

# **DIVORCE IN ISLAM**

## **INTRODUCTION**

TALAQ is the word, used in Islamic Law for divorce. It is an Arabic word and means: to set free.

It is only in unavoidable circumstances that TALAQ is permitted in Islam as a lawful method to bring marriage contract to an end.

The Shariah takes a very reasonable and realistic view of such a sad situation where marriage becomes impossible to continue and all means fails to bring the couple together, by permitting divorce as a last resort.

It is true that the sanctity of marriage is the essential basis of family life, but it also true that the two incompatible individuals cannot be kept together in a life of hell, for life.

It is therefore necessary to give due allowance for human weaknesses and allow such people to part for good.

## **DIVORCE IN ISLAM**

### **ISLAM DISCOURAGES DIVORCE**

The Prophet (peace and blessings of Allah be upon him and his family) is reported to have said:

1. Of all the things permitted in Law, divorce is the most hateful things in the Sight of Allah. (ABU DAUD)
2. Marry and do not divorce undoubtedly the Throne of The Beneficent Lord shakes due to divorce. (Tafsir al-Qurtubi, Vol. 1)
3. A woman seeking divorce unnecessarily will be deprived of the scent of paradise. (Tirmidhi, Abu Daud)

# **DIVORCE IN ISLAM**

## **TYPES OF DIVORCE**

### **1. TALAQ ar-Raji (revocable divorce)**

In this type of divorce the husband pronounces TALAQ once or at the most twice. After the pronouncement of divorce the wife's period of IDDAH starts. Before the period of IDDAH expires, the husband may, if he desires, take his wife back. This is called RAJA or RUJU (return). But the right of RAJA will be lost as soon as the IDDAH is complete and then the TALAQ will cease to be revocable. However the husband and wife can still reconcile with a new NIKAH. After such a fresh NIKAH in future only one or two divorces (not three) will be counted as an absolute/ irrevocable divorce.

Note: - If there is no consummation, there is no IDDAH. Therefore TALAQ is always irrevocable where marriage has not been consummated.

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### **TYPES OF DIVORCE**

#### **2. TALAQ al-BA'IN (irrevocable divorce)**

Talaq al-Ba'in is divorce with three pronouncements of divorce by the husband in successive sittings or at the same sitting or divorce before the consummation of marriage.

If a husband divorces his wife three times, he cannot remarry her until after she has married another man and that husband has divorced her. This is called HALALAH.

A pre-planned HALALAH is a grave sin. Halalah applies only in a typical situation when it happens by chance.

The Prophet (peace be upon him) said;

The curse of Allah be on the man who commits Halalah and the man for whom the Halalah is committed

(IBN MAJAH)

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### **TYPES OF DIVORCE**

#### **3.KULA (Divorce at the instigation of wife)**

A wife can demand a divorce from her husband. In return she might have to pay back the dower (Mahr), money, jewellery, e.t.c. that she received from her husband at the time of marriage.

The principles of KULA have been derived from the Holy Quran. For details refer to Surah an- Nisa, verses 20,128, and 130.

In one of the Hadith it is reported that:

A woman came to the Prophet (peace be upon him) and said " I hate my husband and want separation from him". The Prophet (peace be upon him) replied, " Would you return the orchard that he gave you as a dower?" She replied, " Yes even more than that". The Prophet (peace be upon him) said, "You should not return more than that".

(Al-BAIHAQI)

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## **TYPES OF DIVORCE**

### **4. FASKH (Annulment of Marriage)**

A Muslim wife can also obtain a divorce through dissolution of marriage by applying for it in a Muslim Court. She will be required to prove that her husband has behaved unreasonably and has not fulfilled his obligations to her as a husband. If the QADHI is satisfied that the woman is prejudiced by her marriage, he will annul the marriage.

In this type of divorce the husband and wife with mutual consent, can reunite within the period of IDDAH. After the IDDAH has expired, they can still reconcile with a new NIKAH only.



## **ISLAMIC DIVORCE**

### **RECOMMENDED METHOD OF DIVORCE**

1. The TALAQ is pronounced when the wife is in the state of purity (TUHUR). i.e. She is not menstruating.
2. The husband in the first place must pronounce only one TALAQ.
3. After this first divorce the husband shall not have sexual intercourse with his wife.
4. A second pronouncement is made in the second TUHUR followed by sexual abstinence.
5. If the husband so desires he can reunite with his wife before pronouncing the third TALAQ.
6. Otherwise the third pronouncement is made in the third TUHUR. With this the divorce become irrevocable.
7. If any part of MAHR is outstanding, the husband should pay it at the time of divorce.
8. The husband is expected to bear the maintenance expenses of his wife for the period of IDDAH.

## **ISLAMIC DIVORCE**

### **CERTIFICATE OF ISLAMIC DIVORCE**

I (name and address of the husband) pronounce Islamic divorce (RAJ'I) to my wife, (name and address of the wife) to whom I was married (date of marriage) ACCORDING TO Shariah.

I am making this declaration of my own free will and this divorce becomes absolute after the IDDAH (waiting period) expires.

NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

PLACE \_\_\_\_\_

Witnesses:

1. NAME \_\_\_\_\_

2. NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_

SIGNATURE \_\_\_\_\_

SIGNATURE \_\_\_\_\_



## **ISLAMIC DIVORCE**

### **FORM FOR THE DELAGATION OF POWER OF DIVORCE**

It is hereby confirmed that we (name and address of husband and wife) married according to Islamic law on (date of marriage) have mutually agreed that (name of wife) will be entitled to divorce herself according to Islamic law as and when appropriate and required.

SIGNATURE OF HUSBAND \_\_\_\_\_

SIGNATURE OF WIFE \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

Witnesses:

1.  
NAME \_\_\_\_\_

2.  
NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_

SIGNATURE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

## **DIVORCE IN ISLAM**

### **IDDAH: PERIOD OF WAITING**

The word IDDAH, in the terminology of Shariah, means a period of waiting for a woman before remarriage after the death of her husband or divorce from him. Muslim jurists have unanimously agreed on its essentiality (WUJUB), since the injunction of the Quran is quite explicit on the subject:

The divorced women shall wait concerning themselves for three monthly periods.  
Quran: Surah 2, Verse 228

The words "The divorced women" in this verse, implies that the period of IDDAH will be counted after the divorce and not after the separation.

The provision of IDDAH carries two main purposes:

1. To give spouses time for rethinking and reconsideration the interests of the family and children (if any).
2. To make it known whether the woman is having a child of the former husband, so that there may be no confusion about the paternity of such a child if the woman remarries.

## **DIVORCE IN ISLAM**

### **CODE OF CONDUCT FOR A WOMAN IN IDDAH**

- 1.The woman in IDDAH is required to stay at her matrimonial home during the whole period of IDDAH.
- 2.She can go out of her house only when it becomes unavoidable.
- 3.She must not remarry during the period of IDDAH.
- 4.Widows, observing the IDDAH, should not wear ornaments, coloured or showy dresses, nor adorn themselves with any kind of make-up during this period.
- 5.There is no IDDAH for a marriage that was not consummated.

### **TYPES OF IDDAH**

- 1.IDDAH of a woman who still menstruates: 3 menstruation's
- 2.IDDAH of a woman who has passed the age of menstruation: 3 months
- 3.IDDAH for a woman whose husband has died: 4 months and 10 days
- 4.IDDAH of a woman who is pregnant: until she delivers the child

## **ISLAMIC DIVORCE**

### **3 DIVORCES IN ONE SITTING ARE 3 NOT 1**

With the consensus of all the SAHABAH, the four Imams of Sunni Jurisprudence (FIQH) and other scholars, Imams and Muftis during the last 1400 hundreds, 3 divorces pronounced in one sitting are counted as three and constitute an irrevocable divorce.

First of all Ibn Taimiyah invented and introduced this grossly incorrect concept of counting 3 TALAQ as 1 while pronounced in one sitting. All the Ulama and Muftis of that time refuted Ibn Taimiyah's view and this opinion was never accepted by the mainstream Muslims. Only Ghair Muqalleden (who does not follow any of the four Imams) follow Ibn Taimiyah in this respect.

Ghair Muqalleden call themselves as SALAFI or Ahl-ul Hadith.