



# Shariah rules about divorce & separation

**Written by**  
Mufti Hafidh Syed Ziauddin  
Naqshbandi Qadri,  
Professor, Islamic Law, Jamia Nizamia.

**Published by**  
Abul Hasanaat Islamic  
Research Centre  
Misri Gunj, Hyderabad. 500 053

Published by  
**Abul Hasanaat Islamic Research Centre**  
Misri Gunj,  
Hyderabad. 500 053  
Ph No: 040-24469996

Detailed rules about divorce, annulment of  
marriage, and some special cases.

The husband and wife should live with love and affection. If both of them fulfil their mutual duties properly i. e. the husband takes care of the needs of the wife and the wife, obeys the husband according to the tenets of Islam, then an ambience of love can be easily maintained.

### ***3 Ways of Reconciliation***

If, for some reason the relations between the husband and wife become strained and the wife continues her disobedience then the husband is advised to follow these methods 1. First, the husband should advise the wife 2. If it does not work, then the husband should separate the wife's bed i. e. the husband should stop having sexual intercourse with the wife. 3. The husband should admonish them and beat them lightly.

Allah Ta'ala says in the Holy Quran, Surah an Nisa - 34, "And for those women about whom you have the fear of disloyalty, admonish them, sleep separately from them and may give them a light beating. "

Before pronouncing divorce, the husband should use all these methods for reconciliation and should carefully consider the after-effects of the divorce. But according the Islamic Law, it is not Obligatory (Fardh) for the husband to use these methods. The presence of the wife is not obligatory be present, nor is it necessary to inform the wife either. If the husband wants to divorce the wife, he is strongly advised to pronounce a Talaq E Raj'ee . i. e.

Revocable Divorce instead of a Talaq e Bain i. e. (Irrevocable Divorce) or a Talaq e Mughallaza (Final Divorce i. e. saying Talaq 3 times at once). This has been stressed so that during the Iddah (the waiting period), the husband can reconsider his decision. If the wife is at fault, then she will have some time to correct herself. If someone ignores all this advice, even then the Divorce will be effective.

### ***Detailed rules of divorce***

It is given in Surah Baqarah:

Divorce is (revocable) two times (only). Then either retain (the wife) with honour (in marital relationship) or release her with kindness. And it is not lawful for you to take back anything of that which you have given them, unless both fear that (now by maintaining marital ties) they may not be able to observe the limits set by Allah. So if you fear that both will be unable to keep within Allah's limits, then (in that case) there shall be no sin upon either of them if the wife (herself) may give up something as recompense to free herself (from this distressing bond). These are the limits (set) by Allah. So, do not exceed them. And those who exceed the limits prescribed by Allah, it is they who are the wrongdoers.

Then if he divorces (for the third time), she will not be lawful for him until she marries some husband other than him. But if he (the latter) also divorces her, in such case there shall be no sin on both of them (the former husband and the wife) if they

return (once more to the wedlock), provided both of them (now) think that they would be able to observe the limits set by Allah. These are the limits (prescribed) by Allah which He explains to those who have knowledge.

And when you divorce the women and they reach (the completion of) their waiting period, then either retain them (in marital bond) in a graceful manner or release them nicely. But do not retain them to hurt so that you subject (them) to excesses. And he who does so wrongs his own soul. And do not make fun of Allah's Commands. And call to mind Allah's favour that has been (bestowed) upon you and the Book that He has sent down to you and (the pearls of) wisdom (on which He has enlightened you). He advises you (by means of this code of conduct). And fear Allah and bear in mind that Allah is indeed All-Knowing.

And when you divorce the women and they reach (the completion of) their waiting period, then do not prevent them from remarrying (their former or latter) husbands when they have mutually agreed according to the Islamic Law. This is a direction for him among you who believes in Allah and the Last Day. It is most pure, clean and wholesome for you. And Allah knows and you do not know (so many things). Surah Baqarah (2:229-232)

The summary of these verses is that in verse 229 of the Holy Quran, Allah Ta'ala says about Talaq Raj'ee (The revocable divorce) that after the first and second Talaq, the husband may reconcile with the

wife within the Iddah and should fulfil her rights as given. The husband may also let the time period pass and separate from her amiably. After the Iddah, there can be no reconciliation. However, if both of them agree on this, they can marry again.

In the same verse the rules of Khula (annulment of marriage) have been given. The husband cannot take back the Mehr (alimony) and other jewelry given to the wife at the time of divorce. However, if there is a situation that the husband does not want to give divorce and the differences between the couple are such that they cannot live together anymore and the wife is ready to give some money to get her freedom, then in this case, the husband may accept money to divorce her. This is called as Khula annulment of marriage).

In verse number 230, Allah Ta'ala says about Talaq Mughallaza (the final divorce) that after this the husband and wife will be separated. After this, there can be no reconciliation. If after this, they want to marry, then there is only one solution. After the Iddah, the lady should marry somebody else, the marriage should be consummated. Then the husband should divorce the wife out of his own free wish. Then again, the lady should spend the Iddah and only then can she marry the previous husband.

In verse 231, the rules of Talaq Raj'ee are further explained. The husband can reconcile with the wife only if his intention (Niyyah) is clear, he intends to fulfil all the rights of the wife. If on the other hand,

his intention is to trouble or oppress the lady, then reconciliation becomes impermissible.

In verse 232, if the husband does not reconcile with the wife after the first or second divorce and after this the husband and wife want to marry again, then you should not stop them from doing so, neither should you force them otherwise nor should you be angry at this.

### ***Pronouncing 3 Talaq In A State Of Anger***

About pronouncing divorce in a state of anger, Radd Ul Muhtar Vol. 2 Pg. No. 463 has described 3 states of anger. Out of those 3 states, in 2 states, divorce (Talaq) will be considered as effective and in 1 state it is not.

1. A state of (mild) anger in which the person's has not lost his reason. i. e. he knows and understands whatever he is saying and also understands the effect of his words and actions- A divorce pronounced in this state is effective.

2. Very high, almost maniacal, anger in which the person has lost his reason, i. e. he does not know or understand whatever he is saying or doing nor does he understand the effects of his words or actions- A divorce pronounced in this state is not effective. His other dealings like buying, selling etc are also not considered as proper.

3. A state of anger which is high but the person has not yet lost his reason, . i. e. the person still understands his words and actions and also understands the effects of these words and actions- According to the opinion of the Hanafi school of Jurisprudence, divorce pronounced in this state is effective.

The ruling of the second state of anger is applicable when 2 just witnesses testify about the anger as being maniacal or the person pronouncing the divorce states that on oath. All this when the person's maniacal anger is well known among the people.

As given in Radd Ul Muhtaar Vol. 2, Pg. No. 463

If any person ignores all this advice given by the Shariah and pronounces a final divorce without carefully considering the consequences of his move, even then according to the Holy Quran and the Hadith divorce will be affected and the person pronouncing the divorce will be considered a sinner before Allah Ta'ala. If the anger of the husband is not too intense (as described), the absence of the wife or the wife's lack of knowledge about the divorce, do not make the divorce ineffective. As and when Divorce is pronounced, it becomes effective. If one divorce has been pronounced, one becomes effective, if 3 have been pronounced, 3 will become effective. In the absence of the wife, it is necessary that the divorce should be directed towards the wife or she should be clearly named.



### ***The Shariah Ruling Regarding Pronouncing 3 Divorces Simultaneously***

Pronouncing 3 divorces simultaneously is certainly against the teachings of the Holy Quran and the Hadith and is a sin. When a divorce is pronounced without considering the move carefully, the partners will face many more difficulties. Therefore, the method of pronouncing 3 divorces simultaneously should not be used and awareness about this should be created among Muslim men, so that this method which is against the Shariah should not be resorted to and this sinful course of action is blocked. In spite of all this, if someone pronounces a triple talaq, it is effective.

Sunan Abu Dawood, Book of Divorce Pg. No. 306 has a Tradition:

It has been narrated on the authority of Hadhrat Sahl bin Sa'ad (May Allah be well pleased with him), that he when he was asked about the incident of Hadhrat Uwaimir Ajlani (May Allah be well pleased with him) he replied that he pronounced Triple Talaq to his wife before the Holy Prophet Sallallahu alaihi wa sallam and the Holy Prophet Sallallahu alaihi wa sallam declared it as effective.

This Hadith shows that Triple Talaq cannot be declared as null and void. The consensus of the Companions, the Taba'een and the Four Great Imams and the Imams of the Ahle Sunnah is that Triple Talaq is affected.

When this matter has been established by the Companions, the Taba'een, the Jurists (Fuqaha) and the Hadith-experts (Muhaddithin), any other opinion against this cannot be accepted. A point worth considering is that if a person breaks any law of state in a state of anger, then that person will be held accountable for it and will be punished and when the same person breaks an Islamic law, then excuses are given and reasons are put forth. Muslims are bound by the laws given in the Holy Quran and the H, so the opinion that a Triple Talaq pronounced in a state of anger or keeping the wife unaware of it is not tenable is not acceptable.

### ***Can woman give divorce?***

In the Shariah, the right to divorce has been given to the man and not to the woman because in the married life, the husband is responsible for all the economic and other such affairs and the responsibility of the wife to obey her husband. As long they are bound by marriage, it is necessary for the husband to provide maintenance to the wife and take care of her housing and other affairs. In all these matters, the husband has to perform the duties and is responsible for them. The wife can stay in the house and benefit from what the husband provides. She is free of responsibilities. For this reason, it is justice to give the husband the right to end the relationship and refuse the responsibilities. Allah Ta'ala says about the husband:

Translation: ..... in his hands is the knot of the marriage.

Apart from this, the woman is easily overwhelmed by anger and other emotions. In her menses, the woman suffers from restlessness and anxiety. The decision-taking ability of a woman is less than that of a man. The wisdom of a woman is naturally less than that of a woman. For this reason, she is called as "Naqis Ul Aql" i. e. having less brain in the Hadith. Many cases of divorce happen only because a woman demands them.

A woman remains busy in taking care of the house and in bringing up the children. For this reason, she cannot pay attention to other matters. It must not be that because of tiredness due to work, and some excess committed by the husband, the woman ends up using her right of divorce and repents and rues later on. For all these reasons, the woman is not given the right to divorce.

In light of the above details, it becomes obvious that giving the right of divorce to the husband is correct. However if the wife is facing injustice and she wants separation, she may take course to Khula (annulment of marriage).

### ***Saying 'Talaq' without the intention of divorce***

The ruling in the light of the Hadith is that if any person says the word, "Talaq," then the intention is not considered, as the word "Talaq" is used only for separation between the couple. It has got no other usage and sense. Thus, if the husband used the word "Talaq," without any intention, even then divorce occurs. As given in Sunan Abu Dawood, Vol. 1, Pg. No. 298, Hadith No: 1875:

Translation of Hadith: It has been narrated on the authority of Hadhrat Abu Hurairah (May Allah be well pleased with him) that the Holy Prophet (Sallallahu alaihi wa sallam) said: There are 3 things in which seriousness is also seriousness and joking is also seriousness: Nikah (Marriage), Talaq, Raja'at (i. e. uniting after the first revocable divorce).

As given in Durre Mukhtaar, Vol. 2, Pg. No. 465.

### ***Using ambiguous/unclear words***

If someone says: 'Go to your mother' or such words and does not actually divorce his wife, then these words are about the future and mean a promise. The ruling of the Shariah is that a promise to divorce does not constitute a divorce.

In this case, a divorce is not affected on the wife. As given in Bahjatul Mushtaaq Fi Ahkamit Talaq, Pg. No. 13.

### ***What is Khula***

Khula (annulment of marriage) is in fact divorce on demand for separation by the wife by offering some money or foregoing her monetary rights. For Khula, the consent and agreement of both the husband and the wife is necessary. If the wife wants a Khula, she can offer money to the husband and demand it from the husband, but there is no Khula without the husband's consent. Taking Khula without the knowledge of the husband has no meaning in it. Thus, a wife cannot go the Qazi and take Khula without the husband's knowledge. As given in Tabyeen Ul Haqaaq, Babul Khula, Vol. 3, Pg. No. 189.

When the husband consents to give the Khula, then it is affected. In this case, a Talaq-e-Baain (an irrevocable divorce) is carried out between the wife and husband, as given in Fatawa A'alamgiri, Vol. 1, Pg. No. 488.

If they want to reunite out of their own free will, then within Iddah (the mandatory waiting period) or after it, they can remarry with a new Mehr (alimony) before 2 witnesses. As Khula is like an irrevocable divorce, there is no need for Halala after it.

### ***Saying: I have given you Khula***

If the husband tells the wife: I have given you Khula, then the intention of the husband comes into consideration here. If the husband had said this with the intention of divorce, then a Talaq Bain (Irrevocable divorce) is affected regardless of whether the wife accepts it (the Khula) or not. Also, the Mehr (alimony) of the wife will have to be paid by the husband, as these words are among the suggestive words used for Talaq (Alfaz Kinaya in Urdu), in whose case if the intention is of Talaq, then a Talaq Bain is affected. However, if the husband has used these words without the intention of Talaq, then there is no divorce affected.

Thus, if in the given situation, the husband had said the words with the intention of Talaq, then a Talaq Bain is affected and the Mehr will have to be paid by the husband to the wife. If the intention was not of Talaq, then there is no Talaq.

As given in Bahr Ur Raiq, Kitab Ut Talaq, Babul Khula

### ***Khula before starting to live with the husband***

For the girl who has been married and has not yet started living with her husband, the marriage has not been consummated. In this case if the girl demands a Khula and the husband assents to it, then as per the Shariah, there is no Iddah (mandatory waiting period) for the girl and she can

marry again immediately after the Khula as well. As Allah Ta'ala says in the Holy Quran:

O Believers! When you marry the believing women and then divorce them before you have touched them (i. e. had sexual intercourse with them), then no waiting period is (obligatory) on them for you which you may start counting. Surah Ahzaab (33:49)

It is also stated in Fatawa A'alamgiri, Vol. 1, Kitab Ut Talaq.

### ***Remarrying the same person after Khula***

Khula (annulment of marriage) is like Talaaq-e-Baain (irrevocable divorce). Thus, after Khula, the marriage between the husband and the wife ends. If they want to remarry, then with a new Mehr (alimony) and in the presence of 2 witnesses, they can do so. This can be done within the Iddah (waiting period) or after it. As given in Bahr Ur Raaq, Babul Khula.

### ***Re-marriage before acceptance of Khula***

Khula (annulment of marriage) is nothing but a demand for divorce from the lady and as long the husband does not accept it either in words or writing, it is not affected. After the Khula, she can marry someone after the Iddah (mandatory waiting period).

Thus, the Nikah (marriage) performed without waiting for the acceptance of the husband is not a marriage at all, but a great sin and adultery. As given in Mausoo'a Fiqhiya, which was published from Kuwait.

\*\*\*\*\*