

# **Divorce in Shia Islam VS. Canadian Civil Divorce**

Prepared by Jaffari  
Support Services



Web: [jaffari.org/jss](http://jaffari.org/jss)

Tel: 905.695.1579

Address: 9000 Bathurst St. Thornhill, ON

# 1. What is the definition and conditions of divorce (talaq) from Islamic perspective?

In Shi'a Islam, talaq means dissolution and termination of marriage by either the husband himself or his representative (wakil) pronouncing the talaq on his behalf in the presence of two Shi'a just ('adil) witnesses, after all the conditions relating to talaq have been fulfilled as follows:

- The husband must be acting independently on his free will, sober and serious in his decision.
- The wife should not be in her monthly cycle or in her normal bleeding period after childbirth.
- And that the couple did not have sex during her clean period.

## 2. What are the types of divorce according to Islam?

### **a) Talaq**

The first and most common method of dissolving marriage is known as talaq. This is the divorce that a husband gives to free himself from the marriage bond.

### **b) Khula**

This type of divorce is initiated by the wife who, for certain specified reasons, has developed an intense dislike or disdain towards her husband. In this case, the wife has to offer fidya (redemption) to him by paying him an agreed amount of money or surrenders her mehr to obtain divorce. Islam has set no limit to this amount but it should be reasonable.

If the husband totally refuses to accept money or property and denies her the right to get the khula, then she continues to be his wife until he or his representative pronounces the talaq on his behalf.



If he still does not do that, then Islam provides a relief to her in that she can petition to her Marja or his authorized representative, setting out the grounds for the divorce. If the Marja or his representative is satisfied with the reasons given by the wife, then he can pronounce the khula with or without the consent of the husband.

### **c) Mubar'at**

In this type, both husband and wife develop mutual dislike and hatred beyond reconciliation. In this type of divorce also it is the husband or his wakil who has to pronounce the muba'rat divorce.



### 3. How one can apply for a civil divorce in Canada?

There is one law about civil divorce for everyone in Canada. It is called the Divorce Act. No matter where you live in Canada, the law and the process of getting divorce are the same. You must apply for a divorce in family court. Either you or your spouse can file the application or both of you can file a joint application. Your application can ask for just a divorce, or it can ask the court to decide about custody, support and how to divide property.



#### 4. On what grounds, one might be eligible to apply to get a divorce in Canada?

Canada has no-fault divorce. The only ground for a divorce in the Divorce Act is marriage breakdown. The Divorce Act says you can show your marriage has broken down if any one of the following criteria applies to you:

- a) You have been living apart for one year or more
- b) Your spouse has been physically or mentally cruel to you
- c) Your spouse has committed adultery

## 5. If someone gets a civil divorce does it mean that she/he is divorced in Islam also?

The civil divorce and the religious divorce are based on two mutually exclusively systems of law.

Islam do not recognize civil divorce and, therefore, you will still be considered married in the faith until you also get a religious divorce. Your civil divorce may allow you to get married in a civil ceremony but that next marriage will not be considered valid in Islam.

## 6. Do people contact the Resident Alim before they file for civil divorce?

Some people tend to approach the Resident Alim for religious divorce prior to filing for a civil divorce and some people tend to come after filing for a civil divorce. In the case that both wife and husband mutually agree to get a divorce, whenever they approach the Resident Alim is fine. However, in situations that a couple seems not to be on the same page, it might be helpful if they first approach the Resident Alim and then go for a civil divorce.



## 7. What is the contact information for the Resident Alim?

Sayyid Muhammad Rizvi

Tel: (905) 707-0982

Email: [maulana.rizvi@jaffari.org](mailto:maulana.rizvi@jaffari.org)

Mon to Thur: 11 am – 2 pm

Fri: After Friday Prayers until 3 pm



## In conclusion

In Islamic Law, the husband is the one who gives divorce and the wife who takes it, while in Canadian Law each husband and wife can apply to get a divorce. Therefore, this is very important to sign the marriage contract drawn by Sayyid Muhammad Rizvi, including the optional conditions at the time of marriage. It saves a lot of problems and issues that arise later in life when things go bad resulting in divorce. Under this contract the husband delegates to the wife an irrevocable authorization to appoint an agent (wakil) for divorcing her on behalf of the husband after giving the Shi'a Ithna' Ashari religious authority or Wakil of the Marja' reason to believe the occurrence of certain specified conditions given in detail in the contract.

