

Can a Deed Writer Write a Deed for Three Divorces All at Once?

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: We are deed writers. The parties who come to have the divorce statement written usually ask for a deed in which they declare all three divorced at once. Please provide us with Sharī'ah guidance regarding the permissibility of writing a deed for all three divorces to be given at once. Further, we do not know whether the wife is on her menstrual cycle. In this case, what is the ruling on preparing a divorce deed?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

The divorce deeds that we commonly see nowadays either have two divorces written on them, three divorces, or more than three all at once. Similarly, they have Talaq Ba'in written on them without any reason, even though all these cases are impermissible and a sin. If the deed writer writes any of these i.e. Talaq Ba'in, or two, three, or more divorces at once, he will also be sinful because he is a Wakeel (representative) of Talaq, and the divorce will take place once he writes the deed. In this case, he is fully assisting them and is like the one who conducts a Nikah during the 'Iddah period and becomes sinful because he is also assisting a sin. Similarly, when a Nikah is being conducted forcefully without the consent of the father and the girl, the Wakeel for Nikah, the witnesses, and all others who assist are declared sinful.

In this situation, they should be told the Sharī'ah ruling and encouraged to give divorce according to the Sharī'ah method. They should also be told that giving a woman a divorce during her menstrual cycle is a sin, so that the husband gives divorce during 'Tuhr' (days of purity between the menstrual cycles). It is also impermissible to give a divorce in the 'Tuhr' in which they had intercourse. Therefore, divorce should be given in the 'Tuhr' in which he didn't have intercourse with his wife.

However, if the husband didn't tell the deed writer what state she is in, and in the case that she is in her 'Tuhr', he didn't tell whether they have had intercourse or not, the deed writer will not be sinful because it isn't necessary for him to inquire. For example, if one brings us food, we are not commanded to inquire without any reason whether it was attained through Halal means or Haram means.

We are commanded to assume the best of the actions of Muslims. Therefore, we will hold a good assumption that he isn't giving divorce during her menstrual cycle, and neither is he giving divorce during the 'Tuhr' in which they had intercourse.

The details regarding divorce are:

Divorce is greatly disliked by Allah Almighty and His Messenger ﷺ but greatly beloved to Satan. For this reason, it is Makruh and prohibited to give divorce without a valid need and valid Shari'aḥ excuse. That is why Shari'aḥ has provided us with guidelines that if such a situation comes that one has to give a divorce, one Raj'i divorce should be given on one 'Tuhr'. No more than one divorce should be given. Similarly, Talaq Ba'in shouldn't be given without a reason. Even if three divorces have to be given, one divorce should be given in each 'Tuhr'.

The reason for this is quite clear: sometimes a temporary divorce is needed, but after some time, matters start to resolve. In this situation, if three divorces were given, there is no easy way to reconcile, and nothing is left besides regret (which has been commonly observed). If Talaq Ba'in was given, firstly, this would be giving this divorce unnecessarily, whereas permission to divorce is only granted when there is a need, and the need could be fulfilled with a Talaq Raj'i. Secondly, this dissolves the Nikah. To reconcile, a new Nikah must be conducted with a new Mehr and with the woman's consent.

If two Raj'i divorces were given, the same reason is found here that the second divorce was given unnecessarily, whereas permission for divorce is only granted when there is a need which could have been fulfilled with one divorce.

The benefit of giving one Raj'i divorce is that until the next 'Tuhr', there will be a long period in which both parties get the chance to reflect. If matters are resolved, they can reconcile by verbally doing Rujoo' without needing a new Nikah. But, if they feel the need for another divorce in the next 'Tuhr', a second Raj'i divorce should be given. After this, they have another opportunity to reflect. If they feel a need for the third divorce in the next 'Tuhr', the third divorce can be given. This decision will not be an emotional one; rather, it will be well thought out, and there will be very little chance of making a mistake.

It is best that a woman be given one Raj'i divorce. During the 'iddah period, no other divorce should be given. If there is no chance of reconciliation until the end of the 'iddah, the woman will exit the Nikah at the end of the 'iddah. If they even want to reconcile later, they can reconcile by conducting a Nikah with mutual agreement and by specifying the Mehr amount. There will be no need for 'Halalah', and the husband will have the authority of two more divorces. If they don't want to reconcile, the woman is free and can marry someone else if she wants to.

Juz'iyat (text excerpts) regarding the ruling of Divorce:

It is stated in Sahih Muslim:

عن جابر قال: قال رسول الله صلى الله عليه وسلم: "إن إبليس يضع عرشه على الماء، ثم يبعث سراياه، فأدناهم منه منزلة أعظمهم فتنة، يجيء أحدهم فيقول: فعلت كذا وكذا، فيقول: ما صنعت شيئاً، قال ثم يجيء أحدهم فيقول: ما تركته حتى فرقت بينه وبين امرأته، قال: فيدنيه منه ويقول: نعم أنت" قال الأعمش: أراه قال: «فيلترمه»

Translation: It is narrated that Jabir (رضي الله تعالى عنه) said: The Messenger of Allah ﷺ stated, "Iblees sets his throne on the water and then sends his army. The closest one to Iblees is the one who causes the most fitnah (evil). One of them comes and says: I have done so and so. Satan says: You have done nothing! Another one comes and says: I didn't leave a person alone until I separated him and his wife. Hearing this, Satan brings him closer to himself and says: How great you are!" Al-A'mash (a narrator) states that I think

The Prophet ﷺ said: Then Satan embraces him. (Sahih Al-Muslim, Hadith No. 2813, Vol. 4, p. 2167, Publ. Dar Ihya' Al-Turas Al-'Arabi, Beirut)

It is stated in Sunan Abi-Dawood:

عن ابن عمر، عن النبي صلى الله عليه وسلم قال: «أبغض الحلال إلى الله تعالى الطلاق»

Translation: It is narrated by Ibn 'Umar (رضي الله تعالى عنهما), from The Prophet ﷺ that he said: The most disliked yet permissible act in the court of Allah is divorce. (Sunan Abi-Dawood, Hadith No. 2178, Vol. 2, p. 255, Publ. Al-Maktabah Al-'Asriyah, Beirut)

It is stated in Radd Al-Muhtar:

كونه مبغوضا لا ينافي كونه حلالا، فإن الحلال بهذا المعنى يشمل المكروه وهو مبغوض

(Radd Al-Muhtar Ma'a Al-Durr Al-Mukhtar, Book of Divorce, Vol. 3, p. 288, Publ. Dar Al-Fikr, Beirut)

It is stated in Fatawa Razawiyah:

بے حاجت بلا عذر شرعی طلاق دینا مکروہ و ممنوع ہے۔

Translation: Divorcing without any need and any Shari'ah valid reason is Makruh and prohibited. (Fatawa Razawiyah, Vol. 12, p. 332, Publ. Raza Foundation, Lahore)

Juz'iyat (text excerpts) regarding assistance:

Allah Almighty states in The Holy Qur'an:

﴿وَلَا تَعَاوُنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ﴾

Translation (Kanz-Ul-'Irfan): And do not help each other in sin and transgression. (Part 6, Surah Al-Ma'idah, Verse No. 2)

It is stated in Hashiyah Al-Shalbi 'Ala Tabyeen Al-Haqa'iq:

أورد كتاب الوكالة عقيب كتاب الشهادة لأن كل واحدة من الشهادة والوكالة إعانة الغير۔۔ الخ اهـ۔ أتعاني
(Tabyeen Al-Haqa'iq Ma'a Hashiyah Al-Shalbi, Book of Representation, Vol. 4, pg. 254, Publ. Cairo)

The Imam of Ahl-Us-Sunnah, Imam Ahmad Raza Khan رحمۃ اللہ تعالیٰ علیہ states:

عدت میں نکاح تو نکاح، نکاح کا پیغام دینا حرام ہے۔ جس نے دانستہ عدت میں نکاح پڑھایا اگر حرام جان کر پڑھایا، سخت فاسق اور زنا کار کا دلال ہوا، مگر اس کا اپنا نکاح نہ گیا، اور اگر عدت میں نکاح کو حلال جانا تو خود اس کا نکاح جاتا رہا اور وہ اسلام سے خارج ہو گیا۔

Translation: It is Haram to give a proposal for Nikah during the 'iddah period, let alone conducting the Nikah. Whoever purposefully conducted the Nikah during the 'iddah, if he did so considering it Haram, he is a severe Fasiq and a procurer. This will not harm his own Nikah. But if he did so considering Nikah during the 'iddah permissible, his own Nikah will become void, and he will leave the folds of Islam. (Fatawa Razawiyah, Vol. 11, pg. 266, Publ. Raza Foundation, Lahore)
He further states:

مگر کسی کی بیٹی کو جبراً بلا نکاح لے جانا، پھر باجبر نکاح کرنا ظلم پر ظلم اور مسلمان کو عار لاحق کرنا ہے۔۔۔۔ گواہ و وکیل و معین جتنے لوگ اس واقعہ پر آگاہ ہو کر زید کی اعانت کریں گے سب اس کی مثل ظلم و حرام و استحقاق عذاب میں مبتلا ہوں گے۔

Translation: Forcefully taking someone's daughter without Nikah and then forcefully conducting her Nikah is oppression upon oppression, and causes hatred to a Muslim... The witnesses, representative, and helpers, all who are aware of this and helped Zaid will be equally involved in this oppression, Haram, and deserving of punishment. (Fatawa Razawiyah, Vol. 11, pg. 203-204, Publ. Raza Foundation, Lahore)

Juz'iyat regarding Bid'ee and other categories of divorces:

It is a sin to give more than one divorce at once. Thus, it is stated in Al-Durr Al-Mukhtar:

(والبدعي ثلاث متفرقة أو ثنتان بمرة أو مرتين) فی طهر واحد۔ (لارجعة فيه، أو واحدة في طهر وطئت فيه)

It is stated in Radd Al-Muhtar:

(قوله والبدعي) منسوب إلى البدعة والمراد بها هنا المحرمة لتصريحهم بعصيانہ بحر

(Radd Al-Muhtar Ma'a Al-Durr Al-Mukhtar, Book of Divorce, Chapter of the components of divorce, Vol. 4, pg. 423, Publ. Quetta)

Regarding a Ba'in divorce being a sin, it is stated in Radd Al-Muhtar:

فالأحادثة البائنة بدعية في ظاهر الرواية

(Radd Al-Muhtar Ma'a Al-Durr Al-Mukhtar, Book of Divorce, Chapter of the components of divorce, Vol. 3, pg. 231, Publ. Beirut)

If the husband divorces his wife during her menstrual cycle, the husband will be sinful, but the divorce will take place. Thus, it is stated in Al-Hidayah:

واذا طلق الرجل امرأته في حالة الحيض وقع الطلاق

Explaining this text, it is stated in Al-Binayah Sharh Al-Hidayah:

(Al-Binayah Fi Sharh Al-Hidayah, Vol. 5, pg. 17, Publ. Quetta)

It is stated in Fatawa Razawiyah:

حالت حیض میں طلاق دینا حرام ہے کہ حکم الہی ﴿فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ﴾ مگر دے گا تو ضرور ہو جائے گی اور یہ گنہگار۔

Translation: Divorcing in a state of menstruation is Haram because of the command of Allah Almighty: Divorce them considering their waiting period ('iddah). But if one does give the divorce, it will take place, and he will be sinful. (Fatawa Razawiyah, Vol. 12, pg. 332, Publ. Raza Foundation, Lahore)

It is stated in Al-Hidayah regarding the types of divorce:

الطلاق على ثلاثة أوجه حسن وأحسن وبدعي فالأحسن أن يطلق الرجل امرأته تطليقة واحدة في طهر لم يجامعها فيه ويتركها حتى تنقضي عدتها" --- "والحسن هو طلاق السنة وهو أن يطلق المدخول بها ثلاثاً في ثلاثة أطهار" --- "وطلاق البدعة أن يطلقها ثلاثاً بكلمة واحدة أو ثلاثاً في طهر واحد فإذا فعل ذلك وقع الطلاق وكان عاصياً

(Al-Hidayah, Vol. 1, pg. 221, Publ. Dar Ihya Al-Turas Al-'Arabi)

The best assumption should be made about the Muslim's actions. Thus, The Imam of Ahl-Us-Sunnah, Imam Ahmad Raza Khan رحمۃ اللہ

states:

جب تک خاص اس شے میں جسے استعمال کرنا چاہتا ہے کوئی مظنہ قویہ خطر و ممانعت کا نہ پایا جائے تفتیش و تحقیقات کی بھی حاجت نہیں مسلمان کو روکا کہ اصل حل و طہارت پر عمل کرے اور ممکن و محتمل و شاید و لعل کو جگہ نہ دے۔۔۔ ہاں اس میں شک نہیں کہ شبہ کی جگہ تفتیش و سوال بہتر ہے جب اس پر کوئی فائدہ مترتب ہوتا سمجھے۔۔۔ اور یہ بھی اسی وقت تک ہے جب اس احتیاط و ورع میں کسی امراہم و آکد کا خلاف نہ لازم آئے کہ شرع مطہر میں مصلحت کی تحصیل سے مفسدہ کا ازالہ مقدم تر ہے مثلاً مسلمان نے دعوت کی یہ اس کے مال و طعام کی تحقیقات کر رہے ہیں کہاں سے لایا، کیونکر پیدا کیا، حلال ہے یا حرام، کوئی نجاست تو اس میں نہیں ملی ہے کہ بیشک یہ باتیں وحشت دینے والی ہیں اور مسلمان پر بدگمانی کر کے ایسی تحقیقات میں اُسے ایذا دینا ہے خصوصاً اگر وہ شخص شرعاً معظم و محترم ہو، جیسے عالم دین یا سچا مرشد یا

ماں باپ یا استاذ یا ذمی عزت مسلمان سردار قوم تو اس نے اور بے جا کیا ایک تو بدگمانی دوسرے مو حش باتیں تیسرے بزرگوں کا ترکِ ادب۔

Translation: Until there is any strong reason to assume the impermissibility of the thing that he wants to use, there is no need for investigation. It is permissible for a Muslim to act according to the initial ruling, i.e., permissibility and purity, and not give any room for doubt... However, interrogation and investigation are undoubtedly preferred when there is doubt, given that he assumes that this (investigation) will bring some benefit... That too is only until this caution will not go against any important and emphasized matter, because removing harm [مفسدہ] is preferred over attaining a benefit [مصلحت] in Sharī'ah. For example, if a Muslim arranged a feast and one begins to research about his wealth and the food, where he got it from, how it was obtained, is it Haram or Halal, did any impurity get mixed into it? These are undoubtedly things that will cause hatred and also be a cause for assuming bad about a Muslim, and doing such investigations will hurt him. Especially if that person is respectable and honorable according to Sharī'ah, such as a scholar, a true spiritual guide, parents, teacher, or any respectable Muslim, the leader of a tribe, etc., it is even worse. Firstly, because of having a bad assumption, secondly, because it causes hatred, and thirdly, because of disrespecting honorable people. (Fatawa Razawiyah, Vol. 4, pg. 514,526, Publ. Raza Foundation, Lahore)

The following is a summary of a question that was asked in **Fatawa Razawiyah**:

ہمارے آباء واجداد سے ایک طریقہ چلا آ رہا ہے کہ مسجد کے قریب کچھ زمین ہے کہ جس میں، مسجد میں پانی کے متعلق خدمت پیش کرنے والے خادمین کاشت کاری کرتے ہیں اور جو پیداوار حاصل ہوتی ہے، اس میں سے خراج ادا کر کے بقیہ اپنے پاس رکھ لیتے ہیں، اب یہ معلوم نہیں کہ یہ زمین ہمارے آباء واجداد نے وقف کر رکھی ہے (اور خادمین اس وقف کے مصرف ہیں) یا زمین تو انہی کی ملک تھی، انہوں نے خادمین کے کام کی اجرت کے طور پر زمین کی پیداوار ان

کے لیے مقرر کر رکھی ہے تو کیا اب ہمیں اختیار ہے کہ ہم کہیں کہ زمین ہمارے آباء و اجداد کی ہی ملک ہے اور اس میں ہم جو چاہیں کریں اور خادین کو ان کی خدمت کی اجرت رقم کی صورت میں ادا کر دیں؟

Translation: There is a practice that has been ongoing from our forefathers. There is a land near the Masjid, and the workers who take care of the matters related to the water in the Masjid are the farmers of that land. They pay the 'Khiraj' from the produce and keep the remaining produce themselves. But it is unknown whether our forefathers made this land Waqf (and the workers are the recipients of the Waqf) or if the land was owned by our forefathers and the produce of this land was decided as the wage of the workers. So, is it permissible for us to say that the land is owned by our forefathers and we can do whatever we want with it?

Furthermore, should we pay the workers their wages in the form of money?

Mentioning the different situations, A'la Hazrat رحمۃ اللہ تعالیٰ علیہ stated:

جب کسی کی ملکیت ثابت نہیں اور متعلق مسجد ہونا معلوم ہے تو اسے مسجد پر وقف ہی سمجھا جائے گا، اور یہ کہنا کہ خادین کو جو پیداوار ملتی ہے یہ ان کی اجرت کے طور پر ہے تو یہ درست نہیں کیونکہ اس طرح اجرت مجہول ہے کہ نہ جانے کتنی پیداوار ان کے لیے بچے بلکہ غرو خطر ہے کہ ہو سکتا ہے ان کے لیے پیداوار بچے ہی نہ کہ پیداوار ہو ہی نہ، یا ہو لیکن وہ خراج میں ہی چلی جائے، جبکہ ہمیں مسلمانوں کے کاموں کو حتی الامکان درستی پر محمول کرنا واجب، لہذا یہی قرار دیں گے کہ خادین جو پیداوار لیتے ہیں، یہ بطور اجرت نہیں بلکہ وقف کے مصرف کے طور پر لیتے ہیں یعنی واقف ہی نے زمین اس طور پر وقف کی ہے کہ خادین اس کی کاشت کریں، خراج مسجد کو دیں اور جو بچے وہ خود استعمال کریں، پس جب اس طرح اس کا وقف کرنا ثابت ہوگا تو اب اس کو کوئی تبدیل نہیں کر سکتا کہ وقف میں تبدیلی کا کسی کو اختیار نہیں۔

Translation: When no one's ownership is established and it is known that the land is related to the Masjid, it will be assumed that it is Waqf for the Masjid. And it is incorrect to say that the produce which the workers get is their wage because this wage is unspecified, and it is unknown how much produce will be left for them. Rather, it is possible that no produce may be left for them at all, or if there is any, all of it may be given in 'Khiraj'. However, it is Wajib for us to assume the best of the actions of Muslims. Therefore,

we will declare that the produce that the workers take isn't a wage, but they get it because of being the 'Masraf' (recipients) of Waqf. This means that the Waqif (the one who gave the land in Waqf) gave this land in such a way that the workers will farm the land, pay the 'Khiraj' to the Masjid, and they will take the remaining for themselves. So, when it is proven that they have done Waqf of it in this way, it cannot be changed because no one has the right to change a Waqf.

The text of the Imam of Ahl-Us-Sunnah عليه الرحمة is stated below:

اور جبکہ کسی کی ملک ثابت نہیں، نہ اب دعویٰ ملک سنا جائے اور متعلق مسجد ہونا قطعاً معلوم کہ اسی کے خادمان آب کے تصرف میں رہتی ہے اور وہ مسجد کے لئے اس کا خراج ادا کرتے ہیں تو مسجد پر وقف ہی سمجھی جائے گی اور یہ طریقہ کہ اجرت آب میں ان کو دی جاتی ہے کہ خراج دیں اور باقی حاصل اپنی مزدوری میں لیں حرام ہے کہ اجرت مجہولہ بلکہ غرر و خطر میں ہے اور مسلمانوں کا کام حتی الامکان صلاح پر محمول کرنا واجب، کما نصوا علیہ قاطبہ فی غیر مامقام (جیسا کہ علماء نے متعدد مقامات پر اس کی صراحت کی۔ ت) تو یہ تعامل قدیم یوں سمجھا جائے گا کہ واقف ہی نے زمین اسی شرط پر وقف کی کہ خادمان آب مسجد اس کی کاشت کریں اور حاصل کھائیں اور خراج مسجد کو دیں تو اس طریقے کی تبدیل کسی کے اختیار میں نہیں۔

Translation: Since no one's ownership is established, people who claim to have ownership shouldn't be heard. It is also clearly known that it (the land) is related to the Masjid because the land is under the supervision of the workers who are appointed for matters related to the water (of the Masjid), and they pay the 'Khiraj' (for the land) to the Masjid. Therefore, it will be considered a Waqf for the Masjid. The practice of them giving the 'Khiraj' and then taking the remaining (produce) as their wage for the water works is Haram because the wage is unspecified, and there is even fear (that no produce will remain). Also, it is Wajib to assume the best from the actions of Muslims, as the scholars have explicitly mentioned in various places. Therefore, this practice will be considered such that the Waqif himself gave the land in Waqf with the condition that the workers of the Masjid will farm the land, take the produce, and give the 'Khiraj' to the Masjid. So, no one has the right to make changes.

(Fatawa Razawiyah, Vol. 16, pg. 476, Publ. Raza Foundation, Lahore)

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَيْهِ وَاٰلِهٖ وَسَلَّم knows best.)

Answered By: Muhammad 'Irfan Madani

Verified By: Abu Al-Hasan, Mufti Muhammad Hashim Khan Attari

Ref No: GRW-1456

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