

## CHAPTER SIX

### MUAMALAT (RELATIONSHIP)

#### DIVORCE (TALAQ)

##### Meaning of the term Talaq

Talaq is an Arabic word, which literally means to set an animal free. In the Islamic Shariah, it means the legal method whereby a marriage is brought to an end and allows the spouses to release themselves from the marriage.

##### Conditions of talaq (Divorce)

The following are conditions of divorce:

1. The mechanism for conflict resolution should have been exhausted.
2. The marriage should have been conducted under the Islamic laws.
3. The Talaq must be pronounced either orally or by writing.
4. The woman should be free from her menses.
5. A person should pronounce it by his own free will and not under compulsion.
6. The person pronouncing it should be mature and sane.
7. It should not be pronounced under intoxication or in the influence of drugs.
8. Implementation of Talaq will begin in normal period after the menstrual cycle. After the *iddat* period, woman is free to marry another person or re-marry her ex-husband. Nevertheless, marriage with her ex-husband should fulfill all conditions of nikah.

##### Cases that invalidate Divorce

The following are circumstances under which divorce is considered invalid and null:

- a) If the divorce is pronounced by a minor person who is under the age of puberty
- b) When the divorce is pronounced by a lunatic or a person with similar frame of mind
- c) In case the divorce is pronounced by an imbecile or silly person
- d) In case the divorce is pronounced by an intoxicated condition
- e) A divorce that is pronounced under compulsion is not acceptable Islamically
- f) When a divorce is given under fraud or through any form of cheating

##### Machinery for Talaq

Machinery of divorce refers to the procedure to be followed before the resolution of marriage. It is important to note that Talaq is not something that a married Muslim can use to dissolve his marriage at any time or occasion of his own desire or free will. The prophet (p.b.u.h) said, *“There is no lawful matter which is more detested by Allah (SWT) than divorce.”* (Abu aawoud and Ibn Majah). In the event that there are problems persisting in marriage and there is no remedy, then the Shariah stipulates the following steps:

1. **To give a kind admonition using polite words:** There should be a dialogue and soul searching through giving positive pieces of advice aiming to change the spouses' behavior.
2. **Giving minor punishments:** Such punishments may include the following:
  - Refusal of fulfilling the conjugal rights. The husband should abstain from sharing their matrimonial bed for a known period of time.
  - The husband is allowed to give her a light beating. This should however not inflict pain especially on the face or leave any marks on her body.
3. **Pledging the vow of continuation:** This is the observation of the period of *Ila'a*. The husband then should vow to continue with severing the conjugal rights for a period of four months.
4. **To appoint two mediators from both sides:** During the period of *Ila'a* arbitrators from both sides are chosen to bring reconciliation if the spouses are looking for peace and rebuilding of their marriage
5. **Pronouncing of divorce:** If the couples could not agree on their problem and failed to settle their conflict then they should break up their bond of marriage peacefully.

### **Reasons for divorce**

The following are possible causes that can lead to divorce in the society:

- a) If the husband is cruel to his wife, either physically or emotionally.
- b) Muslim man or woman may seek divorce if the partner is unchaste or proven for having committed Zinaa.
- c) If the husband is physically and mentally able to earn a living but is not a good provider for his wife and any children if they have.

- d) A woman can also leave her husband if she finds him not sufficiently religious, failing to follow the traditional rules and protocols of Islam.
- e) Desertion by either of the spouse provided a sufficient period has elapsed between the abandonment and the request for divorce.
- f) Failing to meet conjugal needs, if physically able by either of the spouses.
- g) Materialistic of either spouse. For example, if the husband is able but he is extremely mean to provide the basic need for the family
- h) Instigation made by relatives who can plot different adverse situations and trivial issues to make the couples to separate
- i) Drinking of alcohol, taking drugs by a spouse which the other one cannot tolerate.
- j) Unfairness in polygamy: if the husband is unjust to his wives in all their needs and desire.
- k) Physical or mental defect or deformity if not present or known about at the start of the marriage can also instigate a divorce.

### **Definition of some Concepts related to Talaq (Divorce)**

- **Sunnah divorce:** It is a divorce that is pronounced once or twice during the time the wife is in her state of ritual purity and have not enjoyed sexual pleasures before pronouncing it.
- **Bid'ah talaq (Innovative Divorce):** It is a divorce that is pronounced during the time the wife is in her state of ritual impurity and after having sexual intercourse with her. Normally, it is pronounced three times at once.
- **Talaqatu-Raj'i (Revocable Divorce):** This is pronouncement of divorce that is less than three times with a desire to take back his wife. The husband has a right to redeem back his divorced wife even without her consent before the period of eddah expires. It is sunnah to have two witnesses on that occasion.
- **Talaqatul-Bain (Irrevocable Divorce):** It is a divorce whereby the husband pronounces three divorces at once or at different three times. The wife becomes unlawful for him until she marries another husband, then divorced and complete her waiting period (eddah) of the second husband.

- **Muhallil:** This is the man who marries a divorced wife in order to make her lawful for her former husband again. This is forbidden in Islam.

### Conditions for redeeming irrevocable Divorce

There are conditions governing a situation when the husband would like to take the back his wife after the third divorce:

1. The Talaq should have been pronounced at three different periods.
2. The wife must have completed her waiting period of the first husband
3. The wife must have been married to another different man, divorced and completed her waiting period (Iddat) for the second husband

### Types of divorce

In accordance to Islamic law the following are the types of divorce:

#### 1. Talaq by husband

This is the divorce pronounced by the husband once or utmost twice. After pronouncement of divorce, the wife begins her eddah. It can be either revocable or irrevocable divorce. Islam has conferred upon the husband the right to divorce.

#### 2. Khulu'

Khulu' literally means stripping off or putting off. Technically, this is a divorce by redemption. It is requested by the wife and is granted by the husband upon the wife's paying him back his dowry.

### Differences between talaq by husband and Khulu'

The following are differences between divorce by Husband and Khulu'

<b>Talaq by husband</b>	<b>Khulu'</b>
a) A husband is conferred by Islam to pronounce it through his own person will with a valid reason	a) A wife asks and requests for the release from the marriage bond

b) A husband is liable for the payment of the dowry to the wife	through her own will with a valid reason b) It is the wife who makes the payment of considerable amount of wealth to the husband to induce him to grant her the divorce
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### **3. Faskh Nikah (Divorce by Agent/Qadhi)**

This is when a woman asks the Kadhi for the dissolution of the marriage with a valid reason.

#### **Circumstances under which a Muslim wife can ask for khulu' or faskh nikaah**

In Islam, a wife may seek Khulu' or dissolution of marriage by the Khadhi when she is not comfortable in the marriage due to a variety of reasons. These reasons may include the following:

1. Insanity or madness of the husband.
2. In the event that the man is impotent.
3. If the husband is suffering from terminal or infectious diseases like leprosy, HIV/AIDS.
4. In the event that the husband permanently changes his residence and the he refuses the wife to follow him.
5. Cruelty or mistreatment of the husband.
6. Prolonged disappearance of the husband and his whereabouts is unknown.
7. Intentional negligence of the husband to provide for the needs of the wife and the children.
8. Inability of the husband to satisfy his wife's conjugal rights due to absence or amputation of the male organ
9. When the husband denounced Islam or incase both of them were unbelievers and she reverted to Islam

### **4. Mubarat (Mutual consent to separation)**

This is irrevocable divorce by mutual agreement and is pronounced by both the husband and wife. In a situation whereby, the spouses have explored all the possible means to keep the marriage intact but have failed to resolve their differences, they may both opt to seek divorce as an amicable solution.

### **Conditions for Talaq Mubaraat**

Mubaraat as a divorce must meet the following conditions -

1. Either of husband or wife can make the offer for the divorce.
2. The other one must accept it.
3. As soon as it is accepted, it becomes irrevocable.

### **5. Lian (Mutual cursing)**

The term lian literally means mutual cursing. Technically, it denotes a situation in which marital relationship between a husband accuses his wife of a charge of adultery and fails to give enough evidence, or denies that the child is his or that she has got pregnant by him.

### **The process of oath of condemnation**

The following is the procedure through which Lian should be conducted:

The husband who accusing his wife with a charge of adultery should take four oaths that state *“I attest by Allah that I’m a speaker of truth when I charged at her the charge of adultery”* and on the fifth time he should invoke a curse to himself by saying that *“The curse of Allah be upon me if I’m a liar”*. Then the wife responds by taking four oaths that state *“I attest by Allah that he is a liar in the charge of adultery that he has imposed on me”* and on the fifth time she invokes a wrath of Allah be upon herself by saying *“The wrath of Allah be upon me if he has spoken the truth when he charged at me with the charge of adultery”*. At this end, the two are considered as divorced irrevocably.

### **6. Dhihar (Injurious comparison)**

This divorce occurs immediately after the husband’s utterances that show *injurious* comparison of his wife to his mother, sister or any other female relative who are prohibited to marry. Therefore, the marriage is temporarily considered cancelled. The comparison should be intentional and with disrespect.

### **Penance of Dhihar**

It should be noted that, Dhihar by itself does not terminate the marriage nor does it cause the wife to lose her right to maintenance even in case of default of penance. It causes the following:

1. Sexual intercourse becomes unlawful.
2. The husband is liable for expiation.
3. The wife can claim judicial separation if the husband persists in wrongdoing.

### **Methods of expiation for Dhihar**

The following are the conditions to be fulfilled by the husband before taking his wife back after Dhihar:

- To free a slave
- To fast two months continuously
- To feed sixty needy people.

### **7. Nushuz**

This is refusal of the wife to obey her husband's orders. For example, if she rejects to share a bed with him, leaving her husband's house without his permission, welcoming a stranger home without her husband's consent or receiving a gift from unauthorized person. These mistakes cannot terminate marriage unless stated by the husband.

### **Effects of divorce**

Divorce has adverse effects to the married partners involved, children and community at large.

### **Effects of Divorce to community**

The following are the adverse impacts of Divorce to community:

- a) It leads to stigmatization and traumatic effects to both the victims and society by the other members of the community who will frequently ask questions.
- b) It creates disunity since the other family members will detach themselves from the divorced person.
- c) It may lead to social evils like prostitution, drug abuse, stealing among others.

- d) It creates misunderstanding among the family members of the two families and thus promoting hatred and revenge at some point.
- e) Sometimes the psychological suffering that the victim is subjected to can make him or her to commit suicide or even to be driven mad.

### **Effects of Divorce to children**

The following are the effects of Divorce to children:

- They lose love and affection from one or both parents.
- They may lack necessities like food, clothing and shelter, which were being provided by the parents.
- They may lack role models or someone to correct them when they go wrong.
- The children feel unwanted and may involve themselves in antisocial behavior.
- It may lead to children living in the streets due to parental negligence.
- The health of the children may deteriorate due stress and malnutrition
- The children will end up without proper education or even drop out from school
- In extreme cases, they may attempt to or even commit suicide.

### **Economic effects of Divorce**

The following are the effects of Divorce financially:

- 1) Added responsibility to the other family members if they are the one to look after the children
- 2) One of the spouses may have acute financial problems if he or she depended solely on the other.
- 3) The wife may be required to work overtime in order to make ends meet.
- 4) Financial constrain will affect the children life i.e. their education and needs.
- 5) One will have to bear more responsibilities as a single parent

### **Harmful Effects if talaq (Divorce) is not allowed**

The following are the harmful effects if divorce is not allowed:

- a) The trend of keeping mistresses will be high.
- b) Murder or suicide may be committed and results into massive loss of lives.



- c) Children may miss the parental care they deserve especially if the parents have frequent quarrels and become negligent to extent of affecting their children.
- d) Sexual perversion such as adultery, fornication and prostitution will be on increase.
- e) The illegitimate children will be on rampant rate due to prostitution and adultery.
- f) Enmity and hatred will grow more and more between the husband and wife.
- g) The rate of feuds between the two families will be high

### **Situations when a mother loses custody of her children**

The following are situations when a mother loses custody of her children:

- When she becomes insane or mentally unbalanced.
- When she has a serious disease like AIDs or leprosy.
- When she is a minor or is immature and has not reached age of property.
- When she is unable to protect the child or guard her body, religion or intellect.
- When she is a disbeliever which will divert the child's faith and beliefs.

### **Iddah (The waiting period)**

*Iddah* is Arabic word which literally means counting. In the Islamic Shariah it refers to the prescribed period of waiting by a Muslim woman who has either been divorced or widowed who is expected to confine herself in a house and refrain from certain acts as getting married or beautifying herself.

### **Types of Iddah**

#### **a). Iddah for Divorced woman**

The following are the types of Iddah for Divorced woman:

1. Iddah for a menstruating woman is three months or three menstrual cycles.
2. Iddah for a non-menstruating woman referring to an old woman who has reached menopause or a girl who has not started her periods, she has to wait for three months
3. The woman with irregular monthly cycles shall wait for a period of three months.
4. The woman who is divorced before any sexual contact with her husband does not have any waiting period.
5. The iddah of a pregnant woman she waits until she delivers

#### **b). Iddah for a widow**

The following are types of Iddah falling under the category of a widow:

- a) A widow shall wait for four months and ten days.
- b) In case she is expecting a child, she shall wait till she gives birth.
- c) For a widow who has ceased menstruation, if the reason is unknown, then she will wait for one year. The nine months shall be for the Iddah for pregnancy and the three months for menstrual cycle. If it is due to suckling or illness, she will wait till she experiences her menstrual cycle then start her Iddah of four months and ten days.

**c). Iddah for a missing husband**

The wife shall wait for a period of four years, if the husband does not show up, then he will observe the Iddah for a widow of four months and ten days.

**Differences between the eddat of a widow and the eddat of a divorced woman**

The following are differences between the eddat of a widow and the eddat of a divorced woman:

- a) The duration for widow is four months and ten days while the eddat of a divorced woman is three months
- b) The eddat for a widow is irrevocable while the eddat of a divorced woman can be revocable or irrevocable depending on the husband's wish
- c) The purpose of eddat of a widow is to give opportunity for mourning while the eddat for divorced one is primarily for determining whether the woman is pregnant or not and to give room for reconciliation
- d) While observing the eddat, the widow is not allowed to beautify her with ornaments, perfumes or colourful clothes, while the divorced may apply perfume, wear attractive clothes and beautify herself to attract her husband with an aim of making her to revoke the talaq
- e) The upkeep and maintenance of the widow in eddat is derived from the estate left by the husband and from the assistance given by the members of the late husband and the society at large, while the upkeep of the divorced woman comes directly from the husband himself or her parents

**Importance of Iddah**

The following are rationales behind the observance of Iddah:

1. It gives the woman time to mourn for her deceased husband.
2. To give the widow time to prepare for her new life socially, psychologically and economically.
3. To ascertain that the woman is free of pregnancy so that to avoid unnecessary conflicts and disputes regarding the patterning of children and making the inheritance process to be done easily.
4. Iddah is a consolation for the widow and therefore it should not be taken as a punishment.
5. For the divorcee, it allows room for reconciliation. That is, to give room for the husband to revoke the divorce if it is revocable and therefore, he can take back his wife.
6. If the wife's husband is missing, then it protects the rights of the marriage.

### **Islamic teachings on the observance of Iddah**

#### **a). Iddat of Divorced woman**

The following are the Islamic teachings on the observance of Iddah of Divorced woman:

- A divorcee should stay in her husband's house but if the husband is cruel, then she can find a safer place like her parents' home.
- She should refrain from going out except when and where it is necessary.
- During Iddah period, the woman cannot marry another person or accept a marriage proposal until she completes her waiting period.
- A divorcee should be maintained by her husband
- A divorcee can apply perfume, wear attractive clothes and beautify herself to attract her husband to revoke the talaq
- A divorcee should observe the period of iddat according to the category she falls in as per the types of divorce.

#### **b). Iddah of a widow**

The following are the Islamic teachings on the treatment of a widow during her Iddah:

- A widow should refrain from going out except when and where it is necessary.

- During Iddah period, the woman cannot marry another person or accept a marriage proposal until she completes her waiting period.
- A widow should be maintained and cared for by her late husband's family and community at large.
- The widow should stay in the home of the deceased husband where possible.
- She should refrain from adornment such as wearing jewelry, perfume or heena
- A widow should observe the period of iddat according to the category she falls in as per the types of divorce. For example, she should observe a period of iddah of four months and ten days or waits until she gives birth.
- She should not use soft words and seductive terms which may make a man to hasten her marriage before the end of her eddat
- A widow has a right to inherit from her late husband's estate according to Islamic sharia
- A widow should claim her dowry from her late husband's estate if not yet paid earlier
- She has a right to remarry any man of her choice and once she remarries, she has a right to take her belongings with her