



**A CRITIQUE ON THE CONCEPT OF *ṬALĀQ*
UNDER THE MALDIVIAN FAMILY LAW**

BY

MOHAMED NASHEED ADAM

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**AHMAD IBRAHIM KULLIYYAH OF LAWS
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MALAYSIA**

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ABSTRACT

The alarmingly high rate of divorce in the Maldives is a peril to the very fabric of the Maldivian society. This fact was the incentive that led the Maldivian legislators to promulgate a new family law in the country. This new family law which came into force on the onset of July 2000, makes it obligatory for every husband who wants to divorce his wife to seek prior judicial permission from the Court. In case he fails to abide by this legal provision, he will face a penalty of banishment to an island other than his own and mandatory confinement within this island for a term no more than six months or a fine not exceeding five thousand Rufiyaa.

However, this useful penal deterrence is not adequate. Maldives clearly needs more objective measures to be integrated into its family law in order to curb the high rate of divorce. This can only be done if the legislators take into account those classical legal views from *Shari'ah* which if successfully implemented, the divorce rate is highly expected to be eventually reduced.

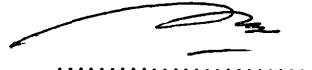
ملخص البحث

كثرة الطلاق باتت تهدد نسيج المجتمع المالديفي مما أدى إلى إصدار قانون جديد للأحوال الشخصية، وهذا القانون الذي بدأ تطبيقه في يوليو/تموز، عام 2000 يلزم الرجل إن أراد أن يطلق زوجته أن يحصل على إذن قضائي مسبق قبل أن يقدم على قطع الرابطة الزوجية بينهما وإلا تعرض للمساءلة القانونية والعقوبة كالنفي إلى جزيرة غير التي ينتمي إليها لمدة لا تتعدى ستة أشهر أو الغرامة بمبلغ لا يزيد على خمسة آلاف روفية.

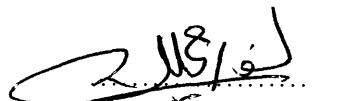
ومع هذا الرادع الجزائي للطلاق المتعسف فإن البلد بحاجة ماسة إلى سنّ قانون للأسرة يأخذ في اعتباره الآراء الفقهية التي من شأنها لو وضعت موضع التنفيذ أن يجعل حداً لأعداد الطلاق المتزايد في البلد، وهذه الآراء رغم كونها مستمدة من كتاب الله سبحانه وتعالى وسنة رسوله صلى الله عليه وسلم لم تحظ باهتمام من دونّ قانون الأسرة المالديفي المعمول به حالياً. لذا، إذا أردنا معالجة مشكلة كثرة الطلاق معالجة جذرية لا بد من الأخذ بهذه الآراء الفقهية عند تعديل قانون الأسرة المالديفي.

APPROVAL PAGE


I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.


.....
Zaleha Kamaruddin
Supervisor
Date:

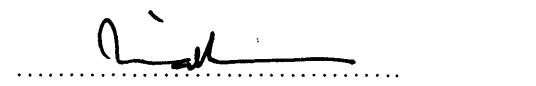
I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.


.....
Normi Abdul Malek
Examiner
Date:

This dissertation was submitted to the Department of Islamic Law and is accepted as partial fulfillment of the requirements for the degree of Master of Comparative Laws.


.....
Aznan Hasan
Head, Department of Islamic Law
Date:


This dissertation was submitted to the Kulliyah of Laws and is accepted as partial fulfillment of the requirements for the Degree of Master of Comparative Laws.


.....
Nik Ahmad Kamal Nik Mahmud
Dean, Ahmad Ibrahim Kulliyah of Laws
Date:

DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

Name: Mohamed Nasheed Adam

Signature: 

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To my beloved parents:
Fāṭimāh Ḥasan and Ādam ‘Alī

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All praise be to Allah, the Most Beneficent, the Most Merciful. May Allah bestow His mercy and blessing to our Prophet Muḥammad ﷺ, his noble family and his Companions.

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Chapter One

Introduction

Maldivians as other Muslims in a large number of countries in this world continue to adhere to the family law derived from the Islamic legal system. The flexibility of the Islamic legal system, resulting from the plurality and divergence of juristic opinion within its broad framework has achieved a tremendous success in keeping it alive through the chains of changes in the socio-economic conditions.

Benefiting by this flexibility, Muslims in many countries of the modern world have in the recent past successfully reformed many aspects of their traditional family law, without parting with its fundamental principles. The Maldivian Family Law 2001 is only one example of this on-going reform.

Maldivians are unified by one faith, one language and a common heritage yet the family institutions are falling apart as their social fabric is getting destroyed by the extremely high rate of *ṭalāq*. With this in mind, Maldivian legislators enacted the Family Law of the country which came into force on 1st of July 2001.

1.1 Objective of the Study

The main objective of this study is to highlight the concept of *ṭalāq* in the light of classical teaching of *fiqh* for it is classical *fiqh* that governs all the family matters in the Maldivian society. This dissertation delves into the existing relevant legal provisions for

the *ṭalāq* laid down in the Maldivian Family Law 2001 in the light of classical teaching of the *Sharī'ah*. The study then attempts to provide some effective legal measures which can be utilized in addressing the high rate of *ṭalāq* in the country.

1.2 Hypothesis

In a Muslim society like Maldives, *ṭalāq* rate should be noticeably low, for *ṭalāq* is the most detestable and abominable thing among the permitted actions in Islam. Yet, despite the fact that Maldives is a 100% Muslim nation since 1153, the *ṭalāq* rate remained appallingly high for many years. A press release issued by the Ministry of Justice on 3rd of February 2004 put the overall rate of *ṭalāq* in Maldives in the year 2003 as 35.3 percent of the marriages contracted in the country.¹ The writer of this dissertation is of the opinion that when the Maldivian lawmakers promulgated this new law of personal status, the pressing need for a thoroughly comprehensive reform of the law to address the horribly high *ṭalāq* rate was not addressed properly. Instead, the parliament imposed some more judicial procedures into the conduct of *ṭalāq* such as banning *ṭalāq* without approval of the Court. To improve this depressing situation of high *ṭalāq* rate in the country, Maldives clearly needs to incorporate certain areas into its family law if we want to see a more stable family institution in this archipelago.

¹ <http://www.haveeru.com.mv/English/>

It is worth noting here that among the twenty provinces (or atolls) into which Maldives is divided the province to which the writer of this paper belongs called Raa Atoll has the highest rate of divorce in the country which is 73.9% in the year 2003 according to the above mentioned report of the Ministry of Justice. This means that, for every 1000 marriages contracted in this atoll 739 divorces take place.

1.3 Literature Review

There had not been any study or review of the Maldivian Family Law 2001, nor is there any academic study on *ṭalāq* as yet in the Maldives. This motivated the writer to take up this topic and incited to look into the underlying issues and to scrutinize the problems and suggest solutions whenever possible.

It is worthwhile stating that, there are reliable literature written by great writers elsewhere on issues relating to the dissolution of marriage under the Islamic law both in English and in Arabic. Following are some relevant literature, among many, written in Arabic and English on this topic.

*Aḥkām al-Sharī'ah al-Islamiyyah fī al-Aḥwāl al-Shakhṣiyyah*² by 'Umar 'Abdullāh³ is an exegesis of the whole Islamic family law and gives a full account of how a marriage according to the *Sharī'ah* provisions can be formed and how it can be repudiated. The book is based on the Egyptian Personal Status Act⁴ where each section and clause in this act is thoroughly examined with a comparative elaboration of all the major schools of *fiqh*. The views of the Ḥanafī scholars, such as Abū Ḥanīfah,⁵ Abū Yūsuf,⁶ Muḥammad,⁷

² 'Umar 'Abdullāh, *Aḥkām al-Sharī'ah al-Islamiyyah fī al-Aḥwāl al-Shakhṣiyyah*. Cairo. Dar al-Ma'ārif, 1965.

³ A prominent Egyptian scholar on Islamic law. He was a professor and head of the department of the Islamic law in the Faculty of law in the Alexandria University (Egypt).

⁴ Egyptian law no. 25 of 1929.

⁵ Abū Ḥanīfah al-Nu'mān ibn Thābit al-Taymī (80 – 150 AH, circa 700 – 767 AC) is an eminent juristic scholar of the *Sharī'ah*. The Ḥanafī school of law is named after him. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London. Graham and Trotman, 1986, p. 16.

⁶ Abū Yusuf Ya'qūb ibn Ibrāhīm ibn Ḥabīb al-Anṣārī (113 – 183 AH, circa 730 – 798 AC) is a prominent scholar of *Sharī'ah*. He is the closest disciple of Abū Ḥanīfah. He held the office of the Chief Justice in reign of the Caliph Harun al-Rashīd. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986, p. 16.

⁷ Muḥammad ibn al-Ḥasan ibn Farqad al-Shaybānī (132 – 189 AH, circa 750 – 805 AC) is a prominent scholar of *Sharī'ah*. He is a disciple of Abū Ḥanīfah, Abū Yūsuf and Imām Mālik in Medina. He also was a

and Zufar⁸ were given the most extensive coverage. But the opinions of other schools of *fiqh* were not neglected. The Egyptian Personal Status is mainly derived from the Ḥanafī *fiqh*, therefore the prominence enjoyed from that school is justified. Mālikī,⁹ Shāfi‘ī,¹⁰ Ḥanbalī¹¹ and Zāhiri¹² views are discussed throughout the book. In addition to that the opinions of some independent juristic scholars like Abū Bakr al-Aṣamm¹³ and Ibn Shubrumah¹⁴ are also occasionally explained. All these views are accompanied by their

friend and colleague of Imam al-Shāfi‘ī, for both of them were students of Imam Mālik at the same time. He like Abū Yūsuf held the highest judicial office and contributed vastly in compiling literature on Ḥanafī of system of jurisprudence. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986, p. 16.

⁸ Zufar (died in 158 H.) an eminent scholar of *Sharī‘ah* and a prominent disciple of Abū Ḥanīfah, albeit less well-known than Abū Yūsuf and Muḥammad. Zufar achieved supremacy over his colleagues in *qiyās* i.e. the deduction of legal rulings based on analogical reasoning. See: Abū al-Ḥasan ‘Alī al-Ḥasan al-Nadawī, *Rijāl al-Fikr wa al-Da‘wah fī al-Islām*, Kuwait, Dār al-Qalam, 1989, p. 90.

⁹ Mālikī School of law is named after Imām Mālik. Imām Mālik is Mālik ibn Anas ibn Mālik al-Asbahī (93 – 179 AH, circa 712 – 795 AC), one of the most distinguished scholars of *Sharī‘ah*. He is the author of the famous book on the prophetic tradition entitled *Al-Muwatta’*. Imām Mālik is the mentor of Imām al-Shāfi‘ī. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986, pp. 16 – 17.

¹⁰ Shāfi‘ī school of law is named after Imām al-Shāfi‘ī. Imām al-Shāfi‘ī is Muḥammad ibn Idrīs ibn al-‘Abbās al-Qurashī (150 – 204 AH, circa 767 – 820 AC) one of the most eminent scholars of *Sharī‘ah*. He wrote the first book ever on the principles of the Islamic jurisprudence called *Al-Risālah*, for which he is been regarded as the founder of Uṣūl al-Fiqh. He was a disciple of Imām Mālik, a colleague of Imām Muḥammad and later he became a mentor of Imām Aḥmad ibn Ḥanbal. Besides *Al-Risālah*, he authored many great books on the Islamic law. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*. London, Graham and Trotman, 1986, p. 17.

¹¹ Ḥanbalī school of law is named after Imām Aḥmad ibn Ḥanbal (164 – 241 AH, circa 780 – 850 AC). He is Aḥmad ibn Muḥammad ibn Ḥanbal ibn Hilāl al-Shaybānī al-Duhafī. He is the author of the well-known and highly regarded compilation of *aḥādīth* entitled as *Musnad*. He is a disciple of Imam al-Shāfi‘ī and Imām Abū Yūsuf. See: Abū al-Ḥasan ‘Alī al-Ḥasan al-Nadawī, *Rijāl al-Fikr wa al-Da‘wah fī al-Islām*, Kuwait, Dār al-Qalam, 1989, pp. 91 – 116. See also: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986, pp. 17 – 18.

¹² Zāhiri school of law was founded by the great scholar of *Sharī‘ah* Dawūd ibn ‘Alī ibn Khalaf al-Aṣbahānī (died 270 H.). He was born in Kūfah, studied there and in Nīsābūr and then lived in Baghdād. He was one of the most eminent scholars of his time and one of great scholars of all time. See: Muḥammad ‘Uthmān Shubayr, *Al-Imām Yūsuf ibn ‘Abd al-Ḥādī al-Ḥanbalī wa Atharuhū fī al-Fiqh al-Islāmī*, ‘Ammān, Dār al-Furqān, 2001, p. 175 (f. n.).

¹³ He is Abū Bakr ‘Abd al-Raḥmān ibn Kīsān al-Aṣamm (died 201 AH.). He is a celebrated legal scholar affiliated for sometime with the *Mu‘tazilah* school of thought. He was famous for his piety and his eloquence oratory as well as his deep knowledge of the Islamic law. He authored many books in different fields of knowledge. See: *Al-Mawsū‘ah al-Fiqhiyyah al-Islamiyyah*, Kuwait, Wuzarah al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1983, vol. XXXIX, p. 431.

¹⁴ Ibn Shubrumah is Abū Shubrumah ‘Abdullāh ibn Shubrumah ibn al-Ṭufayl ibn Ḥassān al-Dabbī, (72 – 144 AH.). He was a disciple of the famous Companion Anas ibn Mālik and later he became the mentor of the famous scholar ‘Abdullāh ibn al-Mubārak and many others. Ibn Shubrumah is an eminent scholar of the

authority from Qur'ān and Sunnah. The author never fails to give preference to the most reliable view among different opinions he has mentioned in the book.

Muḥammad Zakariyyā al-Bardīsī¹⁵ pursues the same method as 'Umar 'Abdullah', in his exegesis of the Egyptian Personal Status entitled *Al-Aḥkām al-Islamiyyah fī al-Aḥwāl al-Shakḥsiyyah*.¹⁶ A notable emulation in al-Bardīsī's book is that he makes reference to the legislation of some other Arab countries like Sudan and Syria.

'Alā' al-Dīn Kharūfah¹⁷ in his commentary on the Iraqi family law¹⁸ entitled *Sharḥ Qānūn al-Aḥwāl al-Shakḥsiyyah*¹⁹ gives a full explanation of the legal provisions and accompany them with the courts interpretations of them from Iraqi case reports.

Muḥammad 'Aqlah²⁰ in his book on Islamic family law *Niẓām al-Uṣrah fī al-Islām*²¹ emulates on the above mentioned works and gives more in-depth explanations of the Islamic family law with frequent reference to the Jordanian family law enactment. In the third volume of his book, Professor 'Aqlah elucidates the Islamic legal provisions on

Islamic law famous for his learned knowledge as well as his piety. See: *Al-Mawsū'ah al-Fiqhiyyah*, Kuwait, Wuzārah al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1983, vol. II, p. 400.

¹⁵ Prominent Egyptian scholar on Islamic law and former professor of *Sharī'ah* in the Faculty of law in the Cairo University.

¹⁶ Muhammad Zakariyyā al-Bardīsī, *Al-Aḥkām al-Islāmiyyah fī al-Aḥwāl a-Shakḥsiyyah*. Cairo, Dār al-Nahḍah al-'Arabiyyah, 1966.

¹⁷ A contemporary scholar of Islamic law. He was a former judge in Basarah, Iraq and served as a professor of Islamic law in International Islamic University in Malaysia.

¹⁸ Iraqi law no. 188 of 1959.

¹⁹ 'Alā' al-Din Kharūfah, *Sharḥ Qānūn al-Aḥwāl al-Shakḥsiyyah*, Baghdād, Maktabah al-'Anī, 1962.

²⁰ A contemporary scholar of *Sharī'ah* who is a professor of Islamic law in the Faculty of *Sharī'ah* of the Jordanian University.

²¹ Muḥammad 'Aqlah, *Niẓām al-Uṣrah fī al-Islām*, 'Ammān, Maktabah al-Risālah al-Ḥadīthah, 1990, vol. III.

ṭalāq giving not only the classical views expressed by the great scholars of the early age, but also includes the views of the modern contemporary scholars.

In *Al-Khilāfat al-Zawjiyyah wa Mu'ālatuha fī al-Sharī'ah al-Islāmiyyah*,²² its author Shawqī 'Abduh al-Sāhī²³ devotes his whole book on the legal aspect of the dissolution of marriage from the *Sharī'ah* perspective. Although the book is written in a straightforward, readable, and modern language, it explains all aspects of *ṭalāq* away from the complexity that exists in some books of *fiqh*.

'Abd al-Fattāh 'Amr's *Al-Siyāsah al-Shar'iyyah fī al-Aḥwāl al-Shakhṣiyyah*²⁴ is not all-inclusive explanation of every feature of the formation and dissolution of marriage. This book is only concerned about those elements of the family law that are linked to the *siyāsah shar'iyyah*. The book also highlights some very important areas in the family law including few problematic facets of *ṭalāq* itself.

*Fatawā al-Mar'ah al-Muslimah*²⁵ is a huge compilation of legal rulings and legal opinions on the personal status. These rulings and verdicts known as *fatwā* were imparted

²² Shawqī 'Abduh al-Sāhī, *Al-Khilāfat al-Zawjiyyah wa Mu'ālatuha fī al-Sharī'ah al-Islāmiyyah*, Cairo, Maktabah al-Nahḍah al-Miṣriyyah, 2001.

²³ A contemporary scholar and professor of Islamic law. He has taught Islamic law in many universities including Azhar University in Cairo, Islamic University in Medina, Umm al-Qurā University in Mecca, and Kuwait University in Kuwait.

²⁴ 'Abd al-Fattāh 'Amr, *Al-Siyāsah al-Shar'iyyah fī al-Aḥwāl al-Shakhṣiyyah*, 'Ammān, Dār al-Nafā'is, 1998.

²⁵ Abū Muḥammad Ashraf ibn 'Abd Al-Mqsūd (ed.), *Fatawā al-Mar'ah al-Muslimah*, Riyadh, Maktabah Aḍwā' al-Salaf, 2001.

by seven great scholars of contemporary Saudi Arabia.²⁶ The one thousand-page-long book covers among other things marriage, all types of divorces including *ṭalāq*, maintenance, marital discord, adoption, custody, inheritance, polygamy and void contracts of marriage. The thoroughly meticulous treatment given to each of these topics is sufficient to make the book a complete guide for Islamic law on family matters.

*Al-Ahwāl al-Shakhṣiyyah fī al-Tashrī‘ al-Islāmī*²⁷ authored by Aḥmad al-Ghandūr²⁸ is a wide-ranging study of the Islamic family law from a comparative point of view. The book explores every aspect of the personal status with ample explanation of the classical views of the great juristic scholars of the past. The book also gives reference to decided cases in many Arab countries from Egypt to Algeria, but he referred to the Kuwaiti family law²⁹ as the basis on which his study on the Islamic family law is built.

In a similar vein, Muḥammad ibn Yaḥyā ibn al-Muṭahhar³⁰ analyzed the Yemeni family law³¹ with a copious debate of legal opinions on every topic in the law. A remarkable feature of this highly academic literature named as *Aḥkām al-Aḥwāl al-Shakhṣiyyah min Fiqh al-Sharī‘ah al-Islamiyyah*³² is that it explains the views and the opinions of all the

²⁶ Those scholars are: Muḥammad Ibrāhīm al-Shaykh, ‘Abd al-Raḥman ibn Nāṣir al-Sa‘dī, ‘Abdullāh ibn Ḥumayd, ‘Abdullāh ibn Bāz, Muḥammad al-Sāliḥ al-‘Uthaymīn, ‘Abdullāh ibn Jabrayn and Ṣāliḥ ibn Fawzān.

²⁷ Aḥmad al-Ghandūr, *Al-Ahwāl al-Shakhṣiyyah fī al-Tashrī‘ al-Islāmī*, Kuwait, Maktabah al-Falāh, 1972.

²⁸ A prominent contemporary Egyptian scholar on Islamic law, served as the head of Islamic law department in Khartoum University in Sudan and Kuwait University in Kuwait and later as the Dean of the Faculty of *Sharī‘ah* and Islamic Studies of Kuwait University. Aḥmad al-Ghandūr was one of the three-member-panel that drafted the Kuwaiti family law which came into force in Kuwait on 1st of October 1984.

²⁹ Code of Personal Status 1984 (no. 51/1984).

³⁰ Muḥammad ibn Yaḥyā al-Muṭahhar is a contemporary Yemeni scholar on Islamic law and he is a judge in the Cassation Court of Yemen.

³¹ Law no. 27/1976 issued by the Revolutionary Council in Yemen Arab Republic.

³² Muḥammad ibn Yaḥyā ibn al-Muṭahhar, *Aḥkām al-Aḥwāl al-Shakhṣiyyah min Fiqh al-Sharī‘ah al-Islamiyyah*, Sana‘ā, Dār al-Fikr, 1989.

major schools of *fiqh* with special emphasis on the two predominant schools in the Yemen: Shāfi'ī and Zaydī,³³ without undermining other prominent schools of *fiqh*.

‘Abd al-Rahmān al-Ṣābūnī³⁴ in his concise study of the Islamic family law entitled *Nizām al-Uṣrah wa Ḥall Mushkilātihā fī Daw al-Islām*³⁵ explains the family system and discusses ways on solving its problems in the light of *Sharī‘ah* guidance.

In *Personal Law in Islamic Countries*,³⁶ its author Ṭāhir Maḥmūd provides an authentic study of the development of family law in the Muslim world. The book covers twenty-two Islamic countries – thirteen Arab and nine non-Arab. The subjects covered in this book are marriage, all types of divorces including *ṭalāq*, matrimonial relief, family relations, domestic obligations, inheritance, bequests, gifts and family *waqfs*. Following its twenty-two chapters each on a single country, it offers a comparative analysis legislation in all these countries vis-à-vis the traditional law.

³³ An Islamic school of law named after Imām Zayd ibn ‘Alī Zayn al-‘Ābidīn ibn Ḥusayn ibn ‘Alī ibn Abī Ṭālib. Zaydīs are regarded as a sect of Shī‘ah Muslims, albeit very different from the mainstream Shī‘ah al-Ja‘fariyyah which also known as Shī‘ah al-Ithnā-‘Ashariyyah. Zaydīs are ideologically much closer to the Sunnis than the mainstream Shi‘ah. The Zaydīs are mainly concentrated in the Yemen where their Imams combined both spiritual and temporal leadership until they were ousted in the 1961 revolution. See: Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986, p. 13.

³⁴ A prominent contemporary Syrian scholar of Islamic law. ‘Abd al-Rahmān al-Ṣābūnī has lectured on Islamic law in a number of universities including Damascus university in Syria, Umm Durmān University in Sudan and Emirates University in United Arab Emirates. He contributed in drafting the family laws of both Syria and the United Arab Emirates.

³⁵ ‘Abd al-Rahmān al-Ṣābūnī, *Nizām al-Uṣrah wa Ḥall Mushkilātihā fī Daw al-Islām*, Damascus, Dar al-Fikr, 2001.

³⁶ Tahir Mahmood, *Personal Law in Islamic Countries*, New Delhi, Academy of Law and Religion, 1987.

*A Code of Muslim Personal Law*³⁷ is a model for a typical codification of the Islamic family law presented by Tanzīl al-Raḥmān³⁸ with a highly erudite commentary. The author elucidates the opinions of the Muslim jurists and investigates the modern statutory legislations of the Muslim states on family law issues.

David Pearl³⁹ in his book on the Islamic family law provides the reader with a straightforward guide to the major aspects of Islamic family law.⁴⁰ This highly readable English text on Islamic family law discusses the sources of the Islamic law, and all the main parts of the family law in Islam with a special emphasis placed on the tension between Muslim and English law.

The well-thought-out book of Jamāl J. Nāṣir,⁴¹ *The Islamic Law of Personal Status*⁴² provides an up-dated and expanded account of personal status provisions under the traditional *Shari'ah* law and modern enactments of the Middle Eastern and North African Arab States. It is an authoritative text book as well as a reliable reference book and a useful guide in the Islamic family law.

This study relies on these literature in drawing the information on matters concerning the dissolution of marriage in the Islamic law as well as in the laws of the Muslim world. It is in the light of this information this study attempts to analyze the legal provisions on *ṭalāq*

³⁷ Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, Karachi, Islamic Publishers, 1978.

³⁸ Dr. Tanzīl Raḥmān is a prominent Pakistani legal expert in its Common law tradition as well as the *Shari'ah*. He also served as a High Court judge.

³⁹ David Pearl is President of the Immigration Appeal Tribunal in the United Kingdom.

⁴⁰ David Pearl, *Muslim Family Law*, London, Sweet and Maxwell Limited, 1998.

⁴¹ A scholar in law and a statesman. Jamal J. Nasir was a former Minister of Justice of Jordan and a member of the Federal Supreme Court in Nigeria.

⁴² Jamāl Nāṣir, *The Islamic Law of Personal Status*, London, Graham and Trotman, 1986.

in *Shari'ah* which is the common law of Maldives and the sole source for the Maldivian Family Law 2001.

1.4 Scope and the Methodology of the Study

This dissertation takes the Maldivian Family Law 2001 and examines its existing provisions related to the dissolution of marriage. *Talāq* is the pivot around which all the discussions in this study revolve. The study does not extend its scope to include additional modes of the repudiation of marriage other than *talāq* such as *khul'u* and *faskh* nor does the study take in the consequences of divorce such as *nafaqah*, *haḍānah*, *nasab* and guardianship which are also essential elements related to *talāq*.

Because the publication of case reports is not an established tradition in the Maldivian Legal System and there is an obvious tendency from the Maldivian law enforcing agencies to keep these reports as confidential documents, the study targets the doctrine of *talāq* as it is practiced in the Maldives from time immemorial until today. The methodology used in writing this paper is purely library based.

Structurally, the study comprises of an introduction and four chapters. Chapter One is the introductory part of the study. Chapter Two discusses briefly the Maldivian Legal System, salient features of the Maldivian Family Law and legal provisions laid down in this enactment regarding the dissolution of marriage. Chapter Three elaborates on the main characteristics of *talāq* in *Shari'ah* which is the common law of the Maldives. And lastly, Chapter Four is the concluding chapter where suggestions on curbing the ever

increasing rate of divorce in Maldives are put forward. These suggestions are mainly related to the legal aspect rather than the social aspect of divorce.

Chapter Two

The Maldivian Legal System and the Family Law

To better comprehend the Maldivian Family Law, a brief reference to its legal system and family law itself is provided in this chapter. Structurally, this chapter is divided into three sections. The first section discusses briefly the Maldivian legal system, while the second section highlights the notable features of the Maldivian Family Law, and lastly the third section discusses on the statutory provisions for *ṭalāq* under the Maldivian Family Law.

2.1 Legal History

Maldives is a sovereign independent republic in the Indian Ocean, southwest of Sri Lanka consisting of almost 1200 low-lying coral islands grouped into twenty six atolls.⁴³ Only about 200 islands of these atolls⁴⁴ are inhabited. The Republic of Maldives was never under direct British rule. As the British came to control virtually all of the area of the Indian Ocean by the late nineteenth century, the Maldivian Sultan established an agreement with the Governor of Ceylon in 1887. This agreement allowed the Maldives to enjoy the status of a protected state without actually becoming a protectorate. Thus, the British only controlled external affairs and had no jurisdiction to involve themselves in

⁴³ *Philip's Encyclopedia*, London. George Philip Limited, 2002. p. 423.

⁴⁴ "Atoll" in English language means a ring like coral island and reef that nearly or entirely encloses a lagoon. English language borrowed this word from Dhivehi (the Maldivian language). See: *The American Heritage Dictionary of the English Language*, New York, Houghton Mifflin Company, 2000, p. 114; and *Reader's Digest Universal Dictionary*, London, The Reader's Digest Association Limited, 1990, p. 106. Although the etymological origin of the this English word is in Dhivehi the exact meaning of this word in the latter differs from the one in the former. In Dhivehi "atoll" means a cluster of islands grouped jointly. or ring-shaped coral reef enclosing lagoon. See: Maurice Waite (edit.), *Oxford Colour Dictionary*, Oxford, Oxford University Press. 1998, p. 35. Maldives consists of twenty six such atolls. These twenty six natural atolls are for governmental purposes divided into twenty administrative atolls.

the internal matters of the islands (although it is said that attempts at interference in internal affairs were made at times). The Maldives obtained full independence from their protected status under the United Kingdom on 26th July 1965.⁴⁵

The legal system is based on a mixture of Islamic law and English common law, with the latter being more influential in some areas, such as commercial law. With relation to personal status, the Criminal Code and the punitive system, the basis for the law is the *Shari'ah*, as adapted to the modern Maldivian judicial system.⁴⁶ This legal system derived mainly from traditional Islamic law, is administered by the Chief Justice locally known as *Uththama Fandiyaaru*, and Judges known as *Gaazees*⁴⁷ on each of the 200 islands, who are appointed by the President and function under the Ministry of Justice. There is also an Attorney General. Each atoll has a Chief known as *atholhverin* who is responsible for law and order. Every Atoll Chief, appointed by the president, functions as a district officer in the British South Asian tradition.⁴⁸

The President being the highest judicial authority as well as being the chief executive, he appoints the judges and they are also removable by him.⁴⁹ There are no jury trials in the country. The High Court serves as the court of appeal, but ultimate appeal lies with the President.⁵⁰

⁴⁵ www.law.emory.edu/IFL/legal/maldives.htm

⁴⁶ www.southasianmedia.net/profile/maldives/mv_politicalsystem.cfm

⁴⁷ *Gaazee* which means judge in Dhivehi language, derived from the Arabic word *qādi*.

⁴⁸ *Ibid*.

⁴⁹ In respect of the judiciary, Articles 112(2) and 118(2) of the Constitution provides that the chief justice and the judges of the High Court and the judges of the lower courts shall be appointed by the President of the republic and may be removed from their office at his own discretion pursuant to Articles 117 and 123.

⁵⁰ <http://www.law.emory.edu/IFL/legal/maldives.htm>

2.2 School of *Fiqh*

While the public life of Muslims in most Muslim countries is being regulated by the laws imported from western legal systems, their personal laws are derived from traditional Islamic legal doctrines. They have however, chosen different schools of Islamic jurisprudence which vary on certain legal points. The Muslims of Indian subcontinent and most countries in the Middle East follow the *Ḥanafī* version of *Fiqh*. The North African as well as Sub-Saharan African countries preferred *Mālikī* school of *Fiqh*. *Shāfi'ī* discipline was chosen by Indonesia, Malaysia, Brunei and Maldives. *Ḥanbalī* views were adopted by Saudi Arabia and other Arab Gulf states. Yemen has chosen *Zaydī* teachings. And while Oman follow *Ibādī* tradition, Iran fervently adheres *Shī'ah* (*Ithnā 'Asharī*)⁵¹ practices.⁵² All Maldivians are *Sunni* *Shāfi'īs*, though the *Mālikī* school predominated until the sixteenth century. The only non-Muslim Maldivian residents are expatriates as Maldivian citizenship is only granted to Muslims.

2.3 Constitutional Status of *Shari'ah*

The people of the Maldives embraced Islam in Rabī' al-Ākhir 548 A.H. (in June 1153) by the virtue of the then Sultan's conversion to Islam and the whole population of Maldives embracing Islam afterwards.⁵³ And since then the Maldives has a 100% Muslim population. During the eight and half centuries that have passed since the people of the

⁵¹ *Shī'ah* *Ithnā 'Asharī* School is also known as *Ja'farī* School. after Imām Ja'far al-Ṣādiq.

⁵² Fazlur Rahman, "Contemporary Trends in Muslim Personal Law" in F. R. Faridi, and M. N. Siddiqi, (eds.), *Muslim Personal Law: papers and proceedings of a seminar*, Delhi, Markazi Maktab Islami, 1973, pp. 135-136; See also: Muḥammad Abū Zahrah, *Muhaḍarāt Ī 'Aqd al-Zawāj wa Athāriḥī*, Cairo, Dār al-Fikr al-'Arabī, (n. d.), pp. 3 – 4.

⁵³ <http://www.maldivesstory.com.mv/site%20files/after%20islam/latest/afterislam-frames.htm>