

If a man gives his wife divorce at least three times in one sitting using clear, explicit words, then does that constitute one divorce or three?

The question being put forward is that if a man gives his wife divorce at least three times in one sitting using clear, explicit words, then does that constitute one divorce or three. There is a view of those who act upon Shaykh Abd al-Azīz ibn Bāz’s fatwa who say only one revocable divorce has taken place. The following should clarify the Ḥanafī School of Law’s view.

Background

The Fuqahā state that divorce is of three types;

- [‘Aḥsan’] Best Divorce – To issue divorce whilst the wife is not menstruating and intercourse has not taken place since the last menstruation.
- [‘Ḥasan’] Good Divorce – To issue divorce whilst the wife is not menstruating, then to issue a second divorce after the following menstrual cycle, and finally, to issue a third divorce after the following menstrual cycle. Hence, three divorces in three consecutive ‘clean’ (not menstruating) times.
- [‘Bid’a’] Non-Sunna Divorce – To issue three divorces in one non-menstruating time, or, issuing divorce during a menstrual cycle, or, to issue divorce whilst the wife is not menstruating but intercourse has taken place since the last menstrual cycle. (Radd al-Muḥtār, Vol 4, pg 419-424)

Evidence for the effect of three divorces in one specific time

It is narrated from Sayyiduna Ikrima that Sayyiduna Ibn Abbās said regarding the verse, “The divorced women should wait three menstrual cycles and it is not permitted for them to conceal that which Allāh has created in their wombs,” that a man who divorces his wife is more entitled to take her back even if he divorces her three times then this was abrogated by the verse, “Divorce is twice...” (Sunan Abū Dawūd, Chapter on the abrogation of returning after three divorces, pg304)

Imām Qurtubī states, “The evidence of the majority is very apparent, that it is impermissible for a woman who has been divorced three times to return to her first husband until she has had intercourse with another husband and there is no difference lexically or Sharī’a-wise between issuing them (three divorces) together or on separate occasions...” (Imām Qurtubī cited in Fatḥ al-

Bārī, Book on Divorce, Chapter on those who permit three divorces, Vol 9, pg 456)

It is also known that the Holy Prophet would accept the issue of three divorces as valid. Imām Bukhārī in his 'al-Jām'i al-Ṣaḥīḥ' has set a chapter titled, 'The Discussion on the acceptance of three divorces,' which details the episode when Sayyiduna Uwaymir Ajlānī accused his wife of adultery in the absence of witnesses (Li'ān – oath of condemnation).

He is reported to have said, "If I take this woman back (after what I have said) I will be called a liar." Therefore, before the Holy Prophet issued a verdict he divorced his wife three times. (Ṣaḥīḥ al-Bukhārī, Chapter on oath of condemnation and whoso divorces after oath of condemnation, pg 799-800; Sunan Abū Dawūd, Chapter on oath of condemnation, pg312)

Imām Abū Dawūd has commented on this ḥadīth;

Hence, he issued three divorces in the presence of the Holy Prophet, which the Holy Prophet declared as valid. That which is carried out in the presence of the Holy Prophet is Sunna. (Sunan Abū Dawūd, Chapter on oath of condemnation, pg 313)

We can summarise the following points from this narration-

- 1 Three divorces were issued during the era of the Holy Prophet.
- 2 The Holy Prophet declared three divorces as valid, even when issued at the same time and when there was no apparent need, as the opinion of the four main schools of law is that after Li'ān there is no need for divorce – the husband and wife are declared separate.

In this very chapter Imām Bukhārī quotes another incident;

Ummunā Ā'isha narrates that a man divorced his wife three times. The woman married another man and he divorced her before intercourse had taken place. The Holy Prophet was asked, "Is she permissible for the first?" He replied, "No." (Ṣaḥīḥ al-Bukhārī, Chapter on those who make three divorces permissible due to the verse of Allāh, the Almighty, "Divorce is twice...", pg 791)

We can see from this ḥadīth that it was not permissible for her to return after three divorces unless ḥalāla was performed. One can also see that the Holy Prophet did not query whether the divorces were issued together or separately, as the ruling is the same.

Please find detailed below more episodes highlighting the validity of three divorces, whether issued together or separately.

- Sa'īd ibn Jubayr narrates, "I asked Ibn Abbās about a man who divorces his wife one thousand times and he replied, "Three would make his

wife illegal for him and the remainder he is making a mockery of the verses of Allāh.”(Sunan Dāri Qutnī, Book of Divorce, Vol 4, pg10)

- Abd Allāh ibn Umar narrates when he divorced his wife he said, “So I said, ‘Oh Messenger of Allāh, if I divorced her three times is it permissible for me that I take her back.’ He replied, ‘No, she is irrevocably divorced and that would be sin.’” (Sunan Dāri Qutnī, Book on Divorce, Vol 4, pg20-1)

Evidence against the consideration of three pronouncements as one divorce

The *ḥadīth* of Abū Rukāna, which according to the narration of Abū Dāwūd is actually Rukāna, is put forward as evidence for the occurrence of one divorce even if three are uttered at one specific time. However, this narration is quoted with different words. In some narrations the words ‘divorced three times’ are mentioned whilst in others the word *al-batta* is mentioned. Imām Abū Dāwūd states the one, which contains *al-batta*, is correct. Below is the narration found in the Sunan of Imām Abū Dāwūd,

Abd Allāh ibn ‘Alī ibn Yazīd ibn Rukāna narrates from his father who narrates from his grandfather (i.e. Abd Allah great-grandson of Rukāna narrates from his father ‘Alī, who in turn narrates from his grandfather, Rukāna) that he divorced his wife *al-batta* so he went to the Messenger of Allāh who asked him what he intended. Rukāna replied, “One.” The Holy Prophet asked, “(Do you swear) by Allāh?” He replied, “(I swear) by Allāh.” The Holy Prophet said, “Then it is upon what you intended.” Abū Dāwūd says this is more correct than the *ḥadīth* of Ibn Jurayḥ, which states that Rukāna divorced his wife three times, this is because Rukāna’s family are more knowledgeable of his matters. (Sunan Abū Dāwūd, Chapter on *al-Batta*, pg 307-8)

With this small point the version narrated by Sayyiduna Ibn Abbās cannot be taken as evidence. (Fath al-Bārī, Book of Divorce, Vol 9, p. 454)

Therefore those narrations that quote three divorces are incorrect. The fact that the Holy Prophet asked him to swear regarding what he meant provides further evidence. If he said three why would the Holy Prophet ask him to swear by Allāh that that is what he meant? Also, this proves that three divorces can take place in one specific time as the word *al-batta* has two meanings, three divorces or one divorce and it is determined by the intention of the speaker. Hence, if only one occurred the Holy Prophet would not enquire the intention of Rukāna, as three was a possibility he sought clarification.

Next we will deal with the statement that Sayyiduna ‘Umar ibn Khattāb’s *fatwā* that three divorces can occur at one time is specific to an era/people. Before we delve into the specifics we need to put forward some general principles.

- None from the al-‘Ulamā al-Salaf have stated that this *fatwā* was specified to an era/time period or people.
- Those events, which took place in the presence of the Holy Prophet regarding the validity of three divorces in one sitting, cannot be called novel or innovative when they occurred similarly in the Caliphate of Sayyiduna ‘Umar.

In fact, this is not the only occasion in which Sayyiduna ‘Umar re-issued a *fatwa* that obtained the consensus of the al-Ṣaḥāba and al-Tābi‘īn present.

One such incident is the impermissibility of *al-Mut’ā*, temporary marriage. Imām Muslim quotes a *ḥadīth* in which Sayyiduna Jabir ibn Abd Allāh says, “We used to perform *al-Mut’ā* in the era of the Messenger of Allāh and Abū Bakr until ‘Umar forbade it.” (Ṣaḥīḥ al-Muslim, Chapter on *al-Mut’ā*, p451) This is similar in wording to the *ḥadīth* of Sayyiduna Ibn Abbās, which is quoted in the beginning of the *fatwā* of Shaykh Ibn Bāz i.e. three divorce statements in one sitting were considered as one in the era of the Holy Prophet, Abu Bakr and in the first two/three years of ‘Umar’s caliphate until he forbade it. The difference is everybody accepts *al-Mut’ā* is *ḥarām* but does not accept that three pronouncements in one sitting are equivalent to three. The question arises why were people still performing *al-Mut’ā* when it was *ḥarām*, the answer is simple. At one time *al-Mut’ā* was permissible then it was made impermissible, however all the companions did not know its abrogation and all Sayyiduna ‘Umar did was to re-issue the original *fatwā* and make it known to the masses.

Another evidence put forward to argue that this was a *fatwā* of Sayyiduna ‘Umar, which was his opinion due to his era, is the narration of Abū Saḥbā who asks Ibn Abbās about a man who divorces his wife three times in one specific time. Sayyiduna Abū Saḥbā asks, “Were not three taken as one in the time of the Holy Prophet, and in the time of Abu Bakr, and for three years of the rule of Umar?” He replied, “Yes.” (Sunan Abū Dāwūd, Chapter on the remainder of the abrogation of return after three divorces, pg 305)

The reason for Sayyiduna ‘Umar’s statement is that in the golden era when people divorced they would mean one divorce and pronounce divorce numerous times for emphasis. As they were from amongst the most upright people who have existed since the dawn of time they were taken on what they intended. Then in the era of Sayyiduna ‘Umar people would pronounce many divorces and claim one, that same level of honesty and uprightness no longer remained as Islam had spread its borders far and wide compared to the era of the Holy Prophet and Sayyiduna Abū Bakr. So in order to remove the large number of pronouncements and any mockery being made of divorce he stated that the verdict is passed upon what is said. This is the opinion of the Ḥanafī school of Law in that one cannot claim divorce was uttered three times for emphasis rather judgement would be passed on the

number he has pronounced.(Imām Qurtubī and Imām Nawawī quoted in Fath al-Bārī, Book on Divorce, Chapter on those who permit three divorces, Vol 9, pg 456)

Finally an argument is put forward that three pronouncements should be considered as one because this brings ease to the family. This is not always the case, what if a woman is in a difficult and painful relationship in which she is not provided for and is abused then one day her husband pronounces three divorces in one specific time, does she want that to be counted as one or three?

To summarise according to the Ḥanafī school of Law as has been explained in great detail if a man utters three divorces or more in one specific time then his wife is irrevocably divorced from him.

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