

Procedures for Talaq, Khul‘, and Faskh

Under **Presidential Decree No. 1083 (Code of Muslim Personal Laws of the Philippines)**, divorce (ṭalāq, khul‘, and faskh) is recognized but regulated through **specific judicial and procedural safeguards** to ensure conformity with Islamic law (*Sharī‘ah*) and Philippine legal standards.



1. Divorce by Ṭalāq (Repudiation by Husband)

Legal Basis:

- *Article 46, Book II, PD 1083*
- *Article 161, Book IV, PD 1083* (Agama Arbitration Council procedure)

Procedure:

1. **Pronouncement**
 - The husband may repudiate his wife **once** during a *ṭuhr* (non-menstrual period) in which there was **no sexual intercourse**.
2. **Notification**
 - The husband must **file a written notice** of ṭalāq with the **Clerk of Court of the Shari’a Circuit Court** where the family resides, and serve a **copy to the wife**.
3. **Constitution of Agama Arbitration Council**
 - Within **7 days**, the Clerk of Court requires both parties to **nominate a representative**.
 - Together with the Clerk (as Chair), they form the **Agama Arbitration Council** to attempt reconciliation.
4. **Waiting Period (‘Iddah’)**
 - The ṭalāq does not become irrevocable until after the **‘iddah** (three menstrual cycles or until childbirth for pregnant women).
5. **Court Order**
 - The Court, based on the Council’s report and other evidence, issues the **corresponding order confirming the ṭalāq**.



Note: The same procedure applies if the wife exercises *tafwīd* (delegated right of ṭalāq).



2. Divorce by Khul‘ (Redemption by Wife)

Legal Basis:

- *Article 50, Book II*, PD 1083
- Supported by *Qur'an* 2:229: “If you fear that they cannot keep within the limits of Allah, there is no blame upon either of them if she ransoms herself.”

Procedure:

1. **Offer by the Wife**
 - The wife **offers to return or renounce her mahr (dower)** or provide other **lawful consideration** to be released from marriage.
 2. **Petition to the Court**
 - She **files a petition** for khul‘ before the **Shari’a Circuit Court**.
 3. **Judicial Evaluation**
 - The Court determines if the request is **meritorious** and if reconciliation has failed.
 4. **Fixing of Consideration**
 - The Court may fix the **amount or form of consideration** to be returned.
 5. **Decree of Divorce**
 - Upon satisfaction of conditions, the Court issues a **decree of divorce (khul‘)**.
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3. Divorce by Faskh (Judicial Dissolution)

Legal Basis:

- *Article 52, Book II*, PD 1083

Procedure:

1. **Filing of Petition**
 - The **wife** may petition the **Shari’a Circuit Court** for *faskh*.
2. **Grounds for Faskh:**
 - (a) Failure of husband to provide support for ≥ 6 months;
 - (b) Conviction of husband with imprisonment ≥ 1 year;
 - (c) Failure to perform marital obligations for ≥ 6 months;
 - (d) Impotence or insanity;
 - (e) Cruelty or serious insults;
 - (f) Any other valid ground under *Sharī‘ah*.
3. **Hearing and Evidence**
 - The Court conducts hearings and may require reconciliation efforts before granting the decree.
4. **Decree of Divorce**

- If justified, the Court issues a **judgment of divorce (faskh)**, terminating the marriage.

4. Post-Divorce Legal Effects

(Articles 54–57, PD 1083)




- The **marriage bond is severed**, allowing both to remarry.
- **Inheritance rights** between the spouses are extinguished.
- **Dower (mahr)**: Wife retains her full dower if marriage was consummated.
- **Support**: Husband must support wife until the end of *‘iddah*.
- **Custody of children** determined under Article 78.

5. Role of the Agama Arbitration Council

Legal Basis: Articles 160–163, Book IV, PD 1083

- Composed of **two party-nominated representatives** and the **Clerk of Court as Chair**.
- Purpose: **Attempt reconciliation** and **advise the court** on family disputes including *ṭalāq*, *khul‘*, and subsequent marriages.

Summary Table

Type	Who Initiates	Court Involvement	Consideration	Arbitration Required	Nature
Ṭalāq	Husband (or wife via <i>tafwīḍ</i>)	Notice + Confirmation Order	None	 Yes (Agama Council)	Extrajudicial + Judicial Confirmation
Khul‘	Wife	Petition + Judicial Approval	Return of <i>mahr</i> or other	 Optional	Judicial
Faskh	Wife	Judicial Petition	None	 Optional	Judicial

Key Takeaways

- **All divorces under PD 1083 require court oversight** to prevent abuse and ensure compliance with Sharī‘ah.

- **Agama Arbitration Council** functions as a reconciliation mechanism.
- **Irrevocability** arises only **after the ‘iddah’** or final court decree.
- **Registration** of divorce is mandatory; failure is penalized under Article 183, PD 1083.

**This is for study and research purposes only. It is not legal advice.
Please consult an accredited Shari’a lawyer or judge for binding guidance.**