



# Divorce in Islam

# Perquisites before Divorce

- ▶ **Sahih International:** And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]. (Qur'an 4:35)
- ▶ This verse ordains that when the marriage is endangered of a possible divorce, the couple should appoint arbiters to sort out the problem and bring about reconciliation between them.

# Disclaimer

- ▶ The Prophet Muhammad said: “Divorce is the most hateful of all the lawful things in the sight of Allah.”

Narrated Jabir [raa] that Allaah’s Messenger [saw] said: Iblis places his throne upon water; he then sends detachments [for creating dissension]; the nearer to him in rank are those who are most notorious in creating dissension. One of them comes and says: I did so and so. And he says: You have done nothing. Then one amongst them comes and says: I did not spare so and so until I sowed the seed of discord between a husband and a wife. The Satan goes near him and says: ‘You have done well. A’ mash said: He then embraces him. [Saheeh Muslim. Number:2813

# Primary reason for Divorce

- ▶ Allah has describe in the Qur'an what the purpose of Marriage is in the Qur'an, Allah says "And of his signs is that He created for you from yourselves mates that you may find tranquility in them, and He placed between you love, affection and mercy." (Qur'an 30:21).
- ▶ When the main ingredients of marriage are not there, as when there is no mutual love, affection and mercy between the spouses or when their living together becomes unbearable and it is to difficult to settle their disputes, then it required that divorce take place.



# Comprehensive Understanding of Divorce in Islam

# Talaq (Divorce)

Talaq literally means to set an animal free. It is used in the Shari'ah to denote the legal method whereby a marriage is brought to an end. Commonly translated as "repudiation" or simply "divorce"

## Cont; Talaq

- ▶ In classical Islamic law it refers to the husband's right to dissolve the marriage by simply announcing to his wife that he divorce her.



# Talaq al Bid'ah vs. Talaq al Sunnah

## Talaq al Bid'ah

- ▶ **The Talaq al Bid'ah is any divorce inflicted on the wife while menstruating or during a period of cleanliness (no menstruation) where the husband has had sexual intercourse with her or the husband pronouncing three divorces at once.**

# Talaq al Sunnah

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The divorce done according to the Sunnah is wherein the husband divorces his wife, with whom he had consummated the marriage, one time during a time of her purity concerning which the two did not have sexual relations.

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Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah , then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah , so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.

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(Qur'an 2:229)

# Cont; Talaq al Sunnah

O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter. **(Qur'an 65:1)**

Narrated Anas bin Sirin: Ibn 'Umar said: "I divorced my wife while she was menstruating." 'Umar mentioned that to the Prophet. The Prophet (peace be upon him) said, (to my father), "Let your son take her back." I asked (Ibn 'Umar), "Is such a divorce counted (i.e. as one legal divorce)?" Ibn 'Umar said, "Of course." Narrated Yunus bin Jubair: Ibn 'Umar said, "The Prophet (peace be upon him) said to 'Umar, 'Order him (Ibn 'Umar) to take her back.' " I asked, "Is such a divorce counted (as one legal divorce)?" Ibn 'Umar said, "What do you think if someone becomes helpless and foolish?"

**Sahih Al-Bukhari – Book 63 Hadith 179**

# Difference between Talaq al Sunnah and Talaq al Bid'ah

Sunnah divorce is when the man divorces his wife once in her purity in which he has not had intercourse with her and to leave her to complete her waiting period which is prescribed generally to be three menstrual periods (three months). Sunnah divorce can in other words can be said to be a divorce that is done in accordance with the divorce laws of the Qur'an and the Sunnah. Bid'ah divorce on the other hand is when a man divorces his wife three times in one divorce declaration, or to divorce her in her menses or post natal bleeding or in purity in which he has intercourse with her. This type of divorce goes against the teachings of the Qur'an and the Sunnah.

# Things that cause Talaq to be null and void

1. Coercion or undue duress.

2. intoxicated or temporarily impaired.

3. Extreme anger that causes drastic behavioral changes in one character.

# Khul or Khula (Woman's right to divorce)

## Daleel (Proof)

Khula is a procedure through which a woman can divorce her husband in Islam, by returning the dowry (mahr) that she received from her husband.

But if you fear that they will not keep [within] the limits of Allah , then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah , so do not transgress them. (Qur'an 2:229)

"And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls is stinginess. But if you do good and fear Allah - then indeed Allah is ever Acquainted, with what you do." (Qur'an 4:128)

Narrated Ibn 'Abbas: The wife of Thabit bin Qais came to the Prophet and said, "O Allah's Apostle! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner if I remain with him." On that Allah's Apostle said to her, "Will you give back the garden which your husband has given you as Mahr?" She said, "Yes." Then the Prophet ordered to Thabit, "O Thabit! Accept your garden, and divorce her once.

# Reasons for Khul

cruel treatment

disappearance of husband

husband's failure to perform marital obligations

husband's failure to provide maintenance

husband's imprisonment

Impotency

Insanity of husband

# Classification of Khul

1. Halal  
(Permissible)



2. Makruh  
(Dislike)



3. Haram  
(Forbidden):

# Halal (Permissible) Khul

- ▶ Khul is halal when the wife feels that staying with her spouse results in disputes and violations of her spouse's rights or when she fears that she will not keep within the limits of Allah. Ex. Committing zina or what leads to zina.
- ▶ Daleel (proof):
- ▶ But if you fear that they will not keep [within] the limits of Allah , then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah , so do not transgress them. (Qur'an 2:229)
- ▶ Narrated Ibn 'Abbas: The wife of Thabit bin Qais came to the Prophet and said, "O Allah's Apostle! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner if I remain with him." On that Allah's Apostle said to her, "Will you give back the garden which your husband has given you as Mahr?" She said, "Yes." Then the Prophet ordered to Thabit, "O Thabit! Accept your garden, and divorce her once.

# Makruh (Dislike) Khul

The Khul is makruh when there is no compelling reason or any extreme circumstances. The Khula should not be the resort of flimsy circumstances or reasons.

Daleel (proof):

The Messenger of Allah said: “If any women ask for divorce from her husband without any specific reason, the fragrance of paradise will be unlawful to her.”

Abu Hurariah reports that the Prophet said: The women asking for separation and Khul (without reason) are Hypocrites.

# Haram (Forbidden) Khul

The forbidden type is one that arose out of where a husband deliberately oppressed his wife with a view of accomplishing dissolution/divorce of the marriage through khul and still be compensated. In this case, the husband is considered unjust to his wife and it is prohibited for him to take such compensation.

Daleel (proof)

“...And do not make difficulties for them in order to take [back] part of what you gave them...” (Qur'an 4:19)

# Iddah (Waiting Period) for Talaq

- ▶ In Islam, **iddah** or **iddat** (Arabic: العدة ; *period of waiting*) is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man. Its purpose is to ensure that the male parent of any offspring produced after the termination of a nikah (marriage) would be known. The length of *iddah* varies according to a number of circumstances.
- ▶ The *iddah* of a woman divorced by her husband is three monthly periods, unless she is pregnant in which case the 'iddah lasts until she gives birth, or unless the marriage was not consummated in which case there is no 'iddah, or unless she does not menstruate, in which case "the scholars say that she should observe an 'iddah of a full year, nine months for pregnancy and three months for 'iddah.

# Cont; Iddah (Waiting Period) for Talaq

- ▶ Daleel (proof)
- ▶ Divorced women should keep themselves in waiting (before remarrying) three courses; and it is not lawful for them to conceal what God has created in their wombs, if they believe in God and last day; and their husbands have more right of taking them back during this, if they want reconciliation; they have (rights) similar to against them and men are a degree above them; and God is mighty and wise. (Qur'an2:228)
- ▶ Such of your women as have passed the age of monthly courses, for them the Iddah, if ye have any doubts, is three months, and for those who have no courses (it is the same): for those who carry (life within their wombs), their period is until they deliver their burdens: and for those who fear Allah, He will make their path easy. (Qur'an 65:4)
- ▶ O ye who believe! When ye marry believing women then divorce them before touching them then there is no iddah, you have reckon with. (33:49)

# Key Points for Iddah for Talaq

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The waiting period of a woman after menopause (no longer having her menstrual cycle) is three months;

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The waiting period for a pregnant woman is until she has given birth.

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No waiting period for the couple who have not consummated.

# Idda (Waiting period) for Khul

There is Ikhtilaf (disagreement) on the Idda of the Khul

First opinion: The Iddah of the Khul is three months just like the Idda of the Talaq.

Second opinion: The Iddah of the Khul is one month. This is derived from a hadith that is found in Tirmidhi , Abu Dawud and al-Nasaa'i. It was narrated from Ibn Abbaas that the wife of Thabit Ibn Qays ended her marriage to her husband by means of Khula' at the time of the Prophet (saw). The Prophet (saw) commanded her to observe an iddah of one menstrual cycle. Caliph Uthman decided a case in accordance with this hadith. **Strongest opinion**

# Hikmah (Wisdom) of Iddah

- ▶ The Iddah allows a transitional period for the husband and wife to rethink all the consequences of divorce, and it also enables them to know whether the woman is pregnant. Lastly it gives them a last opportunity to reconcile their marriage.

# Concerns of divorce

- ▶ Dealing with Islamic Divorce in America
- ▶ Issues with Khula with immigrant Muslims
- ▶ Issues with Talaq with immigrant Muslims

# Strategies to considered

- ▶ Don't marry Muslim couple who don't have a civil marriage license.
- ▶ Those who don't have a civil marriage license and are seeking divorce, must have valid reason for divorce.
- ▶ Create a contract that indicates that before the marriage is dissolve, both parties must go through the process of Iddat for both Talaq and Khul.

# Action plan

- ▶ To create or assimilate a council of Imams to develop procedures, documentations that deal with fiqh issues, such as divorce.

# References for Islamic Divorce

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