



Divorce In Islam



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DIVORCE IN ISLAM

INTRODUCTION

Islam is the lasting truth that is in complete harmony with human instinct and nature and provides mankind with guidance to enable them to lead their personal and social life in the best possible manner.

In Islam, the family is the basic and most important unit of society and it gives many directives to create, maintain and promote this through the institution of marriage. Yet, in view of human nature and practicality, it also provides for the failure of a marital relationship and has given guidance for dissolving it as well.

The Quran states:

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“When you divorce women and they fulfil the term of their (‘Iddat) either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them or to take undue advantage; if anyone does that He wrongs his own soul. Do not treat Allah’s Signs as a jest but solemnly rehearse Allah’s favours on you and the fact that He sent down to you the Book and Wisdom for your instruction. And fear Allah and know that Allah is well acquainted with all things.” (Al-Baqarah :231)

Hence, it is clear that divorce is a serious matter and must not be treated lightly and as in all other matters, Allah-consciousness must guide our actions. In dealing with one another, we are reminded that our actual accountability will be before Allah if we fail to be just.

THE ROLE OF MARRIAGE

Divorce is a condition which arises when the parties in a marriage are unable to do justice to the marriage commitment. Before we examine the details concerning divorce, therefore it is important to understand the role of marriage in Islam.

Marriage is a sacred right and privilege accorded by Allah Himself in order that natural needs may be fulfilled legally and a strong and loving bond may become the foundation of a strong family life and a stable society.

Allah Ta’ala says: **“And among Allah’s signs is this: that He created for you spouses from among yourselves, so that you might find rest in them; and He has set between you love and compassion. Truly there are signs in this for people who reflect.” (Surah Ar-Rum: 21)**

Marriage becomes a binding agreement when marriage vows are exchanged between

the bride and groom in the presence of at least two witnesses, mehr (bridal-money) is offered by the groom and accepted by the bride and an optional marriage contract is drawn up and signed by both parties before witnesses.

A Muslim marriage is a binding contract between both parties and is intended to last for the duration of their whole lives. The primary responsibilities for each of the parties in this relationship are clearly identified. The husband's role is to provide for the needs of the family. He must protect his wife and provide her with guidance in deen. His excellence as a person requires him to treat his wife with the best conduct. The wife must obey her husband, protect and care for his property as well as the family and support and provide repose for him. Though her first obligation is to the house and family, yet nothing prevents her from pursuing her education or a beneficial activity within the Islamic limits. Marriages

of convenience and temporary marriages are strictly disallowed in Islam.

Islam strongly upholds the equality of both men and women in the sight of Allah (SWA). This is aptly demonstrated in the marriage relationship where the special rights accorded to women are clearly spelled out.

However, the purpose and role of marriage today has been misunderstood to mean a tempestuous flow of emotions that inevitably ebbs leaving the couple stranded not knowing what went wrong and the only solution they can think of is divorce. They find no reason to continue a relationship that has 'lost its spark'. Hence the alarming rise in divorces. Although, marriage is not a dull or drab contract devoid of emotion, yet emotion is not the sole

and most important reason for marriage. The purpose that marriage serves is much higher and it takes more than just romance to build this relationship and make it work for a lifetime.

CRISIS MANAGEMENT

Divorce is strongly discouraged in Islam. It creates ill feeling between the families of the two parties, causes severe damage to the family unit and has an adverse effect on society as a whole. Allah (SWA) frowns upon divorce. He has decreed detailed steps and safeguards to be followed before considering separation through divorce. We can judge the importance of preserving the marriage in Islam by the various measures suggested in the Quran to resolve a marital crises.

Husband and wife are encouraged to discuss their problems with each other privately, to

reevaluate their positions and their partners and try to reconcile their differences.

The Quran states: **"O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness, that you may take away part of the Mahr (dowry, bridal-money given by the husband to his wife at the time of marriage) you have given them, unless they commit open illegal sexual intercourse. And live with them honorably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good."** (An-Nisa: 19)

The Prophet SAW said "A believer must not hate a believing woman; if he dislikes one of her characteristics he will be pleased with another." (Sahih Muslim)

Similarly, the wife is asked to make some sort of compromise too because ideal situations cannot exist in this world: **"If a wife fears cruelty or desertion on her**

husband's part there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if you do good and practice self-restraint Allah is well-acquainted with all that you do." (An-Nisa:128)

Allah mentions how man is always greedy about getting his own rights yet close-fisted about giving others their rights or sacrificing some of his own. This tendency must be overcome to make the marriage last.

Men have been told to use some authority as a last resort if nothing else works to save the home from breaking.

"As to those women on whose part you fear disloyalty and ill conduct admonish them (first) (next) refuse to share their beds (and last) beat them (lightly); but if they return to obedience seek not against them means (of annoyance): for Allah is

Most High Great (above you all)." (Surah An-Nisa :34)

However the Prophet SAW has spoken strongly against hitting women, specially against hitting them so as to inflict an injury or on the face.

If the situation comes to a bottleneck, then seeking support from other family members is encouraged. Where matters approach a crisis point and the couple is unable to agree on important issues, Allah (SWA) has decreed that they invite wise and knowledgeable counselors from among the family members of each side to examine the problems and advise them accordingly.

"If you fear a breach between them both appoint (two) arbiters one from his family and the other from hers; if they wish for peace Allah will cause their reconciliation: for Allah has full knowledge and is acquainted with all things." (An-Nisa:35)

However, if inspite of all these efforts to reconcile or due to some other valid reason, the marriage cannot go on, Islam allows for a practical solution in the form of divorce. Then factors such as monetary problems must not shackle anyone. **“But if they disagree (and must part) Allah will provide abundance for all from His all-reaching bounty: for Allah is He Who cares for all and is Wise.” (An-Nisa: 130)** In the eyes of Allah (SWA) divorce is the “most disliked thing” which He has made permissible. Strong punishments and condemnation in the Afterlife has been mentioned for those men and women who give or seek divorce unnecessarily as well as for people who instigate a woman to seek divorce.

Divorce is the last resort after all else has failed. After pronouncement of the divorce, a “cooling off period” called Iddat is

stipulated for the woman, the length of which depends on the specific individual circumstances. Reconciliation is permitted during the Iddat for up to two occasions. The third divorce from the same person is final and reconciliation is strictly disallowed.

Let us now examine the conditions under which divorce becomes permissible and justifiable in Islam.

CONDITIONS GOVERNING DIVORCE

Despite His great dislike for divorce, Allah (SWA) has permitted it for practical reasons. Rather than force the parties to continue in a relationship which is irreconcilable and in which they will both be perpetually unhappy, divorce becomes unavoidable as the only alternative. The following are the conditions which can give rise to a legitimate divorce in Islam:

1. According to the Quran, if the husband or wife fear that they would be unable to keep the limits ordained by Allah
2. Either party lies to the other, or conceals a critical matter which becomes evident before the marriage is consummated. Examples are physical or mental disabilities and abnormalities;
3. Unbearable incompatibility or abhorrence so that mutual marital rights cannot be fulfilled;
4. The husband behaves irresponsibly towards his wife and family;
5. The husband is impotent and his wife is unable to exercise patience;
6. Either party is unable to contribute to conceiving children, especially when the other party desires to have a family of his/her own.

In any such case, divorce is valid and becomes permissible. While these are the

necessary conditions other factors also need to be considered.

To determine whether divorce is permissible, Imam Hanbal has outlined the following conditions :

1. If according to the Qur'an and Sunnah, there is no further hope of maintaining the relationship; for example either party has reason to doubt the chastity of the other or either has developed a great dislike for the other;
2. The behavior and good manners of the wife continue to be lacking after all efforts by the husband to help her to improve them;
3. Either party is living a straight life in accordance with Islam but the other lacks interest to an extent that is less than that allowed by Islam (e.g. refuses to perform prayer or fast in Ramadan etc.). Conditions

which affect the proper upbringing of children are especially of concern .

Divorce for lesser or any other reasons, are not considered sufficient grounds and so are not acceptable in Islam.

SOME OTHER FACTORS FOR CONSIDERATION

When two people get married, their intentions are generally to love and care for each other and to raise a family together. To ensure compatibility, a period of engagement is recommended before the marriage so that they may get a chance to make up their minds. They are encouraged to see each other atleast once before the wedding so that any apparent disabilities or qualities may become known beforehand, however any interaction must be done under the strict supervision of elders. Intimate relations are forbidden until marriage vows are exchanged.

Breaking off the engagement during this period is perfectly honorable if either party develops uncertain feelings about the other.

After the marriage has been contracted and the practicalities of living together as husband and wife set in, difficulties can arise. The greatest challenges which the newly married couple face are related to adjustments and accommodation to their individual behaviors and personalities. The first years of marriage are the most difficult ones. It is during this period that most problems generally arise. The Qur'an prescribes steps to be followed to deal with these problems. In the marriage, the husband takes the role of teacher, instructing the wife about behavior and mannerisms which please him. He must also take full responsibility for his own behavior towards his wife, the family and the home. His duties and responsibilities towards his wife

and family are much greater than that of the wife.

If during the marriage, the husband becomes displeased with his wife, he must counsel her about the matter. He is supposed to exercise patience and good judgment, giving due accord to her feelings, customs, her personality and her personal difficulties. In other words, they must engender a healthy attitude to communicate with each other on an intimate and personal level. If either party shows signs of failure in living up to his or her responsibilities and expectations, counsel from wise elders must be sought to try and resolve the difficulties in a fair and just manner.

DIVORCE PROCEDURES

It has been the practice of some Muslims to use such terms as “I divorce you, I divorce you, I divorce you!” to effect a divorce. Sometimes in instances of hastiness,

pronouncements such as “I divorce you by the number of grains of sand!” or “I divorce you by the number of stars in the sky!” are common. All Imams agree that the pronouncement of the divorce three times constitute a final divorce. However, some scholars state that these are all considered to be a single instance and equivalent to a single pronouncement of divorce if they are all pronounced on the same occasion. The following factors must be understood about the procedure of pronouncing divorce:

- If indirect words are used but with the intention of and actually implying divorce, then it is considered pronounced, but not if the intention was not of divorce
- A coerced or forced divorce without the intention or will of the person does not constitute a valid divorce
- It is disallowed to pronounce divorce during a woman’s courses or in a period of purity in which the man has copulated with her

- A man can pronounce at the most three divorces on his wife.
- In case the husband has pronounced one or two divorces he is entitled to keep the woman back as wife within the waiting period and if after the expiry of the waiting period the two desire to re-marry, they can re-marry; there is no condition of legalisation (tahlil). But if the husband has pronounced three divorces, he forfeits his right to keep her as his wife within the waiting period, and they cannot re-marry unless the woman remarries another husband and he subsequently divorces her of his own free will.
- The waiting period of the woman, who menstruates and marriage with whom has been consummated, is that she should pass three monthly courses. The waiting period in case of one or two divorces is that the woman is still the legal wife of the husband and he can keep her back as his wife within

the waiting period. But if the husband has pronounced three divorces, this waiting period cannot be taken advantage of for the purpose of reconciliation, but it is only meant to restrain the woman from re-marrying another person before it comes to an end.

- The iddat must be carefully counted and the woman should stay in her husband's house during the iddat of her first 2 divorces as this is meant to facilitate the reconciliation. The husband must not force her to leave. The Quran states: **“O Prophet! When you do divorce women divorce them at their prescribed periods and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses nor shall they (themselves) leave except in case they are guilty of some open lewdness. Those are limits set by Allah: and any who transgresses the limits of Allah does verily wrong his (own) soul:**

thou knowest not if perchance Allah will bring about thereafter some new situation.” (At-Talaq: 1)

- Reconciliation after the pronouncement of divorce, can be achieved during the prescribed period (Iddat), simply by agreeing to the terms of the reconciliation and other family members must not try to hinder this in any way.

- There is no waiting period for the woman, marriage with whom has not been consummated, and who is divorced even before she is touched. She can re-marry, if she likes, immediately after the divorce.

- The waiting period of the woman whose husband dies, is four months and ten days.

All Imams except Abu Hanifa, state that the third instance of divorce is

final and there is no option for reconciliation. Imam Abu Hanifa says reconciliation is allowed only under certain strict conditions. The first is when a woman remarries after divorce and her new husband passes away, then reconciliation with her former husband is permissible. The only other situation occurs when the husband marries another and that marriage ends up in divorce, he is permitted to reconcile his former marriage. It is important to point out that marriage for the sake of convenience is absolutely disapproved in Islam. Thus, a husband who, after divorcing his wife for the third time wishes then to reconcile the marriage, is prevented from marrying another woman if his intention is only to divorce her so he can claim a legitimate reconciliation with his former wife. If he marries another with

all good intentions and she dies, then reconciliation is permitted with the former wife.

CONDITIONS FOR A WIFE SEEKING DIVORCE

While it is permissible for the wife to seek a divorce, in general, it is the husband who pronounces divorce. It seems unfair that the husband is granted an almost unequivocal privilege to initiate a divorce.

As explained before, both men and women are equal in the sight of Allah(SWA). They are ranked only according to their piety. In the home, they are ranked according to responsibility. Because of his physical superiority, the husband carries a greater responsibility for earning a livelihood and protecting the family. Out of his earnings, he must provide for the well-being of the family. The

wife, even though she may have the means, is not obligated to undertake this responsibility. If she does so, it is purely voluntary. With this responsibility then, comes the authority of the husband to make the pronouncement of divorce.

A divorce that is sought by the woman is known as 'khula' and in this case, she may have to give up her mehr and gifts as a price for her freedom. The Quran states: **"It is not lawful for you (men) to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allah. If you (judges) do indeed fear that they would be unable to keep the limits ordained by Allah there is no blame on either of them if she give something for her freedom."** (Al-Baqarah: 229)

If a marriage contract was drawn up, agreed between the two parties, and signed by the husband before the marriage, which gave authority to the wife to seek divorce, then the terms and conditions of the contract **must** be respected. If the man has given the wife the right to terminate the marriage contract then the wife's decision will be final. While this concept seems to be lopsided, it is interesting to note that in countries where women and men are given equal rights in the matter of divorce, the incidence of divorce is dramatically higher than that among Muslims.

RIGHTS OF WOMEN IN DIVORCE

It is Islam which, in the sixth century, raised women to a level of dignity and granted them rights and privileges of their own. The right of a woman to own property, to get a share in inheritance, to receive mehr and

many other exclusive rights are enshrined in the Qur'an.

The attitude of compassion and concern in the matter of divorce has been stressed upon, specifically where women are concerned.

During her menstrual period it is recommended that the husband be patient and refrain from pronouncing divorce, waiting for a less stressful time, if it is his desire to do so. Although all scholars agree that it is permissible, they point out that it is not in accordance with the Sunnah of the Holy prophet Muhammad (PBUH). It is recommended that this be done after her period, when she is better prepared to deal with the matter and in a purer state.

Similarly, the Iddah is meant as a 'time-off' for the woman so that she can recuperate and reorganize her thoughts and be able to deal with the future in a better way.

Narrated Abdullah bin Umar RA that he had divorced his wife while she was menstruating during the lifetime of Allah's

Messenger SAW. Umar bin Al-Khattab RA asked Allah's Messenger SAW about that. Allah's Messenger SAW said, "Order him (your son) to take her back and keep her till she is clean from her menses and then to wait till she gets her next period and becomes clean again, whereupon if he wishes to keep her, he can do so, and if he wishes to divorce her, he can divorce her before having sexual intercourse with her, and that is the "Iddah which Allah has fixed for the women meant to be divorced." (Sahih Bukhari)

The husband is also reminded repeatedly not to take advantage of the woman, not to torture or treat her badly, either to let her go in a befitting manner or to keep her in wedlock in kindness.

Regarding the mehr which the man is supposed to give to his wife at the time of marriage, a late dower is also recognized, which if not previously paid, must now be paid in full.

- If divorce is given before consummation and determination of mehr, it is not necessary to pay any mehr but the husband should give the wife some gift according to his means, so they may part on good terms as they have lived together in the past on good terms.
 - If the divorce is given before consummation but after determination of the amount of mehr, then half the amount must be paid.
 - After the divorce, the mehr or other gifts like jewelry, clothes, etc given to the wife must not be taken back
- Continuing in the tradition of the husband having the greater responsibility in the marriage, he is required to provide for her after the divorce in a manner appropriate to her status and living standard. He must provide for her personal daily living expenses out of his own estate. Specifically he must provide for her as per the following conditions :

- during the Iddat, generally a period of three months;
- a period extended to four months and eighteen days if he dies during the waiting period (Iddat);
- if she is pregnant, at least until the baby is born.

- If she is suckling the baby or having it suckled, recompense must be paid till the suckling ends

The Quran itself grants these rights to the woman: **“Let the women live (in 'iddah) in the same style as you live according to your means: annoy them not so as to restrict them. And if they carry (life in their wombs) then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring) give them their recompense: and take mutual counsel together according to what is just and reasonable. And if you find yourselves in difficulties let another**

woman suckle (the child) on the (father's) behalf.” (At-Talaq: 6)

In addition, any other conditions stipulated in the marriage contract must be respected. If, for instance, the marriage contract states that her expenses are to be maintained **throughout her life, then these become a charge on the estate of the husband, according to Islamic law.**

OTHER MATTERS AFFECTING DIVORCE

People sometimes joke about the matter of divorce. In some extreme situations a husband may jokingly make a statement such as “I divorce you” to his wife. There is no dispute that it is a bona fide pronouncement of divorce and is to be treated seriously. No one is permitted to joke about the matter of divorce.

There are instances when a man invokes God in his pronouncement of divorce. For example he may say "I will divorce you, God willing!" Both Imams Hanifa and Shafii state that it is not a valid statement as the husband has invoked a condition ("God willing") over which he valid pronouncement of divorce and is to be treated as such.

It is possible that a divorce can be sought before the marriage was consummated. This can happen in situations where, for example, some abnormality which one of the parties failed to disclose becomes evident at the time. All Imams agree that the divorce in such a situation, is equivalent to a final divorce if the marriage was not consummated, that is he did not touch her intimately or did not enter her sexually. Upon declaration of divorce in such instances the marriage becomes null and void. This decree is allowed especially as it

serves to protect the honor and dignity of the woman so she is not later despised by the community because of it. She is thus, free to enter into marriage with another.

Another situation arises when an ailing husband pronounces divorce on his wife, but dies before the end of the prescribed period ('Iddat). The question arises "Is the wife entitled to an inheritance from the husband's property?" All Imams agree that the wife is entitled to her rightful inheritance as stipulated in the Qur'an. Imam Abu Hanifa, however, adds the condition that during the period of the sickness the request for divorce was not made by the wife. If she did request a divorce, then, according to the latter, she is not entitled to a share in the inheritance. The period during which she is entitled to inherit from the husband's estate differs among the Imams. According to Imam Abu Hanifa, she is entitled to an inheritance if the husband dies during the

Iddat. Imam Hanbal states that the wife can only claim inheritance from the husband's estate if she did not marry another before his death. Imam Malik disagrees with Imam Hanbal and states that she can claim the inheritance even though she remarries. Imam Shafii states that she can inherit from the husband's estate during or after the Iddah, regardless of whether she remarries.

CONCLUSION

The position of Islam on divorce is quite clear. From the Islamic perspective, men and women are equal in the sight of Allah(SWA). In a marriage husband and wife have rights over each other. Beyond this, Islam accords different roles and responsibilities to each party. Notwithstanding the clear dictates of the Qur'an, the position of Islam on this subject is not properly understood or practiced by Muslims in general. There is a strong tendency for peoples of different backgrounds and cultures to confuse local

practices with the dictates of Islam in dealing with this most serious matter. Incorrect practices have led to abuse of privileges and subsequent misunderstandings which have served only to compound the difficulties faced by many Muslims when dealing fairly and justly with this difficult matter.

Even though there is disagreement among the four schools of Islamic jurisprudence, Muslims should follow the dictates of one school of thought consistently. Switching from one school of thought to another for the sake of convenience, is strongly discouraged.

The matter of divorce is a complicated one in any society, regardless of religious beliefs and traditions. This paper has addressed some of the major issues concerning divorce, from an Islamic perspective. A full coverage of the subject can only be attempted in volumes of Islamic

jurisprudence. It is wise, for those who fear Allah and believe in the Hereafter, to seek counsel from those who are more fully conversant with what's acceptable and what's prohibited in this important matter.

May Allah guide us all!

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