

Divorce

Issue 2507: * 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.

Issue 2508: It is necessary that at the time of divorce, wife is Clean (tahir/pak) from Haidh and Nifas, and that the husband should not have had sexual intercourse with her during that period.

Issue 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 whether or not she is Clean (tahir/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.

Issue 2510: If a man thinks that his wife is Clean (tahir/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 Clean (tahir/pak), the divorce is in order.

Issue 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 Clean (tahir/pak) from her Haidh or Nifas. Thereafter, having known that she is Clean (tahir/pak), he can divorce her. And if he is in doubt he will act according to rule

no. 2509 for precaution.

Issue 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.

Issue 2513: * If a man has sexual intercourse with his wife during her Clean (tahir/pak) period, and then wishes to divorce her, he should wait till she enters into Haidh again and becomes Clean (tahir/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).

Issue 2514: * If a person has sexual intercourse with a woman during her Clean (tahir/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.

Issue 2515: * If a person had sexual intercourse with his wife during her Clean (tahir/pak) period, and then separated from her, like, if he proceeded on journey and wishes to divorce her then, not knowing whether she is Clean (tahir/pak) or not, he should wait till such time when the wife enters into the state of Haidh and becomes Clean (tahir/pak) once again. And, as an obligatory precaution, this period should not be less than one month.

Issue 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.

Issue 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. my 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.

Issue 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 Clean (tahir/pak) from her Haidh.

Iddah of Divorce (The Waiting Period after Divorce)

Issue 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.

Issue 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 Clean (tahir/pak) period, she should wait till she sees Haidh twice and becomes Clean (tahir/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.

Issue 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.

Issue 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.

Issue 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.

Issue 2524: * 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.

Issue 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 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

Issue 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).

Issue 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.

Issue 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.

Issue 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.

Issue 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

Issue 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.

Issue 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')

Issue 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.

Issue 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.

Issue 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.

Issue 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. 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'

Issue 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.

Issue 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.

Issue 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 khamisa mi'ati Dollar".

Mubarat Divorce

Issue 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'.

Issue 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.

Issue 2542: * 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.

Issue 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.

Issue 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

Issue 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.

Issue 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.

Issue 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.

Issue 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.

Issue 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.

Issue 2550: The father and the paternal grandfather of an insane man can divorce his wife.

Issue 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.

Issue 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.

Issue 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 her 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.

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