

MARRIAGE AND DIVORCE IN JORDAN

Every Muslim husband of sound mind is entitled to divorce his wife whenever he wishes and without giving any reasons for his action. Although such a ruthless act is distasteful, it is nevertheless lawful under the principles of Islamic law.

Divorce exists from the time of pronouncement of the Arabic word talaq, which means repudiation or divorce. The words used must indicate a clear and unambiguous intention to dissolve the marriage.

The repudiation of marriage may be either revocable or irrevocable. The most desirable repudiation is the one referred to as "most approved" divorce. This type consists of one single pronouncement when the woman is free from her menstrual period [purity period]. This is followed by refraining from having sexual relations during 'iddah', the waiting period imposed upon every divorced woman to determine if she is pregnant. In a case where the wife is old or where the two spouses have lived apart or have been away from each other for a long time, the condition of "purity period" is unnecessary.

The pronouncement made in the "most approved" form is revocable during 'iddah. The 'iddah period is calculated as three months or ninety days from the date of the declaration of divorce, or, if the woman is pregnant, it lasts until delivery. The husband may revoke the divorce at any time during this period. Such revocation may be by express words or by conduct. Resumption of conjugal intercourse is a clear case of revocation. After expiration of the 'iddah, the divorce becomes irrevocable.

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The Jordan Law of Family Rights, 1951, provides the following:

Art. 78. A revocable divorce does not terminate the marital contract forthwith and the husband can revoke it, during 'iddah, by words or by conduct; such a right of the husband does not lapse by renunciation.

Art. 79. If a husband returns to the wife during 'iddah, the marriage continues; his resumption of marital relations during 'iddah does not depend on the wife's consent thereto; no new dower shall become payable in such a case.

Common law marital relationships are not condoned or recognized in the Hashemite Kingdom of Jordan, nor in any other Muslim country applying the principles of Islamic law.

^{1/} Law No. 92 of 1951. In Compilation of Laws and Regulations up to 1957, Vol. 2, p. 20-40 (in Arabic).

The question concerning legitimation is not valid since the child was born in wedlock. However, the following information may be useful:

Under the principles of Islamic law there are only two methods of filiation. Islamic law treats the natural father as the father of the child and provides for another mode of filiation by acknowledgement of paternity. Acknowledgement of paternity is resorted to whenever there is a doubt as to whether a person is the child of another. By acknowledgement, the father confers the status of legitimacy on the child. Hence, legitimacy is a status which results from certain facts, while legitimation is a proceeding which creates a status that did not exist before. To state it clearly, there is no legitimation under Islamic law; on the other hand, acknowledgement is a declaration of legitimacy and not legitimation. It is often said that no statement made by one man saying that another is his son (provided he is illegitimate) can make that individual legitimate; but where no proof has been given, such acknowledgement is substantive evidence that the person so acknowledged is the legitimate son of the person who made the statement provided his legitimacy is possible. Legitimation per subsequens matrimonium is not known in Islamic law. It is, therefore, a

fact that parentage under Islamic law is established in one of two ways: either by birth during regular or irregular (but not void) marriage; or, by acknowledgement in certain circumstances. Adoption is not recognized within Islam and is disapproved of by the Qurān.

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