



# TALAQ WHEN AND HOW? --The Islamic Viewpoint

By:  
SHAMS PIRZADAH (R.H.)

Translated from Urdu by  
Abdul Karim Shaikh

**IDARA DAWATUL QURAN**

59, Muhammad Ali Road,  
Mumbai- 400 003  
Phone :23465005

4<sup>th</sup> Edition. August  
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ ط

In the name of Allah, Most Gracious, Most Merciful

## FOREWORD

Islam disapproves of divorce immensely, and in this connection it has cautioned its followers to be very careful, and has pointed out the steps that the spouses have to take for reconciliation in the event of disagreement between them. It has also laid down the correct procedure of giving divorce if it becomes inevitable to do so. In this connection the basic point to note is that Islam has permitted only the divorce to be given on one occasion. but a very large number of Muslims is unaware of these teachings of Islam and because of the moral and social corruption a number of people put divorce to wrong and improper use by giving three divorces at one and the same time. and feel sorry afterwards. In view of this situation, an urgent necessity is felt to educate the people about the Islamic teachings in concerning divorce and to show to them its correct procedure. This pamphlet has been written mainly with this

purpose in view, but it can be useful from this angle too that those critics, who deride the Islamic shariah laws after seeing wrong procedures of divorce generally followed by the Muslims, would be able to see what was the procedure really laid down by Islam and what procedure is actually being followed by many of its followers.

We pray that this pamphlet may prove helpful in effecting the much-needed reform.

Mumbai,  
12<sup>th</sup> Rabiul Awwal. 1406 A.H.  
26<sup>th</sup> November 1985.

**SHAMS PIRZADA**

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ ؕ

## NIKAH--- A PLEDGE OF LOYALTY

Nikah is that strong relationship in which man and woman are bound by the Shariah Law. This relationship leaves deep impressions on the social life. For this reason Islam wants that this relationship should be more and more strong. Accordingly in the holy Qur'an it has been termed as a firm pledge:

وَآخِذْنَ مِنْكُمْ مِّيثَاقًا غَلِيظًا

"And they (women) had taken from you firm pledge. " (Surah An-Nisa-21 )

Allah has made this alliance a means of love, affection and blessings between the spouses, in order that they may get comfort and peace and may lead a happy life;

وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً.

"And He created between you love and blessings."

(Surah Ar-Room 21).

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا.

It is He who created you from a single soul, and

there-from made his mate, so that he might find comfort in her. (Surah Al-Araf - 189).

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ .

"They are your garments and you are their garments." (Surah Baqarah - 187).

In other words husband and wife have the relationship of hand and glove. As garments not only cover the naked body but also beautify it, similarly the spouses cover one another's defects and are a means of beautification of one another's life.

## HARMONIOUS LIVING WITH THE LIFE-PARTNER

In view of this importance of marriage (nikah) and in view of its high objectives it is imperative that efforts should be made to keep this relationship going permanently and to maintain the marital relations on sound footing. It is improper to end this strong relationship merely on the flimsy ground that the wife is not beautiful or that there is something wanting in her temperament. In this connection, the Qur'an gives these directions:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ

تَكْرَهُنَّ شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا - (سوره نساء: ۱۹)

"Live with them in a good manner. If you dislike

them, it may be that you dislike a thing and Allah has placed (for you) much good therein. " (Surah An-Nisa-19).

It is possible that the wife may not be beautiful, but may have good character; and it is possible that there may be something wanting in her temperament but against that there may be some other good qualities in her which may be useful for the conjugal happiness, e.g. she may have sincere love for her husband and may be taking great pains to serve him in every way she can. The Prophet (Sallalahu Alaihi Wa Sallam) has said:

لَا يَفْرُكُ مُؤْمِنٌ مُؤْمِنَةً إِنْ كَرِهَ مِنْهَا خُلُقًا رَضِيَ مِنْهَا آخَرَ. (مسلم)

"No Momin (believer) male should hate a Momin female: if one particular trait of her character is disliked by him, (possibly) other trait would be liked by him," (Muslim)

It should also be borne in mind that women generally are emotional, and because of this they quickly fall a prey to misunderstanding, which creates a lot of problems in domestic life. But being a member of the stronger sex the task of the husband is to see that matters do not get complicated. The Prophet (Sallalahu Alaihi Wa Sallam) has said:

إِسْتَوْصُوا بِالنِّسَاءِ فَإِنَّ الْمَرْأَةَ خُلِقَتْ مِنْ ضِلْعٍ وَإِنَّ

أَعْوَجَ شَيْءٍ فِي الضِّلْعِ أَعْلَاهُ فَإِنْ ذَهَبَتْ تُقِيمُهُ كَسَرَتْهُ

وَإِنْ تَرَكْتَهُ لَمْ يَزَلْ أَعْوَجَ، فَاسْتَوْصُوا بِالنِّسَاءِ. (بخاری)

"Treat women fairly, because a woman is born from the rib (of Adam), and the most curved part of the rib is its upper part. If you would try to straighten it, you would break it, and if you would leave it alone it would remain curved. Therefore, give women better treatment." (Bukhari)

In this example a hint is given about the weak understanding and volatile temperament of the weaker sex, and men have been directed to be tolerant and kind. The object of this tradition is not to belittle the importance of women but to provide necessary concession for their temperaments.

## PROBLEMS ARISING OUT OF DIVORCE

Generally husbands give divorce to their wives on petty altercations. It is their emotional decision, and not a thought out or well considered decision, while divorce is a decision which cuts the bond that had tied them in the relationship of nikah. Besides, giving divorce entails creating a lot of problems, for example.

(1) After a deep and intimate association, separation becomes a means of mental depression and unrest for both the partners. Their hearts are wounded. In other words divorce is an operation which separates the two hearts that were linked together by love, and as is well known men resort to

(surgical) operation only in emergency cases. Nobody considers it desirable in ordinary circumstances.

Therefore, no recourse should be had to this operation (divorce) unless when it becomes absolutely necessary.

(2) It creates the problem of a second marriage for the woman. In our present day society very few people can be found who would be willing to accept divorced women as their spouses. As a result of this mentality, divorced women have generally to pass their remaining days without getting married.

During the time when the Qur'an was being revealed, marriage with the divorced women was not considered objectionable, but our present society considers it otherwise, and therefore, in the event of a divorce, a woman has to face considerable difficulties.

(3) The question of livelihood for the woman crops up. Modern civilization has made the problem of housing so difficult, that to provide housing accommodation for an individual has become a very difficult matter. The woman may go either to the house of her parents or her brother; in the big cities, where generally an entire family is living in only on room, to make

arrangement for the living of one more individual creates more difficulties for that family. In addition to this, there is the problem of providing maintenance to the divorced woman, who should provide maintenance for her and how. Although the Shariah has placed the responsibility of maintenance on the shoulders of the near relatives, however, in the modern society when people have forgotten their duties and have become careless about fulfilling their responsibilities, the question of sustaining herself poses a serious problem to the divorced woman.

This is the situation, of which the anti-Shariah people have taken undue advantage and are working against the Islamic law concerning maintenance. Therefore, Muslims should realize what difficulties are created by divorce in the present day conditions and what harmful effects it leaves on the society.

(4) If there is a child, then the question of bringing it up is also to be tackled. First of all the separation of father and mother affects the children psychologically, and besides the problem of placing the children under the mother's care becomes disputable.

On account of these reasons, Islam has declared divorce to be an undesirable act. In a hadith it is stated:

أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقِ

“To Allah the most undesirable thing among the lawful things is divorce.” (Abu Dawood)

## MALPRACTICES CONCERNING DIVORCE

It is a fact that people have become very careless and incautious in matters pertaining to divorce. To give divorce without thinking, in a rage, to avoid paying Mehr (dower) even after giving divorce to pronounce three divorces at the times, and to adopt thereafter the non-Shariah procedure about halalah, are some of the defects which need to be reformed immediately.

To use unthinkingly the authority given by Islam to men in the matter of divorce is certainly an extremely irresponsible act.

## RECONCILIATION EFFORTS BEFORE DIVORCE (TALAQ)

If a dispute has arisen between the husband and the wife and their living together as husband and wife is becoming difficult, in such a situation the direction of Islam is that the decision to give divorce

should not be taken immediately, but all efforts should be made for reconciliation between the two disputants, and if it becomes necessary, even to take suitable disciplinary action. The procedures to be adopted in this connection are given in the Qur'an are as under:

وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا - (سورة نساء- ٣٤)

“As for those women from whom you fear defiance, admonish them, leave them alone in their beds, and beat them. Then if they obey you, seek not an excuse against them. Varily Allah is Most High, Great.” (Surah An-Nisa-34)

In this verse three remedial measures have been directed to be adopted by the husband in the case of a disobeying or defiant wife. The first one is to admonish her, that is such words to be spoken to her as would tempt her mind and heart to accept the reformatory attempts. If this attempt fails, then the second measure should be adopted, that is she should be isolated in her bed so that she should realize that her husband is displeased with her. If even this measure also is unsuccessful, then the husband should raise his hand to hit her; but this hitting should not be to satisfy his anger, but with a view to disciplining and reforming her. It should

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be borne in mind that the husband should not hit her hard, but lightly. For beating the wife in an aggressive and tyrannical way is strictly forbidden. In a hadith it is stated:

وَلَا تَضْرِبِ الْوَجْهَ وَلَا تُقَبِّحْ وَلَا تَهْجُرْ إِلَّا فِي الْبَيْتِ - (ابوداؤد)

“Do not hit on her face. Do not abuse, and do not leave her alone except in the home.” (Abu Dawood)

In another hadith it is stated:

فَاضْرِبْ بُوْهَنَّ ضَرْبًا غَيْرَ مُبْرَحٍ - (مسلم)

“Hit them but not in a way that would be hard and painful for them.” (Muslim)

In fact this authority has been given to a husband to keep his wife within the limits of morality and to maintain a healthy discipline in the house. It is not given for the purpose of allowing the husband to beat his wife on petty and flimsy grounds and for misusing it in any way he likes.

If even after the application of this third measure, there is no sign of improvement and the tension may be increasing, then there is one more measure to be tried as ordained, and that measure is of appointing ‘Hakam. (Arbiter) and reaching conciliation through their efforts:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ

يُرِيدَ إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا - (سوره نساء- ۳۵)

“And if you fear a breach between the two,

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appoint an arbiter from his relatives and an arbiter from her relatives. If they both desire reconciliation Allah will effect harmony between them. Verily Allah has full knowledge, and is aware of everything.” (Surah An-Nisa-35)

It boils down to this that if the disagreement between the spouses reaches the point of separation, no haste be made to give divorce, but that one more measure should be tried, and that is an arbiter each from the relatives of the husband and wife be appointed and both these arbiters should try to bring in reconciliation between them. If this effort is made with sincerity, then Allah will reward this attempt with success. Compared to a court of law this method of employing the services of arbiters is more appropriate because the arbiters being the elders from both the families, the chances for reconciliation would be greater. Besides, this measure would spare the dirty linen of the family being washed in the public.

## HOW SHOULD THE DIVORCE (TALAQ) BE GIVEN

If even this last measure proves to be ineffective, and there appears to be no sign of reconciliation, then the husband can use his right of giving divorce; and it is definitely better to free the wife from the bonds of nikah than keeping her suspended

indefinitely. Islam has kept the avenue of divorce open for man in order that man may lead a righteous life and there should be no difficulty for him to keep within the limits of morality. Similarly Islam has given the right of 'Khula' to woman and also to approach a court of law for dissolving her nikah in order that she may also be able to keep within the religious and moral bounds.

In the case of deciding to give divorce, a husband should take care to adopt the Shariah method, and it is better if he reduces this decision to writing. The correct procedure of pronouncing divorce is as under:

(1) Divorce should be given when the wife is in a state of purity', i.e. when she is clean after her menstrual period and the husband had not had sexual intercourse with her.

Giving divorce during the menstrual period of the wife has been forbidden in the hadith, on the good grounds that during the menstrual period a husband is not attracted towards his wife, and in her state of cleanliness thereafter he may turn towards her and may give up the idea of divorcing her.

(2) Only one divorce be given, that is the husband may say to the wife: "I divorce you". He should not add any numbers to his divorce.

If the divorce is being written on paper then it may be clearly stated that it is one divorce

(revocable).

(3) Divorce be given in the presence of two just witnesses. It is stated in Surah Talaq:

وَأَشْهَدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ -

"And call to witness two just men among you." (Surah At-Talaq-2)

(4) After the divorce, the woman will have to pass her term of waiting (Iddat). It is that period in which a divorced woman cannot be re-marry and it is incumbent upon the husband that he should not turn her out before the end of this period of iddat, and he should provide for her maintenance during this time. Similarly it is incumbent upon the divorced woman that she should pass her period of iddat in her husband's house. The term of iddat is for three menstrual periods.

The Qur'an states:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ - (سورة بقره- ٢٢٨)

"Divorced women shall wait, keeping themselves apart, for three menstrual periods." (Surah Baqarah-228).

When the third menstrual period is over, the period of iddat ends. And if the woman is not menstruating, then the period of iddat is three lunar months, that is from the day the divorce is given till the end of three lunar months.

وَالَّتِي يَيْسُرنَ مِنَ الْمَحِيضِ مِنْ نَسَاءِكُمْ إِنْ أَرْتَبْتُمْ  
فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّتِي لَمْ يَحِضْنَ. (سورة طلاق-٣)

“And for such of your women as despair of menstruation, if you doubt, their period (of waiting) shall be three months, and also for those who have it not.”

(Surah At-Talaq-4)

And if the woman is pregnant, then her period of waiting is the termination of her pregnancy (delivery):

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ. (سورة طلاق-٣)

‘And for those with child; their period shall be till they bring forth their burden.’ (Surah At-Talaq-4)

(5) During the period of waiting (iddat) a husband can return to her, i.e. take her back as wife. For this revocation of divorce, two just men should be called as witnesses.

(6) If he has not returned to her or revoked the divorce, then after the period of waiting (iddat) is over, the woman would separate from the man. But this would be ‘One revocable divorce’. If after this both the ex-husband and the ex-wife desire, they can remarry. In other words after the period of iddat, man has no right of revocation, however if he wants to bring her back as a wife, there is an

opportunity for him to marry her again with her willingness.

According to the Qur’an and Sunnah this is the correct and better procedure of giving divorce. In this procedure man gets full opportunity to think and to weigh the pros and cons of his steps, and there remains little or no chance for him to regret. The jurists have termed such a divorce that has been given once and in the state of cleanliness and without an intercourse after the last menstrual period, and no second and third divorce having been given during the period of waiting – but the period of iddat was allowed to pass after one divorce-as ‘the divorce according to Sunnah.’

In the ‘Mughni’ it is stated:

وطلاق السنة ان يطلقها طاهرا من غير جماع واحدة

ثم يدعها حتى تنقضى عدتها. (مغني ابن قدامج ص ٩٨)

“Divorce according to Sunnah is that the woman is divorced in a state of cleanliness (Tohr) without an intercourse, the husband gives one divorces and leaves her as such till the Iddat is over.

“ (Mugni-Ibne Quddamah Vol.7 P.98) And in the Hidayah it is stated:

فالاحسن ان يطلق الرجل امرأته تطليقة واحدة في طهر لم

يجامعها فيه ويتركها حتى تنقضى عدتها لان الصحابة

رضى الله عنهم كانوا يستحبون ان لا يزيدوا في الطلاق

على واحدة حتى تنقضى العدة. (هدايج ١ ص ١٤٩)

“The best procedure for divorce is that the husband should give one divorce to his wife, and that too when she is in a state of cleanliness and he had not had an intercourse with her. Then he should leave her in the same state till the term of Iddat is over. This procedure is better, because the Companions of the Prophet (R) desired that more than one divorce should not be given till the period of iddat is over.” (Hidayah- Vol.1 Page 179)

### WHEN SHOULD THE SECOND DIVORCE BE GIVEN

The second divorce is to be given on some other occasion, that is if the husband had taken back the wife after giving one divorce, but inspite of efforts smooth relations did not prevail, then he can give the second divorce in the manner described in the above lines, after which the woman will have again to spend her period of waiting (iddat). During this period of waiting, the husband can, if he wishes, return to his wife, i.e. take her back as wife. And if the period of iddat is over, then he can re-marry her with her willingness.

The divorce in which the husband has the right to return to his wife or take her back as wife or to revoke his divorces are the first and second divorces, that is the divorces given on two occasions. In the

holy Qur'an it is ordained:

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ. (سورة بقره-٢٢٩)

“Divorce is to be given two times, and then (a woman) must be retained in good manner or released gracefully. “ (Surah Baqarah-229)

### WHEN CAN THE THIRD DIVORCE BE GIVEN

If after giving the second divorce, the husband has revoked his decision and taken her back, but inspite of efforts smooth relations did not prevail, and the husband wants to divorce her, then this time he should arrive at a decision with more careful consideration, because this is the divorce of the third occasion, in which the husband has neither the right of revocation, nor can he re-marry after the passing of the period of waiting unless the woman has re-married and has been divorced by the second husband.

The holy Qur'an directs:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا

غَيْرَهُ. (سورة بقره-٢٣٠)

“So if a husband divorces his wife (after two times) he cannot after that remarry her until after she has married another husband (and he has divorced her). “ (Surah Baqarah-230)

The commands concerning this third divorce are very strict, and it is called 'Talaq-i-mughallazah Baainah'. The third divorce is not only 'baain' (separator) (irrevocable) but is so absolute that the man and the woman cannot remarry even with mutual agreement unless the woman is married to another man and this other man divorces her by his own free will, and not in accordance with a pre-planned understanding, or unless he dies. If this second husband divorces the woman per chance or he dies, and the woman wants to go back to her former husband, then she can remarry him.

### THE WRONG WAY OF GIVING DIVORCE

Generally people, being ignorant of the commands of the Shariah and being carried away by their emotion or rage, pronounce three divorces at one time, and then regret it. This method of giving divorce is against the Sunnah. Therefore, such divorces are called the 'divorce of bid'at' (innovative). What is the effect of pronouncing three divorces at one and the same time? Will it be counted as three divorces or only one? There are differences of opinion among the ulema (scholars) on this point, therefore, safety lines in not pronouncing three divorces at one and the same time.

Generally people are under the wrong

impression that unless a husband pronounces three divorces, the divorce does not become effective, and some Qazis make it a point to write down three divorces in the divorce—document. But such a procedure is absolutely wrong and it is necessary that the matter should be reviewed and the needed reformation effected.

### CARELESSNESS OF MUSLIMS TOWARDS THE SHARIAH LAWS

After laying down the commands concerning divorce in the Qur'an, it has been specifically mentioned:

وَلَا تَسْخَرُوا آيَاتِ اللَّهِ هُزُؤًا. (سورة بقره-۲۳۱)

“Do not treat Allah's signs (commands) as jest. “  
(Baqarah-231)

وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ

فَقَدْ ظَلَمَ نَفْسَهُ. (سورة طلاق-۱)

“And these are the limits (imposed by) Allah, and whosoever transgresses Allah's limits, he verily wrongs his soul. (Surah At-Talaq-1)

And in the concluding part of Surah Talaq, a warning of severe punishment is given to those who would disobey the Divine commands. In spite of these warnings, today the state of affairs among the Muslims is such that a very large number of them

contravenes the Shariah commands and one section of Muslims even openly ridicules the Shariah Laws, and is bent upon terminating their operation, although a Muslim has given a pledge to his Lord that he would lead his life according to the way shown by Him and would keep the banner of His religion and His Shariah high. Then, why this disrespect to the Shariah laws by the Muslims!!!

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## DIVORCE

*is a Separating Operation of two linked hearts.*  
 That is why Islam has declared divorce as undesirable.  
 The Prophet (Sallal Lahu Alaihi Wa Sallam) has siad:

أَبْغَضُ الْحَالِلِ إِلَى اللَّهِ الطَّلَاقِ

“For Allah, the most undesirable act among halal things is divorce.”  
 In the event of a divorce various kinds of problems are created, and afterwards many feel sorry,

**therefore,**

Caution is necessary in the matter of divorce.  
 In this way, the intention of the Shariah is also fulfilled,

**And**

We can be saved from being a victim of the non-Islamic law concerning maintenance of the divorced woman.

### Maintenance of The Divorced Wife

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BECAUSE IT IS THE BOOK THAT LINKS YOU WITH GOD.  
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