

RE: Divorce

1. Have the Afghan laws regarding divorce been changed after 2011?

No, the Afghan Laws regarding divorce or other family law matters didn't change after 2011.

2. On what grounds can a woman obtain divorce in Afghanistan? Are there differences between Sunni and Shia citizens regarding this?

In the Afghan law divorce is defined in two types: (1) Divorce which is within authority of the husband and he can perform it, in Afghanistan law it is pronounced as (Talaq). (2) The second type of divorce is called (Tafriq) which is translated as separation. This kind of divorce is requested by wife and granted by court. (article 135 of Civil Code).

On the following grounds can wife divorce husband or obtain divorce from competent court:

- a. Husband can divorce her wife through having an attorney/legal representative or through delegation of authority of divorce to the wife herself (article 142, Civil Code). So, if such power is delegated to woman, she can divorce the husband, with or without any cause, anywhere and at any time.

Separation through court.

- b. Defect: The wife can demand separation when the husband is infected to a disease whom can't be recovered or his recovery requires a long time and the intercourse with him to completely harmful. Unless the wife knew about such defects before the marriage and accepted it. (articles 176-177, Civil Code).
- c. Harm: Whenever wife claims that she receives of any kind of harm from intercourse with husband, and this makes the continuation of the intercourse impossible. She can demand from the court to grant her separation. (article 183, Civil Code)
- d. Lack of life support: Where the husband refuses to pay for life support of wife, and apparently he owns no property and his inability to pay the alimony cannot be proven, the wife can demand separation.

Where the husband proves his inability to pay for life support, the court shall give him a suitable time, not more than 3 months, to pay for life support. If he is still not able to pay for life support, the court shall order separation between the spouses. (articles 191-192, Civil Code)

- e. Absence: If the husband becomes absent, without any reasonable excuse, for a period of three years or more, and in case the wife suffers a loss as a result of his absence, she can demand separation from the court even though the husband owns property from which the wife can pay for her life support.

In the event of the absence of husband, the court after hearing the demand for separation from the wife, shall announce, in writing, to the absent husband, and shall set a time so that during which he should return to the family's house or ask his wife to come to his residence.

Where the absent husband continues with his absence without any reasonable excuse and despite of the court notice, or in case it's impossible to serve the court notice to the husband, the court, in such cases, shall order separation between the couple.

If the husband is sentenced to 10 years imprisonment or more by the order of the court, the wife can demand separation after a period of five years, even if the husband is capable to pay for her life support. (articles 194-196, Civil Code)

The differences between Sunni and Shia citizens is that the Sunni divorce issues are regulated by the Civil Code, while the Shia is regulated by the Shia Personal Status Law. The grounds for divorce, specially from the wife side is mainly the same, but the Shia law pays for more details, while the Suni is limited. But both grounds are similar.

- 3. Is it possible for a woman to obtain a divorce in case her husband was absent or in prison?

If so, can you maybe specify the stipulations?

Yes, she can. If the husband is sentenced to 10 years imprisonment or more by the order of the court, the wife can demand separation after a period of five years. It's the same in Sunni and Shia law.

- 4. If a married couple obtained a divorce in a European country, would the divorce be seen as valid by the Afghan state authorities as well as religious authorities?

If the divorce is obtained in compliance with Afghanistan laws, it is valid.

- a. What if the divorce was obtained in front of a civil court in Europe?

If the divorce is obtained in compliance with Afghanistan laws, it is valid.

b. What if the divorce was obtained in front of a religious (Islamic) authority in Europe? If the divorce is obtained in compliance with Afghanistan laws, it is valid.

5. In case of divorce, who would obtain custody and guardianship over a child (female)? What if the child was over/under 9 years old?

The guardianship of female child would be with mother until age of 9 and guardianship of male child would be with mother until age of 7. Later it is with father, unless the court decides otherwise.

As the Civil Code states:

The mother shall have the priority right for the guardianship and care of the child during marriage and after separation provided she should have qualifications required for child care. (article 238, Civil Code)

The care period of a male child shall be ended when he reaches the age of seven, and the care period of a female child shall be ended when she completed the age of 9. (article 249, Civil Code)

The court can extend the guardianship period of the child described in Article 249 of the Civil Code, provided that the extended period does not exceed two years. (article 250, Civil Code)

Where it is proved that the child guardian (person taking care of the child) is not in the interest of the child even though he may be the father of the child, the court can give the child guardianship to the second person, who is entitled to the care of the child. (article 251, Civil Code)

a. In case the father was absent (i.e. in prison abroad), would the mother be granted custody and/or guardianship over the child? If not, who would obtain custody and guardianship – members of the father's family? Could it be, that the child was taken away from the mother by the father's family if she entered Afghanistan?

In case the father was absent, the mother will be granted guardianship of the child, provided that the mother is entitled to guardianship qualifications. In case the child is more than the guardianship age, the judge will decide who will take the guardianship to be in best interest of the child.