

Published on Al-Islam.org (https://www.al-islam.org)

Home > Women In Islam Versus Women In The Judaeo-Christian Tradition: The Myth & The Reality > Divorce

## **Divorce**

The three religions have remarkable differences in their attitudes towards divorce. Christianity abhors divorce altogether. The New Testament unequivocally advocates the indissolubility of marriage. It is attributed to Jesus to have said,

"But I tell you that anyone who divorces his wife, except for marital unfaithfulness, causes her to become adulteress, and anyone who marries the divorced woman commits adultery." (Matthew 5:32)

This uncompromising ideal is, without a doubt, unrealistic. It assumes a state of moral perfection that human societies have never achieved. When a couple realizes that their married life is beyond repair, a ban on divorce will not do them any good. Forcing ill–mated couples to remain together against their wills is neither effective nor reasonable. No wonder the whole Christian world has been obliged to sanction divorce.

Judaism, on the other hand, allows divorce even without any cause. The Old Testament gives the husband the right to divorce his wife even if he just dislikes her:

"If a man marries a woman who becomes displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce, gives it to her and sends her from his house, and if after she leaves his house she becomes the wife of another man, and her second husband dislikes her and writes her a certificate of divorce, gives it to her and sends her from his house, or if he dies, then her first husband, who divorced her, is not allowed to marry her again after she has been defiled." (Deut. 24: 1–4)

The above verses have caused considerable debate among Jewish scholars because of their disagreement over the interpretation of the words "displeasing", "indecency", and "dislikes" mentioned in the verses. The Talmud records their different opinions:

"The school of Shammai held that a man should not divorce his wife unless he has found her guilty of some sexual misconduct, while the school of Hillel say he may divorce her even if she has merely spoiled a dish for him. Rabbi Akiba says he may divorce her even if he simply finds another woman

more beautiful than she."(Gittin 90 a-b)

The New Testament follows the Shammaites opinion while Jewish law has followed the opinion of the Hillelites and R. Akiba1. Since the Hillelites view prevailed, it became the unbroken tradition of Jewish law to give the husband freedom to divorce his wife without any cause at all. The Old Testament not only gives the husband the right to divorce his "displeasing" wife, it considers divorcing a "bad wife" an obligation:

"A bad wife brings humiliation, downcast looks, and a wounded heart. Slack of hand and weak of knee is the man whose wife fails to make him happy. Woman is the origin of sin, and it is through her that we all die. Do not leave a leaky cistern to drip or allow a bad wife to say what she likes. If she does not accept your control, divorce her and send her away." (Ecclesiasticus 25:25)

The Talmud has recorded several specific actions by wives which obliged their husbands to divorce them:

"If she ate in the street, if she drank greedily in the street, if she suckled in the street, in every case Rabbi Meir says that she must leave her husband" (Git. 89a)

The Talmud has also made it mandatory to divorce a barren wife (who bore no children in a period of ten years):

"Our Rabbis taught: If a man took a wife and lived with her for ten years and she bore no child, he shall divorce her" (Yeb. 64a)

Wives, on the other hand, cannot initiate divorce under Jewish law. A Jewish wife, however, could claim the right to a divorce before a Jewish court provided that a strong reason exists. Very few grounds are provided for the wife to make a claim for a divorce. These grounds include: A husband with physical defects or skin disease, a husband not fulfilling his conjugal responsibilities, *etc*. The Court might support the wife's claim to a divorce but it cannot dissolve the marriage.

Only the husband can dissolve the marriage by giving his wife a bill of divorce. The Court could scourge, fine, imprison, and excommunicate him to force him to deliver the necessary bill of divorce to his wife. However, if the husband is stubborn enough, he can refuse to grant his wife a divorce and keep her tied to him indefinitely. Worse still, he can desert her without granting her a divorce and leave her unmarried and undivorced. He can marry another woman or even live with any single woman out of wedlock and have children from her (these children are considered legitimate under Jewish law).

The deserted wife, on the other hand, cannot marry any other man since she is still legally married and she cannot live with any other man because she will be considered an adulteress and her children from this union will be illegitimate for ten generations. A woman in such a position is called an agunah (chained woman).2

In the United States today there are approximately 1000 to 1500 Jewish women who are agunot (plural for agunah), while in Israel their number might be as high as 16000. Husbands may extort thousands of dollars from their trapped wives in exchange for a Jewish divorce.3

Islam occupies the middle ground between Christianity and Judaism with respect to divorce. Marriage in Islam is a sanctified bond that should not be broken except for compelling reasons. Couples are instructed to pursue all possible remedies whenever their marriages are in danger. Divorce is not to be resorted to except when there is no other way out. In a nutshell, Islam recognizes divorce, yet it discourages it by all means.

Let us focus on the recognition side first. Islam does recognize the right of both partners to end their matrimonial relationship. Islam gives the husband the right for Talaq (divorce). Moreover, Islam, unlike Judaism, grants the wife the right to dissolve the marriage through what is known as Khula'.4

If the husband dissolves the marriage by divorcing his wife, he cannot retrieve any of the marriage gifts he has given her. The Qur'an explicitly prohibits the divorcing husbands from taking back their marriage gifts no matter how expensive or valuable these gifts might be:

"But if you decide to take one wife in place of another, even if you had given the latter a whole treasure for dower, take not the least bit of it back; would you take it by slander and a manifest wrong?"(4:20)

In the case of the wife choosing to end the marriage, she may return the marriage gifts to her husband. Returning the marriage gifts in this case is a fair compensation for the husband who is keen to keep his wife while she chooses to leave him. The Qur'an has instructed Muslim men not to take back any of the gifts they have given to their wives except in the case of the wife choosing to dissolve the marriage:

"It is not lawful for you (Men) to take back any of your gifts except when both parties fear that they would be unable to keep the limits ordained by Allah. There is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah so do not transgress them." (2:229)

Let us now focus our attention on how Islam discourages divorce. The Prophet of Islam told the believers that:

"Among all the permitted acts, divorce is the most hateful to God" (Abu Dawood)

A Muslim man should not divorce his wife just because he dislikes her. The Qur'an instructs Muslim men to be kind to their wives even in cases of lukewarm emotions or feelings of dislike:

"Live with them (your wives) on a footing of kindness and equity. If you dislike them it may be that you dislike something in which Allah has placed a great deal of good."(4:19)

The Prophet has also emphasized that the best Muslims are those who are best to their wives:

"The believers who show the most perfect faith are those who have the best character and the best of you are those who are best to their wives." (Tirmidhi)

However, Islam is a practical religion and it does recognize that there are circumstances in which a marriage comes to the verge of collapsing. In such cases, a mere advice of kindness or self restraint is no viable solution. So, what to do in order to save a marriage in these cases?

The Qur'an offers some practical advice for the spouse (husband or wife) whose partner (wife or husband) is the wrongdoer. For the husband whose wife's ill-conduct is threatening the marriage, the Qur'an gives four types of advice as detailed in the following verses:

"As to those women on whose part you fear disloyalty and ill-conduct,

- (1) Admonish them,
- (2) refuse to share their beds,
- (3) beat them; but if they return to obedience seek not against them means of annoyance: For Allah is Most High, Great.
- (4) If you fear a break between them, appoint two arbiters, one from his family and the other from hers; If they wish for peace, Allah will cause their reconciliation."

(4:34-35)

The first three are to be tried first. If they fail, then the help of the families concerned should be sought. It has to be noted, in the light of the above verses, that beating the rebellious wife is a temporary measure that is resorted to as third in line in cases of extreme necessity in hopes that it might remedy the wrongdoing of the wife.5

If it does, the husband is not allowed by any means to continue any annoyance to the wife as explicitly mentioned in the verse. If it does not, the husband is still not allowed to use this measure any longer and the final avenue of the family-assisted reconciliation has to be explored.

Prophet Muhammad (S) has instructed Muslim husbands that they should not have recourse to these measures except in extreme cases such as open lewdness committed by the wife.

It has to be noted that the Talmud sanctions wife beating as chastisement for the purpose of discipline.6

The husband is not restricted to the extreme cases such as those of open lewdness. He is allowed to beat his wife even if she just refuses to do her house work. Moreover, he is not limited only to the use of light punishment. He is permitted to break his wife's stubbornness by the lash or by starving her.7

For the wife whose husband's ill-conduct is the cause for the marriage's near collapse, the Qur'an offers the following advice:

"If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best." (4:128)

- 1. Epstein, op. cit., p. 196
- 2. Swidler, op. cit., pp. 162-163.
- 3. The Toronto Star, Apr. 8, 1995.
- 4. Sabiq, op. cit., pp. 318–329. See also Muhammad al Ghazali, Qadaya al Mar'aa bin al Taqaleed al Rakida wal Wafida (Cairo: Dar al Shorooq, 4th edition, 1992) pp. 178–180.
- 5. There is a strict limit to this. Refer to books of jurisprudence for further details.
- 6. Epstein, op. cit., p. 219.
- 7. Ibid, pp 156–157.

## Source URL:

https://www.al-islam.org/women-islam-versus-women-judaeo-christian-tradition-myth-reality-sherif-muhammad-abdel-azeem/divorce#comment-0