

## Divorce issues

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One of the most common questions that many Imams face when it comes to divorce is about the validity of the triple utterances of divorce statement by a husband in one place and at one time known in Fiqh as *Talaq al-Thalath*. Does it count as one divorce or three divorces? Unfortunately, due to the confusion on this issue and without getting into many details, I would like to shed some light on the subject for the sake of educating ourselves as well as stopping this inappropriate behaviour that is specific to some cultures within the Muslim world. Unfortunately, this practice has been imported to the North American Muslim reality and it is still taken lightly by many people in spite of the fact that the Qur'an and the Sunnah vehemently condemn it. Ask any Imam in North America and he would tell you that this is a popular issue and a very time-consuming matter although it should not.

First and foremost, let us read what the Qur'an says about the divorce process: [Divorce must be pronounced only twice (during a marriage) and then (a woman) must be retained in honour or released in kindness... And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has wedded another husband. Then if he (the other husband) divorces her it is no sin for both of them that they come together again if they consider that they are able to observe the limits of Allah. These are the limits of Allah. He manifests them for people who have knowledge. When you have divorced women, and they have reached their term, then retain them in kindness or release them in kindness. Retain them not to their hurt so that you transgress (the limits). He who does that has wronged his soul. Make not the revelations of Allah a laughing-stock (by your behaviour), but remember Allah's grace upon you and that which He has revealed unto you of the Scripture and of wisdom, whereby He does exhort you. Observe your duty to Allah and know that Allah is Aware of all things. And when you have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands if it is agreed between them in kindness. This is an admonition for him among you who believes in Allah and the Last Day. That is more virtuous for you, and cleaner. Allah knows; you know not.] (Qur'an Chap. 2, V. 229-32)

This point was made clear by the Prophet (S) that God Almighty wants to deter men from uttering divorce loosely and playing games and making threats to their wives as if it is an exclusive control thing given by God Almighty to men. The ruling is very plain and strict to protect women and their dignity from some men's injustices, imbecilities and abuse of power. Very often, husbands say that they did not mean it and that they were in a state of anger when they uttered divorce more than once as if people divorce only when they are happy. We are instructed in Islam to be just, patient and control our emotions as much as we can. When the Prophet (S) heard of a man who divorced his wife uttering the statement three times he became angry and said, "Are people playing with the book of Allah while I am still living amongst you...." (Reported by Imam al- Nasa'i and others)

Therefore, the majority of the Muslim scholars including Hanafis have used this tradition and similar ones as a valid proof that this kind of statement of divorce is not permissible and called it in the Fiqh books *al-Talaq al-Muharram* or *al-Talaq al-Haram* (the forbidden divorce) but they still consider it valid as a consequence of a bad decision and 'Umar bin Khattab was on that opinion as well and he did judge over the threefold divorce as being a final divorce with no chance for reconciling and going back unless the divorced woman gets married to another man a genuine marriage and they only separate due to death or genuine divorce, not to make it a *tahleel* marriage which is a trick that serves to make the woman remarry her former husband. Allah says, [then she is not lawful unto him thereafter until she has wedded another husband.] 'Umar b. Khattab was quoted saying, "People are being hasty with regard to a matter in which they should not rush. Let us count it as three and judge between people accordingly."

Other scholars regard it as a single divorce and the couple can go back to each other so long as the waiting period (*'iddah*) has not yet ended. They quote a few hadiths confirming that it was counted as one divorce in the time of the Prophet (S). Ibn Abbas (r) said: "At the time of the Messenger of Allah (Peace be upon him), the time of Abu Bakr (r) and the first two years of 'Umar (r), a threefold divorce was counted as one. "(Muslim).

Islam considers a divorce statement a very serious matter and holds people accountable for their actions and statements. There have been many cases we have seen over the years where husbands divorced their wives tens and tens of times and they still take such things lightly saying they never meant it or they were in a state of anger or not feeling well but Islam does not accept these imbecilities and excuses. This is a kind of abuse to women that is unfortunately a reality that is done all in the name of Islam. A good and God-fearing husband should think twice before uttering anything and

should think of his wife or divorcee as he would think of his mother, his daughter or his sister. What would he do if the same happens to one of them?

In addition to the above issue, divorce statement in general by the husband is valid only if the following conditions are met:

- a. The husband must be mentally stable and must know very well his actions and statements
- b. The statement is not made under duress, constraint or fear
- c. The statement is not made with the intention to escape from any financial commitment or duties he owes his spouse or any other obligations for that matter.
- d. That the husband has a legitimate reason for ending this marriage but must document his statement in a court showing the reasons why he wants to divorce as well as his willingness to take responsibility for his statement.

Likewise, a wife has the right to end a marriage if she is harmed whether physically, mentally or otherwise. If the husband fails to fulfill his duties towards her or he is deemed misfit for marriage she can end the marriage through the decision of the court/judge or through *khul'*.

Fourteen hundred years ago, divorce was made permissible in Islam because it could be a solution for many problems when there is no hope to continue a marriage and all the doors are closed. After exhausting all means possible to reconcile and mediate, divorce becomes the final resort. However, it is still something that is not encouraged or promoted. The Prophet (S) said, "The most disliked thing to Allah yet it is permissible to do is divorce." (Abu Dawood & others)

Divorce issues involve financial and legal matters. Hence, they require thorough process, follow up, authority and power to enforce the laws and court decisions and uphold the rights of the individuals. Imams in countries like Canada have no authority to enforce anything. They can only advice and do the pre-divorce counselling to help find solutions between the disputing couples. North American Muslims have to learn how to honour and practice their religion while also abiding with the laws of the country where they live in. We do not see any clash between the Islamic values and the justice system. Therefore, contending couples must be mindful of Allah's injunctions but also follow due process and seek justice for both parties in a civilized and God-conscious manner.