

DIVORCE IN ISLAM: PROCESSES AND IMPLICATIONS

Divorce is permitted in Islam as a last resort if it is not possible to continue a marriage. Certain steps need to be taken to ensure that all options have been exhausted and both parties are treated with respect and justice.

In Islam, it is believed that married life should be filled with mercy, compassion, and tranquillity. Marriage is a great blessing. Each partner in the marriage has certain rights and responsibilities, which are to be fulfilled in a loving way in the best interests of the family.

STEPS TO AN ISLAMIC DIVORCE

Please note that those are general steps and guidelines for divorce in Islam. Each situation is unique and the below steps and guidelines may or may not apply to your situation. Please reach out to us for a consultation that is specific to your case.

EVALUATE AND TRY TO RECONCILE

When a marriage is in danger, couples are advised to pursue all possible remedies to rebuild the relationship. Divorce is allowed as a last option, but it is discouraged. The Prophet Muhammad once said, “Of all the lawful things, divorce is the most hated by Allah.”

For this reason, the first step a couple should make is to really search their hearts, evaluate the relationship, and try to reconcile. All marriages have ups and downs, and this decision should not arrive easily. Ask yourself, “Have I really tried everything else?” Evaluate your own needs and weaknesses; think through the consequences. Try to remember the good things about your spouse, and find forgiveness patience in your heart for minor annoyances. Communicate with your spouse about your feelings, fears, and needs. During this step, the assistance of a neutral Islamic counsellor may be helpful for some people.

If, after thoroughly evaluating your marriage, you find that there is no other option than divorce, there is no shame in proceeding to the next step. Allah gives divorce as an option because sometimes it is truly the best interest of all concerned. Nobody needs to remain in a situation that causes personal distress, pain, and suffering. In such cases, it is more merciful that you each go your separate ways, peacefully and amicably.

Recognize though, that Islam outlines certain steps that need to take place both before, during, and after a divorce. The needs of both parties are considered. Any children of the marriage are given top priority. Guidelines are given both for personal behaviour and the legal process. Following these guidelines may be difficult, especially if one or both spouses feel wronged or angry. Strive to be mature and just. Remember Allah’s words in the Quran: “The parties should either hold together on equitable terms or separate with kindness.” (Surah al-Baqarah, 2:229)

CAUSES OF DIVORCE

The basis of divorce under Islamic law is the inability of the Spouses to live together rather than any specific cause (or guilt of a party) on account of which the parties cannot live together. A divorce may be either by the act of the husband or by the act of the wife.

Other reasons are:

- Commitment. ...
- Infidelity. ...
- Conflict and arguing. ...
- Marrying too young. ...
- Financial problems. ...

- Substance abuse. ...
- Domestic violence.
- Bareness

ARBITRATION

The Quran says: “And if you fear a breach between the two, 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 4:35)

FILLING FOR DIVORCE

When a divorce is initiated by the husband, it is known as *talaq*. The pronouncement by the husband may be verbal or written, and should only be done once. Since the husband is seeking to break the marriage contract, the wife has full rights to keep the dowry (*mahr*) paid to her.

If the wife initiates a divorce, there are two options. In the first case, the wife may choose to return her dowry to end the marriage. She forgoes the right to keep the dowry since she is the one seeking to break the marriage contract. This is known as *khul’a*. On this topic, the Quran says, “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” (Quran 2:229).

In the second case, the wife may choose to petition an Imam for divorce, with a cause. She is required to offer proof that her husband had not fulfilled his responsibilities. In this situation, it would be unjust to expect her to also return the dowry. The Imam makes a determination based on the facts of the case and the law of the land.

WAITING PERIOD “’IDDAH”

After a declaration of divorce, Islam requires a three-month waiting period (called the *iddah*) before the divorce is finalized. During this time, the couple has time to calm down, evaluate the relationship, and perhaps reconcile. Sometimes decisions are made in haste and anger, and later one or both parties may have regrets. During the waiting period, the husband and wife are free to resume their relationship at any time, thus ending the divorce process without the need for a new marriage contract.

Another reason for the waiting period is a way of determining whether the wife is expecting a child. If the wife is pregnant, the waiting period continues until after she has delivered the child. During the entire waiting period, the wife has the right to remain in the family home and the husband is responsible for her support.

If the waiting period is completed without reconciliation, the divorce is complete and takes full effect. The husband’s financial responsibility for the wife ends, and she often returns to her own family home. However, the husband continues to be responsible for the financial needs of any children, through regular child support payments.

CHILD CUSTODY

In the event of a divorce, children often bear the most painful consequences. Islamic law takes their needs into account and makes sure that they are cared for.

The financial support of any children—both during a marriage or after divorce—rests solely with the father. This is the children’s right upon their father, and courts have the power to enforce child support payments, if necessary. The amount is open for negotiation and should be in proportion to the husband’s financial means.

The Quran advises the husband and wife to consult each other in a fair manner regarding their children’s future after divorce (2:233). This verse specifically holds that infants who are still nursing may continue to breastfeed until both parents agree on the period of weaning through “mutual consent and counsel.” This spirit should define any co-parenting relationship.

DIVORCE FINALIZED

After the waiting period is over, the divorce is finalized. It is best for the couple to formalize the divorce in the presence of the two witnesses, verifying that the parties have fulfilled all of their obligations. At this time, the wife is free to remarry if she wishes.

Islam discourages Muslims from going back and forth about their decisions, engaging in emotional blackmail, or leaving the other spouse in limbo. The Quran says, “When you divorce women and they fulfill the term of their *Iddat*, either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage. If anyone does that, he wrongs his own soul...” (Quran 2:231) Thus, the Quran encourages a divorced couple to treat each other amicably, and to sever ties neatly and firmly.

EFFECTS OF DIVORCE

Divorce can affect both the people getting divorced and any children they may have in both the short and long term. After a divorce, the couple often experiences effects including decreased levels of happiness, a change in economic status, and emotional problems.

The effects on children can include academic, behavioral, and psychological problems. Studies suggest that children with divorced parents are more likely to exhibit such behavioral issues than those with non-divorced parents.^[2]