



JKN FATAWA
YOUR QUESTIONS ANSWERED



DIVORCE IN ISLAM

Mastering Your Basics

By

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Date 3-10-21

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TIME: 12pm - 3pm


For more information about the webinar and how to register click onto the following link.

<https://jknfatawa.co.uk/courses/fiqh-of-divorce/>

Uzavakallah khair

Mufti Abdul Waheed
Researcher at JKN FATAWA
DEPARTMENT
11th September 2021

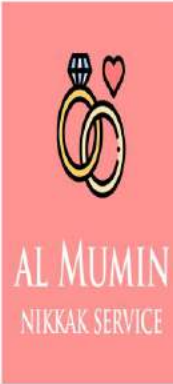
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#3 PAYING SOMEONES Zakat

3 LAWS OF ZAKAT & FINANCE

23:00
28/09/2021

Agenda

Time	Session No:	Topic
12:00pm	Introduction	JKN Fatawa Department
12:05- 1:50pm	1 & 2	Divorce in Islām & After Divorce
BREAK for 15 minutes and Salah		
2:05- 2:40pm	3	Common Questions
2:40-3:00pm	4	Q&A and concluding remarks

Why is Divorced Rarely Discussed?

- ▶ Culturally reprehensible
- ▶ Fear of the consequences especially children
- ▶ Breaks the family honour
- ▶ Breaks family ties
- ▶ Financial burden

Content



DIVORCE

1. The
Meaning of
Divorce in
Islām



2. What
Happens
after
Divorce?



3. Common
Questions
about
Divorce

Session 1: The Meaning of Divorce in Islām

- ▶ How to Resolve conflicts?
- ▶ How Divorce works?
- ▶ When is Divorce reprehensible?
- ▶ When can a woman ask for a divorce?
- ▶ The types of Divorces in Islām
- ▶ Divorce through Khula' or Faskh through Sharī'ah Council. What do they mean.

Case Study 1:

Fatima and Zaid have been married for many years. Since day one their marriage has been quite toxic. It started off due to personality differences and then lead to excessive arguments and even involved in him hitting her because she swore at him. Parents have been saying, divorce is haram in Islām so you shouldn't divorce. Have a child and things will inshallah improve. They have two children and things are still not any better. They need help as on the one hand, they can't separate due to family pressure their children yet both cannot get along and know that this marriage will not work.

1. What should they have done from the beginning so not to escalate the issue?
2. Were the parents right in saying that divorce is haram and have children?
3. Would you advise them to consider divorce?

Case Study 2

Zaid is 25 years old and has been involved in a lot of bad habits. His parents have decided to take him to Pakistan to marry him off to a nice and dutiful girl called Fatima. After much convincing, he accepted the marriage and now has two children. He still hasn't let go of his bad habits. Always out with his friends, coming home late at night and constantly shouting at his wife. He even hit her causing her to miscarry her baby. The parents tried everything to make this marriage work. They even involved a scholar but lost hope in the marriage. Parents were thinking about the children and believed that there is always hope for improvement if given a chance. Zaid even admitted and apologised for his mistakes.

1. Would you advise to give Zaid another chance or recommend a divorce?
2. If divorce is the only option then how would you advise the parents?

How to Deal With Conflict?

وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا (34) وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا (35)

“As from those women amongst whom you fear disloyalty then admonish them, and abandon them in their beds, then strike them. But if they obey you, seek no way against them. Verily Allah is Sublime, All Great. If you fear discord between the two then appoint an arbiter from his family and an arbiter from her family. If they wish to reconcile, God will bring them together. Verily Allah is All-Knowledgeable, All aware.” [Surah Nisa 4: 34-35]

Simple Steps

STEP 1:

Naseehah and advice - Talk to each other privately

STEP 2:

Mediation - family members

STEP 3:

Separation - in the house or relocate to family until further (but after the husband's consent) Look into

STEP 4:

Arbitration - Shari'ee Scholars or Shari'ah board members.

NEVER to use physical strike as a resort. The Messenger of Allāh (saw) never raised his noble hands against any woman in his entire life.

NEVER to quarrel in the presence of children. Confine your disagreements to your bedroom.

Things to avoid during conflict

NEVER to dig out the past issues once they have been settled.

NEVER to vent your frustration against one other.

Three Ways to Ending a Marriage

Talaq

Khula'

Faskh

What Does Divorce Mean?

- ▶ Divorce or a unilateral repudiation known as talāq is when a man uses specific words to end his marriage using the past or present tense whether verbally or written. It is the simplest way to end a marriage relationship.

Allāh Almighty states in the Holy Qur'ān,

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ

“Divorce is twice, now either retain her with goodness or release her with kindness.” (2:229)

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

“O Prophet! When you (people) divorce women then divorce them at a time of their period of Iddah (may start), and count their Iddah...” (65:1)

Is Divorce Reprehensible?

عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ»

Sayyidunā Abdullāh Ibn Umar (ra) that the Holy Prophet (saw) said, “The worst of Halāl things in the sight of Allāh is divorce.” (Abū Dāwood)

تزوجوا ولا تُطَلِّقُوا ، فَإِنَّ الطَّلَاقَ يَهْتَزُّ مِنْهُ الْعَرْشُ

In another Hadeeth the Holy Prophet (saw) said, “Marry but do not divorce, verily the Arsh (throne) of Allāh Almighty shakes with divorce.”

Remember! Avoid divorce whenever possible, but if the couple can no longer maintain their marriage and the nature of the situation is such that by continuing to live together, matters will deteriorate and children will be negatively impacted then divorce is the final resort.

عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - : «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا طَلَاقًا فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ»

Any women who asks for a divorce from her husband **without a reason** then the fragrance of Jannah will be forbidden upon her. (Abu Dawood)

(فِي غَيْرِ مَا بَأْسٍ) : وَفِي رِوَايَةٍ مِنْ بَأْسٍ أَيْ لَغَيْرِ شِدَّةٍ تُلْجِئُهَا إِلَى سُؤَالِ الْمُفَارَقَةِ

In other words, without a severe need that leads her to asking for separation (Mirqat)

What are those Legitimate Grounds?

1. Sexual Deficiency
2. Illness e.g. insanity, leprosy
3. Withholding Expenses
4. Missing Husband whether his existence is known or unknown
5. Non-Compatibility of marriage (kufū) until child birth
6. Musaharat
7. Oppression & Abuse
8. Discord [shiqāq]

The commentators have not generally discussed the factors of shiqāq, however Rahmāni outlines the common factors leading to it based on the general experience of the Dār al-Qadhā and the Imārat Shari'ah. This includes the husband mistreating his wife, constantly suspecting her (for some evil crime), insolent behaviour towards her parents, he is charged with extra-marital relationship with another woman, husband is somewhat unattractive (leading to committing a major sin) or husband is less educated than she is and so forth. (Shaykh Khalid Saifullah Rahmani)

Two Case Studies on Divorce

CS1: Salaam my husband is always out drinking or doing drugs I have two sons one aged 5 and one aged 2. Sometimes he stays out all night we live by ourselves and I really don't know what to do. He doesn't work either. He has also cheated on me in the past he doesn't listen and is always in a bad mood and shows hatred towards me. He does provide me with expenses for my children but can get extremely angry due to drug addiction. Islamically am I allowed to ask for a divorce?

CS2: I have been married to my husband for almost 5 years now. We have two children together. We have always had ups and down in our marriage and cares less for my wellbeing. He has been convicted with homicidal offense leading him to serve 30 years prison sentence. I work in a professional job and provide for myself and for my children. However, I have been experiencing severe mental depression due to my husband being in jail and that I have to bear all of the burden. I cannot remain alone like this any more and considering a divorce so I can move on with my life. Am I allowed to ask him to divorce me or go to the Sharī'ah Council?

Categories of Divorce?

Wordings of Divorce

- Sareeh - Categorical
- Kinayah - Ambiguous

Types of Divorce Issued

- Talaq - Ahsan
- Talaq Sunnah
- Talaq - Bid'ah

Types of Divorce occurred

- Talaq - Raj'ee
- Talaq- Bain
- Talaq Mughalladhah

Sareeh (Clear Terms)

- To use such categorical terms that only indicate towards divorce and nothing else. For instance Zaid said to his wife, 'I divorce you or I have given you Talāq.' Then the divorce will take place regardless of his intention. The intention of a man is not taken into consideration. If a man says to his wife, 'I divorce you' then only one will occur but if he repeated the word 'divorce' three times then three will occur and similarly twice.

Kināyah (Ambiguous Terms)

- To use such terms that can indicate to divorce as well as something else. For instance, 'Go away from me, get out of my house, go and live with your parents, I have nothing to do with you, stay away from me etc.' Such terms can be used either for divorce or something else. In this case the intention and situation are both considered. If by using such terms the husband's intention was to divorce his wife or by looking at the situation the only possible meaning could be divorce and nothing else then the wife will be divorced. The divorce that will occur on the wife in the case of Kināyah will be Talāq-e-Bā'in. But if the husband's intention was not to divorce at all then no divorce takes place.

Talāq-e-Ahsan

- To pronounce one divorce to the wife in that pure period in which they had no intimate relationship. This method is the most recommended way of divorcing one's wife.

Talāq-e-Sunnah or Hasan

- To pronounce three divorces separately whereby issuing one divorce in each of the three pure periods to one's wife with whom he has already had an intimate relationship with.

Talāq-e-Bid'ah

- To either pronounce all three divorces in one sitting or in one pure period without any intervals of menstrual period or to issue a divorce whilst she is menstruating. This is one of the worst and detestable forms of divorce and in doing so the divorce will take place. However the man will also become very sinful.

Talāq-e-Raj'ee (Revocable Divorce)

- When the husband pronounces one or two divorces to his wife who he has already had an intimate relationship with. The ruling would be that whilst the wife is observing her waiting period, if both of them decide to reconcile then they can do so without remarrying. However, if her waiting period has completed and thereafter they decide to reconcile, then they cannot do so unless they remarry because at this point their marriage has officially ended and they are now complete strangers to one another.

Talāq-e-Bā'in (Irrevocable Divorce)

- To divorce by using certain terminologies that can indicate towards divorce as well as something else. Such terms are referred to as Kināyah (ambiguous). After the completion of her waiting period she is free to marry someone else. However, if they decide to reconcile then it is necessary to renew their marriage irrespective of whether they reconcile within her waiting period or after. Or divorce before consummation or Khalwat-e-Saheehah

Talāq-e-Mughalladha (Absolute Irrevocable Divorce)

- To issue three divorces either in one sitting or separately. In this case the couple can no longer rejoin with one another whether during her waiting period or after. However, if the wife married another man and had an intimate relationship with him, thereafter he either divorced her or passed away, then after completing her waiting period from her second husband she decides to marry her first husband then it would be permissible. This is known as Halālah.

Additional Rulings about Divorce

When does it occur

- ▶ In Anger
- ▶ Menstruating or pregnant
- ▶ Appointing someone to divorce her on his behalf
- ▶ Delegating the authority (*tafweezh*) of divorce on to her or to someone else.
- ▶ Serious or jokingly
- ▶ Saying Talaq even if one didn't mean it but just to scare her.
- ▶ Attaching a divorce with a condition.

When it doesn't occur

- ▶ Using a future tense
- ▶ Saying *inshallah* in the same sentence.
- ▶ Forced to write a divorce - NOT VERBAL
- ▶ Using ambiguous phrases without the intention of divorce
- ▶ Whilst sleeping
- ▶ Insane - mentally incapacitated to the extent he cannot distinguish between right from wrong

Khula'

Allāh Almighty states in the Holy Qur'ān,

فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

“And if you fear that they would not maintain the limits of Allāh (i.e. marriage) then there is no sin upon them both in what she (the wife) gives up to secure her release.” (2:229)

It simply means the couple mutually agreeing for the wife to return her mahr in exchange of releasing her from marriage. For instance the wife says to the husband, ‘I will give you this much money and you release me from your wedlock with Khula’ or she says, ‘I will forsake my right of dowry that is outstanding and in return you release me’ and the husband agrees

By returning her mahr back to him, all marital rights are dropped except for maintenance during her waiting period.

Faskh

If he refuses then the Islamic court can take the final initiative to dissolve the marriage, known as faskh or judicial separation. This however does not go without specific grounds which are considered legitimate according to the Sharī'ah principles. The legitimate grounds listed previously are generally accepted and practiced by majority of Sharī'ah Councils across UK.

Three Case Studies

CS1: I want to ask a question that my husband told me in anger MAIN . TUMHAIN ABHI . FAARIGH . KARTA . HOON three times. but he did not say like main tumhain talaq deta hon. My question is that is this statement main.tumhain abhi farigh krta hoon, does it mean talaq? We have been married for some time and have three children.

CS2: My wife and I were both watching Pakistani drama together. In the drama, the actor said words of talaq three times "*main tumhain Talaq deta hun*". I then turned to my wife and repeated these words three times to her just to imitate the actor. Have I divorced my wife?

CS3: My husband and I have been struggling with our relationship for years. We both agreed that our marriage will not work. We agreed to Khula' however he is demanding me to give him £1000 in addition to the £2000 dowry he gave me. On top of this, his family want me to return all of the jewellery they gave to me as a wedding gift. Islamically must I return the gift and give the extra £1000?

Session 2: What Happens after Divorce?

Waiting
Period

Child
Custody

What Happens After Divorce?

Iddah

Allāh Almighty states, *“And divorced women will keep themselves waiting **for three menstruations.**”* (2:228)

*“O you who believe! When you marry believing women and then you divorce them before you touch them (intimate relationship), **then there is no waiting period for you to count on them,** so give them a gift and release them in a handsome manner.”* (33:49)

*“And those women amongst you that have despaired of (further) menstruation, **if you are in doubt then their Iddah is three months as well as those who have not yet menstruated. And as for those pregnant ones, their term (Iddah) is until they give birth to their child.** And whoever fears Allāh, He brings about ease for him in his affair.”* (65:4)

What Happens After Divorce?

- ▶ If a woman is either divorced, agrees to Khula, the marriage is dissolved (faskh) or the husband passed away then in all these instances the woman must observe a waiting period which is known as Iddah in Shari'ah. The ruling is that whilst she must observe an Iddah or waiting period. She is not permitted to observe it anywhere else besides her husband's residence. During her Iddah if the husband is alive then it is compulsory upon him to provide her with the necessary expenses which include food, clothing, expenditure and accommodation.
- ▶ During her Iddah, it is not permissible for her to marry someone else and neither to propose to someone until her Iddah has completed.
- ▶ There are four types of Iddah that a woman observes:
 1. Three menstruations.
 2. Three months.
 3. Pregnancy until she gives birth.
 4. Four months and ten days.

- ▶ If, Allāh Almighty forbid, a pregnant woman has a miscarriage then there are one of two situations:
 1. If she had a miscarriage upon four months or more then her waiting period has completed and the blood that discharges thereafter will be Nifās (post-natal bleeding).
 2. If miscarriage occurred prior to four months then her waiting period will not be completed. In this case the blood that discharges will not be classed as Nifās and her waiting period will now switch to three menstruations. If the bleeding occurred for three consecutive days and night then it will be classed as menstruation otherwise not. When she begins her first menstruation, her new Iddah will recommence.
- ▶ It is only compulsory for a divorcee to observe her Iddah if after the marriage the couple had an intimate relationship or Khalwat-e-Saheehah. If any of the above two cases did not take place at all after the marriage then she is not obliged to observe any Iddah when divorced and is free to marry elsewhere.
- ▶ If a man divorced his wife whilst she was menstruating then that menstruation will not be included. Rather her Iddah will begin from the following menstruation.

What happens During Iddah?

- ▶ A woman who has been given either a Talāq-e-Bā'in, Mughalladhā, the marriage has been dissolved or a woman whose husband has passed away then during her Iddah, she cannot marry another person and neither adorn herself.
- ▶ Not to adorn herself includes; to abstain from applying fragrance, surma, oil, mehndi, wearing attractive clothes, jewellery, silk. However, she is permitted to have a bath.
- ▶ A woman who has been given a Talāq-e-Raj'ee can adorn herself as she is permitted to re-join with her husband during her Iddah without renewing the marriage.
- ▶ She must remain in the same accommodation to complete her waiting period. She may only leave her home if she is likely to suffer physical, financial or mental harm.

Child Custody

- ▶ If for some reason the parents separate and they have children, then the mother will have the first right of custody over the child until the boy reaches the age of seven. In the case of a girl until she is nine or menstruates. Thereafter the father can reclaim the right of custody over them.
- ▶ It is permissible for the mother to give up her right of custody to the father and likewise the father to the mother. The expenses of the child will be due upon the father even if the child is under the care of the mother.
- ▶ The right of custody is dropped due to one of the following reasons:
 1. The mother during the custody got married to a man who is a Ghair Mahram to the child.
 2. She seeks payment for taking care of the child.
 3. She frequently emerges from her home such that a lack of attention is being given to the child.
 4. Either of them is involved in Fisq and Fajoor (open sins and transgression) and are totally corrupt.
 5. The child remains under the care of a disbeliever to the extent that he/she will be affected.
 6. The custodian becomes a Murtad (an apostate).



Break for 15
minutes

Session 3: Common Questions

1. Three equalling to one - What is the debate and why?
2. Doubts about Divorce
3. Divorce in anger or intense pressure
4. Divorce due to Black magic
5. Divorce through the English Court
6. Can a divorcee work during her waiting period?

1. Three Equalling to one?

Severity of three divorces in one sitting

حديث محمود بن لبيد عند النسائي السابق، وفيه أن النبي صلى الله عليه وسلم غضب من إيقاع
الثلث دفعة في غير اللعان، وقال: «أيلعب بكتاب الله، وأنا بين أظهركم؟»

The Messenger of Allah became angry with (someone) issuing three divorces at once without li'an. He remarked, ***“Is the Book of Allah being played with whilst I am present amongst you?”***

Ibn Taymiyyah and Ibn Qayyim - Three equal to one.

Evidence

1. ***“Divorce is twice....”*** referring to twice on two separate occasions - two sessions. By this, three divorces is equal to one single session implies to one only.
2. Abdullah Ibn Abbas (ra) narrates that during the Prophet’s time and Abu Bakar’s time and the first two years of Umar three divorces was (considered) one. Umar (ra) said, *“Verily people have hastened in matters of calmness, so if we.....”* Umar (ra) ruled on the basis of the social need of the time.
3. Abdullah Ibn Abbas (ra) narrates that Rukana divorced his wife thrice in one gathering and became extremely distressed. The Prophet (saw) enquired from him how he divorced her to which responded, three in one session. The Prophet (saw) said, that is just one so return to her.

Response from the Scholars

1. The verse merely indicates to the permissibility of divorce and its maximum limit of a divorce to reconcile thereafter. The wordings of '*marrah*' does not signify session but limit e.g. twice.
2. The narration of Abdullah ibn Abbas (ra) refers to a man pronouncing three divorces separately i.e. "you are divorced, you are divorced, you are divorced." People would imply the second and third to emphasize the first. Umar (ra) annulled the intention and took it on face value.
3. Regarding the narration of Rukana then Abdullah ibn Abbas (ra) also gives the fatwa of three. Furthermore, there are multiple version of the Hadeeth of Rukana (ra).

The Four Schools - Three divorces are equal to three.

The evidence of the four schools.

الطلاق مرتان، فإمساك بمعروف أو تسريح بإحسان..... فإن طلقها فلا تحل له من بعد
حتى تنكح زوجاً غيره

Divorce is twice, then either to retain her with kindness or release her with kindness.....But if he divorces her (third time) then she is not Halal for him thereafter until she marries another spouse (man) other than him. (2:229-230)

1. Sayyidah Ā'ishah (ra) relates that a man pronounced three divorces to his wife, so she married another man (after completing her Iddah) and this man then divorced her (before an intimate relationship). She asked the Messenger of Allāh (saw) whether it was lawful for her to return to the first husband? The Holy Prophet (saw) said to her no until she has an intimate relationship. (Bukhāri)
2. Layth reports from Nāfi that when Sayyidunā Abdullāh Ibn Umar (ra) was asked regarding three divorces then he would reply, “If one or two divorces (then they could have rejoined) because the Messenger of Allāh (saw) instructed me to do this (i.e. rejoin), but if he divorced her thrice then she becomes Harām upon him until she marries someone else.” (Bukhāri). The above Hadeeth is further explained in another lengthy Hadeeth reported by Sayyidunā Abdullāh Ibn Umar (ra) that once he divorced his wife whilst she was menstruating and he intended to divorce her twice more. The Holy Prophet (saw) was informed of this act and instructed him to rejoin with her (to revoke that one divorce) and thereafter divorce her in her pure period. Sayyidunā Abdullāh Ibn Umar (ra) thereafter asked, “O Messenger of Allāh! If I divorce her thrice then can I rejoin with her?” He said, “No! The wife will now become separate from you and you will become sinful.” (Dār-Qutni)
3. Mujahid states that I was with Abdullah ibn Abbas (ra) that a man came to him stating that he divorced his wife thrice. He remained silent until I assumed that he will respond to him. He then said, “*Each of you comes riding a camel and then says, O Ibn Abbas, and verily Allah says, **Who ever fears Allah then He creates a way out for him, but you didn't fear Allah so I do not find a way out for you. You disobeyed your Lord and your wife is now separate from you.***” (Abu Dawood)

2. Intrusive thoughts about Divorce

The Messenger of Allāh *sallallahu alayhi wasallam* said, “***Very Allāh has pardoned my nation of the whisperings (waswasa) coming into the heart so long as (people) do not act according to it or utter it.***” (Abu Dawood). Thoughts like misgivings come and go and most of the times are beyond our natural control. For this reason, Shariah rulings are not determined by such thoughts that constantly occur in one’s mind or heart. Scholars and jurists have therefore ruled that misgivings or thoughts about divorce without uttering them do not take into effect at all. By uttering does not mean mere movements of the lips either, rather clear enough whereby one can hear the words himself. As a point of principle about divorce, verbal utterance (or written) of specific words of divorce is an integral condition (*rukn*) for divorce to take place. Mere contemplating about divorce, thinking over it, misgivings or using words that are not connected to divorce do not constitute divorce at all.

[[Intrusive Thoughts on Divorce - JKN Fatawa](#)]

3. Divorce in Anger or Intense Pressure

- ▶ Every divorce that takes place in anger takes into effect. Regardless if some one meant it or not.
- ▶ An angry person claiming to be mentally unstable must fulfil the following conditions;
 1. Either he was in a *majnun* state whereby the **faculty of differentiating between right from wrong is inhibited and cannot recollect his previous actions**. This maybe due to a calamity that has afflicted him affecting his state either permanently or during that specific moment.
 2. Or he was in the state of *madhosh* which is a type of *junun* except that the faculty of **recognizing fear and shame is depreciated and not able to fully comprehend what they are saying or doing**.
 3. Or in a *ma'tooh* state who **raves by muddling words without the ability to comprehend in what he is saying. In both the second and third category, they may at times recall their previous actions or words but lack the capacity of self-control and clear sense of meaning in what they do.**

The common underpinning principle is that their mental state has significantly deteriorated to the degree that it negatively impacts their actions and statements. **A common sign is their abnormal behaviour towards others and raving by saying unusual things that a normal person would not generally say.** This must be established with evidence either by an expert such as a medical psychiatric report or by the testimony of his associates who can genuinely testify to his abnormal condition. So, any man who divorces his wife in the state of anger takes into immediate effect under normal circumstances regardless if he forgets or not. If he has been diagnosed with some of the above-mentioned symptoms of mental instability then divorce does not take into effect.

[[Divorce in the State of Anger - JKN Fatawa](#)]

4. Divorce due to Black Magic

- ▶ One must take into consideration whether one's mental faculty was intact at the time or not. The *Fuqaha* describe *junoon* as the seizure of the faculty of *aql* (rationale) whereby one is unable to distinguish between right from wrong and starts to behave abnormally. *Junoon* occurs either due to a natural calamity that struck him removing his mind from its stability state or the overpowering of a Jinn inciting him to utter corrupt words (including divorce). Such a person becomes totally unaware of what he did or said during that moment. [[Divorce in the state of Epileptic Fit - JKN Fatawa](#)]

5. Divorce Through the UK Court

If the UK court divorce cannot equate to an Islamic *faskh*, can it equate to a *talaq* on the husband's behalf? This depends on one of the following scenarios.

1. *The husband is the petitioner and the wife either*
 - a) *Defends her case, or*
 - b) *Does not defend the case*
2. *The wife is the petitioner and the husband either,*
 - a) *Defends the case or disapproves of her petitioning by refusing to sign the documentations, or*
 - b) *Approves of it and willingly signs the documentations*

Scenario 2 (a) divorce does not take place and she is still considered his wife despite the pronouncement of the decree absolute. It is as if in this case she is delegating the right of divorce to the judge on her behalf. According to the aforementioned Hadīth, it is the man who has the authority of pronouncing or delegating divorce onto someone else. When she has no authority then her appointment does not validate it either. She must therefore request the husband to either divorce her, accept khula' or refer to a Sharī'ah council.

Scenario 1 both (a) and (b) where the husband is the petitioner and scenario 2 (b) where he approves and signs documentation willingly, then the general view is that it equates to an Islamic *talaq* upon the decree of absolute. His wife's consent is not mandatory. [Mufti Kifayatullah, Kifayatul Mufti, Kitab Talāq, vol 6, p. 166, Mufti Abdur Raheem, Lajpuri, Tanseekh Nikah, vol 6, p. 377, 'Divorce in Non-Muslim Courts' (urdu), Islamic Fiqh Academy Publications, p. 43]

The clause willingly was added intentionally otherwise if the husband was forced to sign the divorce documentation then that divorce does not count towards anything.

6. Working During Iddah

- ▶ If it is the case where the wife is compelled to work because her husband refuses to provide for her and nobody is willing to financially support her then as a last resort, jurists such as Ibn Nujaim *rahimahullah* have permitted such divorcee to emerge to earn her livelihood during her waiting period due to necessity. It must be made clear here that concessions are limited to the extent necessary, and where the necessity is removed then so does its concession. Due to the necessity case, this rule of concession is restricted only to work and cannot be extended to other areas where physical or monetary harm is not incurred. So reasons such as studying, visiting family relatives and so on are not legitimate reasons for her to emerge during her Iddah. [[Divorced women working during Iddah - JKN Fatawa](#)]

Jazakallah Khayr Q&A