

THE OBSERVANCE OF IDDAT AND ITS EFFECT ON MARRIAGE CONTRACT

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ABSTRACT

The present article on Iddat has two main considerations. The issue is of so much importance and concern, for the whole Ummah in general and for the Muslim females in particular, that each one should have some knowledge of it. So the prime object of the article is to create awareness among the Muslim community of our country regarding this particular and significant issue i.e. what is Iddat, how it is observed and what is the effect of Iddat on a marriage contract. The second object of the study is to make clear the confusion, which has been created by the conflicting views of Muslim jurists. The difference of opinion among the jurists is upon two points. First, the Iddat of a pregnant woman, particularly the pregnant widow, that how much time will she spend in Iddat? Second point of difference is the marriage, contracted during Iddat. Some modern jurists consider such a marriage merely an irregular. On the other hand the traditional and the majority of contemporary jurists consider a marriage during Iddat as completely null and void. Through this article an attempt has been made to achieve the forecited goals i.e. the awareness about Iddat and the removal of ambiguity.

INTRODUCTION

Iddat is a period of chastity which is bound to be observed by a Muslim woman, after the termination of her marriage. The observance of Iddat is a religious obligation.¹ The same principle applies to a woman from scriptural religion (Kithabia) whose husband is Muslim. Iddat has also been defined (literally) as numeration and legally it means 'waiting for an opportunity'.² The dissolution of marriage may be by the death of a husband or by divorce. According to Mohammedan Law, when the marriage of a Muslim woman or of a Kithabia (Christian and Jewess female) is dissolved by either of the above mentioned causes the woman is prohibited from marrying within the specified period i.e. Iddat. It is, therefore, called a period of continence because the marriage is not lawful until the time of Iddat is completed. So the completion of this period is a condition for the validity of a marriage contract.³ The main object of this abstinence is to ascertain whether or not she is pregnant by the deceased

husband or divorcer⁴ and in case of widowhood the Iddat also serves as a mark of mourning for a deceased husband.⁵

When Iddat becomes incumbent?

The following three grounds are mentioned in the traditional Islamic Law books,⁶

- 1) - It becomes incumbent when a wife is separated after actual consummation of the marriage, whether the marriage is valid (Sahih Nikah) or irregular (Fasid Nikah).
- 2) - In case of valid marriage, the regular retirement (Khilwath-e- Sahih) of a wife with husband renders the Iddat period incumbent upon that woman after the termination of marriage. Valid retirement is also called a presumed consummation.

⁴ Sircar. S.C : Al-Sharia, Vol. 1, ND: 433 = Abdur Rahman Aljazeri (Ed) : Kithab-ul-Fiqah, 1981: 947 = D.F.Mulla, Principles of Muhammedan Law, Pak Ed, 1987: 335

⁵ Coulson N.J, Succession in the Muslim Family, 1971: 14

⁶ Abdur Rahman Nawab : Institutes of Mussalman Law, 1974: 169 = Baillie, Neil : A Digest of Muhammedan Law, 1974: 352 = B.M.Dayal: op cite : 276 = Fatawa-i-Alamgiri : op cite: 638 = Muhammad Mazhrul Haq Ansari (Ed): Fatawa-i-USmani. : 222 = Tanzeelur Rahman: Majmua-e-Qauanine Islam, 1976, 2nd Ed, Vol.2 : 745

¹ Fatawa-i-Alamgiri, Vol. 2: 638

² B.M.Dayal, Eng Tran: The Durr-ul-Mukhtar, 1070:275

³ Fyzee. A.A : Out Lines of Muhammedan Law, 4th Ed 1974: 107 = Charles Hamilton : The Hedaya, Vol.1, Bk.4, Chap. 12 : 128