

DIVORCE PROCEDURE & LAWS IN PAKISTAN

A Muslim Marriage is a civil contract, which can be executed and dissolved like any other contract; however it is automatically dissolved on the death of either of the spouse. Moreover, Islam also recognizes spouses' legal right to dissolve marriage contract, hence both the spouses are entitled with a religious right to dissolve a marriage. However, the husband, in Islam, has an inalienable legal right of divorce by way pronouncement of 'Talaq', which literally translates into divorce. On the other hand, a wife in Islam can only exercise the right of divorce if the same is granted to her in the marriage contract or *Nikkahnama* at the time of solemnizing marriage, which right should be duly noted in the *Nikkahnama*. But if in the event, the right of divorce is not granted to the wife then she has recourse of filing for '*Khula*' which literally means 'untying the knot' (the right of a wife in Islam to seek dissolution of marriage from her husband through intervention of the court) before the Family Courts to obtain a judicial divorce.

It is critically important to note that whether the marriage has been dissolved through '*Talaq*' or '*Khula*', as it must be legally recognized failing which serious doubts may arise about the effectiveness of the divorce. Therefore, as per Pakistani Law it is vital to obtain dissolution of marriage certificate from concerned government office as a documentary proof of dissolution of marriage. However, it is also important to note that as per Islamic Scholars, divorce once

pronounced by the husband and '*Khula*' once obtained from the court of law is effective and binding.

According to the Muslim Family Laws in Pakistan, there are various ways that a divorce can be affected between the parties to a marriage contract. The first and most common method to divorce is when the husband at his will, without the intervention of a court, pronounces what is commonly called a "*Talaq*" i.e. 'I divorce you'. The second method is by mutual consent of the husband and wife, without intervention of the court, where both the parties to a marriage contract agree to the divorce and part their own separate ways. The third method, which is quite popular nowadays, is by obtaining a judicial decree at the instance of the court by either of the party to the marriage contract.

Divorce/ Talaq by Husband

As per Muslim Personal Law and under *section 7 of the Muslim Family Law Ordinance 1961*, the husband can pronounce '*Talaq*' orally as well as by way of Deed of Divorce. The husband is duty bound to send written notice by registered post to the concerned Union Council or government office in charge for issuance of divorce certificates. In the said notice, the husband must mention the address of his ex- wife, thereby enabling the union council or the government office to issue notices to her by registered post, in pursuance of which, it shall constitute or refer the same to the Arbitration Council within 30 days of receipt of notice for the purpose of reconciliation and settlement between the husband and wife, if possible. The purpose of introducing this legislation was to protect women from an instant and unrecorded divorce, so that if a woman re-marries, she is not

faced with a frivolous criminal case and sentencing. Hence, it is vital for a woman to be absolutely clear about her marital status and to have documentary proof that she is properly divorced. Notice of '*Talaq*' can be served on a wife, with the permission of concerned government office, through her father, mother, adult brother or sister – but no other relatives. If this is not possible because her whereabouts are unknown and notice cannot be served on her through her immediate family, the husband can still serve notice through a newspaper approved by the concerned government office.

Once the 'Iddat period' i.e. the waiting period, which is 90 days from the date the concerned government office receives the '*Talaq*' notice, is over, the office will issue a certificate of '*Talaq*' being effective to the husband and wife. It is pertinent to note that the '*Talaq*' is not effective until the expiry of "Iddat period" and failure to abide by law will cause a simple imprisonment for up to one year and/or a fine of up to Rs. 5000/-. Therefore, a great deal of importance has been attached to the registered notice of '*Talaq*'. Further, a verbal '*Talaq*' is not recognized by law and the husband's failure to send written notice to the government office is treated as ineffective divorce in law. However, it is also important to note that as per Islamic Scholars, divorce once pronounced by the husband and '*Khula*' once obtained from the court of law is effective and binding.

Mutual Divorce by both the Husband and Wife

In this form of divorce, there is no need to approach the Family Court and the marriage can be dissolved cheaply, rapidly, and with few procedural problems. In this case, both husband and wife may sign a Mutual Divorce Deed and send a

written notice under *section 8 of the Muslim Family Law Ordinance 1961* to the concerned government office; however, the government office is duty bound to follow the procedure for the issuance of notices before issuing the dissolution of marriage certificate to the parties.

Demand of Divorce or Khula by Wife

In Islam, a wife can dissolve her marriage unilaterally only if the right of divorce has been unconditionally delegated to her by the husband in the marriage contract or the *Nikahnama*. However, if the right to divorce has not been delegated to the wife, then in such circumstances, she can dissolve the marriage by applying for '*Khula*' from the Family Court, which is also known as dissolution of marriage by way of judicial divorce. '*Khula*' is the dissolution of marriage initiated by the wife and is granted by the court. To apply for '*Khula*' the wife would need to file a suit for '*Khula*' in the Family Court under the *Dissolution of Muslim Marriage Act 1939*, on the grounds that she feels she can no longer live with her husband "within the limits prescribed by Allah" and such a statement on oath made in her suit would be sufficient to establish her case for '*Khula*'.

There are certain Grounds for Judicial Divorce on which women may seek '*Khula*'; however, these must be established before a suit can be decided in her favour by granting with a certificate of dissolution of marriage on the basis of '*Khula*'.

The **Grounds** on which a woman may seek '*Khula*' include:

- Desertion by husband for four years;
- Failure to provide maintenance for two years;
- Husband contracting a polygamous marriage in contravention of established legal procedures;
- Husband's imprisonment for seven years;
- Husband's failure to perform marital obligations for three years;
- Husband's continued impotence from the time of the marriage;
- Husband's insanity for two years or his serious illness;
- Husband is associated with women of evil repute;
- Wife's exercise of her option of puberty if she was contracted into marriage by any guardian before the age of 16 and repudiates the marriage before the age of 18 (as long as the marriage was not consummated);
- Husband's cruelty (including physical or other mistreatment, unequal treatment of co-wives);
- Husband attempts to force the wife to lead an immoral life;

- Husband dispossesses the wife from the own property;
- Husband obstructs the wife from practicing religion;
- Any other ground recognized as valid for the dissolution of marriage under Muslim Law.

After hearing the case, the Family Court will issue decree and send notification to the Chairman Arbitration Council or Union Council, which proceeds as if it received the notice of '*Talaq*' and once the '*Iddat* period' over the '*Khula*', becomes effective. At the time of filing of '*Khula*' suit, the wife usually has to return '*Haq -Mehr*' (Dower) and other benefits received from husband, gifts received from husband's family do not have to be returned as it is decided by the Court as to how much and what is to be returned on the facts of the case.

It is a common practice that the delegated right of divorce is deleted before the *Nikkahnama* is presented to the bride for signatures. The Law of Pakistan entitles a woman to exercise the right of divorce as oppose to filing for '*Khula*' before a Family Court but as a common practice, the marriage contract is prepared in advance and only signatures of the bride are obtained on the *Nikkahnama*, which defeats the purpose of the legislation.