

CHAPTER SEVEN

Why are only men allowed to divorce?

A common question asked in the West, if this right is taken away from women it seems like oppression and as if women have no rights at all. However, Allah knows best His creation and has not placed any burden on anyone. Allah mentions in the Quran:

“Allah (The Exalted) burdens no soul but to the extent of what He has given him.”ⁱ

Discouragement of divorce

A man who has a wife whose company he dislikes and to whom he would be obliged to pay a compensatory dowry in the event that he divorced her; in such a situation, the man may not mistreat his wife in the hope of driving her to demand a divorce and be willing to waive the financial compensation to which she has a right in return for being released from his abuse and insults. Allah (The Exalted) declares:

“O believers! It is not lawful for you to be heir of the women forcibly, and prevent them not with this design that you may take away part of what you had given them as dower except in this shape that they commit an act of flagrant indecency and treat with them fairly; then if you dislike them, it is likelihood that you may dislike a thing and wherein Allah has placed much good.”ⁱⁱ

The divine revelation then reaffirms this right of the woman's even further, warning against any violation of this right or any deceitful attempt to deprive the woman thereof. We read:

“And if you desire to change one wife for another and you have already given her a heap of treasure; then take not anything thereof. Will you take it by Slander and with manifest sin? How you shall take it when each of you has already become unveiled before one another and they have taken from you a most firm covenant?”ⁱⁱⁱ

As most will be aware, one of the most fundamental components of ownership is the establishment of the right to dispose of that which is owned, providing, of course, that there is no cause for such a right to be revoked or restricted (such causes being same for both men and women). Books on Islamic jurisprudence regularly devote long sections to ruling relating to everyday social transactions, with detailed explanations of both men's and women's property disposal rights.

The husband has made a source of loss for him; as Allah (The Exalted) has made dowry and financial support a source of gain for the wife but has tied these to divorce, which he has made to be a source of loss for her. What this means is that the woman, though she may have suffered loss through divorce, has nevertheless been given her dowry in full; similarly, the man, although he has suffered loss through the dowry, has nevertheless been given the right of divorce.

Where, I ask, is the inequality, whether in appearance or in reality, in this balanced relationship?

Financial support

In the case of a divorce which takes place by the unilateral decision of the husband, Allah (The Exalted) has granted legitimacy and effectiveness to this separation on condition that the entire dowry remains in the wife's possession. None of it should be granted to cover the value of which the husband is bound by Islamic law to continue providing his divorced wife with financial support until the termination of her waiting period.¹

What, then, is the status of divorce in the West? To begin with, it may be observed that when a man marries in the West, this costs him nothing comparable to the dowry recognised in Islamic societies, nor is he held legally accountable for providing his wife with material support.

One outcome of this situation is that when divorce takes place by a unilateral decision of the husband, this likewise entails no material cost of commitment.²

Meanwhile, there has been a steady rise in the divorce rate in the UK In 2004, the number rose to 167,116 from 166,737 in 2003, the Office for National Statistics (ONS) figures show.^{iv}

¹ Three months. 'iddah-is the waiting period of the time during which, following being divorced, a woman is not permitted to remarry.

² In cases where the couple divorcing have children, there is often a court ruling that the father is responsible for regular alimony and child support payments.

Is this, then, the ideal approach to divorce when it imposes itself on us? Is this the way to protect and preserve woman's rights in the balance of a just equality with the man?

Beating of women has become the number one domestic crime in the West, and particularly in the United States. In this connection a journal published by the American College of Obstetrics and Gynaecology according to which, "Every 12 seconds a woman is beaten in some cases to the point of death, by a husband or lover." However, we did not pause to ask about the reason behind this crime which grows more serious with every passing day. According to the writer of this article, the reason for this occurrence lies in the fact that the man, when he gets bored and discontented with his wife or girlfriend, chooses some other attractive woman in her place. As for the wife or girlfriend who has agreed to share a life with him, she eventually reaches the limits of her toleration and tries to solve the problem through blame and criticism, couple begin to quarrel and the husband or lover, perceiving his woman as a mere hindrance on his path, falls upon her with blows and insults. This occurrence has led to the presence of millions of divorced women, spinsters and those who have been banished by their lovers, together with heartbreaking numbers of children who have nowhere to find protection and nurture but shelters for the homeless and abused. Hence, leading to a corrupt upbringing and corrupt society.

The Islamic commitment and divorce process reassures the woman that the man who is marrying her will not simply toy with her for a few weeks, then cast her away to go looking for some other diversion.

Divorced women need provision

This is probably one of the abused laws in the Qur'an. But Allah (The Exalted) holds us responsible for our innermost thoughts. If one observes Allah's (The Exalted) laws then Allah (The Exalted) makes it easy for him / her.

"Let the man of means provide according to his means. And as for him, upon whom his provision has been straitened, let him give the maintenance of what Allah (The Exalted) has given him. Allah (The Exalted) burdens no soul but to the extent of what He has given him. It is near that Allah (The Exalted) will bring about ease after hardship."vi

Alimony³ for Widows and Divorcees

And those of you who die and leave behind them wives, they should bequeath for their women to provide them maintenance for a year without turning them out;⁴ then if they themselves leave, you are not accountable regarding any proper thing which they did in their matters and Allah (The Exalted) is Dominant, Wise.vii

And for divorced women too there is proper maintenance, it is incumbent on the God fearing.viii

Women's right to divorce

Who says that women do not have a right to divorce? The Islamic legal system allows a woman to go to a judge (Qadi) and ask for an ending of a marriage on the grounds of cruelty, lack of maintenance, or an absence of husband for a long time, insanity, or in cases where the husband has a dangerous contagious disease such as leprosy etc. similarly she can approach a Qadi for ending of marriage even on grounds of incompatibility as happened in the case of *Bint Qais* who brought her case to the Prophet (may Allah bless him and grant him peace), saying that she had not seen anything wrong with her husband, but that she had not liked him right from the beginning of marriage and that she was afraid of being unfaithful in the marriage. The Prophet (may Allah bless him and grant him peace) asked her whether he had given her any dowry at the time of the marriage. She replied that she had been given an orchard which the Prophet (may Allah bless him and grant him peace) asked her to return to him. Then the Prophet (may Allah bless him and grant him peace) persuaded him to divorce her on grounds of incompatibility.

In other words, the right of a woman to dissolve her marriage in the court of the Qadi was given to Muslim women 1400 years ago. The Western legal system, which is based on their European or Jewish system of law, had either made the dissolution of the marriage too loose or too tight.

³ An allowance payable by a man to his wife or former wife pending or after a legal separation or divorce.

⁴ The above verse was abrogated and replaced with the following: "And those of you who die and leave them wives, they should keep themselves apart for a period of four months and ten days, then when they complete their period, then O guardians! There is no blame on you in anything which the women do with regard to themselves according to law. And Allah is aware what you do." (2:234)

Under what conditions can a woman divorce her husband?

Whichever party chooses divorce, they must obey the laws as above-mentioned. Normally divorce is mutually decided by the couple. If the above-mentioned laws are observed, there could be a situation where either of the spouses may not give their consent but if the negotiator from both the families decide that divorce is the best solution for the estranged couple then they would, nevertheless go through divorce. The divorce laws are applicable to both man and woman (4:35 and 2:237 indicate this) except that there are certain additional laws which a divorced woman has to observe.

Psychological and physiological make-up

As to the question of the right of unilateral divorce granted to the husband in Islam, the following points are worth taking into consideration. A woman's psychological and physiological make-up is such that every month for a period of five to seven days she is in such a state of Physiological changes as discussed by Geddes and Thompson in their book, *Evolution of Sex*.ix The occurrence of menstruation in which the blood flows in a woman, but her mental energy, as well as muscular strength and dexterity, even in the strongest and healthiest and most determined woman, are usually exerted impaired during this period.x Experts in human biology have also said that there appears to be increased nervous tension and greater muscular excitability during this period; reflex action is more marked and there may be slight twitching of the legs; also yawning and stiffness in the neck, and sleep is usually heavier than usual during this period. In some cases there is loss of appetite and at times there is a certain amount of digestive and intestinal disturbance which amount to a tendency to flatulence.xi

On the psychological side, even in good health, there is another series of occurrence. There is greater impressionability, greater suggestibility, and, to a variable extent, reduces self-control. It is also suggested that, at this time, women are more vulnerable to inclined to them, certain impulses, fits of ill temper, moods of depression, impulses of jealousy, and outbursts of self-confession, are more likely to occur. Also during this period when a woman is exceptionally sensitive and irritable, she may be upset by trivial matters which at other times would provoke no apparent response. Likewise the statistics of female criminality shows that a very large majority of crimes committed by women are committed during menstruation.xii Whilst a woman is on her monthly cycle the husband is not allowed to divorce his wife. So we find that Islam recognises the state of women when going through this period.

Affects

The disorder stops them from functioning normally, can cause family and work problems and may be so severe that it pushes women to commit violence against others.

The causes of PMT are unknown, but may be linked to imbalances in levels of serotonin, a chemical messenger in the brain.

Women who are most at risk are thought to have a family history of PMT, a history of post-natal depression or clinical depression and are likely to suffer mood swings.

Stephanie Allen, executive officer of the National Association for Premenstrual Syndrome, said PMT was often not treated seriously.

"I know many women who have lost their partners and careers as a result of suffering from premenstrual symptoms. I have sat and listened to numerous women describe their 'uncontrollable violence towards their partner' and 'feelings of isolation'," she said.

Professor Shaughn O'Brien from North Staffordshire Hospital in Stoke-on-Trent added: "A woman menstruates every month for more than 30 years. This means that she could experience premenstrual symptoms for up to 5,000 days in her lifetime, possibly without any help or advice on how to alleviate these symptoms."^{xiii}

Crime Statistics

- 1894 study: of 80 women arrested for "Resistance to public officials" 71 were menstruating.^{xiv}
- 45% of attempted suicides occurred during the week preceding menstruation in a 1968 study.^{xv}
- 67% of Alcohol drinking binges during PMS
- North Carolina Prison Study: 41% of the inmate assaults were during PMS (1971).^{xvi}

- 1984: of 42 New York Inmates Interviewed, 62 % were premenstrual during the crime commission.^{xvii}
- 156 British Women imprisoned for theft, prostitution and drunkenness almost half were during premenstrual.^{xviii}
- Out of 50 violent crimes committed by females, 44% were during PMS.

Women are more likely to divorce

The proportion of divorces initiated by women ranged around 60% for most of the 20th century, and climbed to more than 70% in the late 1960s when no-fault divorce was introduced: so says a just-released study by law professor Margaret Brinig of George Mason University in Arlington, Virginia and Douglas Allen, economist at Vancouver's Simon Fraser University. The researchers undertook one of the largest studies ever on divorce, using 46,000 cases from the four American states that keep statistics on which partner initiates the action. In addition to women filing twice as often, the researchers found, they are more likely to instigate separations and marriage break ups.

Example One

Theories abound as to why it is so often women who file. Janis Magnusson, a Calgary divorce mediator, says she frequently sees women with unreal expectations of marriage and their partners. "Women expect a Prince Charming, while men just want a wife, sex, food and a job," she says. One of her clients left her husband for a younger man she found more exciting. His home was filled with wooden frames to support a painting holding half-finished paintings," recalls the woman. "He seemed so cultured. But once we married, I never once saw him paint a picture." Now back with her first husband (who had also remarried and separated), the woman says, "I joke that we originally divorced because he left wet towels on the bed. Seriously, he wasn't much help. But did I ever say, "Could you put in a load of laundry?" No, I was busy being the martyr. I just fumed, stomped and slammed. Now we talk."

"I did avoid conflict," her husband admits. "I'm a police officer and I treat words as bullets. I know you don't get them back. However, both my wives also had unrealistic ideas. I wasn't playing the husband role the way they perceived it in the fairy tale world. But men are different. They don't believe in gift horses or fairy tales."

Example Two

"Leslie," a Calgary psychologist, reports a similar experience. After leaving her husband in 1976, she remarried. Then, 20 years later, she returned to husband number one. "I had such huge expectations that no husband could have met them," she says. "Now I have comfort, security and companionship. But I wish I hadn't had to subject all of us to such trouble." Leslie believes she was a product of the age: "I wanted this perfect thing; I was very disappointed. He probably was, too, but I was the one leaving."

Support

"The woman is more willing to take risks because she has more of an emotional support network," asserts Calgary engineer Mahedi Meghani, dismayed that the wives of three close friends have left in the past two years. "She feels better equipped to cope with post-divorce trauma, while he realises he hasn't even phoned his sister in three years. A woman who is alone is seen to be lonely, so people phone her. A man is supposed to look after himself."^{xix}

We find that women are more likely to divorce due to their soft heart, emotions and the nature of the make of women. In order to protect families and societies Islam gave the verbal right of divorce to men, however, women do have a right to ask for divorce but can not give divorce.

Trust

Another reason the scholars state the reason only men can literally divorce is that the husband can go out of his house with firm belief that his wife will look after his wealth and not like some couples who when the husband leaves she takes everything one day leaving the husband with nothing because she has ran off with someone else and in some cases even leaving the children behind.

I came across a web page^{xx} entitled "After the divorce" which stated; "The wide-ranging results showed 66% of women asked for a divorce compared with 41% of men."

We find that research even shows that women are more likely to ask for a divorce than men are, hence, if the right of divorce was given to women then there would be many divorced men for petty reasons, due to the

emotional roller coaster women have to endure, as a result of their genetic makeup. Now make up your own mind and think that the laws laid down by Islam are for the betterment for the individuals as well as the community at large. If the right of divorce was given to the women than the women would have many different partners as and when they wish increasing the number of diseases and illnesses in the community and the fact that the children will all have different fathers and some may not even know who their father is.

i i Surah No: 65, Surah Al-Talaq, Verse: 7

ii Surah Al-Nisa: Surah No: 4; Verse: 19

iii Surah Al-Nisa; Surah No: 4; Verse: 20-21

iv <http://www.bbc.co.uk>

v January 1993

vi Surah No: 65, Surah Al-Talaq, Verse: 7

vii Surah No: 2, Surah Al-Baqarah, Verse: 240

viii Surah No: 2, Surah Al-Baqarah, Verse: 241

ix Havelock Ellis, Man and Woman, page: 288

x *ibid*, Page: 289-290

xi *ibid*; page 291

xii Bauer, Woman and Love, Page: 173

xiii <http://news.bbc.co.uk/1/hi/health/455565.stm>

xiv Lombroso and Ferrero

xv Wallach and Rubin

xvi Ellis and Austin

xvii Brunetti and Taff

xviii D'Orbam and Dalton

xix SOCIETY: Look who doesn't want a divorce. Alberta Report, January 11, 1999, page 30. By Candis McLean

xx [http://lifewise.canoe.ca/LifewiseLoveThingVa104/0607 Val-sun.html](http://lifewise.canoe.ca/LifewiseLoveThingVa104/0607%20Val-sun.html)