

# What is Halalah and What are its Conditions? (Detailed Fatwa)

Darulifta Ahlesunnat (Dawateislami)

## Question

What do the noble scholars and jurists of Islamic law say about the following: What is Halalah? Why has it been prescribed? After three divorces, for it to be permissible for a woman to remarry the same husband, is it sufficient to perform nikah and be in seclusion, or is it necessary to establish marital relations (intercourse)?

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

When three divorces took place between a husband and wife, whether the husband gave the divorces all at once or individually, whether orally or in writing, in all cases, the woman became unlawful for that man. Apart from a halalah, there is no other permissible way for them to reconcile and perform nikah. This is because, according to the Qur'an and Hadith, the husband only has the right to take his wife back, whether through reperforming the nikah or without nikah, until he has given two divorces. But if three divorces are given, then without halalah, the woman will not be lawful for her former husband.

After completing her 'iddah (waiting period) from the first husband, she becomes free. She may marry whomever she wishes, in accordance with the rules and conditions of nikah. This nikah must be with her own consent; she cannot be forced. If she gets married to someone else, then for her to spend her life with her husband shows mutual consent of the husband and wife. But, after consummating the marriage with the second husband (i.e., after a nikah sahih followed by intercourse involving penetration), if she gets divorced by the second husband or he passes away, she must spend her 'iddah (waiting period) of divorce or widowhood. Thereafter, if she and her first husband mutually want to remarry, they may do so, provided they have the dominant assumption that this time they will uphold the boundaries of Allah and will properly fulfill each other's rights.

This entire process is based on the woman's consent. If she wishes, she may live the rest of her life without getting remarried, and if she chooses, she may marry another man of her choice and spend her life with him. Then, if the second husband dies or divorces her, she may remain unmarried, marry a third man, or even remarry her first husband by her own choice. At every stage, she has complete authority over the matter.

In light of the Qur'an and Hadith, there is consensus of Ḥanafī, Shāfi'ī, Mālikī, Ḥanbalī, and all jurists of Islam that for a woman to become permissible for her first husband again after three divorces, mere marriage and seclusion is not sufficient. It is essential that marital relations (sexual intercourse) also take place. Only then does she become lawful for the first husband. If she remarried her first husband without this, such a marriage would not be valid but would instead be haram and fornication.

The ruling given by Sharī'ah in the above-mentioned process is to ensure that husbands avoid giving three divorces out of fear of the process. This is a beneficial process for the welfare of society.

The Noble Qur'an states the following about the wife becoming unlawful for the husband after three divorces and taking her back into his nikah:

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۖ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۖ﴾

Translation (Kanz-ul-'Irfan): If he divorces her the third time, that woman is no longer lawful for him until she marries another man. Then, if the second husband divorces her, there is no sin on both (first husband and wife) returning to each other if they think that they will uphold the boundaries of Allah. (Part 2, Surah Al-Baqarah, Verse 230)

In this verse, marrying another husband means having marital relations with him. There is consensus that this is a condition. Thus, Imam Jalal-Uddin Suyooti Shafi'ee رحمه الله تعالى states under the words ﴿حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾

in Tafsir Jalalain:

ويطأها كما في الحديث رواه الشيخان

Translation: and then the husband has intercourse with her, as mentioned in the hadith narrated by the Shaykhain (Imam Bukhari and Imam Muslim رحمه الله تعالى). (Tafsir Al-Jalalain Ma'a Hashiyah Al-Sawi, vol. 1, pg. 195, Publ. Lahore)

Allamah Ahmad Bin Muhammad Sawi Maliki رحمه الله تعالى states in Hashiyah Sawi 'Ala Al-Jalalain:

﴿فَإِنْ طَلَّقَهَا﴾ أي طلقة ثالثة سواء وقع الاثنتان في مرة أو مرتين والمعنى فان ثبت طلاقها ثلاثا في مرة أو مرات ﴿فَلَا تَحِلُّ﴾ الخ، كما اذا قال لها أنت طالق أو البتة، وهذا هو المجمع عليه ----- قوله: ﴿حَتَّى تَنْكِحَ﴾ المراد به هنا العقد مع الوطء كما بين ذلك في الحديث والاجماع عليه

Translation: If he divorces her a third time, regardless of whether the first two occurred at once or at two different times. This means, if three

divorces are given at once or at multiple occasions, that woman will no longer be lawful for him, such as when one said to his wife, 'you are divorced' or given 'talaq-e-battah'. This is agreed upon... The statement "until she marries" refers to the marriage contract along with having intercourse, as mentioned in the hadith, and there is consensus on this. (Hashiyah Al-Sawi 'Ala Tafsir Al-Jalalain, vol. 1, pg. 195, Publ. Lahore)

Allamah Mujeer-Uddin Bin Muhammad 'Aleemi Maqdisi Hanbali رحمۃ اللہ تعالیٰ states in the Tafsir of this verse in Fath Al-Rahman Fi Tafsir Al-Qur'an:

﴿فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ﴾ أي: بعد الطلقة الثالثة ﴿حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ﴾ غير مطلقها، فيجامعها. والنكاح شرعاً: يتناول العقد والوطء جميعاً

Translation: That woman is no longer lawful for him, i.e., after the third divorce, until she marries another man, other than the one who divorced her, and he has intercourse with her. Nikah in Sharī'ah terminology includes both the contract and intercourse. (Fath Al-Rahman Fi Tafsir Al-Qur'an, vol. 1, pg. 326, Publ. Dar Al-Nawadir)

Mentioning the wisdom behind this ruling mentioned in the Qur'an and Hadith, it is stated by 'Allamah Ismail Haqqi Hanafi in Tafsir Ruh Al-Bayan:

الحكمة في اشتراط إصابة الزوج الثاني في التحليل وعدم كفاية مجرد العقد فيه الردع عن المسارعة الى الطلاق، فإن الغالب ان يستنكر الزوج ان يستفرش زوجته رجل آخر، وهذا الردع انما يحصل بتوقف الحل على الدخول، واما مجرد العقد فليس منه زيادة نفرة وتهيج غير، فلا يصلح توقف الحل عليه رادعاً وازجراً عن التسرع الى الطلاق

Translation: The wisdom behind making it a condition for the second husband to consummate the marriage for her to become lawful, and the contract of nikah not being sufficient, is so that the husband doesn't hasten in giving divorce. Commonly, a man dislikes that his wife sleeps with another man, and prevention (the husband from giving divorce) will only be attained when becoming lawful (after being given three divorces) is contingent upon intercourse (with the second husband). As for the nikah contract, this doesn't increase aversion, nor does it provoke his sense of honor. Therefore, basing the wife's becoming lawful for the first husband on the contract is insufficient in preventing the husband from hastening towards divorce. (Tafsir Ruh Al-Bayan, vol. 1, pg. 359, Publ. Dar Al-Fikr, Beirut)

Sadr Al-Afadil, Maulana Syed Na'eem-Uddin Muradabadi Hanafi رحمۃ اللہ تعالیٰ states in Tafsir Khazain Al-'Irfan:

تینوں طلاقوں کے بعد عورت شوہر پر بھرت مغلطہ حرام ہو جاتی ہے، نہ اس سے رجوع ہو سکتا ہے، نہ دوبارہ نکاح، جب تک کہ حلالہ نہ ہو یعنی بعد عدت دوسرے سے نکاح کرے اور وہ بعد صحبت طلاق دے، پھر عدت گزارے، پھر پہلے شوہر سے نکاح کرے۔

Translation: After three divorces, the woman becomes unlawful upon the husband with 'Hurmat Mughallazah'. Nor can he reconcile with her, nor can he conduct nikah until halalah takes place. This means, after the 'iddah period, she will perform nikah with another man, he will give divorce after having consummated the marriage and thereafter, she will wait her 'iddah period. Afterwards, she will conduct her nikah with the first husband. (Tafsir Khaza'in Al-'Irfan, Part 2, Al-Baqarah, Verse 230)

If the second husband divorces her without having established marital relations, the wife will not become lawful for the first husband. Thus, it is stated in a hadith recorded in Sahih Al-Bukhari:

عن عائشة ان رجلاً طلق امراته ثلاثاً، فتزوجت فطلق، فسئل النبي صلى الله عليه وسلم اتحل لاول؟ قال: لا، حتى يذوق عسلتها كما ذاق الاول

Translation: It is narrated from A'ishah رضي الله تعالى عنها that a man divorced his wife thrice. She then remarried and was again divorced. So, the Prophet ﷺ was asked: Has she become lawful for the first (husband)?

He ﷺ replied: No, not until he tastes her sweetness (has intercourse with her) just like the first one did. (Sahih Al-Bukhari, Book of Divorce, Chapter of the one validated three divorces, vol. 7, pg. 43, Hadith No. 5261, Publ. Dar Tawq Al-Najah, Egypt)

It is stated in Tanwir Al-Absar Wa Al-Durr Al-Mukhtar:

(لا) ينكح (مطلقة بها) اى بالثلاث (حتى يطاها غيره ولو) الغير (مراهقاً بنكاح) نافذ (وتمضى عدته) اى الثانى

Translation: The husband cannot marry the woman who was given three divorces until another man has intercourse with her after a 'Nikah Sahih', even if he is a Murahiq (a child who has reached the age of feeling lust), and until the 'iddah of the second nikah has not ended. (Al-Durr Al-Mukhtar Ma'a Radd Al-Muhtar, vol. 5, pg. 43-46, Publ. Quetta)

Stating the details of halalah, The Imam of Ahl-us-Sunnah, My master, A'la Hazrat, Imam Ahmad Raza Khan عليه الرحمة states:

شریعت کا حکم یہ ہے کہ جس شخص نے اپنی عورت کو تین طلاقیں دی ہوں، ایک دفعہ میں، خواہ برسوں میں کہ ایک کبھی دی اور رجعت کر لی، پھر دوسری دی اور رجعت کر لی، اب تیسری دی، دونوں صورتوں میں عورت اس پر بغیر حلالہ حرام ہے۔ حلالہ کے معنی یہ ہیں کہ اس طلاق کے بعد عورت اگر حیض والی ہے، تو اسے تین حیض شروع ہو کر ختم ہو جائیں اور اگر حیض والی نہیں، مثلاً نو برس سے کم عمر کی لڑکی ہے یا بچپن برس سے زائد عمر کی عورت ہے اور اس طلاق کے بعد تین مہینے کامل گزر جائیں یا اگر حاملہ ہے، تو بچہ پیدا ہو لے، اس وقت اس طلاق کی عدت سے نکلے گی۔ اس کے بعد دوسرے شخص سے نکاح بروجہ صحیح کرے یعنی وہ شوہر ثانی اس کا کفو ہو کہ مذہب، نسب، چال چلن، پیشہ کسی میں ایسا کم نہ ہو کہ اس سے اس عورت کا نکاح عورت کے اولیاء کے لیے باعث بدنامی ہو یا اگر ایسا کم ہے،

تو عورت کا ولی نکاح ہونے سے پہلے اس کو یہ جان کر کہ یہ کفو نہیں ہے، اس کے ساتھ نکاح کی بالتقریح اجازت دے دے یا یہ ہو کہ عورت بالغہ کا کوئی ولی ہی نہ ہو، تو عورت کو اختیار ہے جس سے چاہے نکاح کر لے اور ولی نے اسے غیر کفو جان کر نکاح سے پہلے صریح اجازت نہ دی، تو نکاح ہی نہ ہوگا۔ یونہی لڑکی اگر نابالغہ ہے اور اس کے نہ باپ ہے، نہ دادا، بھائی، چچا وغیرہ ولی ہیں، لوگوں نے کسی غیر کفو سے اس کا نکاح کر دیا، جب بھی نکاح نہ ہوگا۔ غرض جب شوہر ثانی سے نکاح صحیح طور پر واقع ہو اور وہ اس سے ہمبستری بھی کر لے اور اس کے بعد وہ طلاق دے اور اس طلاق کی عدت اسی طرح گزرے کہ تین حیض ہوں اور حیض نہ آتا ہو، تو تین مہینے اور حمل رہ جائے، تو بچہ پیدا ہونے کے بعد، اس کے بعد پہلا شوہر اس سے نکاح کر سکتا ہے، ان میں سے ایک بات بھی کم ہوگی، تو وہ نکاح نہ ہو گا، زنا ہوگا۔

Translation: The ruling of Sharī'ah is that the one who has given his wife three divorces, all at once or separately over a period of time by giving one divorce, then reconciling, then giving a second one, then reconciling, then giving a third, in both cases, the wife is unlawful for him without halalah. Halalah is: after this divorce, she must spend three menstrual cycles (if she experiences menstruation), wait three complete months since this divorce (if she doesn't menstruate, such as if she is younger than nine years old or older than 55 years of age), or give birth to a child (if she is pregnant), then her 'iddah of her divorce will be complete. After this, she must conduct a valid nikah with another man, and this second husband must be her 'Kufu', i.e., he must not be so inferior to her in religion, lineage, conduct, or profession such that it is a cause of shame for her guardians. If he is inferior but the guardian explicitly gave her permission to do nikah with him beforehand, knowing that he isn't 'kufu', or she is a balighah woman without a guardian, in these cases, she has the choice to marry anyone she wants. But if the guardian assumes that he isn't a 'kufu' and doesn't give her clear permission before the nikah, the nikah will not take place at all. Similarly, suppose the girl is non-baligha and she neither has a father, nor a grandfather (from the father's side), nor a brother, nor an uncle (from the father's side), nor any other guardian, and other people conducted her nikah with a non-kufu. The nikah will not be valid in this case either.

Anyways, when a valid nikah takes place with the second husband and he also has intercourse with her, then he gives her a divorce, and she spends the 'iddah in the same manner i.e. three menstrual cycles, three months if she doesn't menstruate, or if she is pregnant then she has given birth, then after this, the first husband can marry her. If any condition is

missing, the nikah will not take place, and it will instead be fornication.  
(Fatawa Razawiyyah, vol. 12, pg. 407, 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: Mufti Muhammad Qasim Attari**

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**Dar-ul-Ifta Ahlesunnat (Dawat-e-Islami)**



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