

Book of Marriage (*Kitāb al-Nikāh*)

Marriage is from among the *sunnah* of the Messengers. It is related in a *ḥadīth*,

يَا مَعْشَرَ الشَّبَابِ، مَنْ أَسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُنَ لِلْبَصَرِ، وَأَحْصَنَ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءَ.

“Young people, whoever of you is able to marry should do so, for it lowers the gaze and guards the chastity. Whoever is not able to marry should observe the fast, for it will be a shield for him.”³⁷¹

تُنْكِحُ الْمَرْأَةُ لِأَرْبَعٍ: بِلَالِهَا وَلِحَسِبِهَا وَجَمَالِهَا وَلِدِينِهَا، فَاظْفَرْ بِذَاتِ الدِّينِ، تَرِبْتَ يَدَكَ.

“A woman is married for four things: her wealth, her lineage, her beauty, and her religion, so choose the one who possesses religion, may your right hand be rubbed in dust.”³⁷²”³⁷³

³⁷¹ Bukhārī, 9/112; Muslim, no. 1400.

³⁷² Ibn Hajar states in *Fatḥ al-Bārī* (10/566), “Ibn as-Sakīt said that the original meaning of “may your hand be rubbed in dust” is “may you be needy.” It is a phase which is said not intending by it a true supplication, it is only meant to encourage doing that which was mentioned. If the individual was to go against that advice he would lose out. Al-Nahās said that it means that if you do not do it then you are not going to gain anything except dust.”

³⁷³ Bukhārī, 9/132; Muslim, no. 1466.

Therefore, a person should choose a wife who is endowed with religious commitment and of noble lineage, who is affectionate and fertile. If an individual decides to propose to a woman, then he should look for attributes that will attract him to marry her.

It is not permissible for a person to propose to a woman whom his Muslim brother has proposed to, until the latter withdraws his proposal or gets his proposal rejected.³⁷⁴ It is not permissible to publicly mention a proposal to a woman who is in her 'iddah (waiting period). However, it is permissible to implicitly propose to an irrevocably divorced woman, a widow, or someone similar. This is due to Allah's statement,

﴿وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَضْتُمْ بِهِ مِنْ خُطْبَةِ النِّسَاءِ ﴾

“There is no sin on you if you make a hint of marriage or conceal it within yourself.” (Q, 2: 235)

The method of implicitly proposing is to say, “I would like someone such as yourself,” or, “I hope you do not pass me by,” or other statements of a similar nature.

During the marriage contract, a sermon should be delivered which is similar to what was reported by ibn Mas'ūd, who said, “The Messenger of Allah taught us to recite *tashahhud* during times of need,

الْحَمْدُ لِلَّهِ نَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنفُسِنَا وَسَيِّئَاتِ أَعْمَالِنَا مِنْ يَهْدِهِ
اللَّهُ فَلَا مُضِلٌّ لَهُ وَمَنْ يُضْلِلُ فَلَا هَادِي لَهُ ، وَأَشْهُدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ ، (وَحْدَهُ لَا
شَرِيكَ لَهُ) وَأَشْهُدُ أَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ.

“All praise be to Allah; we praise Him, seek His help, guidance, and forgiveness. We seek refuge in Allah from the evils of ourselves and from our bad deeds. Whoever Allah guides none can misguide him, and whoever He misguides none can guide him. I bear witness that none has the right to be worshiped except Allah, (He is the one and has no partners), and I bear witness that Muhammad is His slave and Messenger.”³⁷⁵

³⁷⁴ If a man is unaware that another has decided not to suit the woman or he asks the man about his decision on the issue but the latter remains silent and does not respond, then one should not go ahead and propose to the woman. See *al-Mukhtārāt al-Jalliyah*, pg. 103.

³⁷⁵ Ahmad, 1/392; Abū Dāwūd, no. 2118; at-Tirmidhī, No. 1105, who called it *ḥasan*; al-Nisā'ī, 3/104; ibn Mājah, no. 1892.

He then reads the following three verses [from the Qur'an]:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا آتَقُوا اللَّهَ حَقَّ تُقَاتِلُهُ، وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ ﴾ ١٠٢

1. “You who believe, fear Allah as he should be feared, and do not die except in a state of submission.” (Q, 3:102)

﴿يَا أَيُّهَا النَّاسُ آتَقُوا رَبِّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَجَدَنَّ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَ مِنْهُمَا رِجَالًا كَثِيرًا

﴿وَنِسَاءً وَآتَقُوا اللَّهَ الَّذِي تَسَاءَلُونَ عَنِهِ، وَالْأَرْضَمَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴾ ١١

2. “People, be dutiful to your Lord, Who created you from a single person, and from him He created his wife, and from them both He created many men and women. Fear Allah through Whom you demand [your mutual rights], and do not sever your kinship. Allah is All Watching over you.” (Q, 4:1)

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا آتَقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ﴾ ٧٠ يُصْلِحَ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرُ لَكُمْ

﴿ذُنُوبَكُمْ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ، فَقَدْ فَازَ فَوْزًا عَظِيمًا ﴾ ٧١

3. “You who believe, maintain your duty to Allah and fear him, and speak the truth. He will direct you to do righteous deeds and will forgive you your sins. Whoever obeys Allah and His Messenger has indeed achieved a great achievement.” (Q, 33: 70-71)

Marriage is only contracted through the following:

1. Offer, which is made by the guardian, such as his saying, “I marry you [to my daughter],” or, “I give her to you [in marriage].”
2. Acceptance, which is uttered by the [future] husband or his representative, and can take the form of, “I accept this marriage,” or, “I accept,” and any statement of a similar nature.³⁷⁶

³⁷⁶ The Shaykh said elsewhere, “The correct view is that the contracts are valid through any words that signify them. This is equally true of all contracts relating to sale, giving away, renting, marriage, and anything else.” See *al-Mukhtārāt al-Jalliyah*, pg. 69 & 103.

-CHAPTER-
THE CONDITIONS OF MARRIAGE

The marriage contract should contain the consent of both spouses, with the following exceptions:

- An underage girl, who can be married off by her father.³⁷⁷
- A female slave, who can be married off by her master.

The guardian of the bride must be present [for the marriage contract],³⁷⁸ as it has been reported by the Five in an authentic *hadīth* that the Prophet said,

لَا نِكَاحٌ إِلَّا بِوَلِيٍّ.

“There is no marriage without a guardian.”³⁷⁹

The one who is most entitled to get a free woman married is:

1. Her father, grandfather, and so forth no matter how high the ascendant.
2. Her son, grandson, and so forth no matter how low the descendant.
3. Then, the closest of her agnate heirs.

In a *hadīth*, which is agreed upon [by Bukhārī and Muslim], it states that the Messenger of Allah said,

«لَا تُنْكِحُ الْأَيْمَمَ حَتَّى تُسْتَأْمِرَ، وَلَا تُنْكِحُ الْبِكْرَ حَتَّى تُسْتَأْذَنَ» قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ إِذْنُهَا؟ قَالَ: «أَنْ تَسْكُتَ».

“Do not marry off a divorced woman without her consent, and do

³⁷⁷ The Shaykh has said that the sound opinion is that a man cannot force his adult and sane daughter to marry someone she does not like. See *al-Mukhtārāt al-Jalliyah*, pg. 103.

³⁷⁸ The Shaykh has said that the absolute sound opinion is that ‘adālah (reliability) is not a condition for a *walī*. A sinful person can act as *walī* for the women under his guardianship. See *al-Mukhtārāt al-Jalliyah*, pg. 4.

³⁷⁹ Ahmad, 4/394; al-Dāramī, 2/137; Abū Dāwūd, no. 2085; at-Tirmidhī, no. 1101; ibn Mājah, no. 1881; al-Hākim, 2/170, who called it *ṣahīḥ*. Bukhārī, ibn al-Madīnī, Muhammad b. Yaḥyā al-Dhuhlī and others have declared this tradition *ṣahīḥ*.

not marry off the virgin until she agrees." They asked, "Messenger of Allah, how does she agree?" He said, "By her remaining silent."³⁸⁰

Aḥmad reports that the Prophet said, "Make the marriage known."³⁸¹ The ways of making the marriage known: is the witnessing of it by two just people, announcing and publicizing it, beating of the *duff*, and things of a similar nature.

The woman's guardian is not permitted to marry her off to anyone that is not suitable for her. Therefore, a licentious man is not to be matched with a chaste [woman],³⁸² and the Arabs are a match for each other.³⁸³ If she does not have a guardian, or her guardian has been absent for a long time, or her guardian prevents her from marrying someone that is suitable for her, then the ruler can marry her off. This is established from the *ḥadīth* recorded in the *Sunans* except for *al-Nisā'ī*,

السُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيٌّ لَهُ.

"The ruler is the guardian for the one who has no guardian."³⁸⁴

It is obligatory that the one who is intended for marriage be specified. So [a guardian saying,] "I marry you to my daughter," is invalid if he has more than one daughter unless he specifies his daughter by name or by description. Additionally, there should be no impediments in relation of either of the two [prospective] spouses that my hinder the marriage, such as those mentioned in the Chapter of Prohibited Marriages [which follows].

³⁸⁰ *Bukhārī*, 9/191; *Muslim*, no. 1419.

³⁸¹ *Aḥmad*, 4/5; *at-Tirmidhī*, no. 1089; *al-Nisā'ī*, 6/127. *Al-Ṭabarānī* has declared it *ṣahīh*. The Shaykh said, "The wedding banquet is a *mustahab* (desirable) act. It is to be arranged according to the prosperity or poverty of the groom. It is however obligatory to accept an invitation to the wedding banquet. People must observe a balance approach in this ceremony, and they should avoid indulging in extravagance." See *Nūr al-Baṣā'ir*, pg. 48.

³⁸² The Shaykh said elsewhere, "The sound opinion is that one of the conditions of a valid marriage is that both the male and the female partners be free from fornication. Therefore, marrying a man who is known for fornication, unless he repents, is not permissible. Similar is the case regarding a woman who is known for committing fornication, unless she repents." See *al-Mukhtārāt al-Jalliyah*, pg. 104.

³⁸³ This can be because they maintain a similar culture. [TN]

³⁸⁴ *Aḥmad*, 6/66; *al-Dāramī*, 2/137; *Abū Dāwūd*, no. 2083; *at-Tirmidhī*, no. 1102; *ibn Mājah*, no. 1879; *al-Ḥākim*, 2/168, who called it *ṣahīh* based on the conditions of *Bukhārī* and *Muslim*.

-CHAPTER-
THE PROHIBITED MARRIAGES (*MUHARRAMĀT*)

Woman who are forbidden to marry are of two types:

1. Those who are permanently prohibited.
2. Those who are temporarily prohibited.

[Permanently Forbidden Marriage]

As for those who are permanently prohibited, they include:

- a. Seven who are prohibited due to kinship,³⁸⁵ and they are:
 1. Mothers, no matter how high the ascendant.
 2. Daughters, no matter how low the descendant.
 3. [Full and half] sisters.
 4. [Sister's] daughters.
 5. Brother's daughters.
 6. Paternal aunts, no matter how high the ascendant
 7. Maternal aunts, no matter how high the ascendant.
- b. Seven who are prohibited due to breastfeeding, and they are similar to the ones mentioned above.
- c. Four [who are prohibited] due to marriage,³⁸⁶ and they are:
 1. Mother-in-laws, no matter how high the ascendant.
 2. Step-daughters, no matter how low the descendant as long as sexual relations has occurred with their mother.
 3. The wives of the fathers, no matter how high the ascendant.
 4. The wives of the sons, no matter how low the descendant, whether through lineage or breastfeeding.

³⁸⁵ All women who are included among the blood relatives are prohibited to be taken into marriage except for daughters of paternal aunts and uncles, and daughters of maternal aunts and uncles (i.e., female cousins). See *Nūr al-Baṣā'ir*, pg. 49.

³⁸⁶ The Shaykh has ascertained that adultery and fornication do not entail the family of the partner in the sin to become legally prohibited for him/her to marry. See *al-Mukhtārāt al-Jalliyah*, pg. 105.

The ruling is based on the words of Allah,

﴿ حُرِّمَتْ عَلَيْكُمْ أُمَّهَّاتُكُمْ وَبَنَاتُكُمْ وَأَخْوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخْيَرِ وَبَنَاتُ الْأَخْتِ وَأُمَّهَّاتُكُمُ الَّتِي أَرْضَعْنَكُمْ وَأَخْوَاتُكُمْ مِنْ الرَّضَعَةِ وَأُمَّهَّاتُ إِنَّسَاءِكُمْ وَرَبِّيْبَكُمُ الَّتِي فِي حُجُورِكُمْ مِنْ نِسَاءِكُمُ الَّتِي دَخَلْتُمْ بِهِنَّ فَإِنَّ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَّتِلُّ أَبْنَاءِكُمُ الَّذِينَ مِنْ أَصْلَانِكُمْ وَأَنْ تَجْمِعُوهَا بَيْنَ الْأَخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا ﴾ ٢٤ ﴿ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابُ اللَّهِ عَلَيْكُمْ وَأَحْلَلْتُمْ مَا وَرَأَءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ عَيْرَ مُسَيْغِيْنَ فَمَا أَسْتَمْتَعْنُ بِهِ مِنْهُنَّ فَنَأْوُهُنَّ أُجُورُهُنَّ فِرِيْضَةٌ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفِرِيْضَةِ إِنَّ اللَّهَ كَانَ عَلِيْمًا حَكِيمًا ﴾ ٢٥ ﴾

“Forbidden to you [in marriage] are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother’s daughters, your sister’s daughters, your mother who has suckled you,³⁸⁷ your suckling sisters,³⁸⁸ your wives’ mothers, your step-daughters under your guardianship—born of your wives with whom you have consummated the marriage; but if you have not consummated the marriage then there is no sin on you if you [marry their daughters]—the wives of your begotten sons, and two sisters in marriage simultaneously, except for what has already passed. Allah is Most Forgiving, Most Merciful. ²⁴Also [forbidden to you are] all married women, other than those whom your right hands possess. This Allah has ordained for you. All other women are lawful to you, provided you seek [them in marriage] with gifts from your property,³⁸⁹ desiring wedlock rather than fornication. To those with whom you seek to enjoy marriage, give them their dowry as prescribed; but after prescribing the dowry, if you mutually agree to do otherwise, then there is no sin on you. Allah is indeed All Knowing, Wise.” (Q, 4:23-24)

It is also based on the following statement of the Prophet,

³⁸⁷ This is in reference to those women who breast-feed an infant. Islam regards women who breastfeed other people’s infants as foster-mothers. [TN]

³⁸⁸ This is in reference to a foster sister. She is the daughter of the woman that has breast-fed an infant and therefore becomes that infant’s foster-sister. [TN]

³⁸⁹ Refers to dowry. [TN]

يَحْرُمُ مِنَ الرَّضَاعَةِ مَا يَحْرُمُ مِنَ الْوَلَادَةِ.

“Whatever is forbidden by breastfeeding is also forbidden by lineage and birth.”³⁹⁰

[Temporary Forbidden Marriage]

As for those who are temporarily forbidden, they include:

- Those referred to in the Prophet's statement,

لَا يُجْمِعُ بَيْنَ الْمَرْأَةِ وَعَمْتِهَا، وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتِهَا.

“A person should neither marry a woman and her paternal aunt, nor a woman and her maternal aunt simultaneously.”³⁹¹

- Those referred to in Allah's statement,

وَأَن تَجْمَعُوا بَيْنَ الْأَخْتَيْنِ ﴿٤﴾

“Two sisters in marriage simultaneously.” (Q, 4:23)

It is not permissible for a free man to have more than four wives [simultaneously], or for a slave to have more than two wives [simultaneously]. As for a man who has female slaves, then he can have sexual relations with as many of them as are under his possession.

If a disbeliever embraces Islam while being married to two sisters simultaneously, he should choose one of the two [and divorce the other]. If he has more than four wives, he should choose four and divorce the rest.

Additionally, woman in the following scenarios are forbidden for a man to marry:

1. A woman in the state of *ihrām*, until she exits from it.
2. A woman in her *'iddah* (waiting period) who has been divorced by another man, until she completes it.
3. The adulteress is for an adulterer; if she repents then she may marry someone else.
4. An irrevocably divorced woman is impermissible for the husband who divorced her until she marries another husband,

³⁹⁰ Bukhārī, 5/253, 9/139; Muslim, no. 1444 & 1447.

³⁹¹ Bukhārī, 9/160; Muslim, no. 1408.

[is divorced after having sexual relations with him] and then completes her 'iddah.

It is permissible for a person to own two sisters simultaneously [as slaves]. However, if he has sexual intercourse with one of them, then the other becomes impermissible for him until he makes the former one impermissible for himself by selling her or she gets married, after it is ascertained that she is not pregnant by her master.

As for the suckling relationship which makes a person impermissible for marriage it is that which occurs before weaning and consists of five or more breastfeedings.³⁹² With that the suckled child and his offspring become foster children of the wet nurse and her husband. The impermissibility of marriage between the foster child, the wet nurse, and her husband [and offspring] is similar to the impermissibility due to blood relation.

³⁹² The Shaykh said elsewhere, "The sound view is that merely letting the baby attach to a breast or transferring him to another breast is not fostering; rather, it should be a complete breastfeeding." See *al-Mukhtārāt al-Jalliyah*, pg. 111.

Shaykh Ibn 'Aqil related the following words of Ibn Qudāmah from *al-Kāfi* (5/64), "Ibn Hāmid said, 'If the infant is hindered from [breast]feeding due to a problem, or he has been removed and then made to resume the feeding, it will be considered a single feeding and not two. If the infant and the breastfeeding woman are separated and distanced from one another and the infant is transferred to another woman with whom he resumes the feeding, then it will be considered as two instances of breastfeeding. This is just like a person who is eating or drinking and pauses due to a hindrance and then resumes eating or feeding, it is counted as a single instance of a meal. The same is the case with breastfeeding.'" ³⁹³

-CHAPTER-
THE CONDITIONS WITHIN A MARRIAGE

Such conditions are those stipulated by either of the two spouses as being incumbent upon the other, and it is of two types:

1. Valid conditions, such as stipulating that the husband not marry another wife [while he is married to her], not take a concubine, not relocate her from her house or country, or that he increase the amount of dowry (*mahr*) or spending money, and other similar things. All such conditions are included under the Prophet's saying,

إِنَّ أَحَقَّ الشُّرُوطِ أَنْ تُؤْفَوَا بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ.

“The conditions that deserve to be fulfilled the most are those that make the private parts lawful to you.”³⁹³

2. Invalid conditions, which includes *mut'ah* (temporary) marriage³⁹⁴, *tahlil* marriage³⁹⁵, and *shighār* marriage³⁹⁶. *Mut'ah* was initially permitted by the Prophet, however it was later made impermissible by him.³⁹⁷ He also cursed the *muhalli*³⁹⁸ and *muhall al-lahū*³⁹⁹. Additionally, he forbade *shighār* marriage,⁴⁰⁰ and all of the *hadīths* concerning it are authentic.

³⁹³ *Bukhārī*, 9/417; *Muslim*, no. 1418.

³⁹⁴ Marriage that is arranged for a pre-determined period of time and when the time is complete the couple automatically divorce. [TN]

³⁹⁵ Marriage to an irrevocably divorced woman with the sole intention of making her permissible to her former husband. [TN]

³⁹⁶ This occurs when two guardians agree to marry those who are under their custodianship to each other without any dowry. [TN]

³⁹⁷ See *Muslim*, no. 1405.

³⁹⁸ Refers to a man who marries an irrevocably divorced woman for the sole purpose of making her lawful for her ex-husband to remarry. [TN]

³⁹⁹ Refers to the ex-husband of the woman who was irrevocably divorced, seeking to remarry her through an unlawful marriage. [TN]

⁴⁰⁰ *Bukhārī*, 9/162; *Muslim*, no. 1415.

-CHAPTER-
DEFECTS IN MARRIAGE

If one of the spouses discovers that the other suffers from a defect that was unknown prior to contracting the marriage, such as mental insanity, leprosy, or something similar, then that spouse has the option to nullify the marriage. If the wife finds the husband to be impotent, then he should be given respite for a year, and if after that time his status has not changed, then she is given the right to void the marriage.

If a [slave] woman becomes completely emancipated and her husband remains a slave, then she is given the choice to either remain married to him or to separate from him.⁴⁰¹ The evidence behind this is the lengthy *hadīth* reported by ‘Ā’ishah about the story of the emancipation of Barīrah, who was given the choice to remain with her husband or separate from him after her emancipation. It is agreed upon by Bukhārī and Muslim.⁴⁰²

If the marriage is nullified prior to the consummation of the marriage, then no dowry is due [on the husband]. Otherwise, the dowry becomes due on him and he is to demand the repayment of it from the one who deceived him.

⁴⁰¹ The Shaykh said that the choice [to remain married or not to a slave man when a slave girl wins her freedom] does not expire unless she willingly foregoes her right to choice, or the slave man has sexual intercourse with her while she has knowledge of her right that it will expire with this act. See *al-Mukhtārāt al-Jalliyah*, pg. 105.

⁴⁰² Bukhārī, 9/404; Muslim, no. 1504.

-CHAPTER-
SPOUSAL TREATMENT⁴⁰³

Each spouse is obligated to live harmoniously with the other, through maintaining good company, refraining from causing any harm, and not hesitating in giving their due rights.

The wife is obligated to obey the husband in the following things:

1. Acts of intimacy.
2. Refrain from leaving his house or traveling, except with his permission.
3. Carrying out chores such as cooking, and other similar things.

The husband is required to spend on the wife's expenditures and clothing in a fair manner. This is based on Allah's saying,

وَعَاشُوْهُنَّ بِالْمَعْرُوفِ ﴿٤﴾

"Live with them honorably." (Q, 4:19)

It is also based on the following *hadīths*,

اَسْتَوْصُوا بِالنِّسَاءِ خَيْرًا.

"Treat the women good."⁴⁰⁴

خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ.

"The best of you is the one who is best to his family."⁴⁰⁵

إِذَا دَعَا الرَّجُلُ امْرَأَتَهُ إِلَى فِرَاشِهِ، فَأَبْتَأَتْ أَنْ تَجْيِئَ، لَعْنَتُهَا الْمَلَائِكَةُ حَتَّى تُضْبَحَ.

"If a man calls his wife to his bed and she refuses to come, then the angels curse her until the morning."⁴⁰⁶

Additionally, a husband should be equitable in his dealings between his wives, such as the division of his time, spending on them, clothing them, and everything else in which he is able to maintain equity with

⁴⁰³ In the Arabic file this Chapter was located in the Book of Dowary, but we felt it was better situated for this Chapter.

⁴⁰⁴ Bukhārī, 9/253; Muslim, no. 1468.

⁴⁰⁵ Al-Dārmī, 2/159; Tirmidhī, no. 3895; al-Ḥakīm, 4/173.

⁴⁰⁶ Bukhārī, 9/293; Muslim, no. 1436.

them. The Prophet said,

مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَا لَهُ إِلَّا إِحْدَاهُمَا، جَاءَ يَوْمَ الْقِيَامَةِ وَشِقَّةُ مَائِلٌ.

“Whoever has two wives, but inclines towards one more than the other will come on the Day of Judgment leaning more to one side.”⁴⁰⁷

It was also reported on the authority of Anas [b. Mālik],

مِنْ السُّنْنَةِ إِذَا تَزَوَّجَ الرَّجُلُ الْبَكْرَ عَلَى الشَّيْبِ أَقَامَ عِنْدَهَا سَبْعًا وَقَسْمَ، وَإِذَا تَزَوَّجَ الشَّيْبَ عَلَى الْبَكْرِ أَقَامَ عِنْدَهَا ثَلَاثًا ثُمَّ قَسْمَ.

“It is from the Sunnah that when a man marries a virgin while being married to a non-virgin, he should remain with the virgin for seven days, and afterwards divide the days equally [between them]. If he marries a women who is a non-virgin, then he stays with her for three days and then divides the days [between them].”⁴⁰⁸

‘Ā’ishah said,

كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا أَرَادَ سَفَرًا أَقْرَعَ بَيْنَ نِسَائِهِ، فَأَيْتَهُنَّ خَرَجَ سَهْمُهَا خَرَجَ بِهَا مَعَهُ.

“Whenever the Messenger of Allah intended to travel, he would draw lots among his wives, and the one whose lot was chosen would accompany him.”⁴⁰⁹

However, if a woman waives her rights, [with the husband’s permission,] for the division of time, expenditure, or clothing, then this is permissible. It is known that Sawdah bint Zam’ah gave her days to ‘Ā’ishah, so the Prophet would divide up the days and give ‘Ā’ishah her day and that of Sawdah’s. This is agreed upon by Bukhārī and Muslim.⁴¹⁰

If a husband fears marital discord (*nushuz*) from his wife, and her disobedience becomes apparent, then he should:⁴¹¹

⁴⁰⁷ Ahmad, 2/347; Abū Dāwūd, no. 2133; ibn Mājah, no. 1969; al-Nisā’ī, 7/63; Tirmidhī, no. 1150; al-Bayhaqī, 7/297; al-Ḥakīm, 2/186.

⁴⁰⁸ Bukhārī, 9/314; Muslim, no. 1461.

⁴⁰⁹ Bukhārī, 5/293; Muslim, no. 2770

⁴¹⁰ Bukhārī, 9/312; Muslim, no. 1463.

⁴¹¹ A wife who disobeys her husband, revolts against him, and abandons his obligatory obedience, without any shortcoming from him, no longer enjoys the right to her prescribed time with him and provisions until she resumes being obedient to him. Such

- a. Admonish her.
- b. If she persists in her disobedience then he should abandon sharing the bed with her.
- c. If she still persists [in her disobedience] then he should lightly hit her, without causing her any harm.

However, if the husband does not give the wife her marital rights, then he is prevented from doing the above things.

If separation is feared between the spouses, then an arbitrator should be chosen from his family and one from her family. They should have knowledge of the situation and [the ability to determine] whether reconciliation or separation is best. They should try to make reconciliation between them if that is acceptable to both parties, with some form of compensation or not, or they should separate them. So whatever decision the arbitrators decide, it becomes binding on the parties, and Allah knows best.

a wife should be brought to the right course by her husband through wise counseling. See *Nūr al-Baṣā'ir*, pg. 51.

Book of Dowry (*Kitāb al-Ṣadāq*)

Ṣadāq should be an amount that can be easily acquired.

سَأَلَتْ عَائِشَةَ: كَمْ كَانَ صَدَاقُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ قَالَتْ: «كَانَ صَدَاقُهُ لِأَزْوَاجِهِ ثَنَتُ عَشْرَةُ أُوقِيَّةٍ وَنَسْنَاءً»، قَالَتْ: «أَتَدْرِي مَا النَّشُّ؟» قَالَ: قُلْتُ: لَا، قَالَتْ: «نِصْفُ أُوقِيَّةٍ، فَتِلْكَ خَمْسُمِائَةٌ دِرْهَمٌ».

‘Ā’ishah was asked, “How much was the dowry which the Prophet gave?” She said, “The dowry was twelve ounces [of gold] and one *nash*. Do you know what a *nash* is?” I⁴¹² said, “No.” She said, “It is half of an ounce. So the [total amounted] to five hundred dirham.”⁴¹³

She also said,

أَعْتَقَ صَفِيَّةَ، وَجَعَلَ عِنْقَهَا صَدَاقَهَا.

“He freed Safiyyah and made that her dowry.”⁴¹⁴

⁴¹² Referring to Abū Salamah, the questioner. [TN]

⁴¹³ Muslim, no. 1426. The Shaykh said that a person should try to set a lesser amount for the *mahr* if the wife and her *walī* agree to it. Otherwise the man should give to the wife the amount of *mahr* that is conventionally given to a woman of her stature in the town of her residence. See *Nūr al-Baṣā’ir*, pg. 48.

⁴¹⁴ Bukhārī, 9/132; Muslim, no. 1365.

The Prophet also said to a man,

التَّمِسْ وَلُؤْ خَاتَمًا مِنْ حَدِيدٍ.

“Seek out something [to give], even if it is a metal ring.”⁴¹⁵

Therefore, anything which is valid and has a value or is used as payment, even if it is a small amount, is valid as dowry.

If a man was to marry a woman without stipulating the amount of her dowry, then it is the same as other woman who are similar to her. If a man divorces a woman prior to the consummation of the marriage, then she receives alimony [based on the status of her husband]; so the rich according to his means and the poor according to his. The evidence for this is the saying of Allah,

﴿لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فِرِضَةً وَمَتَعُوهُنَّ عَلَى الْمُوْسِعِ قَدْرُهُ وَعَلَى الْمُقْتَرِ قَدْرُهُ مَتَعًا بِالْمَعْرُوفِ حَقًا عَلَى الْمُحْسِنِينَ ﴾

“There is no sin on you if you divorce women with whom you have not consummated, nor appointed for them their [dowry] amount, but make provisions for them, the rich according to his means and the poor according to his means, a gift of reasonable amount; this is a duty on the good-doers.” (Q, 2:236)

The complete dowry is paid to the wife upon the death of the husband or upon consummation of the marriage. If separation occurs, at the request of the husband, prior to consummation, then half of the dowry is due. However, the dowry is not due in the following scenarios:

1. The separation is due to the request of the wife.
2. Annulment of the marriage by the husband due to a discovered defect in the wife.

The one who divorces his wife should provide her with some maintenance as a mean of consolation. This is due to Allah's statement,

﴿وَلِلْمُطَلَّقَاتِ مَتْعًا بِالْمَعْرُوفِ حَقًا عَلَى الْمُتَّقِيْنَ ﴾

“Divorced women shall have maintenance according to what is fair. This is a duty on those who are conscious of Allah.” (Q, 2:241)

⁴¹⁵ Bukhārī, 9/131 & 205; Muslim, no. 1425.

Book of Divorce (*Kitāb al-Talāq*)

The proof for its permissibility is Allah's statement,

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطْلَقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ﴾

“Prophet, when you divorce women, divorce them during their prescribed periods, and count accurately their ‘iddah.’” (Q, 65:1)

There are other similar texts from the Qur'an and the Sunnah that relate this. The phrase, “Divorce them during their prescribed periods,” is illustrated in the *ḥadīth* of ibn ‘Umar in which he divorced his wife during her menses. The Messenger of Allah was asked concerning this, and he said,

مُرْهَ فَلْيُرَاجِعْهَا، ثُمَّ لِيَرْكُحَا حَتَّى تَطْهَرَ، ثُمَّ تَحِيضَ، ثُمَّ تَطْهَرَ، ثُمَّ إِنْ شَاءَ أَمْسِكَ بَعْدُ، وَإِنْ شَاءَ طَلَقَ قَبْلَ أَنْ يَمْسَ، فَتِلْكَ الْعِدَّةُ الَّتِي أَمْرَ اللَّهُ عَزَّ وَجَلَّ أَنْ يُطْلَقَ لَهَا النِّسَاءُ.

“Command him to take her back, and leave her alone until she enters her second menses, and then again becomes pure. Then, if he wishes, he can stay with her and if he wishes he can divorce her before having sexual intercourse with her. That is the prescribed

period that Allah has commanded for divorcing women.”⁴¹⁶ In another narration it says,

مُرْأَةٌ فَلَيْرَاجِعُهَا، ثُمَّ لِيُطْلَقُهَا طَاهِرًا، أَوْ حَامِلًا.

“Command him to take her back, and then divorce her after she is pure [from menstruation] or pregnancy.”⁴¹⁷

This is proof for the impermissibility of divorcing a woman during her menstruation or during a period of purity in which the husband has had sexual relations with her, unless it is ascertained that she is pregnant.

Divorce takes effect with the use of any words that indicate it, such as:

- a. Explicit pronouncement, which denotes nothing other than divorce, such as the utterance of the word divorce (*talāq*), its derivatives, or anything similar to it.
- b. Implicit pronouncement, when accompanied by the intent to divorce, or an indication to it.⁴¹⁸

Divorce is effected:

- a. Immediately, or
- b. pending a stipulated condition, such as the husband saying, “If such and such time comes, then you are divorced,” or when he stipulates a condition for the divorce, and if the condition is met then divorce takes place.

Revocable and Irrevocable Divorce

A free man possesses the right to pronounce divorce three times,⁴¹⁹

⁴¹⁶ Bukhārī, 9/345; Muslim, no. 1471.

⁴¹⁷ Muslim, no. 1471.

⁴¹⁸ A man who is doubtful as to whether he issued a *talāq* or how many *talāqs* he issued is not bound to consider the doubt and instead follows that which is clear. See *Nūr al-Baṣā'ir*, pg. 52.

⁴¹⁹ The Shaykh said elsewhere, “Shaykh ibn Taymiyyah preferred the view that *talāq* uttered/issued through different expressions refers to only one *talāq*. This remains true even if the husband clearly uses the word “Three or thrice,” or, “indeed,” or any other expressions that are used for stress. The second *talāq* is not applicable except after [issuing the first one] and then revoking it properly. Ibn Taymiyyah supported

after which his wife becomes impermissible for him until she marries another person through a valid marriage, and that person has sexual intercourse with her [and then divorces her]. This is due to Allah's statement,

﴿الَّطَّلُقُ مَرَّتَانِ فَإِمْسَاكٌ يُعْرُوفٌ أَوْ شَرِيفٌ بِإِحْسَنٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا أَنْتُمْ مُوْهِنُونَ
شَيْئًا إِلَّا أَنْ يَخَافَا أَلَا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خَفْتُمْ أَلَا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا أَفْدَتْ بِهِ
تِلْكَ حُدُودَ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَعْتَدَ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ ﴾٢٢٩﴾ فَإِنْ طَلَقْهَا فَلَا يَحِلُّ لَهُ مِنْ
بَعْدِ حَقِّ تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَقْهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَرْجِعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ
حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ﴾٢٣٠﴾

“Divorce may be [revoked] twice, then either retain her in an acceptable manner or release her with kindness. It is unlawful for you to take back from them anything that you have given them [as dowry], except where both fear that they may not be able to maintain the limits ordained by Allah.⁴²⁰ If you fear that they would not be able to maintain the limits ordained by Allah, then there is no sin on either of them if she gives back [her dowry] for her release. These are the limits set by Allah, so do not transgress them. Those who transgress the limits set by Allah are the wrongdoers. If he divorces her [for the third time], she is no longer lawful for him until she marries another husband. If the latter divorces her, there is no sin on both of them if they reunite, provided they feel that they can keep [within] the limits set by Allah. These are the limits of Allah, which He makes clear for people who have knowledge. Divorce is twice and if he has divorced her [the third time], then she is not lawful to him afterwards until she has married another husband.” (Q, 2:229-230)

Divorce becomes irrevocable in four cases:

1. The case mentioned above.⁴²¹

this view from a number of perspectives, and anyone exposed to his arguments on this issue cannot go against this view. Similarly, he has chosen the view that the vow to divorce one's wife is like all other oaths requiring expiation. This view is to be adopted in my opinion. Similarly he has established that divorce issued by an inebriated person is not applicable. This is the case with all other agreements that he makes, and his confession is not considered.” See *al-Mukhtārāt al-Jalliyah*, pg. 108.

⁴²⁰ Meaning, they are unable to deal with each other in an equitable manner. [TN]

⁴²¹ Where he has divorced her for the third time. [TN]

2. If the husband divorces his wife prior to consummation of the marriage. This is based on Allah's saying,

﴿يَأَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوْهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْدُونَهَا﴾

"You who believe, if you marry believing women and then divorce them without having sexual intercourse with them, then there will be no waiting period with respect to them." (33:49)

3. If the marriage is invalid.
4. If it was done in exchange for compensation.⁴²²

As for any other case, then divorce is revocable, meaning, the husband has the right to take back his wife as long as she is still observing her waiting period. This is due to Allah's statement,

﴿وَيُعُولُنَّ أَحَقُّ بِرَدَهُنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا﴾

"Their husbands are more entitled to take them back in this [period], if they desire reconciliation." (Q, 2:228)

The ruling of a woman who is taken back [by her husband] in a revocable divorce is the same as other wives, except in the equal division of the husband's time.

It is legally required for a person to declare the marriage, divorce, retraction of a divorce (*ruj'ah*)⁴²³ and to have witnesses for them. This is due to Allah's statement,

﴿وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ﴾

"Take as witness two just persons from among yourself." (Q, 65:2)

As well as the *hadīth*,

ثَلَاثٌ جَدُّهُنَّ جَدٌّ، وَهُزْلُهُنَّ جَدٌّ: النَّكَاحُ، وَالْطَّلاقُ، وَالرَّجْعَةُ.

⁴²² Meaning, they are unable to deal with each other on an equitable basis. [TN]

⁴²³ The Shaykh has clarified that separation (*firāq*) turns into a *bā'in firāq* (irrevocable divorce) in six cases. He mentions these four and adds: when the husband dies, or when the marriage is cancelled from his side due to a compelling factor. See *Nūr al-Baṣā'ir*, pg. 55.

"Three things when said seriously are taken as serious and when said in jest are taken as serious: marriage, divorce, and reconciliation [of a divorce]."⁴²⁴

It is also reported from ibn 'Abbās that the Prophet said,

إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَا، وَالنُّسُيَانَ، وَمَا اسْتُكْرُهُوا عَلَيْهِ.

"Allah has forgiven my community for their [unintentional] mistakes, forgetfulness, and what they commit under compulsion."⁴²⁵

⁴²⁴ The Shaykh concluded elsewhere that the revocation of divorce is not obtained by mere resumption of sexual intercourse with the divorced wife. The husband has to have a clear intention of revocation to accompany such steps. See *al-Mukhtārāt al-Jaliliyyah*, pg. 109.

⁴²⁵ Abū Dāwūd, no. 2194; Tirmidhī, no. 1184, who called it *ḥasan garīb*; ibn Mājah, no. 2039; al-Dāraqutnī, no. 50; al-Ḥakīm, 2/197, who called it *ṣahīḥ*.

-CHAPTER-
ILĀ', ZIHĀR, & LI'ĀN

[Ilā']

Ilā' is when a husband swears an oath⁴²⁶ to not have sexual relations with his wife for an indefinite period of time or a time that exceeds four months. If during this time the wife requests her right to have sexual relations with her husband, then he is commanded to fulfill it and a period of four months is set for him. If he has sexual relations with his wife during this period, then he is required to offer an expiation for breaching his oath. If he refuses to do so, then he is made to divorce her. This is due to Allah's statement,

﴿لِلَّذِينَ يُؤْلُونَ مِن نِسَائِهِمْ تَرْبُصُ أَرْبَعَةُ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ عَفُورٌ رَحِيمٌ وَلَمْ يَعْزِمُوا الظَّلَاقَ ﴾
ۚ
فَإِنَّ اللَّهَ سَمِيعٌ عَلَيْهِ ﴾
ۚ

“Those who take an oath to abstain from their wives⁴²⁷ must wait four months, but if they go back,⁴²⁸ then Allah is Most Forgiving, Most Merciful. However, if they decide on divorce, then Allah is All Hearing, All Knowing.” (Q, 2:226-227)

[Zihār]

Zihār is when a husband says to his wife, “You are [as forbidden to me] like the back of my mother,” or any similar words that denote an explicit forbiddance of his wife for him. Such utterance is a rejected act and a false statement. Although the wife does not become forbidden for him through an utterance, but it is not permissible for him to have sexual intercourse with her until he does that which Allah commands in His statement,

⁴²⁶ Ibn Mājah, no. 2045; al-Dāraqutnī, no. 497; al-Hākim, 2/198, who called it *ṣahīh* based on the conditions of Būkhārī and Muslim.

⁴²⁷ The Shaykh declared the following view as sound: *Ilā'* (a vow not to have sexual relationship) is affected through an oath by the Almighty, divorce, freedom, and other acts known as an undertaking. This is because the expression in the following verse is general in nature, “For those who declare *ilā'* with their wives.” See *al-Mukhtārāt al-Jalliyah*, p. 109.

⁴²⁸ Meaning, do not have sexual relations with them. [TN]

"Those who make their wives unlawful for themselves through *zihār* and wishes to free themselves from what they uttered, [the penalty] is the freeing of a slave before they touch each other. That is what you are admonished to do. Allah is All Aware of what you do. He who does not find [the means to do that] must fast two consecutive months before they touch each other. If he is unable [to fast], then he should feed sixty poor people. That is so that you may believe in Allah and His Messenger. These are the limits set by Allah, and for the disbelievers there is a painful torment." (Q, 58: 3-4)

Therefore, the husband is required to emancipate a believing slave who is free of any defect that would hinder him from carrying out his work. However, if he cannot afford this, then he must fast for two consecutive months. If he is unable to do even this, then he must feed sixty poor people. All this applies whether *zihār* was absolute [in which no time period was mentioned] or for a fixed time period, such as the month of Ramadān or anything similar.

In regards to making, through the utterance of a statement, one's female slave forbidden, or declaring some permissible food or clothing as forbidden, and other similar things upon oneself, it entails offering an expiation for breaching an oath.⁴²⁹ This is due to Allah's statement,

﴿ يَأَيُّهَا الَّذِينَ آمَنُوا لَا تُحِرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ
الْمُعْتَدِينَ ٨٧ ﴾ وَكُلُّا مِمَّا رَزَقَكُمْ اللَّهُ حَلَالًا طَيِّبًا وَأَنْقُوا اللَّهُ الَّذِي أَنْتُمْ بِهِ مُؤْمِنُونَ لَا
يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَدَدْتُمُ الْأَيْمَانَ فَكَفَرُرَبِّهِ إِطْعَامُ عَشَرَةِ
مَسْكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِكُمْ أَوْ كِسْوَتِهِمْ أَوْ تَحْرِيرُ رَقْبَةٍ فَمَنْ لَمْ يَجِدْ فَصُومَاتُ ثَلَاثَةِ
أَيَّامٍ ذَلِكَ كَفَرَةٌ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَأَحْفَظُوا أَيْمَانَكُمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ أَيْمَانَهُ لَعَلَّكُمْ
تَشْكُرُونَ ٨٨ ﴾

Believers, do not make forbidden the good things that Allah has

⁴²⁹Meaning, they change their mind and return to their wives within this period. [TN]

made lawful to you. Do not transgress, [for] Allah does not love the transgressors. Eat what Allah has provided for you of the lawful and good things, and fear Allah in Whom you believe. Allah will not take you [to task] for what is thoughtless in your oaths, but He will take you to task for your oaths that you have sworn in earnest. The expiation [of an oath is to] feed ten poor people with food equivalent to what you would normally feed your own families, or to clothe them, or to set free a slave. Whoever cannot afford [that], should fast for three days. That is the expiation for the oaths that you have sworn, [so] protect your oaths. Thus, Allah makes clear to you His revelations so that you may be grateful. (Q, 5:87-89)

[Li‘ān]

Li‘ān refers to the husband accusing his wife of adultery. Therefore, the crime of defamation is charged against him and he is subjected to eighty lashes unless he does either of the following:

1. Establishes the proof for it through the testimony of four just witnesses, in which case the legal punishment (*hadd*) will be carried out on the wife.
2. He invokes Allah's curse upon the one who is lying (*mulā‘anah*). This will remove the legal punishment of defamation from being applied on him.

The method for *li‘ān* has been described by Allah in *Sūrah an-Nur*, where He says,

﴿ وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَّهُ شُهَدَاءَ إِلَّا أَنفُسُهُمْ فَشَهَدَهُ أَحَدُهُمْ أَرْبَعُ شَهَدَاتٍ بِإِلَهَهِ إِنَّهُ لَعِنَ الصَّادِقِينَ ٦ وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ٧ وَيَدْرُوُ عَنْهَا الْعَذَابَ أَنْ تَشَهَّدَ أَرْبَعُ شَهَدَاتٍ بِإِلَهَهِ إِنَّهُ لَعِنَ الْكَاذِبِينَ ٨ وَالْخَامِسَةُ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ٩ ﴾

“Those who accuse their wives and have no witnesses but themselves, let the testimony of one of them be to swear by Allah four times that he is one of the truthful, and the fifth that the curse of Allah is on him if he is one of those who lie. However, it will avert punishment from her that she bear witness four times

by Allah that he is one of the liars, and the fifth that the wrath of Allah be upon her if he is one of the truthful." (Q, 24:6-9)

Therefore, *li'ān* is observed in the following way:

- a. The husband testifies five times, swearing by Allah, that she is an adulteress. In the fifth testimony he says, "May the curse of Allah be upon me if I am speaking a lie."
- b. The wife then testifies five times, swearing by Allah, that he is a liar. In the fifth testimony she says, "May the wrath of Allah be upon me if he is speaking the truth."

After the completion of this [the following occurs]:

- a. The legal punishment for the husband is dropped.
- b. The legal punishment for the wife is voided.
- c. Both spouses are separated, and they are permanently forbidden for each other.
- d. The child is not attributed to the husband, if he was mentioned as part of the *li'ān*,⁴³⁰ and Allah knows best.

⁴³⁰ The Shaykh has said that a child is attributed to the legal father except in two cases:

1. If the husband opts for *li'ān*, and
2. If there is no chance for the husband to have approached the woman and lived with her for at least nine months after the marriage, or he could not have possibly been with her because they were living separate for a long time.

Under these cases it is known that the child cannot be his. See *Nūr al-Baṣā'ir*, pg. 54.

-CHAPTER-
KHUL⁴³¹

Khul' refers to a separation initiated by the wife in exchange for some type of compensation paid by her or a third party. The ruling for this is based on Allah's words,

فَإِنْ خِفْتُمْ أَلَا يُقْبِلُهَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا أَفْدَتْ بِهِنَّ

"If you fear that they would not be able to maintain the limits ordained by Allah, then there is no sin on either of them if she gives back [her dowry] for her release." (Q, 2:229)

Thus, if the wife dislikes something about her husband, such as his mannerism or his physical characteristic, and fears that she will not be able to maintain the limits ordained by Allah if she stays with him, then there is no harm if she offers him compensation in exchange for him divorcing her.⁴³² It is valid whether it is a small or large amount [of compensation] as long as the divorce is issued by the one whose pronouncement of it is legally valid. However, if *khul'* is sought for a reason other than her fearing that she will not be able to maintain the limits ordained Allah, then its consequences have been mentioned in the following *hadīth*,

أَيُّمْ امْرَأَةٌ سَأَلَتْ زَوْجَهَا الطَّلاقَ مِنْ غَيْرِ بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ.

"Any woman who asks her husband for a divorce without a good reason, then the smell of Paradise is forbidden for her."⁴³³

⁴³¹ This Chapter in the original Arabic was under the Book of Dowry, but has been moved to this Book as it pertains to this discussion.

⁴³² *Khul'* is not counted as a *talāq* even if the word *talāq* is used and the intention of it is involved in this form of separation. The Shaykh has confirmed this view as authentic in *al-Mukhtārāt al-Jalliyah*, (pg. 108). He said that if the ruling authority cancels a marriage due to some valid point, such as the delinquency of the husband in regards to provisions and sexual relations, then the annulment is complete. It is not divided according to the number of *talāqs*, and the wife becomes *bā'in* (irrevocably separated), and it is similar to a triple *talāq*. However, the man is permitted to take the woman back in marriage with her consent through a new marriage contract in presence of witnesses and with the approval of her *walī*. This can even be done during her *iddah* period. See *Nūr al-Baṣā'ir*, pg. 51.

⁴³³ Ahmad, 5/277; al-Dārmī, 2/162; Abū Dāwūd, no. 2226; Tirmidhī, no. 1187, who called it *ḥasan*; ibn Mājah, no. 2055; al-Ḥākim, 2/200, who said that it is *ṣaḥīḥ* according to the conditions of Būkhārī and Muslim.

Book of the Waiting Period (*Kitāb al-‘Iddah wa al-Istibrā‘*)

[‘Iddah]

The ‘iddah is the waiting period observed by the woman⁴³⁴ whose husband has left her through divorce or death. Concerning the separation due to death, then it entails that when the husband dies, the wife observes the ‘iddah no matter what. [Therefore:]

- a. If she is pregnant, then her ‘iddah is until she delivers the child. This is due to Allah’s statement,

﴿وَأُولَئِنَّ أَجْلَهُنَّ أَنْ يَضْعَنَ حَلْهُنَّ﴾

“Those who are pregnant, their ‘iddah is until they deliver.”
(Q, 65:4)

This is general for the case of separation, whether it is from death or during life [through divorce].

⁴³⁴ The Shaykh clarified elsewhere that a woman with whom sex has occurred due to confusion [confusing her with one’s legal spouse or slave girl], then is not obliged to observe the usual *iddah* for married women. Instead, she waits for a single menstrual cycle to ascertain that she is not pregnant. See *al-Mukhtārāt al-Jalliyah*, pg. 110.

- b. If she is not pregnant then her 'iddah is four months and ten days.

A woman observing 'iddah [due to her husband's death] must observe mourning through the following:

- a. Avoid adorning herself by using perfume, jewelry, or embellishing herself by coloring her hair with henna, and anything that is similar.
- b. Remains in the house where she was living with her husband when he died, only leaving the house during the day for necessity. This is due to Allah's statement,

﴿وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَرِيَضُنَّ بِأَنفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا﴾

"Those of you who die and leave behind wives, they [the wives] shall wait four months and ten days [before remarrying]." (Q, 2:234)

As for separation that occurs while the husband is alive, [then the following applies]:

- 1. If the husband divorces the wife prior to consummation, then there is no 'iddah for her. This is evident from the words of Allah,

﴿يَأَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكْحَثُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا

﴿لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْدُونَهَا﴾

"You who believe, if you marry believing women and then divorce them without having sexual intercourse with them, then there will be no waiting period with respect to them." (Q, 33:49)

- 2. If he consummated the marriage with her or he was alone with her, then the following will apply:

- a. If she is pregnant, then her 'iddah continues until she delivers the child, irrespective of whether the duration is short or long.
- b. If she is not pregnant, then this needs further elaboration:

- i. If she has menstrual periods, then her 'iddah is the completion of three full menstrual cycles. This is due to Allah's statement,

﴿ وَالْمُطْلَقَاتُ يَرِبَّضُنَّ بِأَنفُسِهِنَّ ثَلَاثَةَ فُرُوعٍ ﴾

“Divorced women should wait three [menstrual] periods.” (Q, 2:228)

- ii. If she does not have any menstrual periods—such as a young girl, the one who does not menstruate, and the one experiencing menopause—then her period is three months. This is due to Allah's statement,

﴿ وَالَّتِي يُؤْتَنَ مِنَ الْمَحِضِ مِنْ نَسَاءِكُنْ إِنْ أَرَبَّسْتُمْ فَعَدْتُمْ ثَلَاثَةَ أَشْهُرٍ وَالَّتِي لَمْ يَحْضُنْ ﴾

“Those who have passed the age of menstruation, and you are in doubt [about their periods], then their 'iddah is three months, as well as for those who have not received their menstruations.” (Q, 65:4)

- iii. If she has menstrual periods but they have stopped because of breastfeeding, or anything similar, then she waits for her menses to continue as normal and then she begins her 'iddah from there.⁴³⁵
- iv. If her menstrual periods have stopped and she does not know the cause of it, then she waits nine months as a precaution that she might be pregnant, and then begins her three months of 'iddah.
- v. If after the completion of her 'iddah she has doubts regarding the signs of pregnancy, then she does not marry until her doubts are dispelled.

Concerning the husband who is missing, the wife should wait until

⁴³⁵ The Shaykh said elsewhere that under the scenario where there is the probability of the husband's return, the woman should observe a waiting period of a year, nine months for pregnancy and three for her 'iddah. The view that says that a woman should wait for him until she enters menopause entails a great injury to the woman, and the *shari'ah* does not allow this type of infliction on the believers. See *al-Mukhtārāt al-Jalliyah*, pg. 110.

he has been declared dead by the ruler [or someone appointed by him], and then she begins her 'iddah.

As for alimony, it is only given in the following cases:

1. For a woman who is observing 'iddah after a revocable divorce.
2. For a woman whose husband is alive and separates from her while she is pregnant. This is due to Allah's words,

﴿وَإِن كنَّ أُولَئِنَّ تَحْلِيلٍ فَاتِّقُوا عَلَيْهِنَ حَقَّ يَضْعَفُ حَلَاهُنَ﴾

"If they are pregnant, then spend on them until they deliver." (Q, 65:6)

[*Istibrā'*]

Istibrā' refers to the waiting period of a female slave whose master has had sexual relations with her. [If she marries or is sold], her husband or new master should not have sexual relations with her, except under the following cases:

- a. After the completion of one menstrual cycle.
- b. If she does not have any menstrual cycles, then she should ascertain that she is not pregnant by waiting one month.
- c. If she is pregnant, then after delivery of the infant.