

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

<u>Home</u> > <u>An Introduction To The Rights And Duties Of Women In Islam</u> > <u>Section One: The Rights and Duties of Women in Islam</u> > <u>Divorce in Islam</u> > The Philosophy of Divorce

## Divorce in Islam

Islam tolerates divorce and separation of a husband and wife under specific conditions; however, Islam regards divorce as abhorrent and reprehensible. Thus, it has been censured in Hadith. Imam Sadiq ('a) has declared:

Verily, Allah loves a house in which a wedding is held and hates a house in which a divorce is conducted and there is nothing more hateful than divorce. 1

Noble Sadiq ('a) has elsewhere announced:

Among that which Allah has made permissible there is nothing He hates more than divorce and Allah hates a man who divorces and marries many women.2

He has also stated:

When the Prophet of Allah heard that Abu Ayyub (Ayyub's father) intended to divorce his wife, he declared: The divorce of Umm Ayyub (Ayyub's mother) is a sin.3

Imam Muhammad Baqir ('a) cited from the Prophet of Allah (S):

Gabriel ('a) commended wives to such an extent that I presumed divorce is not permissible unless a wife performs an explicit act of unfaithfulness and infidelity.4

Noble Sadiq ('a) had stated:

Marry and do not divorce because surely divorce shakes the very Throne of God ['Arsh].5

The Prophet of Allah (S) has proclaimed:

Allah loves no permissible like marriage, and Allah hates no permissible like divorce.6

Islam holds divorce as an extremely ugly and vile act, which must be avoided within the bounds of possibility as it even rocks the very Throne of God. Even though it has not been forbidden, for various reasons, it is severely condemned. In order to prevent divorce, Islam campaigns against its causes, some of which are enumerated below:

One influential factor for divorce is the disheartenment of a husband for his legitimate wife and his fondness and affection towards non-mahram women. The chief instrument for this is lack of adequate *Hijab* among women and leering in men. When a man looks upon a woman who is more beautiful and attractive than his own wife he may become infatuated with her and become disheartened with his wife. Little by little he makes familial life bitter by finding faults, seeking excuses, and picking quarrels, which might ultimately lead to divorce.

In order to keep this from happening, on the one hand, Islam enjoins women to observe *Hijab*, cover their attractions from men, and refrain from being alluring for anyone but their own husbands. On the other hand, Islam directs men to abstain from looking at, and joking and bantering with non-*mahram* women. If their eyes happen upon a non-*mahram* woman, they must not linger and immediately look away.

Another agent for divorce is indifference of spouses towards one other and apathy and lack of passion in fulfillment of the sexual needs of one another. Many divorces and deviations occur when a husband or wife is not sufficiently sexually gratified.

To prevent this, Islam instructs women to wear their best clothes when at home, make themselves up according to their husbands' wishes, and display themselves with ardent fervor. Moreover, Islam charges men to observe cleanliness and personal hygiene, style themselves, and show a handsome and warm demeanor for their wives.

Furthermore, Islam advises both women and men that when making love and performing sexual acts, they must not only think of their own pleasure and release but seek to give pleasure and gratification to their partner also.

A third catalyst for divorce is misconduct, discourteousness, carping, picking quarrels, and stubbornness in a husband, wife, or both. Statistics show that the prime reason for most divorces is behavior incompatibility of spouses.

Islam strives to pre-empt these factors and strengthen the cornerstones of the holy institution of family by prescribing various rights and responsibilities for men and women. In addition, it advises against selfishness, egocentricity, autocracy, and recalcitrance, and advocates tolerance, forgiveness, and resolving differences with reason, fairness and affection.

The moral obligations of both women and men have been explicated in detail in various books on ethics, but some of these have been indicated in chapter five.

Islam has also anticipated the need for a team of arbitrators to resolve the disputes of spouses and preclude divorce. This team consists of two mediators; one chosen by the wife's family, and one by the husband's. They may be of the couple's family or unrelated. The Quran states:

"And if you fear a breach between the two, then choose an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah shall effectuate concord among them. Surely, Allah is All-knowing, All-aware." [

In order to bring about reconciliation, the team of arbitrators arranges a meeting with the wife and husband. They unearth the problem, hear out both sides with punctiliousness and fairness and advise, in friendship and love, each person regarding their mistakes and shortcomings. They remind each of the spouses of their responsibilities. Then they enjoin the couple to forgiveness, tolerance, observance of marital duties, and determination to fortify the holy institution of their marriage and family. They also warn them of the detrimental effects of discord and separation. In this manner, they restore harmony among the pair.

However, it must be expressed that the reconciliation brought about by Islamic arbitrators is different

from the settlement that results from the force of law. Judicial settlement is like the placating of two partners or neighbors or two persons who are hostile towards one another by obstructing them from encroaching upon each other's rights, whereas the reconciliation brought about by the team of arbitrators has nothing to do with judicial constraint; rather, it results from rectifying rancor, uprooting the source of the disputes, endeavoring to create mutual understanding, consolidating familial love, heartening the couple regarding their life together, and normalizing the relations between them.

The merits of this method over the modern judicial method are obviously far superior. If, however, after careful scrutiny and necessary action, the arbitrators realize that the conflicts are excessively deepseated and that the flames of marital love and affection have been completely quenched and there is no hope for concord after encouraging forgiveness and forbearance, they may leave the couple to their own devices or they advise them to seek a divorce.

Another instrument that may prevent divorce or at least forestall it is the payment of *Mihr*. A man who has paid his wife's *Mihr*, does not have the right to take it back, and if he has not, he must pay it completely before divorce. The Holy Quran states:

"And if you desire to take a wife instead of a [current] wife and have given her much wealth, do not take back any part of it; would you take it back with slander and blatant sin. And how shall you take it while you have taken pleasure of each other and after they have taken from you a strong pleage (at the time of marriage)"8

*Mihr* is the canonical and lawful right of women and they can collect it in any way possible. If the husband has not given it, he must pay it before the divorce. If it is a large enough amount, it can to some extent impede divorce, especially for people who are not financially well–off.

Another factor is keeping and fostering children and providing for their expenses, which are both the duty of men. In the event that the couple's conjugal relationship is normal and the husband and wife live together, women mostly handle the responsibility of fostering children. This gives men a better opportunity to work and provide family expenses.

However, if they are separated by divorce, the husband must take custody of their children and rear them (in addition to providing their expenses) and jointly accomplishing these two endeavors is very difficult. Additionally, children need motherly affection and this is a need that a man cannot deliver himself. This is why if a father contemplates the matter well and examines the consequences and difficulties of such an action, he usually is discouraged from getting a divorce.

Consequently, the existence of children and the responsibility of fostering them may be considered a

support for the persistence and consolidation of the family institution and an obstruction for divorce.

Another factor is the necessity for two righteous witnesses. Islam necessitates the presence of two righteous witnesses when the formula of divorce is recited because it must be recited correctly, which is not achievable by just anyone. Also, the two righteous witnesses must be present when the formula is recited so they may bear witness to the recitation if necessary in the future.

Because a reciter of the divorce formula and two righteous witnesses are not easily available and require time to find, men are impeded from a hasty divorce.

In the meantime, it is possible that the husband sees reason and attenuates his resentments and stubbornness, thinks well about the downsides of divorce and its future complications, and thus changes his mind. Well-wishing friends and advisers can help in this matter. Even after all the necessary conditions are accumulated, the reciter of the divorce formula and the witnesses do not carry out the divorce immediately. They endeavor to resolve differences and make peace among the couple and delay the divorce as long as they deem necessary to give the man and woman more time to think about their future and change their minds. Because Islam is opposed to divorce, it attempts to prevent it in any manner possible.

Finally, after all the conditions of divorce are fulfilled and the process completed, Islam does not consider the marriage terminated; it has determined a duration called 'iddah9 in which after a revocable divorce a man may return to his previous marriage by mutual consent without having to recite the formula of marriage and determine *Mihr* anew.

Islam favors the continuance of marriage to such degree that even after the divorce it gives the couple an opportunity, for the duration of 'iddah', to contemplate well and return to one's spouse if they both consent.

## The Philosophy of Divorce

Some might criticize the principle of divorce thus: If divorce is truly hated by Islam, as has been previously stated, why has it not prohibited it? Essentially, how is the union of legitimacy and detestability possible? Why has Islam permitted divorce and what is its philosophy?

In answer it must be said: Even though divorce is hateful and ugly, sometimes it is a necessity that cannot be avoided. For instance, surgical removal of parts of the body is painful and abhorrent but it is crucial in certain conditions and is to the benefit of humans; such as when a person has cancer. If enduring the marriage is torturous and unendurable for the husband and wife and the problem cannot be solved in any other way, divorce may be the best solution.

For example, one of these instances is where the fires of a husband's love and affection for his spouse are completely extinguished. Here, the woman has fallen from her beloved status of attractiveness and

the foundations of the family are in ruins. A home that does not have love is cold, dark, and sinister; not only has it lost its tranquility in the eyes of the wife and husband, it is a forbidding prison and fiery hell.

Matrimony is a natural union of a man and woman. It is completely different from all other social contracts such as transactions, leases, mortgages, and peace treaties. They are wholly social and contractual with no instincts and nature involved whereas marriage is a natural union that has its roots in the essence and instincts of couples and stems from natural needs and desires. Marriage results from the inner attraction of a man and woman and their desire for unification, linkage, and unanimity.

This attraction has been instilled differently in each gender. For men it manifests as love and affection, desire and possession of the female individual. For women it exhibits as self-beautification, allure, and captivation of a man's heart. Men want to possess their beloved and women want to be their husbands' beloved and attain their hearts.

The foundations of family are grounded on these two principles and if each part of a couple achieves their inner desires the institution of family becomes warm, pleasant, and beautiful. Men are heartened by their family and work hard to secure the ease and welfare of the family. Women consider themselves happy and successful and endeavor diligently in taking good care of their husbands, children, and home.

One the other hand, if a husband does not have affection towards his legitimate wife (or vice versa) and despises seeing and associating with her, and if the wife feels that she has fallen from her status of beloved and that her husband does not like her, the family has lost two of its key pillars and is considered dilapidated and ruined. Living in such a cold and broken family is exacting and painful for both women and men and its continuance in not to either's advantage. In such a state of affairs, even though Islam despises divorce, it is regarded as the best solution and thus allows it. Hence, the legitimization of divorce is for such cases.

Another item is lack of behavioral compatibility: when a man and woman have incongruent morals and attitudes or unlike beliefs. They might both be selfish, spiteful, inflexible, and fight continually; they may not listen to reason or advice or refuse to adjust and rectify themselves. Living in such a family is grueling and agonizing and maintaining it is neither to the woman's advantage nor the man's. In such instances divorce seems to be the best solution and thus Islam authorizes it.

As one can see, there are some cases in which divorce is a social necessity and the best solution; hence, it cannot be prohibited.

One might say: Even if we accept the necessity of divorce in some cases, why then is the law regarding divorce so general? It gives any capricious man permission to divorce, with the merest of excuses, expelling his unfortunate wife, who has expended her youth, energy, health, and spirit in her disloyal husband's house from her cherished home and taking another wife soon after. Is not allowance of such divorces oppression towards women?

In reply it is said: Islam is also exceedingly opposed to capriciousness and inhumane divorces. It campaigns extensively against its causes, has determined conditions and rules for divorce, and has set obstructions that can to a great extent prevent divorce.

If, however, for any reason a wife falls from her cherished status and becomes hated by her husband, what must be done? The wife knows that she is not her husband's sweetheart and the mistress of the house, and that her husband dislikes her. This painful occurrence causes the greatest humiliation and anguish for a woman. Is it right to forcefully keep such a woman in wedlock with laws and prevent her from divorce?

A woman can be kept in wedlock with the force of law and the man forced to pay her *nafaqah*; however, no laws can create love, which is the backbone of marital life, between the couple. Even though Islam loathes divorce, it seems to be the best solution to some problems.

It might be asked: If divorce is necessary and the best answer to some problems, why is it specific to men, and why do women not have sanction to divorce? These feelings may also originate in women. A woman may lose her love for her husband and abhor continuing their conjugal relationship. In such a situation it can be said: Because there is no love, in essence, their familial life has ended and the wife must have the right to divorce her husband and proclaim the termination of their marriage.

In answer, it is said: A wife's disinterestedness cannot be considered the end of marital life; rather, it is a sign of her husband's shortcomings and faults or his negligence regarding performing his nuptial duties and caring for his wife. The key to a woman's love and affection is in her husband's hands. If a man truly loves his spouse and desires her plentifully, performs his duties regarding his wife, and rectifies his behaviors, usually the wife gains high spirits, hope, and love for her husband and endeavors to retain her husband's heart indefinitely.

Thus, if a woman is unenthusiastic toward her life and husband, it is the fault of her husband. In such a situation, divorce is not necessary; the husband must be informed of his duties and the delicate and subtle art of caring for a wife, so that he reconsiders his ways, speech, and manners, and strives to gain his wife's heart in any method possible and give her hope for a better future.

It may be asked: What must a wife do if her husband beats her, does not provide her *nafaqah*, makes life hard on her, does not correctly perform his sexual duties, torments and harasses her, curses and swears at her, and even refrains from divorcing her? Do you tell her to have patience and "grin and bear it" until her death arrives? Why have women not been given the right to divorce in such cases, so that they may be freed of their torturous prison?

In answer it is said: Islam is based upon justice, fairness, and human rights; thus it never allows or approves of such indecent and oppressive behavior. Islam greatly opposes such mannerisms and defends the rights of women.

In such cases, a woman must approach the team of arbitrators and ask them to advise and council her husband and induce him to observe justice and fairness, and to perform his duties. If they are successful, she continues her life with him and if he does not see the light and amend his ways, she must advance her complaint to a canonical Islamic judge or family court.

The judge summons the offending husband and demands that he refrain from oppression and abuse and that he perform his duties. If he does not accept, he is obligated to divorce her. If he refuses to do so, the judge himself divorces them and forcefully takes the wife's rights from her husband.

```
Wasa'il ush-Shi'ah, vol. 22, p. 7.
Ibid, p. 8.
Ibid, p. 8.
Makarim al-Akhlaq, vol. 1, p. 248.
Ibid, p. 225.
Mustadrak al-Wasa'il, vol. 15, p. 280.
Surah Nisa', 4:35.
Surah Nisa', 4:20-21.
The 'iddah of a revocable divorce is the duration of three menstrual cycles of a woman after divorce.
```

## Source URL:

https://www.al-islam.org/introduction-rights-and-duties-women-islam-ibrahim-amini/divorce-islam#comment-0