

# What is the right to divorce?



As you know, according to Article 1133 of the Civil Code and Sharia, the right to divorce is in the hands of men. But a man can delegate his right to divorce to his wife or any other person.

Of course, if the husband has given his wife a power of attorney to divorce, the man's right to divorce is still valid and the husband can file for divorce on behalf of the husband.

## **Representation of the right to divorce or obtaining the right to divorce is in two ways:**

√ The first is to be written as a condition in the marriage document

√ Second, the couple (man) goes to one of the notaries and gives power of attorney in divorce to his wife or another. If the couple is abroad, he can go to the Iranian embassy or

consulate and give the right to divorce to anyone who wants To grant. But it is common for a man to give his wife a power of attorney in a divorce. But as mentioned, the couple can delegate this divorce power to whomever they want, assuming their father, friend or spouse.

If the right to divorce is considered as a condition of the contract, the marriage certificate is sufficient to do so. If the divorce is done in the office, the original and copy of the identity card, the original and copy of the national card and the original marriage certificate are required.

It should be noted that the wife needs a formal power of attorney from the husband to prove her power of attorney in court. In practice, the wife cannot introduce herself as the husband's lawyer only on the basis of a condition during the marriage; Therefore, in order for the condition to be enforceable during the marriage, in addition to including such a condition, it is necessary for the husband to go to the notary public office to be granted power of attorney to the wife and provide the necessary documents to the wife and provide the necessary documents to obtain the right. Divorce, grant power of attorney to divorce. Let us now examine the conditions of such a power of attorney:

### **The power of attorney given by the husband to the wife must be irrevocable.**

Power of attorney is permissible (ie each of the parties can terminate it at any time), so it is better to have a power of attorney, in addition to the marriage contract that needs to be granted to the wife, or at the beginning of the power of attorney phrase "Out" to be inserted. In this way, the power of attorney granted to the wife can not be easily revoked.

In the power of attorney of the client (husband), the lawyer (wife) should be given all the powers related to the divorce of the wife and observing its legal formalities, so that the wife can free herself from the bondage of marriage without

acting on behalf of her husband. Can disrupt such a process; Items such as: referring to electronic services offices, referring to the court or dispute resolution council, referring to arbitration or selecting an arbitrator, referring to notary public and divorce registration, issuing a divorce decree, receiving a divorce certificate, granting power of attorney to others, the right to receive or Dowry by the husband, referring to the counseling unit and participating in counseling sessions...;

To facilitate the enforcement process of the power of attorney, it should be stated: "In a way that does not require the client to reappear" at the end of the list of powers of the lawyer.

In this case, too, the wife, as the husband's lawyer, applies for a consensual divorce, and as a result will go through the same formalities: If the wife requests a consensual divorce as the husband's lawyer, the two parties will first be referred to counseling and then apply for The case will be referred to court.

In this case, the wife submits a divorce petition to the court on behalf of her husband through her attorney, and if the power of attorney is properly prepared, she can file other divorce petitions on behalf of her husband. Take it easy. Now, in some cases, the husband withdraws the divorce petition submitted by his wife on behalf of her in order to prevent the wife from continuing the divorce process. As we know, total deprivation of rights is not valid even by individuals; Therefore, the inclusion of a condition that deprives the right to return the lawsuit – meaning the withdrawal of the lawsuit – is not acceptable in Iranian law. As a result, in the power of attorney regulating divorce, the lawyer (wife) should be given the option that in case of a lawsuit under this power of attorney, the return of the lawsuit and the appeal and the appeal of that lawsuit will be the responsibility of the lawyer, and if the lawyer recognizes (Wife), the lawyer can, on behalf of the client, formally and definitively waive such rights in connection with the lawsuit.

As can be seen, here, since the deprivation of the right is not general and is limited to a specific lawsuit, such a condition can be considered correct in Iranian law.

**The terms of the marriage include 12 conditions, which are called the twelve conditions of the marriage. The conditions for a woman's right to divorce are:**

۱- The wife can apply for a divorce from the court, if the husband refuses to pay the wife's expenses and fulfill the other obligatory rights of the wife for 6 months.

۲- The second condition mentioned in the contract that allows the wife to divorce is the abuse of the husband to the extent that it makes the continuation of life unbearable for the wife.

۳- The third condition with which a woman has the right to divorce is a dangerous incurable disease of a man to the extent that it endangers a woman's health.

۴- The fourth condition of a woman's right to divorce is that the man is crazy.

۵, The fifth condition in the contract is that the man is engaged in work that damages the dignity of the woman and her family interests, in which case the woman can file for divorce.

۶- Sentencing the husband to a sentence of 5 years or more imprisonment, or to a fine that leads to 5 years of detention due to inability to pay, or to imprisonment and a fine that leads to a total of 5 years or more imprisonment, and the sentence is ongoing. Execution is another condition during marriage that allows a woman to divorce.

۷- Injury of the husband to any harmful addiction that, according to the court, disrupts the family life and makes it

difficult for the wife to continue living, such as addiction that leads to male unemployment, selling home furniture and harming the physical and mental health of the wife.

٨- It is the eighth condition according to which a woman gets the right to divorce. If the couple leaves family life without a valid excuse or is absent for 6 consecutive months without a valid excuse, the wife can file for divorce without going to court.

٩- Among the cases in which the court accepts the wife's request for divorce and is also mentioned in the contract, the final conviction of the husband for committing a crime and the execution of any punishment, including hadd and ta'zir, which is contrary to the dignity and family affairs of the wife. The matter is also with the court according to the status of the woman and the custom and other criteria.

١٠, The tenth condition of the twelve conditions of marriage is that the man does not have children after 5 years of cohabitation due to infertility or other physical complications, in which case the woman can file for divorce.

١١, Also, if the spouse goes missing and the spouse is not found within 6 months after the court appeals, the court will issue a divorce decree.

١٢, The last condition that the couple signs in the contract and gives the divorce to his wife is the remarriage of the man without the permission of the wife, in which case the woman takes the right of divorce from the man.