

Nullification of Divorce: A Comparative Jurisprudential Study in Light of the Jordanian Personal Status Law

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ABSTRACT

This study aims to clarify an important issue in Islamic jurisprudence and the Jordanian Personal Status Law, namely the issue of the “resetting (demolition) of the divorce count.” The researcher relied on the preferential (comparative) methodological approach to examine the differing opinions of jurists. The study concluded that if a husband divorces his wife and she subsequently marries another man, then returns to her first husband, she returns through a new marriage contract with a fresh count of three divorces, without considering the divorces previously issued or the number remaining from the earlier marriage.

Keywords: Demolition, Divorce, Marriage.

INTRODUCTION

Among the most important objectives of Islamic law is the stability of marital life and the preservation of its strength, purity, cohesion, and continuity. God Almighty described the covenant between spouses as a “solemn covenant.” He said: (**And they have taken from you a solemn covenant**). (Al-Quran 4: 21).

The Profit of Allah (peace and blessings be upon him) said: “So fear Allah regarding women, for you have taken them as a trust from Allah, and their private parts have been made lawful to you by the word of Allah.” (Sahih Muslim, 4/39, Hadith no. 3009).

What further affirms Islam’s concern for strengthening and preserving this fundamental unit (the family) is that it made the termination of this bond—when necessary—take place in stages, so that the mistakes that may affect marital life can be remedied. The Almighty said: (**Divorce is twice. Then, either retain [her] in an acceptable manner or release [her] with good treatment**). (Al-Qur'an 2:229)

Ibn Kathir said: If you divorce your wife once or twice, you have the option—so long as her waiting period (iddah) has not ended—to take her back, intending reconciliation and kindness toward her, or to leave her until her waiting period finishes, at which point she becomes separated from you. You then release her with good treatment, without depriving her of any of her rights or causing her harm (Ibn Kathir, 1994). However, marital life may sometimes be disturbed by factors that trouble its harmony. Winds of separation and estrangement may blow, and various causes may arise that lead to dissolution and the breaking of the bond, resulting in separation between the spouses.

As for the issue of *haddm* (resetting the divorce count)—which is the subject of our research—it is one of the matters over which considerable disagreement has arisen, with jurists holding differing and multiple views. This is because no explicit text exists on this issue in either the Qur'an or the Sunnah to provide a decisive clarification; rather, it is a matter of juristic reasoning (*ijtihad*), and the opinions of scholars concerning it vary. Ibn al-Qayyim stated: “Ahmad said: This is the view of the leading Companions of the Messenger of Allah... as for

the jurisprudential reasoning of the matter, it is contested.” (Ibn al-Qayyim, 1986). This diversity of opinions reflects the timelessness of Islamic law and its suitability for all times and places. A matter that may not be appropriate for one era can be entirely suitable for another.

Significance of the Study

The importance of this study emerges from the topic it addresses, as it deals with an issue closely related to people’s practical lives: the issue of *haddm* (resetting) of divorce, whose rulings are not widely known. Therefore, this research aims to clarify the reality of this issue and to explain its ruling in Islamic law.

Objectives of the Study

This study aims to achieve the following objectives:

1. To provide a conceptual understanding of *haddm* of divorce.
2. To clarify the legitimacy of divorce in Islam.
3. To present the opinions of jurists regarding the issue of *haddm* of divorce and to explain the position of the Jordanian Personal Status Law on this matter.

Scope of the Study

The study is limited to defining *haddm* in divorce, explaining its legitimacy, its types, the views of jurists on the matter, and the stance of the Jordanian Personal Status Law.

RESEARCH METHODOLOGY AND PLAN

The researcher relied on the descriptive method, based on the examination of specific juristic details, followed by the comparative method through presenting juristic opinions from their original sources, organizing the evidence, addressing objections, and reconciling the views without bias toward any particular opinion or school of thought.

The study included the following sections:

First Section: Definition of the study’s key terms.

Second Section: Legitimacy of divorce in Islam.

Third Section: Classifications of divorce.

Fourth Section: *Haddm* (Nullification) of divorce.

The conclusion presented the most important findings reached by the study.

The First Section: Definition of the Study’s Terms

First: Haddm (Nullification /Demolition) – Linguistically and Terminologically:

Linguistically: *Haddm* (demolition) is singular; its plurals are *abdam* and *hidam*. It is the opposite of construction. The verb forms include *badama*, *yabdimu*, *badman*, and *tahaddama* (Ibn Manzur, 2005; Al-Fayrouzabadi, 1414 AH). Al-Firuzabadi defines *haddm* as worn or patched clothing, or specifically a wool garment, with the plural being *abdam* (Firuzabadi, 2005).

With diacritical markings, *haddm* refers to a demolished structure, analogous to the passive form (*maf’ul*) (Abu Al-Saadat, 1979).

Ibn Faris notes that the root denotes the dismantling of a structure, e.g., “I demolished the wall” (Ibn Faris, 2002).

In another usage, *haddma* refers to a forceful push, such as rain rushing down, seemingly collapsing under its force.

Terminologically: *Haddm* (Nullification) retains its linguistic meaning, referring to the removal or dismantling of a structure, as it is the opposite of construction (Al-Cassani, 1982).

Second. Divorce (Talaq) – Linguistically and Terminologically:

- **Linguistically:** The word *talaq* in Arabic carries several meanings, including release, leaving, sending away, and lifting a restriction, whether physically or metaphorically. For example, one may say “I released the she-camel (*talaktu al-naqa*)” when letting it go freely. In the metaphorical sense, it applies to divorce as well (Ibn Manzur, 2001; Al-Zubaidi, 1414 AH). Al-Jawhari explains that “a man divorces his wife (*talāqa*)... she is then considered divorced (*tāliqah*)” (Al-Jawhari, 1990).

- **Terminologically:** Jurists, despite differences in their schools of thought, provide closely aligned definitions:
- **Hanafi:** The immediate or eventual lifting of the marital bond by a specified formula (Ibn Nujaym, 1431 AH).
- **Maliki:** A judicial act that removes the husband's entitlement to marital benefit from his wife (Alish, 1984).
- **Shafi'i and Hanbali:** Dissolution of the marriage contract by pronouncing divorce (Al-Sherbini, 1955; Ibn Qudamah, 1405 AH).
- **Chosen Definition for This Study:** Dissolution of the entire or part of the marriage bond, immediately or eventually, through an explicit or implicit formula.

Meaning of Removing the Marriage Bond: Termination of the contract so that the wife no longer becomes lawful to the husband afterward, e.g., in the case of an absolute (*ba'in*) divorce (Al-Jaziri, 2003).

Partial Dissolution: Reduces the husband's right to marital access without fully ending the contract, as in a revocable (*raj'i*) divorce, which diminishes the number of remaining divorce opportunities.

Immediate (fi al-hal): Applies to absolute (*ba'in*) divorces.

Eventual (fi al-mā'al): Applies to revocable (*raj'i*) divorce until the waiting period expires; it reduces the remaining divorce count but does not fully dissolve the marriage.

Similar Cases (wa nahwu): Includes symbolic or written pronouncements, or equivalent actions.

Definition in Jordanian Law: The Jordanian Personal Status Law No. (15) of 2019, replacing Law No. (61) of 1976, does not provide a specific definition of divorce. However, Article 325 states that matters not mentioned in the law shall refer to the predominant view of the Hanafi school; if absent, the court shall apply Islamic jurisprudence most consistent with the provisions of this law.

Third. Haddm of Divorce – as a Compound Term:

It refers to the annulment of the divorces pronounced on a wife who marries another man and is subsequently divorced or widowed, allowing her to return to her former husband under a new marriage contract, with a full count of three divorce opportunities.

The Second Section: Legitimacy of Divorce

Divorce (*talaq*) is considered legitimate according to the Qur'an, Sunnah, consensus (*ijma'*), practices of the Companions, and reason:

1. From the Qur'an:

1. Allah Almighty says: (Divorce is twice. Then, either retain [her] in an acceptable manner or release [her] with good treatment.) (Qur'an 2:229)
2. He also says: (O Prophet! When you divorce women, divorce them for their waiting period and count the period accurately) (Qur'an 65:1)

Evidence: These verses explicitly indicate the permissibility of pronouncing divorce. Although the second verse addresses the Prophet (peace be upon him), it is considered a message to the entire community, as he is the one who explains, clarifies, and conveys the word of Allah (Ibn Adel, 1998; Ibn Kathir, 1994; Al-Tabari, 2000).

2. From the Sunnah:

1. Hamzah ibn Abi Usaid reported that Abu Usaid said: "We went out with the Prophet (peace be upon him) until we reached a wall called Al-Shawt. We sat between two walls, and the Prophet entered and brought Al-Jawniyah, who was placed in a house in a palm grove belonging to Umaymah bint Al-Nu'man ibn Sharahil, with her nurse. The Prophet said to her: 'Give yourself to me.' She replied: 'Does a queen give herself to a servant?' He placed his hand gently on her, and she said: 'I seek refuge with Allah from you.' He replied: 'You are protected by refuge.' Then he said to Abu Usaid: 'Marry her and provide for her.'" (Sahih Al-Bukhari 13/248, Hadith 5255)
2. Sa'id ibn Jubayr reported from Ibn Abbas that Umar said the Messenger of Allah (peace be upon him) divorced Hafsa and then reconciled with her (Al-Naysaburi, 1990; Ibn Majah, 2016, authenticated by Al-Albani).
3. Abdullah ibn Umar (may Allah be pleased with them) reported that he divorced his wife while she was menstruating during the time of the Prophet (peace be upon him). Umar asked the Prophet about this, and he said: "Let him reconcile with her, then hold her until she becomes pure, then menstruates, then

becomes pure again. Then he may either retain her or divorce her before intimacy. That is the ‘iddah that Allah has commanded women to observe.’” (Sahih Al-Bukhari 13/243, Hadith 5251)

Evidence: These hadiths clearly indicate the permissibility of divorce. If divorce were not legitimate, the Prophet (peace be upon him) would not have acted in this manner. His actions thus affirm its legitimacy.

From Consensus (Ijma):

It has been the consensus of the scholars since the death of the Prophet (peace be upon him) until today that divorce is permissible, and no one has denied this (Al-Mawsili, 2005; Al-Sherbini, 1955; Al-Bayhaqi, 1994; Ibn Al-Mundhir, 2004).

From the Actions of the Companions:

1. Suwayd ibn Ghafrah reported: Aisha al-Khath‘amiya said to Hasan ibn Ali when he was appointed Caliph: “May the caliphate weaken you, O Commander of the Faithful.” Hasan replied: “Ali is being killed and you express delight? You are divorced three times.” (Al-Daraqutni 4/30, Hadith 82)
2. Abd al-Rahman ibn Awf divorced his wife Tamadur bint al-Asbagh al-Kilabi (Ibn Abi Shaybah 1409, 4/141, Hadith 18708).

From Reasonable:

Sound intellect acknowledges the great wisdom and benefits of marriage. Human nature longs for companionship, affection, and security. Marriage fosters love, tranquility, and harmony, sustaining society and life itself, as Allah says: (*And among His signs is that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He placed between you affection and mercy.*)” (Qur'an 30:21)

However, at times, the winds of aversion may disrupt marital life, causing incompatibility, lack of affection, and disharmony. In such cases, remaining in marriage becomes purely harmful and causes actual harm. Allah has thus legislated divorce to remove harm and protect the rights and well-being of both spouses, as He says: “*And if they separate, Allah will enrich each [of them] from His bounty. And Allah is all-Encompassing, Wise.*” (Qur'an 4:130) (Al-Mawsili, 2005; Ibn Qudamah, 1405; Wafa Maatouq, 2015; Al-Zuhayli, 1433)

Moreover, if marital life becomes untenable and cannot be maintained, forcing the spouses to remain together is futile and defeats the purpose of marriage, which is to achieve mutual benefit and fulfillment of its objectives (Badran; Abu Al-Enein, n.d.).

The Third Section: Classifications of Divorce

Divorce (*talaq*) has been classified in various ways according to different criteria. In this study, we focus on the classification based on whether the marital bond remains or is dissolved, as follows:

1. Revocable Divorce (*Talaq Raj'i*)

A revocable divorce is one in which the husband retains the right to reconcile with his wife during her waiting period (*iddah*) without her consent, without a new marriage contract, and without a new dowry (Al-Saratawi & Zidane, 2019). It occurs in the following cases:

1. When it is not given as compensation.
2. When the husband pronounces a single explicit divorce after consummation.
3. When the divorce is less than three pronouncements.
4. When divorce is issued by a court due to the husband's financial incapacity (Al-Kasani, 1995; Ibn Qudamah, 2016; Ibn Hazm, 1994; Zidane).

Legal Position: Article 91 of the Jordanian Personal Status Law defines cases of revocable divorce: all divorces are revocable except those completing the three pronouncements, pre-consummation divorce (even after seclusion), divorce for money, and divorces explicitly stated as irrevocable in the law.

Consequences of Revocable Divorce:

1. Reduction of remaining pronouncements: The husband's remaining number of divorces decreases with each revocable divorce.
2. Termination of marital bond at the end of the ‘iddah: If the ‘iddah ends without reconciliation, the marital bond is terminated, and the deferred dowry becomes due. During the ‘iddah, the wife is entitled to maintenance and accommodation.
3. The wife remains in the marital home during the ‘iddah.

4. Reconciliation is permitted during the 'iddah, either verbally or through action; after the 'iddah, reconciliation requires her consent.
5. Rights such as pronouncement, declaration (*zihar*), oath (*ila*), and curse (*la'n*) apply; inheritance rights persist during the 'iddah (El-Sherbini, 1955).
6. The revocable divorce does not annul the marital entitlement (*milk*) or the permissibility (*hal*), which remain as long as the 'iddah continues (Al-Hasakfi, 2000; Ibn Jazi, 1955; Al-Shirbini, 1405; Ibn Qudamah, 2016).
7. The husband may issue additional divorces during the 'iddah (Al-Hattab, 1972; Ghandour, 1329 AH).

Legal Provision: Articles 81, 98, and 99 of the Jordanian Personal Status Law affirm the above points: revocable divorce does not end marriage during the 'iddah, the husband may reconcile during the period, and no new dowry is required.

2. Irrevocable Divorce (*Talaq Bain*)

Irrevocable divorce is divided into two types:

a. Minor Irrevocable Divorce (*Bainah Sughra*)

This occurs when the husband cannot reconcile with his wife except through a new marriage contract and dowry, regardless of whether she is in her 'iddah or not (Al-Shirbini, Al-Sartawi, 1993, 2016; Shaaban).

Cases of Minor Irrevocable Divorce:

1. Pre-consummation divorce, as the wife has no 'iddah.
2. Divorce for money (compensation).
3. Court-ordered separation at the wife's request due to harm, defect, or absence.
4. Single pronouncement of divorce where the 'iddah expires without reconciliation (Al-Kasani, 1982; Ibn Al-Hammam, 1970; Al-Shirbini, 1955; Ibn Qudamah, 2016; Al-Sartawi, 1994; Zidane).

Consequences:

1. Marital entitlement ends, but permissibility remains; the husband may not enjoy conjugal rights during the 'iddah and reconciliation requires a new contract.
2. Reduction in the husband's remaining pronouncements.
3. Deferred dowry becomes due upon divorce.
4. Inheritance is prohibited between spouses during the 'iddah, except in cases of intended deprivation (publicly debated among jurists).
5. Explicit divorces are treated similarly to minor irrevocable divorces under Hanafi jurisprudence.
6. Re-marriage of the same wife is permitted with a new contract and dowry.
7. The husband cannot issue additional divorces.
8. The wife retains maintenance during the 'iddah and must observe it in the marital home without conjugal contact (Al-Kasani, 1982; Ibn Qudamah, 2016).

Legal Provision: Articles 94, 126, and 128 of the Jordanian Personal Status Law codify these provisions, including court-ordered separation for defect or dispute.

b. Major Irrevocable Divorce (*Bainah Kubra*)

This occurs when the wife cannot return to her former husband except after marrying another man in a valid marriage, consummating it, and then being divorced or widowed (Zidane, 1994).

Cases of Major Irrevocable Divorce:

1. Completion of three pronouncements of divorce (Qur'an 2:230).
2. Pronouncing "you are divorced thrice" in a single statement.
3. Repeating the divorce statement three times with actual or legal consummation (Al-Kasani, 1982; Ibn Al-Hammam, 1955; Al-Shirbini, 1405; Ibn Qudamah, 2016; Al-Sartawi).

Consequences:

1. Ends the marital bond immediately; no inheritance between spouses during the 'iddah.
2. Wife cannot remarry the same husband except after a valid marriage with another man (Qur'an 2:230).
3. Deferred dowry becomes due.
4. Wife retains maintenance during the 'iddah and must observe it in the marital home without conjugal contact.
5. No additional divorces may be issued (Al-Kasani, 1982; Ibn Qudamah, 2016).

Legal Provision: The Jordanian Personal Status Law aligns with Shariah by distinguishing revocable and irrevocable divorce:

1. Article 91 defines revocable divorce.
2. Article 94 addresses major irrevocable divorce.
3. Article 36 prohibits a man from remarrying a thrice-divorced wife until she completes the 'iddah after a valid marriage with another man.

The Fourth Section: Nullification of Divorce (Tahrim/Tahlil Concept)

There is consensus among jurists that a woman who was divorced with a major irrevocable divorce (*bainah kubra*) can return to her first husband after marrying a second husband, provided that the second marriage is consummated, and then either divorced or the second husband dies. In such a case, the marriage with the first husband becomes fully valid again, and the husband retains three full divorces as if marrying her for the first time. This is because the major irrevocable divorce previously exhausted all of the husband's divorce rights over her.

However, differences of opinion arise in the case of a woman divorced with a minor irrevocable divorce (*bainah sughra*), who then marries another man, consummates the marriage, and is then divorced or widowed. The question is whether the first husband regains:

1. Full three divorces, or only the divorces remaining from before.

Opinions of Jurists

First Opinion (Majority View):

The second marriage nullifies all remaining divorce effects of the first husband, including any incomplete divorce count. Upon the woman's return to the first husband, he regains full rights, including three new divorces.

Rationale:

The second husband's consummation establishes a new legal bond, dissolving the prior prohibition against the first husband. When the second marriage ends, the woman's previous marital incapacity is gone; a completely new permissibility (*hal*) is established, allowing the first husband full divorce rights.

Supporters of this View:

Companions: Ali ibn Abi Talib, Ibn Abbas, Abdullah ibn Mas'ud, Ibn Umar (one view), Jurists: Ata, An-Nakh'i, Shurayh, Abu Hanifa, Abu Yusuf, Ibn Qudamah, Ibn Hazm, Al-Shirbini, Ibn Al-Hammam, Al-Zarkashi, Abu Zahra, Sayyid Sabiq (Al-Qurtubi, 1405; Ibn Qudamah, 2016; Al-Hilli, 1992; Abu Zahra, 2007).

Notable Statements:

- Ibn Abbas: "It is a new marriage and a new divorce" (Musannaf Abd al-Razzaq).
- Ibn Qudamah: Consummation by the second husband establishes a complete permissibility, thus resetting the divorce count to three.
- Abu Zahra: The first permissibility is nullified; after the second marriage consummation and its end, a new permissibility arises.

Evidence Cited by Supporters

1. Qur'anic Evidence (General Principles):

2. Surah An-Nisa 4:3: Encourages lawful marriage and limits polygamy, emphasizing fairness, implying permissibility after lawful marriage without distinction between prior divorce types.
3. Surah An-Nur 24:32: Encourages marriage of single persons, reinforcing the general permissibility of new marriage.
4. Surah Al-Baqarah 2:230: "If he divorces her, she shall not be lawful to him thereafter until she marries another husband..." – implies the prior divorce effect is nullified after the second marriage, establishing a new permissibility.

5. Surah Al-Baqarah 2:229: Addresses divorce twice, indicating the general principle that marriage can occur after prior divorce, supporting renewal of divorce rights.

2. Sunnah:

Hadith: “Marry, and do not divorce, for divorce shakes the Throne” (,29/1)Al-Ajlouni 1989, Al-Muttaqi Al-Hindi, 9/1161 H: 27874, Al-Manawi said: 3/243).

Implication: Encourages marriage and discourages divorce; equal treatment applies whether a woman was married before or after a second marriage.

3. Statements of the Companions:

1. Ibn Abbas: “A new marriage, a new divorce.”
2. Ibn Umar: Supported Ibn Abbas’ view.
3. Abdullah ibn Mas’ud: Confirmed return to three divorces after the second marriage ends.

Other Narrations: Addressed cases where the second marriage ends via death or divorce, reinforcing the renewal of divorce rights.

4. Rational/Logical Reasoning:

The second marriage consummation nullifies the first permissibility; upon its end, a new permissibility arises. The new permissibility allows the first husband full rights (three divorces) as in the initial marriage.

Analogy (*qiyas*): Like the effect of a third party in establishing permissibility, the second husband’s consummation cancels the previous restrictions, allowing full rights upon return.

This majority opinion establishes that:

Minor irrevocable divorce (*bainah sugbra*) followed by a second marriage with consummation and its dissolution produces a **new permissibility**, resetting the divorce count to three.

The first husband regains full marital rights as if marrying her for the first time.

Here’s the English translation of your text, keeping it precise and scholarly:

1. The Group That Argues the Second Marriage Nullifies All Previous Divorces (Single, Double, or Triple) and Grants the First Husband Three Full Divorces Upon Her Return

A. Evidential Arguments (Transmission-Based):

- **Ibn Abbas:** “A new marriage and a new divorce,” meaning the second marriage interrupts the effect of the previous divorce and restores the first husband’s position as if it were a new marriage.
- **Companions such as Ali ibn Abi Talib, Abdullah ibn Mas’ud, Ibn ‘Umar:** Reported that the woman, after the second marriage, returns to the first husband with a new permissibility, giving him three full divorces.
- **Quranic Evidence:** Verses on divorce (e.g., {...then he shall not remarry her until she marries another man...} – Al-Baqarah 2:230) indicate that the previous marital status is cut off with completion of divorce and the second marriage, and a new legal effect begins if she returns to the first husband.

B. Rational Arguments:

- The second marriage, especially if consummated, interrupts the previous prohibition on the first husband and establishes a new full permissibility.
- Analogical reasoning: Just as a third husband does not affect the previous divorces, the second marriage “nullifies” the first divorce and establishes a new full set of rights for the first husband.

C. Critique by Ibn Hazm:

- Ibn Hazm argues that claiming the second marriage nullifies one, two, or all three divorces is illogical. Nullification applies only to complete prohibition (all three divorces), not partially (one or two).
- The analogy used to justify full nullification is invalid and contradicts the Quranic limits.
- The second marriage does not actually “annul” the previous divorces; it only suspends the temporary prohibition on the first husband.

2. The Group That Argues the Second Marriage Does Not Nullify Previous Partial Divorces, and the First Husband Retains What Remains

A. Position:

- If the woman was divorced once or twice and then married another man, consummated the marriage, and was then divorced or widowed, she returns to her first husband with only the remaining divorces.
- For example: If divorced once, he retains one or two remaining; if divorced twice, he retains one.
- No partial divorce is annulled by the second marriage unless the three-divorce limit is completed.

B. Evidential Arguments (Transmission-Based):

- **Companions and Tabi‘un (e.g., Umar ibn al-Khattab, Ali ibn Abi Talib, Abu Huraira, Mu‘adh ibn Jabal):** Reported that the woman returns to the first husband with only what remains of his original divorces.
- **Scholars (Shafi‘i, Zahiri, some Hanbalis, and Shi‘i Imami):** Same view; the second marriage does not nullify prior partial divorces.
- **Ibn Hazm:** Confirms that if divorced once or twice, then married another man, consummated the marriage, then divorced or widowed, the first husband only regains what remains of the original divorces.
- **Ibn Qudamah:** Confirms the same, emphasizing that the remaining divorces persist for the first husband.

C. Rational Arguments:

- Partial divorce does not constitute complete separation; the second marriage does not create a full new permissibility unless the triple divorce is completed.
- This position aligns better with Quranic texts specifying prohibitions and does not grant the first husband rights exceeding the actual divorces.

3. Critical Summary

Point	First Group (Complete Nullification)	Second Group (Remaining Divorces Only)
Effect of second marriage on previous divorces	Nullifies all previous divorces; first husband receives 3 new divorces	Does not nullify partial divorces; first husband retains what remains
Evidential Sources	Ibn Abbas, Ibn ‘Umar, Ali, some Companions	Umar, Ali, Abu Huraira, Mu‘adh, Shafi‘i, Zahiri, some Hanbalis, Shi‘i Imami
Rational Arguments	Second marriage interrupts prohibition and establishes a new full permissibility	Partial divorces were not completed; second marriage only suspends prohibition; no new full effect
Critique (Ibn Hazm)	Complete nullification is illogical; analogy invalid	Consistent with Quranic texts; preserves actual number of divorces.

Here's the English translation of your text, keeping the technical and scholarly tone intact:

Evidences of the Scholars Supporting This Opinion

The proponents of this opinion rely on the following evidences:

1. The Holy Qur'an – General Texts Regarding Marriage

- **VerSES:**

{Divorce is twice; then either retain [her] in an acceptable manner or release [her] with good treatment... If he divorces her [for a third time], she is not lawful to him afterward until she marries another man. If he divorces her, there is no blame upon them if they return to each other, provided they believe they can uphold the limits of Allah...} (Al-Baqarah 2:229–230)

- **Reasoning:**

These verses indicate that a woman divorced three times is absolutely forbidden to her husband, without distinguishing whether the third divorce was preceded by a consummated second marriage or not. The “third divorce” constitutes a true threefold divorce.

The second husband does not terminate the prohibition established by the threefold divorce; the verse {...until she marries another man...} signifies the limit of the prohibition. Since the prohibition is only established after

the three divorces, the second husband cannot retroactively nullify it. Therefore, if she returns to the first husband, she does so with the remaining divorces from the first marriage intact. (Al-Kasani, 1982; Ibn al-Hammam, 1970)

2. Al-Shafi'i's Argument

Allah distinguishes between a woman divorced once or twice and a woman divorced thrice.

A woman divorced once or twice can return to her first husband without any intermediary. However, after three divorces, she is forbidden to him until she marries another man.

The marriage to another man does not create a comparable legal effect for one or two divorces; the original ruling on the remaining divorces is preserved.

The general principle is that something forbidden becomes permissible only through the act of the one who has the right to prohibit (i.e., the husband), and the second marriage does not alter the remaining partial divorces. (Al-Shafi'i, 1990)

3. Ibn Qayyim

The Prophet's ruling confirms that if a man divorces a woman less than three times, then she marries another man and later returns, she comes back to her first husband with what remains of the original divorces. (Ibn Qayyim, 1986).

4. Ibn Baz

If a woman returns after marrying another husband and the first husband had only divorced her once, he retains two remaining divorces; if he had divorced her twice, he retains one.

The new marriage does not nullify the previous divorces. (Ibn Baz, 1417 AH).

5. Companions' Reports

- **Abu Huraira:** Reported that Umar ibn al-Khattab said: If a woman is divorced once or twice, then marries another man and is widowed or divorced, and returns to her first husband, she returns with the remaining divorces intact. (Al-Muwatta', Malik bin Anas, Al-Bayhaqi, Abd al-Razzaq)
- **Other Companions:** Ali ibn Abi Talib, Abu ibn Ka'b, and 'Imran ibn Husain reported similarly. (Ibn Qayyim; Al-Muwatta, 1986).

6. Principle of the Opinion

The initial permissibility (after partial divorces) is only nullified by three divorces.

If the man divorced his wife once or twice, she is not forbidden to him. If she marries another man and returns afterward, she comes back with the same original permissibility, and he only retains the remaining divorces. (Ibn al-Hammam, 1970; Al-Kasani, 1982; Ibn Rushd, 1415; Al-Shirbini, 1955; Ibn Qudamah, 1405)

7. Third Sub-Opinion (Distinguishing Consummated vs. Non-Consummated Second Marriage)

If the second husband consummates the marriage, the woman returns to her first husband as a new marriage with three full divorces.

If separation occurs before consummation, and she remarries the first husband, the marriage proceeds with only the remaining divorces from the first contract.

Nakh'i reportedly follows this view, reconciling the positions of the Hanafis and the majority: the principle being **“utilizing both evidences, even generally, is preferable to neglecting one entirely.”** (Al-Qurtubi, 1964; Ibn Qayyim, 1986; Al-Isnawi, 1999).

Here's the English translation of the text you provided:

Legal Opinion

The Jordanian Personal Status Law No. 36 of 2010 aligns with the view of the first group of scholars, which holds that the husband retains the right to three new divorces over his wife. Article 96 of the aforementioned law states: *“The marriage of a divorced woman to another man terminates, by consummation, the divorces from her previous husband, whether they were three or fewer.”*

Thus, the Jordanian Personal Status Law conforms to the position of the first group of scholars. The legal ruling in this matter resolves the dispute because the obligated individuals must adhere to the law, leaving no room for disagreement.

Preferred Opinion

After reviewing the opinions of the Imams and their evidences, the soundest view is that the second marriage cancels only the divorces remaining to the first husband, because:

- Before marrying the second husband, the woman retained a “thread of connection” with her first husband, on the basis of which reconciliation was possible.
- Once she marries a second husband, that connection is severed, and any subsequent return to the first husband—after the death of the second husband or his divorce of her—occurs through a new contract, independent of the previous one.

Therefore, the first husband regains the right to three divorces as if marrying any other woman anew.

This approach also aligns with the objectives of Islamic law, which aim to restrict divorce and encourage reconciliation in marital life. The evidence supports this position, and at minimum, there is no text prohibiting the annulment of the previous divorces by the second marriage.

Ibn Hazm (2016) refuted the opposing argument, stating:

‘We examined what those holding the other view relied upon, and we found that all they said was: We do not dispute that the marriage to another husband nullifies the three divorces.’ Yet if it nullifies the three, it necessarily nullifies the one and two as well, and it is impossible for it to nullify them partially.’

Al-Kasani (1982) emphasized the rationale from a public interest (maslaha) perspective:

“Marriage is recommended and lawful, and it encompasses both religious and worldly benefits. It cannot be prevented arbitrarily because obstructing its benefit would be harmful, and Sharia is free from contradiction. The right to divorce was delegated to the husband because of his capacity for judgment. If he divorces three times in error, then reconciles after the second husband, the benefit of the marriage remains, and there is no reason to prohibit it. Therefore, the second marriage does not change the permissibility but confirms it, whether the second husband’s consummation occurs before or after the three divorces.”

The Jordanian Fatwa Committee, in Fatwa No. 825 on 14/07/2010, affirmed this:

“The Sharia courts in many Muslim countries adopt the opinion of Abu Hanifa (may Allah have mercy on him), that the second marriage nullifies the previous divorces of the first husband.”

CONCLUSION

The research has reached several key findings:

1. Annulment of Divorce: The divorces previously exercised by a husband are nullified when his divorced wife marries another man and then separates from him—either through divorce or his death—and subsequently returns to her first husband through a new marriage contract, giving him the right to three new divorces.
2. Preservation of the Family: One of the objectives of Islamic law is to safeguard the family, and divorce is considered the last resort for resolving marital problems.
3. Effect of the Second Marriage: The second marriage nullifies any remaining effects of the first husband’s previous divorces, including the three divorces, so that when the wife returns to her first husband, she does so with full permissibility and three new divorces. This is the prevailing opinion in the school of Imam Abu Hanifa.
4. This view aligns with the objectives of Sharia, as it restricts the avenues of divorce and provides an opportunity for reconciliation.
5. It is also the position applied in Jordanian Sharia courts.

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