

# Divorce rules in islam assignment

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## DIVORCE IN ISLAM IMPORTANT INFORMATION ABOUT A MUCH ABUSED

**PRIVILEGE** The abuse of talaq or divorce by husbands that is being currently witnessed has reached alarming proportions. This has prompted us to enlist some important rules of the Shariah regarding divorce so that husbands (present and future) may understand the significance and importance of this very sensitive and serious Shar'ee institution and acquaint themselves with the necessary laws. These rules have been taken from The Quran, Hadith, and books of Fiqah.

## SOME SAYINGS OF RASOOLULLAH (sallallahu alaihi wasallam) ON TALAAQ “

The most detested of halaal things by Allah is divorce. ” (Hakim, Abu Dawood) “ Marry, but do not divorce (without a real need), for Allah does not love such men and women who taste a lot (i. e. they marry and divorce often). ” (Tibraani) “ Women should not be divorced except for lewdness. ” (Tibraani) “ Marry, but do not divorce, for the Throne of Allah shudders over talaq. ” (Ibni Adee) “ Those women who contrive to get talaq, or force their husbands (by disobedience) to divorce them, are hypocrites (munafiqs). (Nasaa-ee) “ If a woman seeks talaq from her husband without a pressing need then the fragrance of Jannat becomes haraam upon her. (Ahmad, Haakim) Another hadith has it that the most beloved to Iblees from among his army of devils are those who create enmity and division between husband and wife. (Muslim, Ahmad)

## RULES OF DIVORCE

C Islam has vested the right to divorce with the husband only, and not the wife. This is so because of the weak nature and temperamental instability of the wife. However, it appears that even the husbands of today have lost their self-control and stability, hence this spate of divorces in the Muslim community.

Lack of such control, erratic mood swings, impulsiveness, anger, etc. are the factors contributing to what Rasoolullah (sallallahu alaihi wasallam) described as one of the signs of qiyamat (i. e. increased divorce rate). Such husbands need spiritual (not marital) counselling and guidance to counter this spiritual deficiency. C As stated above, the wife cannot divorce the husband. C The Arabic for divorce is talaq. Whether one uses the Arabic word talaq or the English term divorce, the result is the same.

C Divorce in the Shariah is only there to fulfill a need, and that need is to terminate the nikah when it (the marriage) has irretrievably broken down and there is no means of conciliation, and this after all efforts to bring the parties together again have failed. The husband has been made the owner of three talaq. But this does not mean that he must issue three and only then will the nikah end. Only one talaq is enough to do the job. Since the purpose of talaq is to fulfill a need as a last resort, the husband only has to pronounce talaq once, and the nikah will be over.

It is a gross misconception on the part of people to believe that only when three talaq are issued does the nikah break. After talaq has been given, the wife must sit in iddat, which is normally three menstruation periods. After this iddat the nikah is over and she may marry another man of her choice. If the husband has issued one or two talaq, he has the right to take the wife back without making a new nikah while she is still in the iddat mentioned above, irrespective of whether she wants to come back or not.

In this particular case the wife has no say at all. The husband may take her back in the iddat by saying verbally: “ I have taken my wife back” or by a

sexual advance such as kissing or sexual intercourse, etc. It is preferable, not compulsory to say he is taking her back in front of two witnesses. But after the expiry of the iddat, (when 1 or 2 talaaq were given) the husband and wife can only get back together again by making a new nikah with a new dowry. And this is if the wife agrees to come back.

If the woman does not agree to come back after the iddat, no one can force her because the moment the iddat ends, she is no longer his wife. In this case the woman has got a choice of her own (whether to come back to her former husband or not). IF THE HUSBAND ISSUES ONE TALAAQ, HE HAS TWO LEFT, EVEN IF THE TWO PARTIES CAME TOGETHER AGAIN. AND IF HE GAVE TWO TALAAQ, HE HAS ONLY ONE LEFT, EVEN IF THEY RECONCILED DURING THE IDDAT OR AFTERWARDS (THROUGH A NEW NIKAH). So remember, once a talaaq is given, it is deducted from the total sum of three which the husband initially had.

**THREE TALAAQ** If the husband gave his wife three talaaq then the nikah breaks immediately and there is no way the two can get back together again. This is the strongest form of talaaq. The wife is now forever haraam upon the husband. Our menfolk should therefore be very, very careful in the utterance of talaaq. So often the husband blurts out three talaaq in anger, sometimes to spite the wife, or to frighten her, or punish her. Little do we realise we are spiting none but ourselves. We are only punishing ourselves. It is a classical example of cutting off the nose to spite the face.

After such a rash utterance, only then does the severity of the matter hit home. By then it is too late to change anything. We referred earlier to

impulsive behaviour, to anger and rashness. This, plus ignorance of the laws of talaaq is what propels the husband to make such utterances which he rues for the rest of his life. Take note of the following laws. For a divorce to be effective it is not necessary that it must be in writing. A verbal talaaq, be it one, two, or three is effective and enough to sever the bond of nikah.

It is wrong to believe that only a written talaaq is valid. The law of the Shariah clearly states that a talaaq uttered with the tongue is valid and takes effect. Similarly, the husband does not need to have the Imam who made his nikah in his presence when divorcing his wife. Even in the absence of such an Imam the divorce is still binding. There is no need for witnesses when issuing talaaq. When the husband utters a divorce, even if no witnesses are present, such a divorce is valid and effective according to Shariah.

There is no need for the wife to be present when giving divorce. A talaaq issued in the absence of the wife is valid and effective according to the Shariah. Many people believe the above items are requisites for a divorce, hence they feel justified in blurting out a talaaq to “scare” the wife. They falsely think that since there are no witnesses, or nothing has been given in writing, or the Imam is not present, the divorce cannot take effect. But this is a highly erroneous and dangerous belief, one that has already lured many a husband into marital misery.

We reiterate, a divorce uttered with the tongue is valid, even if the wife is not present, or has not heard the words of divorce, or the talaaq was not given in writing, or there are no witnesses who heard the divorce being uttered. All these are not conditions for the validity of talaaq. The moment a

husband thinks of divorcing his wife, we suggest that he goes to the Ulema for advice on how to go about it. We appeal: Please do not be hasty in issuing a talaq until you have consulted the Ulema. If the man contemplates divorce for whatever reason, consult Ulema on which type of divorce to issue.

In so doing you will safeguard your Deen and your nikah as well. Should the marriage reach a point where talaq is the only way out then let the husband follow this simple and safe procedure: Issue only one talaq. And then leave the wife to sit in her iddat. He must separate himself from her by not sharing the bed and not mixing, but they both may stay in the same house. The wife must spend her iddat in the house provided for her by the husband. After a few days or weeks (before the iddat ends) should the couple wish to make up, they may come together again as explained above.

If the iddat expires and they then wish to reconcile, a new nikah can be made and the couple may live happily ever after. But by issuing three talaq, all hope of reconciliation is destroyed. One talaq is therefore enough. Some wives (or in-laws) insist and impose upon the husband to issue three. And the husband, like a fool, goes and does exactly that! There is absolutely no such thing. One talaq is enough and will break the nikah. Three talaq are valid even if they are uttered in one sentence, in one phrase, or in three different sentences, or they are uttered in one gathering or on three separate occasions.

It makes no difference. EXAMPLES OF THREE TALAAQ: [Talaq, talaq, talaq] [I divorce you thrice] [I give you three talaq] [I divorce you, I divorce

you, I divorce you] [I give you talaq, I give you talaq, I give you talaq] [You are divorced] (repeated thrice) [You've got three talaq] IN ALL THE ABOVE THE WIFE BECOMES FOREVER HARAAM UPON THE HUSBAND. If a husband issued one talaq and took his wife back, there are now two talaq left. After some years he issues another talaq; there is now only one left. Another five years later, for example, he divorces his wife again.

Now he has used up all three talaq and everything is finished between him and his wife. They cannot come back to each other again. So the lapse of time between the different occasions of talaq does not make any difference. Eventually they all add up. Reference 1 <http://www.intisaarul.netfirms.com/divorce.htm> A man who divorces his wife must be adult and sane, but if a boy of ten years of age divorces his wife, precaution must be exercised. Similarly, a man should divorce of his own free will, therefore, if someone compels him to divorce his wife, that divorce will be void.

It is also necessary that a man seriously intends to divorce; therefore, if he pronounces the formula of divorce jokingly, the divorce will not be valid.

2508. It is necessary that at the time of divorce, wife is Pak from Haidh and Nifas, and that the husband should not have had sexual intercourse with her during that period. 2509. \* It is valid to divorce a woman even if she is in Haidh or Nifas in the following circumstances: (i) If the husband has not had sexual intercourse with her after marriage. ii) If it is known that she is pregnant. And if this fact is not known and the husband divorces her during Haidh, and he comes to know later that she was pregnant, that divorce will be valid, and as a recommended precaution he should divorce her again. (iii) If due to the husband's absence or imprisonment, he is not able to ascertain <https://assignbuster.com/divorce-rules-in-islam-assignment/>

whether or not she is Pak from Haidh or Nifas. But in this case, as an obligatory precaution, man must wait for at least one month after separation from his wife and then divorce. 2510.

If a man thinks that his wife is Pak from Haidh and divorces her, but it transpires later that at the time of divorce she was in the state of Haidh, the divorce is void. And if he thinks that she is in the state of Haidh and divorces her, and it is later known that she was Pak, the divorce is in order. 2511. \* If a person who knows that his wife is in Haidh or Nifas, is separated from her, like when he proceeds on a journey, and wishes to divorce her, he should wait till such time when he becomes sure that his wife must have become Pak from her Haidh or Nifas.

Thereafter, having known that she is Pak, he can divorce her. And if he is in doubt he will act according to rule no. 2509 for precaution. 2512. \* If a man who is separated from his wife wishes to divorce her and can acquire information as to whether or not she is in the state of Haidh or Nifas, even if that information is based on her habit, or any other signs known in Shariah, if he divorces her and later finds out that his information was wrong, the divorce will be void. 2513. If a man has sexual intercourse with his wife during her Pak period, and then wishes to divorce her, he should wait till she enters into Haidh again and becomes Pak. But if the wife has not completed her ninth year, or if she is pregnant, she can be divorced after the sexual intercourse. The same rule applies to a wife in menopause. The meaning of menopause has been explained in rule no. 2457). 2514. \* If a person has sexual intercourse with a woman during her Pak period and divorces her



during the same period, and if it transpires later that she was pregnant at the time of divorce, the divorce will be void.

As a recommended precaution, he should divorce her again. 2515. \* If a person had sexual intercourse with his wife during her Pak period, and then separated from her, like, if he proceeded on journey and wishes to divorce her then, not knowing whether she is Pak or not, he should wait till such time when the wife enters into the state of Haidh and becomes Pak once again. And, as an obligatory precaution, this period should not be less than one month. 2516. If a man wishes to divorce his wife who does see blood of Haidh at all by habit, or because of some disease, while other women of her age habitually see Haidh, he should refrain from having sexual intercourse with her for three months from the time he has had the intercourse, and then divorce her. 2517. \* It is necessary that the formula of divorce is pronounced in correct Arabic using the word “ Taliq”; and two just (‘ Adil) persons should hear it. If the husband wishes to pronounce the formula of divorce himself and his wife’s name is, for example, Fatima, he should say: Zawjati Fatima taliq (i. e. y wife Fatima is divorced) and if he appoints another person as his Wakil to pronounce the formula of divorce, the Wakil should say: Zawjatu muwakkili Fatima taliq (Fatima, the wife of my client is divorced). And if the woman is identified, it is not necessary to mention her name. And if the husband cannot pronounce divorce in Arabic, or cannot find a Wakil to do so, he can divorce in any language using the words of the same meaning as in Arabic formula. 2518. There is no question of of divorce in the case of a woman with whom temporary marriage is contracted, for example, for one month or one year.

She becomes free when the period of her marriage expires or when the man forgoes the period of her marriage by saying: “ I hereby exempt you from the remaining time of marriage”, and it is not necessary to have a witness nor that the woman should be Pak from her Haidh. Iddah of Divorce (The Waiting Period after Divorce) 2519. A wife who is under nine and who is in her menopause will not be required to observe any waiting period. It means that, even if the husband has had sexual intercourse with her, she can remarry immediately after being divorced. 2520. \* If a wife who has completed nine years of her age and is not in menopause, is divorced by her husband after sexual intercourse, it is necessary for her to observe the waiting period of divorce. The waiting period of a free woman is that after her husband divorces her during her Pak period, she should wait till she sees Haidh twice and becomes Pak. Thereafter, as soon as she sees Haidh for the third time, her waiting period will be over and she can marry again.

If, however, a husband divorces his wife before having sexual intercourse with her, there is no waiting period for her and she can marry another man immediately after being divorced, except if she finds traces of her husband's semen in her private part, then she should observe Iddah. 2521. If a woman does not see Haidh in spite of being the age of women who normally see Haidh, if her husband divorces her after sexual intercourse, she should observe Iddah for three months after divorce. 2522. If a woman whose Iddah is of three months, is divorced on the first of a month, she should observe Iddah for three lunar months, that is, for three months from the time the moon is sighted. And if she is divorced during the month, she should observe Iddah for the remaining days in the month added to two months thereafter,

and again for the balance from the fourth month so as to complete three months. For example, if she is divorced on the 20th of the month at the time of sunset and that month is of 29 days, she should observe Iddah for nine days of that month and the two months following it, and for twenty days of the fourth month.

In fact, the obligatory precaution is that in the fourth month, she should observe Iddah for twenty one days so that the total number of the days of the first month and the fourth month comes to thirty. 2523. \* If a pregnant woman is divorced, her Iddah lasts till the birth or miscarriage of the child. Hence, if, for example, she gives birth to a child one hour after being divorced, her Iddah is over. But this is in the case of a legitimate child of the husband who is divorcing. If the pregnancy is illegitimate, and her husband divorces her, the Iddah will not be over. 524. \* If a woman who has completed nine years of age, and is not in menopause, contracts a temporary marriage, for example, if she marries a man for a period of one month or a year and the period of her marriage comes to an end, or her husband exempts her from the remaining period, she should observe Iddah. If she sees Haidh, she should observe Iddah for two periods of Haidh, and cannot marry again during that period. But if she does not see Haidh, then she should refrain from marrying another man for forty five days.

And if she is pregnant, she should observe Iddah till the birth or miscarriage of the child, or for forty five days and as a recommended precaution, she should wait for whichever period is longer. 2525. The time of the Iddah of divorce commences when the formula of divorce is pronounced, irrespective of whether the wife knows about it or not. Hence, if she comes to know after

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the end of the Iddah that she had been divorced, it is not necessary for her to observe Iddah again. Iddah (Waiting Period) of a Widow 2526.

If a woman is free and is not pregnant and her husband dies, she should observe Iddah (the waiting period) for four months and ten days, that is, she should not marry during that period even if she has entered into menopause or her husband had contracted temporary marriage with her, or he may not have had sexual intercourse with her. If, however, she is pregnant, she should observe the waiting period till the birth of the child. But if the child is born before the end of four months and ten days from the death of her husband, she should wait till the expiry of that period.

This period is called the waiting period after death (Iddatul Wafat). 2527. It is haraam for a woman who is observing the Iddah of death to wear brightly coloured dress, or to use surma and to do any such act which is considered to be an adornment. 2528. \* If a woman becomes certain that her husband has died, and marries another man after the completion of Iddah of death, and later on learns that her husband had died later, she should separate herself from her second husband.

And as a precaution, if she is pregnant, she should observe Iddah of divorce for the second husband till she gives birth to a child, and should thereafter observe Iddah of death for the first husband. But if she is not pregnant, she should first observe Iddah of death for her first husband and thereafter she should observe Iddah of divorce for the second husband. 2529. \* The Iddah of death begins, in the situation when the husband has disappeared or is

absent, when the wife learns of his death, and not from the time when he actually died.

But this rule does not apply to a wife who has not attained the age of Bulugh, or if she is insane. 2530. \* If a woman says that her Iddah is over, her word can be accepted unless she is known to be unreliable, in which case, her word will not be accepted. For example, if she claims to have seen blood three times in the month, her claim will not be trusted, except when her women relatives confirm that it is her habit. Irrevocable and Revocable Divorce 2531. \* Irrevocable divorce means that after the divorce, the husband is not entitled to take back his wife, that is, he is not entitled to take her as his wife without Nikah.

This divorce is of five kinds, namely: (i) The divorce of a woman who has not completed nine years of age. (ii) The divorce of a woman who is in menopause. (iii) The divorce of a woman whose husband has not had sexual intercourse with her after their marriage. (iv) The third divorce of a woman who has been divorced three times. (v) The divorce called Khul'a and Mubarat. (vi) The divorce by intervention of Mujtahid, in the case of a wife whose husband is neither prepared to maintain her nor to divorce her. Rules pertaining to these kinds of divorces will be detailed later.

Divorces other than these are revocable, in the sense that as long as the wife is observing Iddah her husband can take her back. 2532. \* When a person has given revocable divorce to his wife, it is haraam for him to expel her out of the house in which she was residing at the time of divorce. However, in certain cases, like, when she has committed fornication or

adultery there is no harm in expelling her. Also, it is haraam for the wife to go out of the house unnecessarily, without her husband's permission. Orders Regarding Return (Ruju') 2533. In the case of a revocable divorce a man can take back his wife in two ways: (i) By telling her words which would mean that he wants her again as his wife. (ii) By acting in a manner which would convey his intention to take her back. And taking her back will be established by sexual intercourse although the husband may not have intended it. But touching, kissing, with or without intention of taking her back is not sufficient. 2534. It is not necessary for taking her back that the husband should call any person to witness, or should inform his wife.

On the other hand if he takes her back without any one else realising this, the Ruju' is in order. However, if the husband claims after the completion of Iddah that he took his wife back during Iddah, he must prove it. 2535. \* If a person who has given revocable divorce to his wife takes some payment from her, making a compromise with her that he will not make Ruju' to her, though this compromise is valid and it is obligatory on him not to 'return', yet he does not forfeit the right to 'return'.

And if he 'returns' to her, the divorce given by him does not become the cause of their separation. 2536. \* If a man divorces a woman twice and takes her back, or divorces her twice and takes her back by Nikah, or takes her back after one divorce and returns her by Nikah after the second divorce, she becomes haraam for him after the third divorce. But if she marries another man after the third divorce, she becomes halal for the first husband on fulfilment of five conditions, that is, only then he can remarry her: (i) The marriage with the second person should have been of permanent nature.

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If he contracts with her a temporary marriage for one month or a year, and then separates from her, the first husband cannot marry her. (ii) The second husband should have had sexual intercourse with her, and the obligatory precaution is that the sexual intercourse should have taken place in the normal way. (iii) The second husband divorces her, or dies. (iv) The waiting period (Iddah) of divorce or Iddah of death of the second husband should have come to an end. (v) On the basis of obligatory precaution the second husband should have been Baligh at the time of intercourse.

Khula' Divorce or Talaqul Khula' 2537. \* The divorce of a wife who develops an aversion from husband and hates him, and surrenders to him her Mahr or some of her property so that he may divorce her, is called Khula' Divorce. The hatred must have reached a proportion where she would not allow him conjugal rights. 2538. If the husband himself wishes to pronounce the formula of Khula' divorce and his wife's name is, say, Fatima, he should say after receiving the property: " Zawjati Fatimatu Khala'tuha ' ala ma bazalat" and should also say as a recommended precaution: " Hiya Taliq" i. e. I have given Khula' divorce to my wife Fatima in lieu of what she has given me, and she is free'. And if the wife is identified, it is not necessary to mention her name in Talaqul Khula' and also in Mubarat Divorce. 2539. If a woman appoints a person as her representative to surrender her Mahr to her husband, and the husband, too, appoints the same person as his representative to divorce his wife, and if, for instance, the name of the husband is Muhammad and the name of the wife is Fatima, the representative will pronounce the formula of divorce thus: " An muwakkilati Fatimah bazalat mahraha li muwakkili Muhammad li Yakhla'aha ' alayh".

Then he says immediately: “ Zawjatu muwakkili khala'tuha ' ala ma bazalat hiya Taliq”. And if a woman appoints a person as her representative to give something other than Mahr to her husband, so that he may divorce her, the representative should utter the name of that thing instead of the word “ Mahraha” (her Mahr). For example, if the woman gives \$500 he should say: bazalat khamsa mi'ati Dollar”. Mubarat Divorce 2540. \* If the husband and the wife develop mutual aversion and hatred and the woman gives some property to the man so that he may divorce her, this divorce is called ‘ Mubarat’. 2541. If the husband wishes to pronounce the formula of Mubarat, and for example, his wife's name is Fatima he should say: “ Bara'tu zawjati Fatimah ' ala ma bazalat”. And as an obligatory precaution, he must add: “ Fahiya Taliq”, that is “ my wife Fatima and I separate from each other in consideration of what she has given me. Hence, she is free. ” And if he appoints someone as his representative, the representative should say: “ An qibali muwakkili bara'tu zawjatahu Fatimata ' ala ma bazalat Fahiya Taliq”. And in either case, if he says: “ bima bazalat” instead of the words “ ' ala ma bazalat” there is no harm in it. 542. \* It is necessary that the formula of Khula' or Mubarat divorce is pronounced in correct Arabic. And if that is not possible, then the rule explained in 2517 will apply. However, if for the sake of giving her property, the wife says in English or any language that: “ I give you such and such property in lieu of divorce” it will be sufficient. 2543. If during the waiting period of Khula or Mubarat divorce the wife changes her mind and does not give her property to the husband, he can take her back as a wife without Nikah. 2544.



The property which the husband takes in Mubarat divorce should not exceed the Mahr of the wife. But in the case of Khula' divorce, there is no harm if it exceeds her Mahr. Various Rules Regarding Divorce 2545. If a man had sexual intercourse with a non-mehram woman under the impression that she was his wife, the woman should observe Iddah, irrespective of whether she knew that the man was not her husband or thought that perhaps he was her husband. 2546. \* If a man commits fornication with a woman knowing that she is not his wife, it is not necessary for the woman to observe Iddah.

But if she thought that the man was probably her husband, as an obligatory precaution, she should observe Iddah. 2547. \* If a man seduces a woman so that her husband decides to divorce her and then she can marry him, the divorce and marriage are in order, but both of them have committed a major sin. 2548. \* If a woman lays a condition at the time of Nikah that if her husband goes on a journey or, for example, does not give her maintenance for six months, she will have the right of divorce, the condition is void.

However, if she lays a condition that if her husband goes on a journey or, for example, does not give her maintenance for six months, she will be his Wakil for her own divorce, the condition is in order. 2549. If the husband of a woman disappears and she wishes to marry another man, she should approach an ' Adil Mujtahid and act according to his directive. 2550. The father and the paternal grandfather of an insane man can divorce his wife. 2551.

If the father or paternal grandfather of a child contracts a temporary marriage between him and a woman, and a part of the period fixed for the

marriage covers some of the time when the child will have attained the age of bulugh, for example, if he contracts the marriage of a fourteen years old boy for a period of two years – he (the father or the paternal grandfather of the child) can exempt the woman from a part of the period of marriage if doing so, is in the interest of the child, but he cannot divorce the child's permanent wife. 2552.

If a man considers two person to be just (' Adil) according to the standard prescribed in Shariah, and divorces his wife in their presence, another person to whom their being ' Adil is not proved can, after the expiry of that woman's Iddah, marry her or give her in marriage to another person, although the recommended precaution is that he should not marry her nor should he give her in marriage to someone else. 2553. If a person divorces his wife without informing her, and he continues to maintain her the way he did when she was his wife, and after a year tells er that he divorced her a year ago, and also proves it, he can take back from her the things which he supplied her during that period if she has not used them up, but he cannot demand from her the things which she has already expended. Reference 2 [http://www. al-islam. org/laws/divorce. html](http://www.al-islam.org/laws/divorce.html) A Talaq (Arabic: ??????? ) is the Islamic term for divorce and is used to end a marriage, or Nikah (Arabic: ??????? ). The rules for talaq vary among the major Islamic schools of jurisprudence. Most importantly Shia and Sunni Muslims have different rules for performing a talaq.

Sunni practice requires no witnesses, and allows a husband to end a relationship by saying the triple talaq. Shi'a scholars view the triple talaq as a jahiliyya (" pagan pre-Islamic") custom, forbidden by Muhammad, but <https://assignbuster.com/divorce-rules-in-islam-assignment/>

reinstated by Umar ibn al-Khattab, and thus haraam (“ forbidden”). Sunni scholars agree to the facts, but deem it halal (“ acceptable”) anyway. Some Sunni countries have debated whether the triple talaq can be performed with the help of modern technology such as by text message. citation needed] In some Sunni schools of jurisprudence it is possible for a woman to petition a qadi (“ judge of Muslim jurisprudence”) for a divorce under certain conditions. In a very few circumstances, Shafii qadis will allow a woman a divorce. Shi’a practice requires two witnesses[1] followed by the iddah period where the couple are supposed to try to reconcile with the help of mediators from each family. If the couple breaks the iddah, the talaq is voided. Since Shi’a view the talaq as a procedure stemming from a conflict rather than a decision, they do not use the procedure to end a Nikah Mut’ah, or temporary marriage.

The Shi’a just annul the nikah mut’ah at the end of the period, without any talaq procedure being involved, since there is not necessarily a conflict to resolve. After the iddah is over, the couple is divorced and the husband is no longer responsible for the wife’s expenses. Rules Shi’a and Sunni have different rules to engage a talaq. The talaq has three steps: ??? Initiation ??? Reconciliation ??? Completion [edit] Initiation This is the stage where the talaq process is initiated. According to most Sunni scholars it consists of: ??? The husband saying talaq three times in the presence of his wife. According to most Shi’a scholars: Making a public announcement that you are starting the divorce process. ??? Does not allow the triple talaq The appropriate verses from the Qur’an are: ??? Sura 65. 1 (partial) translated by Shakir O Prophet! when you divorce women, divorce them for their prescribed time,

and calculate the number of the days prescribed, and be careful of (your duty to) God, your Lord... ??? Sura 2. 228 (partial) translated by Shakir And the divorced women should keep themselves in waiting for three courses; and it is not lawful for them that they should conceal what God has created in their wombs, if they believe in God and the last day... edit]

Reconciliation ??? According to Sunni and Shi? a jurisprudence, the couple is supposed to try to reconcile during the iddah period, with the help of mediators from each family. If the couple breaks the iddah by engaging in sexual intercourse, they are deemed to have been reconciled and the talaq is voided. The appropriate verses from the Quran are: ??? Sura 4. 35 translated by Shakir And if you fear a breach between the two, then appoint judge from his people and a judge from her people; if they both desire agreement, God will effect harmony between them, surely God is Knowing, Aware. ??? Sura 65. 1 (partial) translated by Shakir .. Do not drive them out of their houses, nor should they themselves go forth, unless they commit an open indecency; and these are the limits of God, and whoever goes beyond the limits of God, he indeed does injustice to his own soul. You do not know that God may after that bring about reunion. [edit] Completion After the completion of the talaq procedure, the couple are divorced, the husband is no longer responsible for the wife's expenses and she becomes non-mahram for him and so they must observe the hijab rules. ??? Sunni scholars view a talaq initiated and completed by the husband saying the triple talaq. Shi? a scholars understand that when the ? idda is over, the talaq procedure is completed. Two witnesses ref are required to witness the completion of the talaq. The relevant parts of the Qur'an are: ??? Sura 65. 2 translated by Shakir So when they have reached their prescribed time, then retain them

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with kindness or separate them with kindness, and call to witness two men of justice from among you, and give upright testimony for God. With that is admonished he who believes in God and the latter day; and whoever is careful of (his duty to) God, He will make for him an outlet. Sura 2. 231 translated by Shakir And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality, and do not retain them for injury, so that you exceed the limits, and whoever does this, he indeed is unjust to his own soul; and do not take Allah's communications for a mockery, and remember the favor of God upon you, and that which He has revealed to you of the Book and the Wisdom, admonishing you thereby; and be careful (of your duty to) God, and know that God is the Knower of all things. edit] Aftermath ??? If the wife is divorced for the third time, then she becomes " haram" for her former husband. Otherwise, the couple would be able to remarry. ??? Even if divorce separates a man from his wife, he has to seek her help in caring for the child or another female if the mother agrees. He must pay for her expenses. In practice: ??? In most Islamic states it is generally unacceptable for a divorced woman to live alone (as is usually also the case with unmarried women). In most situations women who find themselves divorced will return to live with their parents or to the household of another close relative. The relevant part of the Qur'an is: ??? Sura 2. 232-3 translated by Shakir And when you have divorced women and they have ended their term (of waiting), then do not prevent them from marrying their husbands when they agree among themselves in a lawful manner; with this is admonished he among you who believes in God and the last day, this is more profitable and purer for you; and God knows while you do not know.

And the mothers should suckle their children for two whole years for him who desires to make complete the time of suckling; and their maintenance and their clothing must be borne by the father according to usage; no soul shall have imposed upon it a duty but to the extent of its capacity; neither shall a mother be made to suffer harm on account of her child, nor a father on account of his child, and a similar duty (devolves) on the (father's) heir, but if both desire weaning by mutual consent and counsel, there is no blame on them, and if you wish to engage a wet-nurse for your children, there is no blame on you so long as you pay what you promised for according to usage; and be careful of (your duty to) God and know that God sees what you do. ??? Sura 2. 235 translated by Shakir

And there is no blame on you respecting that which you speak indirectly in the asking of (such) women in marriage or keep (the proposal) concealed within your minds; God knows that you win mention them, but do not give them a promise in secret unless you speak in a lawful manner, and do not confirm the marriage tie until the writing is fulfilled, and know that God knows what is in your minds, therefore beware of Him, and know that God is Forgiving, Forbearing. ??? Sura 2. 241 translated by Shakir And for the divorced women (too) provision (must be made) according to usage; (this is) a duty on those who guard (against evil). After divorce, Qur'an specifies responsibilities on divorcee and divorcer on behalf of their children. [2][3] Qur'an also prohibits interventions from the previous husband in the divorced woman's life. 4] Following are some of the cases regarding child custody decided by Muhammad: ??? Abd-Allah ibn Umar narrates that a lady came to Muhammad and said: " For this son of mine, it is only my belly

which was his abode, and my breasts which were his vessel and my lap which was his dwelling place. Now his father has divorced me and wants to take him away from me. ” Muhammad replied, “ You are more entitled to keep him until you marry again. ” Sunnan Abu Dawood 2276 ??? Abu Hurairah narrates that in a woman came to Muhammad and said, “ My husband wants to take away from me this child even though he has brought over water for me from the well of Abu ‘ Anbah and given me a lot of benefit. ” Muhammad replied, “ Both of you can cast a lot on this. When the husband heard, he said, “ Who will quarrel with me regarding this son of mine? ” Muhammad said, “ O son! This is your father and this is your mother; grasp the hand of the one you want to hold. ” The child grasped the mother’s hand and she took him away. Sunnan Abu Dawood 2277 Reference 3 [http://en.wikipedia.org/wiki/Talaq\\_\(Nikah\)](http://en.wikipedia.org/wiki/Talaq_(Nikah)) Marriage is supposed to be a permanent contract. It is never entered into with a time limit. At the same time, it is a contract based upon affection and mutual understanding. Without these qualities, married life becomes impossible. For this reason, Islamic Law has taken great pains to preserve this affection and encourage treating one’s spouse kindly. It calls to gentleness and intimacy.

It prescribes arbitration to deal with difficulties. In spite of all this, sometimes the hearts of people are incompatible with each other and foster no affection, so that a return of affection and mutual understanding becomes inconceivable. In this situation, the only alternative to divorce is conflict and continuous quarreling. This can lead to mental illness, and it places the two people in a state of perpetual suffering. They merely maintain the outward appearance of a marriage in spite of the fact that they want to have nothing

to do with each other. The purposes of marriage and the wisdom behind it are not being realized under these circumstances, for the needed comfort, affection, and cooperation are just not there. The only logical solution in this situation is to terminate the marriage and give both people the opportunity to look for a better relationship elsewhere, so each can enjoy a happier and more peaceful family life. This happens in two ways: a standard divorce or a khul` settlement where the wife pays compensation. A. Divorce This is where the marriage contract is revoked either immediately or after a period of time. Thus there are two forms that it can take: 1. Irrevocablee divorce: This is where the husband does not have the right to take his wife back except with a new marriage contract, another dowry, and her consent. 2.

Revocable divorce: This is a divorce where the husband has the right to take the wife back for a period of time without contracting with her a new marriage. The reason for this is that the marriage does not actually terminate until the waiting period is completed. Islam has placed this form of divorce in the hands of the man, but it has taken many precautions with it and restricted it with a number of specific rules. Only one divorce should be given at a time. It must take place after she has completed a menstrual cycle and before he has resumed sexual relations with her, meaning it is not permissible for him to divorce her during her monthly period or if he has had sex with her afterwards.

If he has had sexual relations with her after her last period, then he must wait for her to complete another monthly cycle before he can divorce her. This gives the husband a period of time to stay with his wife without divorcing her. Likewise, it gives him the right to take her back for a period of

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time, so if he regrets divorcing her, he still has the opportunity to resume his family life with her without having to go through any procedures or difficulties. This period of time is three months for older women who have ceased to have their menstrual cycles as well as for those women who have never had monthly periods. For other women, the length of the waiting period is three menstrual cycles. However, the waiting period for a pregnant woman is up to the time that she has given birth.

The woman, according to many jurists, has the right to petition the courts for a separation during this time if she is suffering abuse from her husband, whether this abuse is physical or otherwise. The courts will offer her right to an immediate, irrevocable divorce at this time if she so wishes. B. The Khul` Settlement: This is a divorce that occurs where the woman pays to her husband a compensation for being released from the marital bond. This form of divorce is attested to by the following verse of the Qur'an: " If they fear that they will not be able to keep to the limits set by Allah, then there is no sin on them for what she gives in payment for her freedom. " The wisdom behind this option is that it gives the woman a way out if she cannot bear to remain with her husband.

Sometimes a woman cannot stand to remain with her husband, but he has every desire to keep her. Thus, Allah has prescribed for her the khul` so that she can free herself from remaining with a man with whom she cannot hope to have a proper family life. Khul` is generally disliked ??? though not prohibited ??? unless the husband's abusive behavior or ill treatment is the cause for her wanting to get away. Likewise, the Qur'an sternly forbids a man to mistreat his wife in hopes of taking her money. Allah says: " Do not <https://assignbuster.com/divorce-rules-in-islam-assignment/>

treat them with harshness so you can take away part of what you have given them. " Reference 4 [http://www.islamtoday.com/show\\_sub\\_section.cfm?main\\_cat\\_id=8&\\_cat\\_id=0](http://www.islamtoday.com/show_sub_section.cfm?main_cat_id=8&_cat_id=0)

The typical way to end a marriage is through Talaq, a legal Islamic divorce.

Divorce is very disliked in Islam. However, it is still legal and can be practiced. In Shia Islam, a divorce is a procedure that is threefold ???

Initiation - The divorce is announced publicly (triple talaq is illegal) ???

Reconciliation - the couple will try to reconcile differences ??? Completion -

With two witnesses and after the Iddah period has expired, the divorce is complete. In Sunni Islam there is Triple talaq, it is a (controversial) practice in which the couple instantly divorces by declaring the intention three times and thus making sexual relations between them haram for each other.

However Islamic tradition maintains that divorce cannot be final until after a period called Iddah, that is the period of three months or more specifically three menstrual cycles, so that it is evident that the wife is not pregnant.

Furthermore, after the divorce is final the couple may not remarry until the wife has married and divorced another. Narrated Nafi: Ibn ' Umar bin Al-Khattab divorced his wife during her menses. Allah's Apostle ordered him to take her back till she became clean, and when she got another period while she was with him, she should wait till she became clean again and only then, if he wanted to divorce her, he could do so before having sexual relations with her.

And that is the period Allah has fixed for divorcing women. Whenever ' Abdullah (bin ' Umar) was asked about that, he would say to the questioner,

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“ If you divorced her thrice, she is no longer lawful for you unless she marries another man (and the other man divorces her in his turn). ‘ Ibn ‘ Umar further said, ‘ Would that you (people) only give one or two divorces, because the Prophet has ordered me so. ” Sahih Bukhari: Volume 7, Book 63, Number 249 Narrated Yunus Ibn Jubair: Ibn ‘ Umar divorced his wife while she was having her menses. ‘ Umar asked the Prophet who said, “ Order him (your son) to take her back, and then divorced her before her period of the ‘ Iddah has elapsed. I asked Ibn ‘ Umar, “ Will that divorce (during the menses) be counted? ” He replied, “ If somebody behaves foolishly (will his foolishness be an excuse for his misbehavior)? ” Volume 7, Book 63, Number 250 Reference 5 [http://en.wikipedia.org/wiki/Islamic\\_marital\\_jurisprudence](http://en.wikipedia.org/wiki/Islamic_marital_jurisprudence)

We have already seen, in an earlier chapter in this book that Abu Dawud recorded a tradition to the effect that of all the things made lawful to men by Allah, divorce displeased him most. Divorce, though allowed, is considered blamable (mubah) and, if possible, to be avoided. (Klein, The Religion of Islam , p. 191). The Qur’an has two sections which deal exclusively with the subject of divorce.

Although the book does make divorce openly permissible, it hedges in its sanction of the practice with many safeguards. In the Suratul-Talaq (the Arabic word for divorce being talaq), it is said: O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear God 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 God: and any who transgresses the limits of God, does verily wrong his (own) soul: Thou

knowest not if perchance God will bring about thereafter some new situation. Surah 65. 1 Divorce is thus not primarily sinful in Islam as it is in Christianity (Matthew 19. -9), yet it has considerable restrictions. There has to be an ‘iddah, a “prescribed period” of three monthly courses (Surah 2. 228), before the divorce becomes final. The husband, after declaring to his wife on three occasions that he intends to divorce her (anti talaq – “you are dismissed”), must wait three months thereafter before he can finally separate from her, and the wife likewise must remain in the home during this period to see whether she is pregnant and to see whether a reconciliation can be made. Divorce is a process beginning with the cessation of marital relations and ending with the actual divorce when the ‘iddah has run its course.

This is to be carefully reckoned and divorce is not actually to take place until it has expired. Meanwhile no overt steps are to be taken. The woman is not to leave her husband’s house, nor is he to send her away unless in the interval she has been guilty of some public scandal. Thus outwardly the spouses are to continue living together as before, in the hope that before the end of the waiting period some reconciliation may take place, or as the Qur’an expresses it, Allah may cause something to happen. (Bell, “Muhammad and Divorce in the Qur’an”, *The Muslim World*, Vol. 29, p. 62). The Qur’an also urges husbands to be very considerate when divorcing their wives. They are to set them free on equitable terms (Surah 2. 31), are not to take them back purely to spite or injure them, and are not to prevent them from being married to a former husband (Surah 2. 232). Despite these detailed exhortations, the Qur’an does not stipulate that there need be any specific grounds for a divorce. There is no suggestion that desertion or

adultery must first take place, or that the husband must have some valid cause before divorcing his wife. The Qur'an's silence on this point has led some scholars to conclude that the husband may divorce his wife at will. Since no justification for divorcing his wife is demanded from the husband by the Koran, he is permitted to divorce her at his own will or caprice.

But no such privilege is accorded to the wife, an inequality which has had the consequence of gravely lowering the status of women in Islam. (Levy, *The Social Structure of Islam*, p. 121). Muslim scholars are quick to rise to such challenges and one well-known writer states: The impression that a Muslim husband may put away his wife at a mere caprice, is a grave distortion of the Islamic institution of divorce. (Ali, *The Religion of Islam*, p. 551). The writer goes on to give a list of occasions where the wife has the right to divorce her husband, namely, where her husband is completely missing and cannot be found, by returning her dowry, and where she is a convert to Islam with a non-Muslim husband.

An objective study of the Qur'anic teaching on divorce yields the impression that, while no particular ground for divorce is necessary, it is not to be taken lightly and to be avoided wherever possible. Nevertheless the general rule in Islam is that divorce is the husband's right. Hanafi law is particularly dogmatic at this point: And in this matter of dissolution of marriage the accepted Hanafi rules are more rigid and retrogressive than those of any other school, for they virtually deny the wife any right of divorce whatever, judicial or otherwise, while they not only leave the power of the husband unilaterally to repudiate his wife completely unfettered, as do all the Sunni schools, but go further than any other in regarding as valid, binding and

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even final various expressions of divorce never really intended to have that effect.

Thus the wife can never divorce her husband or divorce herself from him unless he has expressly given her this right (tafwid al- talaq), while even the offer to redeem herself for a financial consideration is absolutely dependent on his consent: nor has she any right to the judicial dissolution of her marriage, however long she has been deserted or severely she has been maltreated, or even if she finds herself unwittingly married to one afflicted with some loathsome and infectious disease. (Anderson, “ Recent Developments in Shari ‘ a Law V”, The Muslim World , Vol. 41, p. 271).

Certainly the one section in the Qur’an giving the standard teaching on divorce (Surah 2. 228-232) speaks only of husbands divorcing their wives and addresses its exhortations to men only. The Qur’an has one law regarding divorce that is truly hard to commend or understand.

It is found in these words: So if a husband divorces his wife (irrevocably), he cannot, after that, re-marry her until after she has married another husband and he has divorced her. Surah 2. 230 In the previous verse it is said that “ divorce is only permissible twice” (Surah 2. 229) and Islamic jurists have concluded that a man is entitled to divorce his wife twice and duly remarry her but, after divorcing her a third time, may not remarry her until she has married another man and has become divorced from him. The object of this teaching is clearly to inhibit men from divorcing their wives frivolously or abusing divorce as a means of causing their wives constant insecurity. In the end, however, it seems to fail in its purpose by obliging the wife to enter into a second union before the first may be resumed.

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The Hadith, true to the letter of the law, make this teaching more absurd than ever: Narrated Aisha: A man divorced his wife thrice (by expressing his decision to divorce her thrice), then she married another man who also divorced her. The Prophet was asked if she could legally marry the first husband (or not). The Prophet replied, “ No, she cannot marry the first husband unless the second husband consummates his marriage with her, just as the first husband had done”. (Sahih al- Bukhari, Vol. 7, p. 136). In passing it is interesting to note that this tradition is interpreted to mean, not that three separate divorces must first take place, but that on the required threefold declaration of divorce the first time, the husband may not take his wife back before she marries again.

A Western scholar interprets this subject in the same way: “ An absolute divorce, or Talaq i Mutlaq, consists of the mere repetition of the words ‘ Thou art divorced’ three times. A woman so divorced cannot be restored to her husband until she has been married to another and again divorced” (Hughes, Notes on Muhammadanism , p. 122). Either way one cannot help being taken aback by the rigid stipulation that the second marriage must first be consummated. Here indeed the letter of the law has made no allowances for the reflections, misgivings or regrets of the parties and appears to force on the woman what Jesus regarded adultery (Matthew 5. 32), even though she is willing to return to her true husband without violating the intimate relationship she has enjoyed with him.

The same tradition in the Sahih al-Bukhari is also found in the other great work of Hadith and here it is said that Muhammad’s answer was “ No, until the second one has tasted her sweetness as the first one had tastes” (Sahih <https://assignbuster.com/divorce-rules-in-islam-assignment/>

Muslim, Vol. 2, p. 730), even though the second husband had already divorced her. This seems to be a gross injustice calculated to punish the first husband for being double-minded once too often about his relationship. In some Muslim communities, especially in North Africa divorce is quite common and a normal event in society. Elsewhere, particularly where monogamy has become the norm, it is a rare occurrence. Reference 6 <http://www.domini.org/lam/divorcepractice.html>