142223 - Guidelines to Restrict Divorce in Islam

the question

I am Muslim and believe that Allah’s wisdom is great, even though we may not understand it, for He, may He be glorified and Exalted, knows better than we do what is good for us. I know that the wisdom behind the strict conditions for the marriage contract is to prevent immoral conduct so that no woman can commit Zina and say “I am married.” But why is it so easy to divorce and end a marriage with a single word, without witnesses or informing people? Furthermore, divorce (Talaq) is limited to three times; doesn’t this make it easy to destroy the family? Moreover, without the presence of witnesses to the divorce, doesn’t this lead to evil consequences, as the one who has divorced his wife without that being witnessed by anyone could demand inheritance, or the woman who becomes pregnant as a result of Zina could attribute the child to the one who divorced her?

Summary of answer

Islam has ordained restrictions and rulings that make it difficult for the man to issue a divorce, and reduce the incidence of divorce. It has not given the man the power to issue a divorce whenever he wishes. These restrictions include:
1. The basic principle regarding divorce is that it is not allowed, either by way of prohibition or by way of it being disliked.
2. Allah has given the power of divorce to the husband, not to the wife.
3. It is not permissible for a man to divorce his wife when she is menstruating.
4. The wife is not to be made to leave her house after divorce takes place.
5. Islam has set the number of divorces that the husband can issue as three.

Detailed answer

Praise be to Allah.

Islam has prescribed marriage and enjoined it, because of the good consequences to which it leads, and it imposed strict conditions for divorce ; it is not as the questioner says, that divorce is easy.

Islam has ordained restrictions and rulings that make it difficult for the man to issue a divorce, and reduce the incidence of divorce. It has not given the man the power to issue a divorce whenever he wishes.

If the Muslims adhered to these rulings, divorce would be very rare and it would not happen except in cases where the husband really needs it. But most people do not pay attention to these rulings, and they transgress the limits set by Allah. Hence there is a great deal of divorce, as some people think that Islam has made divorce very easy.

Among these rulings that Allah has prescribed to reduce the incidence of divorce are the following:

1. The basic principle regarding divorce is that it is not allowed, either by way of prohibition or by way of it being disliked (Makruh) .

Shaykh Al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

“The basic principle regarding divorce is that it is not allowed, and it is only permitted to the extent that is necessary, as it is soundly narrated in an authentic narration from Jabir (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) said: “Satan sets up his throne over the sea and sends out his emissaries, and the closest of them to him in status are those who cause the most turmoil. A devil comes to him and says: ‘I kept on at him until he did such and such,’ until a devil comes to him and says: ‘I kept on at him until I separated him from his wife.’ Then he draws him close to him and says, ‘You are the one,’ and embraces him.” And Allah, may He be Exalted, says, condemning Sihr (witchcraft): {And [yet] they learn from them that by which they cause separation between a man and his wife} [Al-Baqarah 2:102]." (*Majmu` Al-Fatawa,* 33/81)

And he (may Allah have mercy on him) also said:

“Were it not for the need for divorce, the evidence would indicate that it is prohibited, as is indicated by the reports and basic principles. But Allah, may He be Exalted, has permitted it out of mercy towards His slaves, because they need it sometimes. '” (*Majmu` Al-Fatawa,* 32/89)

2. Allah, may He be Exalted, has given the power of divorce to the husband, not to the wife.

If the power of divorce had been given to women, you would have seen many times more instances of divorce than is currently the case, because women are easily provoked to anger and are hasty in making decisions.

Ibn Al-Humam Al-Hanafi (may Allah have mercy on him) said regarding the wisdom of the rulings on divorce that the power of divorce has been given to men, not women, and the reason for that is that men have more self-control and are better able to weigh up the consequences of actions. See, *Fath Al-Qadir,* 3/463)

3. It is not permissible for a man to divorce his wife when she is menstruating , or during a period of purity in which he has had intercourse with her.

The jurists differed as to whether such a divorce counts as such or not.

So the one who wants to divorce his wife when she is menstruating or during a period of purity in which he has had intercourse with her must wait until her period ends, then divorce her before having intercourse with her. This period of time may, in some cases, be as long as a month, and in most cases, after waiting for this length of time, the husband will change his mind about divorce, and the reason that prompted him to want to divorce his wife will no longer apply.

4. The wife is not to be made to leave her house after divorce takes place , and it is not permissible for her to leave. Concerning that, Allah, may He be Exalted, says (interpretation of the meaning):

{O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them

out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter.} [At-Talaq 65:1]

One of the reasons for this ruling is that it gives the couple the opportunity to solve the problem and for the husband to take back his wife without the involvement of any other parties, whose interference could be a cause of further trouble, not reconciliation.

But if the woman were to leave her house as soon as divorce takes place, that would – as is seen in real life – lead to exacerbation of the problem and would make the husband insist on not taking his wife back.

In the same verse, Allah, may He be Exalted, explains the wisdom behind this ruling, as He says (interpretation of the meaning): {You know not; perhaps Allah will bring about after that a [different] matter}, namely a change in the situation and the husband's taking back his wife.

5. Islam has set the number of divorces that the husband can issue as three .

The wisdom behind that is clear: it is so that the man will have the opportunity, if he regrets divorcing his wife, to take her back, and perhaps the partner who erred can rectify his or her mistake. Then the husband is given another chance, and if he divorces her a third time, then in most cases this indicates that things can never be put right between them, so there is no option left except divorce.

At-Tahir ibn `Ashur (may Allah have mercy on him) said:

"The wisdom behind this prescription is to deter husbands from not taking the rights of their wives seriously and treating them like playthings in their houses. Thus the husband is allowed the first divorce as a mistake, the second as a test and the third as separation, as the Messenger of Allah (blessings and peace of Allah be upon him) said in the Hadith about Musa (peace be upon him) and Al-Khadr: "The first time was because Musa forgot and the second time it happened, a

condition was stipulated, and the third time it was taken as deliberate, hence Al-Khadr said to him the third time: {This is parting between me and you} [Al-Kahf 18:78 - interpretation of the meaning].” (Narrated by Al-Bukhari, 2578 and by Ahmad, 35/56; classed as authentic by the commentators [on *Musnad Ahmad*])” *(At-Tahrir wa’t-Tanwir,* 2/415)

Ibn Al-Humam Al-Hanafi (may Allah have mercy on him) said in his discussion of the wisdom behind the prescription of the number of divorces as three:

“It is because [the husband’s] Nafs may deceive him and make him think that he has no need of his wife, or that he needs to leave her, and his Nafs may push him in that direction. Then when he does that, he regrets it, becomes distressed, and becomes impatient. So Allah, may He be Glorified and Exalted, prescribed it as three divorces, so that he may test himself the first time, and if reality confirms [what he thought, that he does not need her], he may continue until the ‘Iddah [waiting period] is over. But if reality turns out to be otherwise, he can try to rectify the situation by taking her back. Then if his Nafs makes him feel the same way again and pushes him to divorce her again, he may look again at what has happened to him [And take her back, if need be]. But once that happens for a third time, he will have already experienced divorce and will have come to know that it is in fact what he wants, and after the third time there are no more excuses." (*Sharh Fath Al-Qadir,* 3/465, 466]

6. It is prescribed to admonish one’s wife , forsake her in bed and hit her lightly , if there is the fear that she is looking down on her husband and scorning him, as Allah, may He be Exalted, says (interpretation of the meaning):

{But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.} [An-Nisa’ 4:34]

So the husband should not initiate divorce for the slightest problem that arises between him and his wife. There are ways of attempting to rectify the situation which he should try before resorting to divorce.

7. It is prescribed to appoint people to act as arbitrators between the spouses if they are unable to solve the problems that have arisen between them. Regarding that, Allah, may He be Exalted, says (interpretation of the meaning):

{And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].} [An-Nisa' 4:35]

So the husband should not hasten to divorce his wife if he is not able to solve the problem. Rather there should be another attempt [to save the marriage] by appointing these two arbitrators.

Thus it becomes clear that Islam does not make divorce easy; rather it makes it strict and difficult for the man, so as to reduce the incidence of divorce. That is only because divorce is something that is disliked by Allah, may He be Exalted, and it is not loved by Him.

Shaykh `Abd Al-`Aziz ibn Baz (may Allah have mercy on him) was asked:

Islam has only prescribed divorce as a last resort to separate the spouses, and it has prescribed trying to solve problems first, before resorting to divorce. Could you tell us about these solutions that Islam has prescribed to resolve disputes between spouses before resorting to divorce?

He (may Allah have mercy on him) said:

"Allah has prescribed reconciliation between the spouses and taking measures to bring about reconciliation and drive away the spectre of divorce. These measures include admonishing the wife, forsaking her in bed, and striking her lightly if admonition and forsaking are to no avail, as it says in the verse in which Allah, may He be Glorified, says (interpretation of the meaning):

{But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand} [An-Nisa' 4:34]

Another of these measures is appointing two arbitrators, one from the husband's family and the

other from the wife's family, in the event of a dispute between them, to bring about reconciliation between the spouses, as it says in the verse in which Allah, may He be Glorified, says (interpretation of the meaning):

{And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]} [An-Nisa' 4:35]

If these measures do not succeed and it is not possible to bring about reconciliation, because the dispute is persisting, then it is prescribed for the husband to issue a Talaq (divorce) if he is the cause of the dispute, and it is prescribed for the wife to ransom herself by giving the husband money, if he does not want to divorce her unless she gives him something, if the fault lies with her or if there is resentment on her part, because Allah, may He be Glorified, says (interpretation of the meaning):

{Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers} [Al-Baqarah 2:229].

Releasing her with good treatment is better than conflict, dispute and failing to attain the objectives of marriage for which it was prescribed. Hence Allah, may He be Glorified, says (interpretation of the meaning):

{But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And ever is Allah Encompassing and Wise} [An-Nisa' 4:130]

And it was soundly narrated from the Messenger of Allah (blessings and peace of Allah be upon him) that he instructed Thabit ibn Qays Al-Ansari (may Allah be pleased with him), when his wife could not remain with him because she did not love him and she agreed to return to him the

garden that he had given her as a Mahr, to accept the garden and divorce her once (one *Talaq*). So he did that. (Narrated by Al-Bukhari) (*Fatawa 'Ulama' Al-Balad Al-Haram,* pp. 494- 495)

And Allah knows best.