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A MUSLIM WIFE'S RIGHT TO SEEK
DISSOLUTION OF HER MARRIAGE
AND HER RIGHTS AFTER A DIVORCE:
A STUDY OF THE MALAYSIAN LAW
WITH SPECIAL REFERENCE TO
THE STATE OF SELANGOR

by

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ABSTRACT

Marriage is a sacrament, as well as a contract in Muslim family Law, and like every contractual agreement, it can be terminated on several grounds, i.e. through divorce, annulment, the death of either party or by a decree from the courts.

Divorce however, is, "of all things permitted, the one most detestable to God" and a lot of steps are taken in order to discourage a divorce, but as it is against the restriction of liberty of men and women, Islam may only check hasty actions by arbitrators or a judge, leaving the doors to reconciliation open at many stages, for instance a period of edda has to be observed.

Women are ignorant of their rights on divorce. They are ignorant that they too have a right to obtain a divorce if they find it unbearable to live with their husband, or their husband had done them wrong. Though their powers are not as arbitrary as the husband's power of talaq, nevertheless, there are various ways for women to obtain a dissolution of their marriage.

In Malaysia, the most common way for a woman to seek her release is by the Cerai Taklik. This involves an agreement, signed on the date of the couple's marriage that on the happening of a certain event of cruelty or non-maintenance by the husband,

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CHAPTER...I

A. INTRODUCTION

1. "Marriage is a sacrament, as well as a contract"

A basic social teaching of Islam is the encouragement of marriage. Marriage, according to Muslim Law, is a civil contract and being recommended by the Prophet, it is also a religious sacrament.

Surah XXIV, Verses 32 - 33 of the Holy Quran states:

"Marry those among you who are single, or the virtuous ones among your slaves, male or female. If they are in poverty, God will give them means out of His Grace: For God encompasseth all, and He knoweth all things".
"Let those who find not the wherewithal for marriage, keep themselves chaste, until God gives them means".¹

The Quran advanced its universal recommendation of marriage as a means to ensure a state of chastity, which is held to be induced by a single free wife. The Quran states that those guilty of adultery are to be severely punished with 100 lashes or stoned to death. The general ethic of the Quran considers the marital bond to rest on mutual love and mercy, and the spouses are said to be "each others garments."²

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1. A. Yusuf Ali, The Holy Quran, Text, translation and commentary, 3rd edn, Beirut, Lebanon, Dar Al-Arabia 1938
 2. ibid