

In many Muslim contexts, men and women do not have equal access to divorce. A husband can often divorce simply by pronouncing it, without consent from or discussion with his wife, or even her knowledge. While a wife may be able to initiate several forms of divorce, it is far more difficult for her to be released from the marriage. She may be required to produce extensive evidence, it may take years in court, or she may have to pay compensation or give up her financial rights.

Because men have easier access to divorce, they hold considerable power over their wives. This is often worse because of backlogs in court systems and the resources and time required to bring a case. Children can suffer because of these financial issues as well as the emotional damage caused by acrimonious divorces. Wives can be trapped in unhappy or unstable marriages because of the threat of unilateral divorce, the difficulties in obtaining a divorce without the husband's agreement, and the financial instability that can result from divorce.

The Qur'an and the example of the Prophet Muhammad (pbuh) offer an approach to divorce that rests on principles such as graciousness (*fadi*), justice, fairness, and equity (*'adl, qist, insaf*), kindness (*ihsan*), and that which is commonly known to be right (*ma'ruf*). This approach should be adopted into divorce laws and processes today.



Divorce provisions in many Muslim family laws are unfair and can be damaging to women and their children.

States must act to ensure that men and women have equal access and rights in the dissolution of marriage in terms of the types of divorce available and the ease in obtaining divorce.



TYPES OF DIVORCE

Most contemporary Muslim marriages and family laws are derived from classical *fiqh*, or interpretations of the Qur'an and Sunnah, and have been influenced by custom, tradition, and colonial influences. Dissolution of marriage is permitted in Muslim family laws, though reconciliation between spouses is recommended in the Qur'an. Jurisprudence and laws relating to divorce are complex and differ greatly between schools of *fiqh* in the classical era and between countries today.

The most common form of divorce is *talaq*, in which the husband can unilaterally declare the marriage to be over, without consent of the wife or even her knowledge. *Talaq* is a privilege of men alone.

Women may have access to a variety of forms of divorce in classical *fiqh* and contemporary laws, depending on the school of jurisprudence and/or country. These include:

MUBARAT

is when both parties mutually agree to dissolve the marriage.



KHUL'

is also known as divorce for compensation or redemptive divorce. This allows the wife to seek release from the marriage in exchange for some form of compensation, such as returning her dower (*mahr*), paying other compensation (*'iwad*), and/or giving up any post-divorce financial rights. Most early jurists assumed that *khul'* would be negotiated between both parties, but Qur'anic verse 2:229 and the Prophetic hadith on which *khul'* is based do not require the husband's consent.



FASKH, TAFRIQ, AND TATLIQ (JUDICIAL TALAQ)

are different forms of divorce for cause in which the wife must prove a husband's fault or defect or his failure to fulfil the terms of the marriage contract. Traditional *fiqh* schools differ on the grounds for initiating such a divorce as well as the level of evidence required to prove the case. Grounds may include extended absence of the husband, harm (*darar*), impotency, illness, failure to provide support, or abandonment.



TALAQ TAFWID OR 'ISMA

is also known as delegated right to divorce. This is where a husband delegates his right to unilateral divorce to the wife either in the marriage contract or at a later date so she can pronounce the divorce herself.

SHIQAQ OR NIZA' WA SHIQAQ

is divorce for irreconcilable differences or discord and strife between the two parties. It can be initiated by either spouse.



In all forms of divorce except *khul'*, the wife must observe a waiting period (*'iddah*) of three menstrual cycles to allow the couple a chance to reconcile and to confirm she is not pregnant. During this period, she is entitled to receive financial maintenance. When the divorce is final with the end of *'iddah*, she may be given the deferred portion of her dower (if applicable) and a 'gift of consolation' (*nafaqah al mut'ah*) from the husband if he has been proven to be at fault for the divorce. In most countries, the wife has no claim to marital property. In all schools, either spouse could annul the marriage contract before its consummation under certain conditions that vary from one school to another.

WHY IT MATTERS

Reforms in some family laws have set restrictions on *talaq* or opened up more options for women to initiate divorce. In general, however, women have a much harder time accessing and obtaining divorce than men. In addition, they may be harmed much more than men if they choose to file for divorce.

Current divorce provisions must be reformed because:



It is generally much easier for men to access divorce than for women.

In many countries, husbands can divorce by pronouncing *talaq* for any or no reason, with no evidence. Even if the law requires court involvement, the process is reasonably fast and not that costly to him financially or in terms of time, emotional energy, or social standing.



Wives may become trapped in violent marriages if they do not have access to divorce.

Women are still physically, mentally, and emotionally abused in the home. For this reason, wives must have standard, efficient methods of legally dissolving harmful marriages without financial penalty. Delays in the process can expose women to further physical or emotional harm, and requiring women to pay compensation to get a quicker *khul'* divorce penalizes them for violence by the husband.



Divorce can worsen women's and children's poverty.

Women must expend time and resources on court cases when they could otherwise spend this on their families or concentrate on making a living. Divorced women with custody of children are especially vulnerable, since they bear the day-to-day expenses and many fathers do not provide adequate support. Women are already disadvantaged in terms of the types of jobs available to them alongside wage and asset gaps, and divorce magnifies this. This problem is exacerbated by the fact that many countries have no concept of joint property during marriage and wives often have no claim to the marital home.



When women are allowed to file for divorce, they often must struggle to do so.

Divorces for cause require extensive evidence that can be difficult, expensive, or time-consuming to gather.

Women bear the burden of proof. They may have to hire lawyers or other professionals to obtain, organize, or present evidence in a way that is convincing to the judge. Husbands may make the process difficult in order to punish the wife, persuade her to drop the claim, or force her to use *khul'* and give up her financial rights.

Khul' requires women to pay compensation and/or give up financial claims.

Women who are desperate for divorce may have to sacrifice their only resources for their freedom.

Divorce initiated by women can be time-consuming

In many countries divorce proceedings initiated by wives can take years to conclude. Women may have to travel to courts many times for hearings. Courts may have long backlogs that prevent timely resolution. Women can also face endless delays if their husbands contest the divorce or decide to hinder the process.

Women may face discrimination within the male-dominated court system.

Courts in Muslim contexts are disproportionately comprised of male judges and lawyers who bring their own biases into the courtroom.

Reform of divorce laws is needed to ensure that both spouses can both be released from marriages in a way that is fair, just, and respectful.

WHY THE LAWS CAN BE CHANGED

Governments often argue that divorce provisions cannot be reformed because of religion. But family laws in contemporary Muslim contexts are not sacred. Instead, they were written and enacted by humans based on classical jurists' understandings of the sacred texts. Many provisions related to divorce have been changed over the past century. Islamic teachings and Muslim legal tradition guide the way towards even further reform.

Divorce proceedings should be respectful, honorable, and equitable.

The revelation and the example of the Prophet introduced an approach and processes for divorce in line with Islamic principles such as graciousness (*fadl*), justice, fairness, and equity (*adl, qist, insaf*), kindness (*ihsan*), and that which is commonly known to be right (*ma'ruf*).

- *Surah al-Baqarah* 2:229 calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)'.
- *Surah al-Baqarah* 2:231 instructs men to treat their former wives with honour and dignity, warning that those who take wives back 'to injure them, (or) to take undue advantage ... wrongs his own soul'. Husbands are directed not to take the revelation in jest.
- *Surah al-Baqarah* 2:237 concludes the series of verses about divorce by instructing the couple not to forget to be gracious towards one another (*al fadl baynakum*).
- *Surah an-Nisa'* 4:35 sets out a mediation process through which a couple can decide on their future under fair terms: 'If you fear a breach between a married couple, appoint (two) arbiters, one from among his people, and the other from among her people'.

Divorce should be grounded in the same values as marriage itself.

In the Qur'an, marriage is seen in *Surah an-Nisa'* 4:21 as a 'solemn covenant' (*mithaq ghaliz*) and in *Surah al-Baqarah* 2:187 and *Surah ar-Rum*

30:21 as an intimate and tranquil union. Relationships are described in terms of values such as love and mercy (*mawaddah wa rahmah*), serenity (*sakinah*), dignity (*karamah*), and consultation and mutual consent (*tashawur wa taradi*). It only makes sense that the dissolution of such relationships should also be grounded in the same values.

Muslim-majority countries have reformed divorce laws to be fair for all parties.

These laws try to ensure that everyone affected – husbands, wives, and children – experiences consideration and fairness and is not harmed through the process. The Moroccan *Moudawana* introduced a form of egalitarian divorce based on *Surah an-Nisa'* 4:35 that allows both men and women to file for divorce on the grounds of irreconcilable differences (*shiqaaq*) and requires the divorce be resolved within six months. The process is equitable because both spouses can file for divorce in the same manner. The time limit ensures that their lives are not put on hold for an indefinite period of time and their resources will not be exhausted through court proceedings. In other countries, women have the same right to pronounce *talaq* as men through the principles of *talaq tafwid*, or delegated right to divorce. This gives women the ability to easily end the marriage for breach of conditions in the marriage contract (*tatliq*) without financial consequences.



**RESPECTFUL
HONOURABLE
EQUITABLE**

Some international human rights obligations related to dissolution of marriage:

- **Universal Declaration of Human Rights article 16(1):** 'Men and women ... are entitled to equal rights as to marriage, during marriage and at its dissolution'.
- **International Covenant on Civil and Political Rights article 23(4):** 'States Parties ... shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution'.
- **CEDAW article 15:** 'States Parties shall accord to women equality with men before the law'.
- **CEDAW article 16(1):** 'States parties ... shall ensure, on a basis of equality between men and women, ... (c) The same rights and responsibilities during marriage and at its dissolution'.
- **CEDAW General Recommendations 21 and 29:** 'States parties should provide for separating the principles and procedure dissolving the marriage relationship from those relating to the economic aspects of the dissolution' (GR 29, para. 42).

WHERE REFORM HAS HAPPENED

A number of countries have acted to promote fairness and justice for men and women in divorce.

At a minimum, many countries require *talaq* to be effectuated through a court, with some mandating that all financial provisions be decided before the divorce certificate is issued. Some countries (e.g., Algeria, Bahrain, Bangladesh, Brunei, Egypt, Jordan, Malaysia, Mauritania, Morocco, Nigeria, Pakistan, Qatar, Singapore, United Arab Emirates) have allowed women to obtain *khul'* divorce.

Other reforms that provide for greater fairness and justice between men and women include:

Equal right to divorce



Turkey, Tunisia:

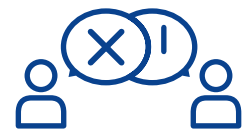
All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (*talaq*) by the husband is not recognised.



Judicial divorce due to irreconcilable differences

Jordan, Morocco:

A wife may petition the court for a divorce on the ground of 'irreconcilable differences' or irretrievable breakdown of the marriage (*niza' wa shiqaaq*).



Delegated right of divorce to the wife (*talaq tafwid*)



Afghanistan, Bangladesh, Bahrain, Egypt, Iran, Iraq, Jordan, Lebanon (Sunni), Mauritania, Morocco, Oman, Pakistan, Palestine (West Bank), Qatar, Syria, United Arab Emirates, Yemen:

While a husband still has a unilateral right of divorce, he may delegate this to his wife through the marriage contract. This permits her to pronounce *talaq* upon herself. The wife's right to financial entitlements remains preserved.



Procedural reform



Singapore:

A wife can get a divorce whether the husband agrees to the divorce or not and even in instances where the wife is unable to prove a breach of the marriage vows (*taklik*) or one of the grounds for judicial divorce. The reconciliation process (*hakam*) will end up with either: (i) the husband voluntarily pronouncing *talaq*; or (ii) the husband delegating the right to divorce to his wife (*talaq tafwid* or *'isma*); or (iii) if the husband refuses to do either (i) or (ii), the court will direct the husband's arbitrator to pronounce *talaq* on the husband's behalf.

HOW TO ENSURE EQUALITY AND JUSTICE

Divorce provisions in many Muslim contexts make it easier for men to obtain divorce than women. Husbands may often divorce without obtaining consent from their wives. Wives, by contrast, may have to spend considerable time and money attending court hearings and identifying evidence that can be used to prove their claims. Alternatively, wives may have to pay their husbands for their release or give up their financial rights.

Some family laws have been partially reformed to restrict men's unilateral *talaq* or provide women more options for initiating divorce. But most reforms do not fully address the legal and social power that men hold over their wives because it is so easy for them to get a divorce.

Countries can take a number of approaches to provide for more equitable divorce provisions:

- **Comprehensive reform** can eliminate *talaq* as the default form of divorce and instead provide equal

access—initiated by both men and women—to judicial divorce, divorce by mutual agreement (*mubarat*), or divorce because of irreconcilable differences (*shiqaaq*). This should include establishing a dignified process and time limits for resolving the divorce.

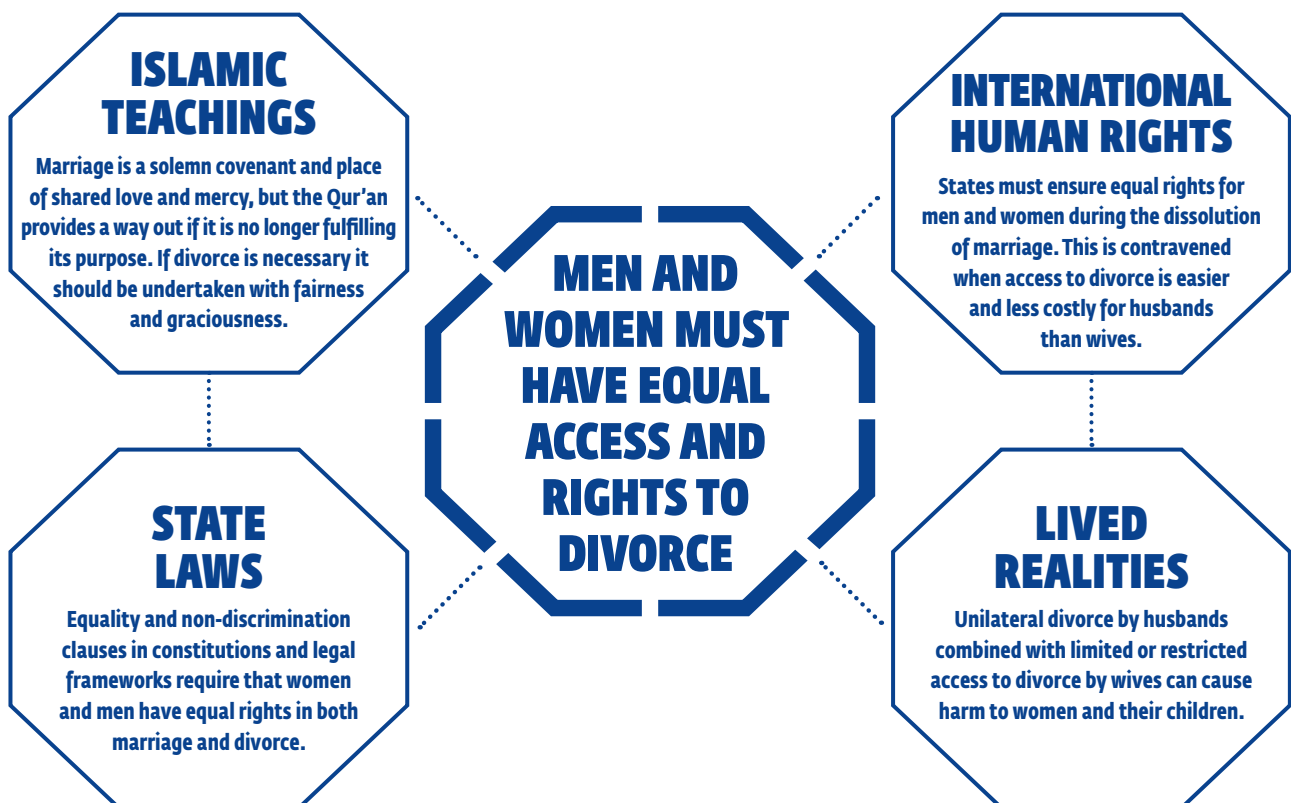
- **Regulation of unilateral divorce by men (*talaq*)** can address problems, such as by obligating men to come to the court and pay financial dues before they can divorce and restricting or abolishing men's unilateral right to revoke the divorce during the waiting period.

- **Procedural regulations for fault-based judicial divorce (*tatliq*)** can: (1) address gaps in evidentiary requirements, such as inadequate recognition of spousal violence; (2) reduce litigation periods by setting clear time limits; and (3) close loopholes that enable men to miss court hearings or court-based mediation and arbitration sessions.
- **Better defined and implemented judicial *khul'* laws** can allow women to obtain a divorce without their

husbands' permission and ensure that disputes over how much women must compensate their husbands can be better adjudicated.

Inequality in divorce provisions harms women and children and goes against Qur'anic principles of fairness, kindness, honor, and graciousness. It is vital that States act to ensure equal access to divorce and equal divorce rights for men and women.

To promote justice, fairness, and equity (*'adl, qist, insaf*), kindness (*ihsan*), dignity (*karamah*), graciousness (*fadl*), and that which is commonly known to be right (*ma'ruf*), men and women must have equal access to divorce and equal rights during the divorce process.



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For general resources on Muslim family law reform and references to those resources used in this brief, visit the brief's page on the Musawah website.

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