

Simplified Rules of Islamic Divorce (part 2 of 2)

Description: The types and procedures of divorce is a detailed subject among Muslim jurists, but this two-part lesson will aim to cover the basic rules of divorce in Islam with little technical language.

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Objectives:

- To learn five important points related to a *talaq*.
- To learn the basic rules of *khul'* - woman's divorce.
- To learn about the transfer of right of divorce to wife.

Arabic Terms:

- *Talaq* - divorce initiated by a man.
- *Khul'* - termination of marriage initiated by a woman.
- *Nikah* - marriage contract.
- *Sunnah* - The word *Sunnah* has several meanings depending on the area of study however the meaning is generally accepted to be, whatever was reported that the Prophet said, did, or approved.

Correct Manner of Giving Divorce (*Talaq*)

1. A clear divorce with the words, 'I divorce you,' or 'You are divorced,' given by the husband to the wife in the period of purity in which sexual intercourse has not taken place. The husband is forbidden to say, 'You are divorced three times,' or repeat 'You are divorced' three times.



Also, the husband can divorce in writing (through a text message or whatsapp message) with the intention of divorce.

After the pronouncement, the wife is allowed to complete the period of *iddah* which differs in the case of different women. See Part 1 of the lesson.

This form of divorce does not terminate the marriage completely much less does it entail any resentment or cruelty. She may not be evicted from the home, nor should she leave it, unless she had committed an offense of indecency. The husband is obliged to keep her in the same house and provide her adequately as she was provided before divorce for the duration of the probationary “waiting period.”

2. After pronouncing the divorce, the husband is entitled to return to his wife in the sense of resuming normal conjugal relations before the expiration of her *iddah*. This “return” does not require a marriage ceremony or a new *nikah*. The basis for ‘returning’ is in the Quran:

“And their husbands are best entitled to take them back.” (Quran 2:228)

“And take two witnesses endowed with justice from among you.” (Quran 65:2)

3. Upon the expiration of the *iddah* (the waiting period), the wife is free to remarry. She can remarry her previous husband with a new *nikah* (a new marriage contract) or she may marry another man.

4. It is better that the pronouncement of divorce in step 1 is mentioned to two witnesses so as to avoid any disputes.

5. If after pronouncing the divorce **two times** and ‘returning’ to the wife after each one during her *iddah*, the husband pronounces the divorce the **third time**, it is considered ‘irrevocable.’ After the third time, he cannot revoke it during the *iddah* and have his wife back.

Consequences of Divorce

1. The wife is released from the marriage contract by the husband. If he does not revoke the divorce, she is not regarded as his wife.

2. After the conclusion of the mandatory *iddah* (waiting period), the wife is free to marry another person.

Khul’ – Woman’s Divorce

Muslim jurists agree in principle that certain situations related to the husband’s situation justify a wife’s request for divorce. Long absence without knowing his whereabouts, long imprisonment, refusal to financially provide for the wife, severe poverty, and impotence are major reasons under which a wife may seek legal release from her

marriage. Another set of circumstances which may involve either spouse is desertion, serious chronic illness, insanity, deceptive misrepresentation at the conclusion of the marriage contract, mistreatment, and moral laxity. If either spouse is involved in any of these situations, the other may justifiably seek divorce or annulment. In short, a husband cannot compel a woman to live with a man she dislikes.

Islam has given the right of *talaq* (divorce) to the husband who can exercise this right in case of necessity and with certain conditions. What if the woman is tormented, abused, and suffers from ill-treatment? What if a woman begins to dislike her husband due to his physical appearance, bad treatment, religious incompatibility, or aging? What recourse does she have? She can ask her husband to divorce her. She can return him the dowry and ask for *khul'* (termination). *Khul'* without compensation is valid. The essence of *khul'* is the desire on part of the woman to end the marriage and separate from her husband.

“But if you fear that they may not be able to abide by the bounds set by Allah, there is no blame on either of them if she returns what has been given.” (Quran 2:229)

In case of *khul'*, the woman has to wait (*iddah*) for one menstrual period after *khul'*. During this period, the husband **cannot** take her back. After her *iddah*, she is free to remarry. If she wants to go back to her husband at a later date and he wants that too, they can remarry with a new marriage contract and a new dowry if they believe they can keep the limits ordained by Allah.

If he refuses to let her go, she has recourse to an Islamic court (if there is one) or a similar entity and demand that her marriage be dissolved. They have the authority to annul or dissolve the marriage. Some Muslim minority countries like India and Singapore allow Muslims to settle such matters in religious courts with limited jurisdiction. If you live in a country where one is not available, please consult a religious authority, scholar, or imam for consultation.

Transfer of Right of Divorce to Wife in Pre-Nuptial Agreement

Although the concept of ‘transferring divorce’ to one’s spouse has been explored by certain Muslim bodies and organizations around the world, the correct opinion regarding it is that it is not an option that is supported by Islam.

In general, a separation between husband and wife is a “tri-concept”. A part lies with the husband in the form of ‘divorce’, another with the wife in the form of ‘*khul'*’ (termination initiated by a woman) and the last with a Muslim judge in the form of ‘*faskh'*’ (an annulment).

Transferring the right of divorce to one’s spouse is something scholars have discussed and have given an almost unanimous opinion regarding it. It cannot be done, and if done, it is not acceptable, except within a very limited scope. The reason for this is in the words of Allah: “Men are responsible for women.” The Prophet, may the mercy and blessings of

Allah be upon him, further indicated this saying: “Every condition that goes against what is in the Book of Allah or the *Sunnah* is false, even if it be 100 conditions.”

The only instance in which this would be accepted is if a man has decided to divorce his wife for a valid reason, and he then tells his wife, “You may divorce yourself.”

In the end, the issue of transferring the right of divorce to one’s wife is usually explored due to the high rates of divorce in certain Muslim communities. This in itself will not lessen the divorce rate, it may even increase it! Only knowledge, a pure understanding of faith and good manners will prevent the rise of divorce in any community.

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