 1938 Maulana Maududi came to Darul Islam in Pathan Kot when Allama Iqbal was facing a health issue. Maududi was ready to move towards Lahore, but he came to know that Iqbal had passed away. His desire to make a well-defined project with Iqbal was not fulfilled.²

But after Iqbal's death, Maududi was alone to fulfill the task.

Although the situation was quite challenging despite all this Maulana Maududi played a vital role. Although Muslim Ummah was facing a number of problems really important was their matrimonial issue. If we penetrate our eyes in the ground reality, then we come to know that family life is really important in Muslim Ummah. This is because only legal sexual relationship is allowed in Muslim society. Fornication is

¹. Abu Rashid Farooqi, Iqbal and Maudodi, Lahore- Maktaba Tameer e Insaniyat, 2nd ed. 1980, P: 25

². Ibid, P: 154.



strictly forbidden. But despite having sound commands regarding matrimonial relationships in the Holy Quran and Sunnah, Muslim Ummah was victimized by misinterpretation of legislative material.

Mawlana Maududi was not only aware of the problem but he was interested in solving it. He writes: It was a matter of discussion in Haidadbad, Dakan, Bhopal, and British India that problems in the Muslim's matrimonial life are due to flaws in the legislation, there must be a struggle to implement true commands of Islam.³

He wrote down in 1935 a number of articles in the Monthly Journal of Tarjman ul Quran which was later published in a book from under the name of Haqooq al Zawjain.⁴

Means matrimonial rights. This book provided ground stone to solve the existing issue. First of all, he discussed two borders of thinking. Muslim thinking was under the influence of two types of civilization, i.e., Muslim and British. So Unnecessary man domination i.e., is not part of Muslim religion was absorbed from Hinduism. As well as the fatal slogan of equality was the result of British rule. It was two extreme limitations on the other hand, this thinking badly influenced the life of a Muslim woman. Even in the worst condition, she was not able to file the case of Khula due to social influence.⁵ It is a fact that oppressive behavior creates tension and reaction in human behavior. If we snatch the right from the person her or his behavior will lose balance.

Maududi is having a glance at traditional thinkers as well as modern thinkers. He criticized the Western Civilization that it has inculcated the poisonous concept of men's and women's equality so deep in the minds of their people that they are now afraid of the Islamic thoughts which are purely based on the rationale of Natural laws on which the Islamic Social system is based.⁶

He also addressed the plight of Muslim Women in British India, which led them to apostasy to escape their husbands, oppression. The basic reason behind their apostasy is that they can't find any legal relief within the currently applicable legal system in situations. The husband treats her with brutality and cruelty, but they can't get Khula from him. The husband is impotent or insane, dangerous or habitual of inappropriate behavior, and due to this wife hates him. They both have no matrimonial relationship between them but the wife can't get herself out of the relationship of marriage. Husband's whereabouts are unknown for many years, but she has no solution for such

³. Maudodi, Abu al Aala, (d:1979a) Hoqooq al Zowjain, Lahore-Islamic publications 1972a, p: 5.

⁴. Ibid, P: 5.

⁵. Ibid, P: 13.

⁶. Ibid, P: 14.



problems. Such circumstances leave her with no option but to adopt the way of apostasy and leave Islam.⁷

It is a fact that women were facing miserable circumstances. It is not an easy task to face the oppressive behavior of the husband. Sometimes it is not only an easy task to fight natural sexual desire, in the case of an impotent husband she had to face it. Protection, food, clothes, and a good social life depend on the calmness of matrimonial life. But a woman had to face miserable conditions.

Maulana Maududi further writes:

If the wife demands Khul and the husband is not willing to give her freedom then the Judge will order the husband to leave his wife. All the available texts of Islamic law provide that the Holy Prophet (PBUH) and the first four Muslim rulers are of the view that the husband should accept compensatory money and leave his wife if she demands Khula. The order of the judge has the power that the judgment should be obeyed. Whether he likes it or not, and if he disobeys then the judge can punish him with imprisonment. In Islamic law, the judge is not merely an advisor his orders can be taken as advice and the judgment debtor may or may not obey his orders. Because in such a scenario, the forum of the court is of no useful value.⁸

We can deduce the analogy from the decision of Hazrat Ali (MGBPWH) in which he said to the husband I will not leave you until you obey the order of elders as the wife had accepted them.⁹

Command of the Qazi is just like an order we have no way to disobey the order. We have to accept his order whether it is in our favor or not. It depends upon us to obey or not then it is quite useless to elect the Qazi. If we are bound to obey him in different issues then what is the difference in the matter of Khul? This matter should be handled just like other matters of life in which Qazi is quite an influential personality.

The betterment of human beings is compulsory in Islam. To fulfill this purpose, Islam introduced a few obligations and a few rights. If one is not performing his duties then the rights of another person are affected. If the wife is not performing or not able to perform duties then the husband can emphasize his right of divorce but on the other hand, if the husband is not performing or not able to perform the duties women can use the right of Khula. It means there is a balance in matrimonial rights and duties on both sides.

The name of the wife's legal right is Khula. The procedure for its use is that if the wife wants to dissolve the marriage, then she first demands Khula from her husband and if

⁷. Ibid, P: 109-110.

⁸. Ibid, P: 70.

⁹. Ibid, P: 76.



he is not willing to accept her demand then she can have the help of the court for the dissolution of the marriage on sound grounds. The balance between the parties of marriage can only be maintained in this way. We know that Allah and His beloved Prophet (PBUH) preach such balance. But this balance has been disturbed by removing the role of the court in such issues.¹⁰

In Islamic jurisprudence mostly rules are interpreted and explained while considering the general circumstances of people and to apply such interpretations to all cases without context is not appropriate. To implement a specific religious command, it is necessary to know about the situation and circumstances in which the decision is implemented, over time commands of human beings are changed. That is why one should consider the external circumstances, trends of the society, and nature of the person.

It is a fact that “URF” is also a source of law so one should consider this considerable fact.

Competent scholars can perform the task and solve the upcoming problems in the new era from the perspective of the Quran and Sunnah. It is an obvious command; that Ijtihad is valid for Muslims till the Day of Judgment. To consult the different schools of thought on any issue was allowed till the first four centuries of Islamic rule and that period is known as the Time of Ijtihad but afterward, it was prohibited.¹¹

In the beginning, Ulama concentrated on different problems and gave their opinion according to their thinking. Difference of opinion was not supposed to be a negative thing. From 4th century Hijri to 9th century Hijri Hanafi jurists used to make changes in rules regarding contemporary issues of followers and they used to consult and deduce rules from the interpretation of other prominent jurists. But we should keep the fact under consideration that free ijthihad without rules and regulations can create anarchy in society. There must be hard and fast rules regarding this matter.

There is no doubt that if people are allowed to do Ijtihad and deduce rules for all the matters themselves then they will try to get away from the strict rules of their school of thought and use relaxations given by other schools to manage their issues and in this way, they will only follow their desires and make fun of the rules and regulations given by Islam. And in this, there will be chaos in the society. But if Muslim scholars of the present time collectively and with strong and positive intentions try to find answers to the problems which Muslims in the contemporary world are experiencing then there is no fear of any spiritual or worldly loss.¹²

¹⁰. Ibid, P: 73.

¹¹. Ibid, P: 92.

¹². Ibid, P: 94-95.



The first and foremost important point in the Islamic legal system is that the judge of the court must be Muslim. It is mentioned by juristic that identical command of non-Muslims is not applicable, in the true sense. Marriage cannot be dissolved by non-Muslim judges, and women cannot get married to other people.¹³ But in the subcontinent women were facing the problem of dissolving marriage under British rule it was really difficult for the Muslims to dissolve marriage.

After the establishment of British rule in India, Muslim Qadis were responsible for deciding the matters of Muslims till 1864. These Qadis were selected after consultation with Muslim Scholars. But after that the Qadi system was abolished and Islamic legal issues were given to English courts for decisions as normal civil cases.¹⁴

Therefore, Muslims had to face many dimensional problems regarding judicial matters. Maulana Maudodi describes its after-effects.

Its first negative impact was that the application of Islamic rules in the matters of Muslims was almost abolished. It became difficult for Muslims to make legal decisions according to Islamic Law which they could consider as proper Islamic decisions. The second negative impact which is not less important than the first one is that these courts do not have the required knowledge and resources to understand the actual Islamic principles regarding different matters and they do not have that kind of respect for such rules as they are not followers of that Law so they can transgress the boundaries of such law. Their knowledge is based on the texts that are written by those people who knew nothing about the Arabic language such as Hamilton who translated the *Hidaya* by using a Persian exegesis of the Holy Quran.¹⁵

Non-Muslim judges cannot have the motivation of *ijtihad*. They were not familiar with terminologies on the other hand they were not equipped with the true spirit of Islam which is required for *ijtihad*. The last solution in such difficult circumstances to this problem according to the teachings of the Maliki School of thought is to constitute an arbitratative (Panchayat) committee of three Muslim people in each District. And it must be necessary that the majority of Muslims in that District have faith in those people. One of these committee members must be a certified Muslim Scholar. And then Muslims should force the ruling Government to accept the ruling of such committee as final and equal to the decision of the courts in the matters of marriage and dissolution of Muslim marriages. And there must be no right of appeal against such orders in English courts.¹⁶

¹³. Ibid, P: 85.

¹⁴. Ibid, P: 82-83.

¹⁵. Ibid, P: 85.

¹⁶. Ibid, P: 87



To solidify the importance of such a committee (Panchayat) this committee must have solid and true Islamic textual references available to them that can't be negated by anyone. And this needs team work. All opinions of the scholars should not only be welcomed but must be in written form. And Ulma can have a sound and healthy debate on it. And can produce written material that can be considered the last and final decision. For Muslims, all judicial matters can be solved by consulting the material. In this legal summary, Ulma should not only concentrate on the Quran and Sunnah but Urf (costume) and present circumstances must be under consideration. So that people can have sound solutions to the problem which is related to religion and the judiciary.

Critical analysis

If we compare the thinking of Maulana Maududi with other scholars then we come to know:

Maulana Maududi gave different important points:

- 1) To consult the other jurisprudence is not a prohibited thing when it is necessary.
- 2) The role of the qazi must be considered in the matter of dissolution, as it is considered in other matters.
- 3) The system of panchayat can be an alternative remedy in this context.

Maulana Maududi has also written regarding this aspect and explained the difference of opinion of jurists. He wrote that according to Imam Abu Hanifa if the husband is unable to give maintenance, then "The wife should be advised to have patience and tolerance and manage the situation by taking loans from any relative. In Imam's opinion, the maintenance of such a woman is mandatory for the person who would be responsible for her in case she was unmarried. But Imam Malik, Shafi, and Ahmad bin Hanbal think that if a wife finds it impossible to live with such a husband and file a suit for dissolution of marriage, she must be given such separation". Maulana Maudodi says: "So according to me the best opinion regarding this issue is of Imam Malik among all other scholars. Which gives a fair time to husband for managing his problems and after that moves towards dissolution".¹⁷

Maulana Maudodi wrote in light of the Ayah that "This system of procreation is not without reason; it is because through this both man and woman can fulfill their natural desires from each other and through this relationship they find peace and tranquility."¹⁸ He considers sexual satisfaction as one of the important objectives behind marriage that man and woman remain attached and fulfill their desire for each other. One must remember that the desires of man and woman are both equally important. So, he further

¹⁷. Maududi, Abu al Aala, (d:1979a) Hoqq al zowjain, P:125-126.

¹⁸. Maududi, Abu al Aala, (d:1979a) Tafhim ul Quran, Lahore- Maktaba Tameer e Insaniyyat, 18th addition, 3/320.



states that love means “the sexual desires” and compassion means “the spiritual desires”.¹⁹ So it means that the wife needs love and compassion as well as the husband. It’s the sexual desires that strengthen the mutual relationship and ultimately establish a strong family setup but this relationship has compassion which is the reason they both remain loyal to each other and take care of each other even when they get old and the sexual attraction fades away.

Shami describes that:

“If she came to know that her husband is impotent but she is ready to live with him then she will be deprived of her right of dissolution”.²⁰ In this case, it is ridiculous that a pious lady tried to cope with the situation. But in the end, it was not possible for her then we should give her punishment for her devoted attitude towards her husband. It is quite an oppressive punishment for the Muslim woman.

Maududi was quite interested in solving such acute and chronic issues of Muslim women. He writes down regarding above-mentioned issues:

“In such cases, the wife will lose her right to file for dissolution of marriage but then how can she get rid of such a useless husband? If she requests her husband to divorce her after taking back full dower and he refuses her and if she goes to the court, the court refuses to force her husband to divorce her. In such a scenario think about the misery of the wife. It will force her to live a miserable life, or a life of a nun by suppressing her natural desires and needs, or to indulge in illicit relationships while being in marriage, or even lead her to convert to any other religion which may allow her to leave her husband”.²¹

(i) If he was mad before marriage and the woman was aware of the fact and got married then she cannot demand separation. It means that a woman is aware of the fact that she has to live with him her whole life. Maybe his madness becomes bitter and he becomes oppressive, maybe he has to face worse conditions and the situation becomes out of control then what will be done with his wife? On the other hand, we should be aware of the fact that a female can misuse the right if we give her the right to dissolve the marriage in every situation e.g. she may get married for dowry and then put the case to dissolve. It is not a balanced opinion to provide her dowry from the mad person. Maulana Maududi gives a balanced opinion regarding this matter. If she knowingly gets married to a person then this punishment will be sufficient to deprive her of dowry.²² If we consider the opinion of Maududi then we can save the rights of both life mates.

¹⁹. Maududi, Abu al Aala, (d:1979a) Tafsir Tafhim ul Quran, Lahore- Maktaba Tameer e Insaniyat, 18th addition, 3/321.

²⁰. Ibn e Abdin, Raddul Muhtar, 3/495.

²¹. Maududi, Hoqoq al Zowjain, 1972a, P:78.

²². Ibid, P:136.



Summing up the discussion we can say Maududi is quite research-oriented person. He was not blind follower of a particular fiqh. He had a balanced opinion among all the fiqh and for both genders. He tried to provide remedy by keeping balance opinion, i.e based on true preaching of Islam.