

FASKHUN NIKAH

Dissolution
of a Muslim Marriage

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GUIDANCE • UBUNTU • EMPOWERMENT

FASKHUN NIKAH - Dissolution of a Muslim Marriage

The Qur'an Shareef refers to Nikah as a covenant of great strength and merit. It enjoins on those who possess resources to support a family and establish a permanent relationship of marriage, fulfilling all its dues. **“...and they (your wives) have taken from you a firm and solemn covenant.”** (Surah An-Nisa - Verse 21)

Nikah is convened by the mutual consent of the 'Nikah parties', and in the event of a complete breakdown of irretrievable consequences, terminated by the husband effecting Talaq (divorce). The right and responsibility of releasing the woman, with dignity and honour, has been placed upon the husband - **“...So either maintain them with compassion or release them with kindness.”** (Surah Al-Baqarah - Verse 229)

UNFAIR SUPPRESSION AND OPPRESSION

The husband, in his capacity as the gatekeeper of Talaq, should never abuse his position by unfairly withholding the Talaq, once it is clear the marriage cannot continue. To keep the wife 'trapped' in the Nikah when she is unwilling and unable to continue is oppressive and sinful. If all efforts to reconcile the marriage are exhausted, and there remains no hope or purpose for the marriage, then a settlement should be reached, kindly and fairly.

Should the husband cause undue distress to the wife by refusing to release her from the Nikah, then Islam grants the wife the Islamic option to seek relief through an annulment or dissolution of the marriage. Importantly, certain warnings have been sounded for the wife who unduly seeks a divorce. Rasulullah ﷺ said, **“The fragrance of Jannah is Haram for a woman who seeks a divorce without a valid reason.”** (Musnad Ahmad)

Before a matter is considered for Faskh (dissolution or annulment), all efforts to resolve the matter amicably through constructive intervention or mediation must be attempted. Faskh is an absolute last resort when all other mechanisms fail.

WHAT ARE THE GROUNDS OF FASKH?

Faskh of a marriage is based on certain grounds. The following reasons constitute some of the valid grounds for Faskh:

1. **Absent Husband:** husband has absconded, is not contactable or missing
2. **Failure to Provide Maintenance:** husband is unable or refuses to provide for his wife
3. **Health Condition or Illness:** husband suffers from insanity, leprosy, impotency, HIV, STD's or any such disease that could endanger the health or life of the wife
4. **Severe Abuse:** Physical, verbal, emotional abuse which is severe and unbearable
5. **Gross Neglect:** Spouses fear inability to fulfill the limits prescribed by Allah
6. **Imprisonment:** husband is serving a lengthy prison sentence
7. **Undesirable Conduct:** Husband conducts himself in a manner that makes living in the marriage unbearable and intolerable.

N.B. The above mentioned grounds are not exhaustive and each case shall be determined on its merit, subject to further details as expounded in the Shari'ah.

THE MUSLIM MARRIAGES TRIBUNAL - MMT

In an Islamic country with an Islamic Judicial system, a Muslim woman may approach the Islamic Court to seek an annulment of her marriage. In the absence of such a court, as is the current situation in South

Africa, women have an alternative to approach an Islamic Judicial Committee or Muslim Tribunal for annulment.

The Judicial Committee or Tribunal should comprise of individuals who are qualified and competent. An annulment concluded by such a Tribunal, based on Shar'i procedures and grounds, will be valid and binding upon the couple, resulting in the wife being released from the marriage.

The Muslim Marriages Tribunal is an initiative of Darul Ihsan Centre established to serve in assisting women who require such assistance.

THE PROCESS OF ANNULMENT

A woman who wishes to apply to the Muslim Marriages Tribunal for dissolution of her marriage shall be required to comply with the following:

1. Produce documentation and reports that reflect efforts to reconcile or resolve matters through marital counseling, external intervention or other measures of resolution.
2. If all efforts to reconcile the marriage have failed and the wife believes that no possibility of reconciliation remains, she may then consult the Muslim Marriages Tribunal.
3. The Tribunal will request her to fill in the Pre Application Assessment Form which would elicit important information and documentation, in order to ascertain the merits of her application.
4. Once the above is established, the applicant will formally apply for dissolution of marriage by completing the 'Application for Dissolution Form'.
5. The Tribunal shall undertake to establish contact with the husband for the purpose of conducting a hearing wherein both parties are

accorded a fair opportunity to present their case. The parties will be given adequate notification for the hearings and meetings. In the event of the husband not appearing, the Tribunal reserves the right to issue a default judgment.

6. Both parties must be present at all the hearings of the Tribunal in order to present their case, and evidence and undergo cross examination.
7. After following due process, which could entail a substantial amount of time, the Tribunal will issue a judgement.
8. In the event of a Faskh, the wife will be irrevocably divorced and shall observe the Iddah of divorce. For details on Iddah visit www.faskh.co.za
9. The Tribunal reserves the right to accept or reject an application as per it's application policy.
10. Parties and witnesses will be required to make their statements and present their evidence under Islamic oath.

This is a basic and general overview of 'Faskhun Nikah' and its procedure. Related queries should be referred to a competent Alim or to the MMT.

Muslim Marriages Tribunal



WHATSAPP

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About Darul Ihsan

Darul Ihsan Humanitarian Centre provides education, guidance, social, empowerment and welfare services to the community. In providing this service, we adopt a holistic approach, that gives due importance to basic needs as well as human rights and dignity of those that we serve.

Founding Philosophy

Darul Ihsan Humanitarian Centre is a multi-purpose, humanitarian-services providing organisation. 'Ihsan' means compassion towards mankind and to act with excellence. The Centre was established in the year 2000 with the primary objective of serving humanity and alleviating poverty and hardship locally and abroad. Since its inception, it has developed and established many humanitarian projects and provides a variety of free services to the community.

Key Objectives

One of the key objectives of the Centre is to promote a better understanding of humanity and peace, thereby serving as a bridge-builder between faiths and communities. Through guidance, Ubuntu and empowerment, the organisation hopes to train and develop the youth to become torch bearers of hope, peace and compassion to humanity.



أَهْلًا وَسَهْلًا

WELCOME

