

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الصَّلَاةُ وَالسَّلَامُ عَلَيْكَ يَا رَسُولَ اللَّهِ

Assalato Wasallaamo 'Alaika Yaa Rasool Allah ﷺ
Wa 'Alaa Aalika Wa As Haabika Yaa Noor Allah ﷺ

Divorce and Waiting Period

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CONTENTS

Literal Translation of Divorce.....	4
Conventional Meaning of Divorce.....	4
Types of Divorce.....	4
Best (Ahsan) Divorce	4
Good (Hasan) Divorce	5
Reprehensible (Bad'i) Divorce	5
Why Divorce Was Made Permissible?.....	6
Divorce Only as a Last Resort.....	6
Qur'anic Code for Keeping Relationships Intact	7
Limit of Divorce.....	9
Divorce and Khula are Disliked	10
Happiness of Satan.....	11
Divorce Given in Anger.....	12
Compulsory to Divorce	13
Iddat (Waiting Period).....	15
Types of Iddat	16
Responsibilities of the Husband During Iddat.....	18
Compulsory to Mourn During Iddat.....	21
Method of Iddat During Days of Ignorance	24
A Woman Should Remarry if She is Widowed.....	25
Mourning Anyone Other Than a Husband	26
Swearing Oaths.....	27
Types of Oaths	28
Conditions for Taking Oath	29
Words of Oath.....	30
Khula.....	32
Khula – Description and Orders.....	33
Zihar – Comparing One's Wife to One's Mother	36
Definition of Zihar.....	39
Result of Zihar	40
Compensation for Zihar	40
Aims and Objectives	44



**Nahmaduhu Wa Nusalli 'Alaa Rasoolihil Kareem, Amma
Ba'ad!**

Marriage (Nikah) is a pure relationship and its foundation was laid in Paradise. Sometimes however, roadblocks like incompatibility make it difficult to continue this relationship permanently. For this reason, one of the methods that Islamic law has allowed for this relationship to be terminated is divorce. What methods of reconciliation should be attempted before divorce? Under what circumstances should divorce be given? What is the method of giving divorce? It is necessary to know the answer to questions like these. Therefore, let us find out about divorce based on the Qur'an and Sunnah and if the need arises, act upon the methods shown in them.

Literal Translation of Divorce

Untying the knot of marriage, breaking it or letting go of it.

Conventional Meaning of Divorce

Marriage makes a woman committed to her husband. Removing this commitment is called divorce. (*Bahar-e-Shariat*)

Types of Divorce

There are three types of divorce – Best (Ahsan), Good (Hasan) and Reprehensible (Bad'i)

Best (Ahsan) Divorce

In the days when a woman is pure (not menstruating) and sexual relations have not been carried out with her, one divorce should be given. The waiting period (Iddat) now begins. The man has the right to reconcile (known as Ruj'u) during this time but if the Iddat lapses then it is not reversible. However, the husband and wife can still reconcile with a fresh

Rights of Spouses

Nikah after which only one or two divorces will remain (not three).

Good (Hasan) Divorce

In the days when a woman is pure (not menstruating) and sexual relations have not been carried out with her, one divorce should be given. After one menstrual cycle has passed a second divorce should be given followed by sexual abstinence. After a second menstrual cycle has passed and without carrying out sexual relations a third divorce should be given. After the third menstrual cycle the woman is now forbidden for him and they cannot now remarry without a Halalah.

Reprehensible (Bad'i) Divorce

There are three forms of reprehensible divorces:

1. Giving a divorce three times in one gathering or sitting regardless of whether 'I divorce you three times' is said once or saying 'I divorce you' three times.
2. Giving one divorce during a woman's menstrual cycle. It is compulsory (Wajib) to reconcile (do Ruj'u) after this divorce but the divorce will count as the first divorce.
3. Giving divorce once in the days when sexual intercourse has taken place.

It is a sin and the person who divorces in one of the reprehensible manners is a sinner regardless of the manner or circumstances that the divorce is given in.

If one of two divorces are given with the word 'divorce' mentioned then this is reversible (known as Talaq Raj'i). If the divorce is insinuated or implied but the word 'divorce' is not used then this is non-reversible (Talaq Baayin). For example, with the intention of divorce a man says to his wife, 'You are like my mother.' It is possible to reconcile a reversible divorce but the original divorces will still be counted; if one or two divorces were given then after reconciliation only one more divorce will remain.

Rights of Spouses

A non-reversible divorce immediately terminates the marriage. However, if less than three non-reversible divorces have been given then as long as both parties are in agreement, they can remarry but the original divorces will still count.

Why Divorce Was Made Permissible?

The aim of Islam is that all possible efforts should be made in order to ensure that those who are joined together in marriage remain married to each other all their lives. If disagreements or misunderstandings arise between them then family and community members should help them clear up their misunderstandings and make peace between them. If all attempts are made at reconciliation but the couple are not able to resolve their differences and there is a danger that they will not be able to abide by the limits ordained by Allah Ta'ala, and the aim and benefits of marriage will be lost, then because of their dislike or hatred for each other they should not be forced to remain together. In this instance, for their benefit, the benefit of their families and society in general, the man should not be stopped from divorcing his wife. Another method of terminating the marriage is for the wife to give something to her husband and have the marriage annulled (Khula) or for an Islamic judge (Qazi) to annul the marriage. A fourth method is for the two Muslim arbitrators who were in charge of trying to resolve the matter declaring the marriage annulled and terminated.

Divorce Only as a Last Resort

The Qur'an teaches us that even if a husband does not like his wife, he should try and be accommodating – Allah Ta'ala states:

وَعَايَشُوا هُنَّ بِالْمَعْرُوفِ ۚ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَىٰ أَنْ

تَكْرَهُهُمَا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾

“...and deal kindly with them; and if you do not like them, so it is possible that you dislike a thing in which Allah has placed abundant good.” (*Surah Nisaa Verse 19*)

Hazrat Muharib states that RasoolAllah ﷺ said, “Of all the things permitted by Allah Ta’ala, divorce is the most hated thing in the Sight of Allah Ta’ala.” (*Sunan Abu Dawood Vol 1 Page 296*)

Hazrat Ibne Umar رضي الله عنه narrates that RasoolAllah ﷺ said, “Of all permissible things the most hated by Allah Ta’ala is divorce.” (*Sunan Abu Dawood Vol 1 Page 296*)

In light of this guidance from the Qur’an and Sunnah it is essential for a husband to try everything possible in order to avoid divorce. If it is impossible then he should give one reversible divorce because that will give them three months (time of Iddat) to reconsider otherwise after the waiting (Iddat) period they will be separated. Nowadays, people think that divorce can only be given three times so they themselves either give divorce three times or write three divorces in front of a lawyer or commissioner of oaths (Three divorces makes the divorce final and non-reversible). When they realise that they have given three divorces and that the marriage is now over they panic and come running to Scholars (Muftis) and ask for the method to reverse the divorce. They even become willing to carry out the (incorrect) form of Halalah even though this form of Halalah has been cursed by RasoolAllah ﷺ. However, in order to try and save their children from misery and save themselves from other evils, both parties are willing to reconcile at any cost.

Qur’anic Code for Keeping Relationships Intact

Allah Ta’ala states:

Rights of Spouses

وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ ۚ فَإِنْ
أَطَعَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾ وَإِنْ خِفْتُمْ شِقَاقَ
بَيْنِهِمَا فَاْبْعَثُوا حَكَمًا مِّنْ أَهْلِهِمْ وَحَكَمًا مِّنْ أَهْلِهَا ۚ إِنَّ يُرِيدَ إِصْلَاحًا يُوَفِّقِ اللَّهُ
بَيْنَهُمَا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴿٣٥﴾

“...and the women from whom you fear disobedience, (at first) advise them and (then) do not cohabit with them, and (lastly) beat them (lightly); then if they obey you, do not seek to do injustice to them; indeed Allah is Supreme, Great. And if you fear a dispute between husband and wife, send an arbitrator from the man’s family and an arbitrator from the woman’s family; if these two wish reconciliation, Allah will unite them; indeed Allah is All Knowing, Well Aware.”

(Surah Nisaa Verses 34-35)

In commentating on these verses, Hazrat Allama Peer Muhammad Karam Shah Azhari writes:

‘Along with many good natured women there are also some women who have a very hot temper and temperament and these verses teach the method of trying to reform them. ‘Disobedience’ here means where the wife, because of pride, arrogance and hatred, goes against the orders of the husband. ‘Fear’ does not mean suspicion or doubt but it means complete certainty (Qurtabi). This means that if you are completely certain of their disobedience then do not lose control or your temper, but rather first calmly explain things to them. If this does not work then do not spend the nights with them and do not talk about love and sexual relations with them. The woman who has some virtue and nobility in her will undoubtedly reform herself at this stage. However, if this does not work either then you can beat her but the beating should be light and should not be hard enough that it would leave marks or bruises on her body. There is further clarification on this from Hazrat Ibne Abbas رضي الله عنه who narrates

Rights of Spouses

that if the situation is such that you must beat her then beat her with a Miswak or similar light thing. Nowadays, many ignorant people beat their wives like animals; Islam does not give any such permission whatsoever.

If a woman stops her defiance and becomes obedient to her husband then it is essential for him to stop being oppressive and treat her with love and respect. This is the order of the Lord Who is the Greatest of all and the results of turning away from His orders are extremely dangerous.

However, if their efforts are not successful and it seems like the situation will only end in divorce then the husband and wife or their families should choose two people to listen to both their grievances and help them find a solution. If the dispute goes to court then the judge should not hastily dissolve the marriage. Rather he should use his authority to order them to try and find a solution. If the arbitrators and judges guide them sincerely then the guidance of Allah Ta'ala will undoubtedly be with them.

According to some commentators the words '**if these two wish reconciliation**' means that if the husband and wife desire reconciliation sincerely then Allah Ta'ala will create the means for them to be reconciled.' (*Tafseer Zia-ul-Qur'an Vol 1 Pages 342-343*)

Limit of Divorce

Allah Ta'ala states:

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِعُرْوَةٍ أَوْ تَسْرِيمٍ بِإِحْسَانٍ ط

"This type of divorce is up to twice; the woman must then be retained on good terms..."

(*Surah Baqarah Verse 229*)

Rights of Spouses

It states in Khaza-inul Irfan that a lady came to RasoolAllah ﷺ and said that her husband had stated that he will divorce her and then reconcile with her. Each time he divorces her one time and then when the waiting period (Iddat) is almost over he reconciles with her. He then divorces her again and reconciles and wants to keep her a prisoner like this for life. Upon this incident the above verse was revealed stating that reconciliation is only for two divorces and there is no reconciliation after the third divorce. (*Khaza-inul Irfan*)

Divorce and Khula are Disliked

Hazrat Thaubaan ؓ narrates that RasoolAllah ﷺ said:

“The fragrance of Paradise is unlawful on the woman who seeks divorce from her husband without extreme necessity.”

(Ibne Majah)

Hazrat Ibne Umar ؓ narrates that RasoolAllah ﷺ said:

“The most disliked lawful deed in the Sight of Allah is divorce.”

(Abu Dawood)

Hazrat Abu Hurairah ؓ narrates that RasoolAllah ﷺ said:

“The women who seek freedom from marriage and seek Khula are hypocrites.” (*Nisaa'i*)

This means that the women who grieve their husbands in order that they will be pressured into divorcing them or seek khula (divorce obtained on the wife's initiative) are hypocrites because they appear to love their husbands, but in reality they have hatred for them in their hearts and seek freedom from them.

These Ahadith clearly show how disliked and despised divorce and khula are to RasoolAllah ﷺ and the reason he is

Rights of Spouses

making apparent his intense dislike is so that his followers will try everything possible in order to avoid divorce.

In short, divorce is lawful but is extremely disliked by Allah Ta'ala and His Beloved Prophet ﷺ and worthy of wrath and anger. Therefore both men and women should attempt to stay out of the target of this wrath and should try and spend their lives as each other's coverings and lead a happy, peaceful life. Especially once Allah Ta'ala has also granted you children because after children are born the parent's lives are not for themselves, they are for training and guiding their children. Whenever a man or a woman thinks about separation they should look at their beautiful children and think that if we separate how will these children receive our joint love. The peace and successful training and guidance of children depends wholly on receiving joint love from their parents. If children are denied this joint love, then regardless of having enormous wealth, this lack of love cannot be compensated for by either the father or mother alone. If this consideration is kept at the forefront then the thought of divorce will not enter the mind, the home can be saved and the children's future will not be ruined. Examine closely what the Beloved Prophet ﷺ is telling us.

Happiness of Satan

Hazrat Jaabir رضي الله عنه narrates that RasoolAllah ﷺ said, "Satan places his throne on water (every morning he places his throne on the water and opens his register and gives his disciples their duties for that day). Then he sends this group amongst people in order to cause and create strife and conflict. In the evening they return and relate everything that they did during the day. They all describe their day one by one until one of them says, 'I did not leave such and such a person alone until I made sure I created conflict and disagreement between him and his wife.' Upon hearing this Satan the

Rights of Spouses

accursed is overjoyed and hugs this disciple of his and says, 'You have done really well.'" (*Muslim Shareef*)

If this conflict causes divorce then it is bad but if it causes separation without divorce it is even worse because that makes it more likely for them to become embroiled in further sins and disobedience. Nevertheless, Satan is extremely happy with those of his disciples who cause friction between a husband and wife. Have you ever thought about why this is? It is because he has 'killed many birds with one stone.' He has broken the relationship that was joined together by Shariah, he has made it easier to tempt the man and woman to commit sin, the relationship between the two families has been destroyed as they are now enemies and not only are the children's futures ruined but there is now more likelihood of them becoming mischievous and troublesome. The more you think about it, the reason for Satan being so happy will become more and more apparent.

If a husband and wife argue, even if it is every day, it is no big deal as this is human nature and happens all the time but as soon as the thought of divorce enters the mind during an argument, realise that Satan has now got involved in the argument. Before he can be successful in his aim, recite curse on him (La Hawla) and end the argument and save your own and your children's futures from being ruined.

Divorce Given in Anger

Remember that Satan uses the help of anger in order to create friction, arguments and divisions. He kindles the fire and the argument starts. As the fire rages the argument gets worse. Regardless of whether the woman asks for a divorce or not, the man says the word 'divorce.' As soon as their anger subsides, they both realise what they have done and go running to Scholars (Muftis) in order to find a solution. They think that because the divorce was given in anger it is not valid. If they thought about it for a moment they would realise

Rights of Spouses

how illogical and stupid their thinking is. No one stabs or shoots a person with love. When anger and hatred reaches its height the weapon is fired. Regardless of whether a bullet is fired with love, happiness or anger, it will always do what it is designed to do and that is to kill. Divorce is like a bullet to the relationship of marriage and regardless of how it is fired, it will take the life of this relationship. Anger is ignited, the bullet is fired and the relationship is destroyed. If only one or two bullets would be fired there would be some room to fix the wound and bring the relationship back to health. However, Satan is a very cruel enemy and always makes sure that all three bullets are fired in order to take the life of both the husband and wife. The Scholars now do not have any medicine with which to give life back and even if they do have the medicine, it is so bitter that no self respecting person is willing to drink it. This is why the Shariah has made anger unlawful and why RasoolAllah ﷺ ordered us to stay away from anger in order to safeguard ourselves from its damaging effects.

Hazrat Abu Hurairah رضي الله عنه narrates that on one occasion RasoolAllah ﷺ said repeatedly, "Do not become angry, do not become angry." Then he added, "A strong person is not the person who throws his opponent to the ground. A strong person is the person who contains himself when he is angry." How weak is that person whose fiery anger set fire to his house and he is unable to put out the fire. Regardless of this, if a person gives divorce in anger the divorce is valid and applies.

Along with many comforting gifts, marriage (Nikah) also gives a man a very destructive weapon. A wise person is he who makes use of the comforting gifts in order to make his life restful, pleasing and secure and puts the destructive weapon in a corner of the house and forgets about it.

Compulsory to Divorce

Rights of Spouses

Sometimes it is compulsory (Wajib) and essential to use the weapon of divorce and terminate the relationship. For example, if the man is born impotent or because of black-magic or some other illness he is unable to perform sexual relations and satisfy his wife, and it does not seem as though he will be cured, then the man himself should divorce his wife and free her because in this situation the chances of the woman committing sin is greatly increased. Even if the woman is a very pious woman, her life (with such a man) will still not be peaceful and the way a married home should be. If a man does not free the wife in this situation then he is guilty of being oppressive and making things difficult for his wife, or will be guilty of pushing her into committing acts of sin and both of these crimes are great sins. In order to save himself from these sins he should divorce his wife.

It has been stated that it is better and more preferred to divorce in some situations. For example, if the woman does not perform Salah, or grieves her in laws and family members, or hates them and does not like to even see them, or is forced into this marriage and she is attracted to someone else, or she is dishonest with his wealth and property. In all these and similar situations it is better to divorce such a woman and free yourself from the harmful and damaging effects of her actions. However, this should only be done after all Islamic and societal methods of reforming and correcting her have failed.

A similar incident was presented in the court of RasoolAllah ﷺ when Habiba binte Sahal, who was the wife of Thaabit bin Qais رضي الله عنه, came and asked for separation (Khula) from him as he was not very handsome, was short and dark whilst Hazrat Habiba, who was the sister of Abdullah bin Ubai, was tall and very beautiful. Therefore she did not find Hazrat Thaabit رضي الله عنه attractive and came to RasoolAllah ﷺ and said, "I do not have any problem with Thaabit's character or his piety as he is a very nice and religious person. However, I do not want infidelity to enter my religion meaning I do not want to praise

Rights of Spouses

him with my tongue but do not love him in my heart. This is deception which is not allowed in Islam, and therefore please ask him to divorce me." Upon hearing this RasoolAllah ﷺ did not display great anger but he asked, "Will you return the orchard to Thaabit that he gave you as Mehr?" She replied that she would. RasoolAllah ﷺ called Hazrat Thaabit ؓ and said, "Thaabit take this orchard of yours and give her one divorce." Hazrat Thaabit ؓ did as he was ordered and gave her one divorce.

This incident makes it clear that if there is no love between a husband and wife and they do not like, love or find each other attractive, then rather than force them to spend their lives together, it is better for them to separate and in this situation they should divorce.

Iddat (Waiting Period)

Iddat means to calculate and count. In Islamic law Iddat is the counting and calculating of the days between one Nikah ending and another Nikah being permissible. It is forbidden to perform marriage during the days of Iddat and it is not liked to even talk about or prepare for marriage during these days. Iddat is only for women and not for men because the aim of Iddat is to ensure the woman is not pregnant and ensuring there is no confusion as to who the father is if she is pregnant. The length of Iddat for a pregnant woman is until she gives birth and as soon as she gives birth her Iddat is over. This obviously only affects women and does not affect men. However, if a man wants to marry a woman who he is not allowed to marry whilst being married to his current wife (i.e. her sister, niece, aunt etc) then he must divorce his current wife, wait until her Iddat is over and then he can marry his new wife. This is because during the Iddat period they are still considered married and can reconcile and therefore marrying his new wife during this time will mean he is married to them both at the same time and this is not allowed.

Types of Iddat

There are three types of Iddat:

1. Iddat after death – Meaning the Iddat of the woman whose husband has passed away and she is now a widow. Her Iddat is four months and ten days.
2. Iddat after divorce which is three menstrual cycles regardless of whether the woman is of an age where she has regular menstrual cycles or has passed the age of menopause which is approximately 55 years of age.
3. Iddat of a pregnant woman is as soon as the child is born regardless of whether that is right after divorce has been given or some days or weeks after that. There is no Iddat for a woman who is divorced before sexual relations have taken place.

We have been ordered through RasoolAllah ﷺ to think about the woman's Iddat before divorcing her. This means that divorce should be given when she is pure and sexual relations have not taken place with her so that her days of Iddat are not lengthened and she does not have to wait longer in order to get remarried. Allah Ta'ala has stated:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

“O Beloved Prophet! When you people divorce women, divorce them at the time of their completing the appointed period, and keep count of the appointed period...”

(Surah Talaq Verse 1)

It is a great blessing of Islamic law that it aims to remove difficulties for women by ordering men to ensure that if they intend to divorce their wives, keep into account their Iddat and divorce them at a time when they will have the shortest time to wait to remarry. As has been mentioned earlier, this means divorce them in the days when they are pure (not

Rights of Spouses

menstruating) and you have not had sexual relations with them. If they are divorced during this time then they will only have to wait for three menstrual cycles. Due to the fact that Iddat is very important in Islamic law Allah Ta'ala specifically orders us to 'keep count' of the days of Iddat and not to make a mistake in calculating them. For those women who are past the age of menopause (do not have menstrual periods and is at approximately 55 years of age) or those younger women who for whatever reason do not have regular menstrual periods the length of Iddat is mentioned as follows:

وَالَّذِينَ يَسْتَسْنُونَ مِنَ الْحَيْضِ مَنْ دُشَّاتِكُمْ إِنْ ارْتَبْتُمْ
فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْ^ط

“And for those of your women who have no hope of menstruation, if you doubt, the appointed period is three months - and also for those who have not yet had menstruation;...”

(Surah Talaq Verse 4)

The Iddat for those who are pregnant, regardless of whether they have been divorced or widowed, is stated as follows:

وَأُولَاتُ الْأَحْصَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ^ط

“...and the appointed period for the pregnant women is up to the time they deliver their burden...”

(Surah Talaq Verse 4)

The Iddat for those women who are widowed is mentioned in Surah Baqarah. Allah Ta'ala states:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ
بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا^ع

“And those among you who die leaving wives behind them, then such widows shall restrain themselves for four months and ten days...” (*Surah Baqarah Verse 234*)

Responsibilities of the Husband During Iddat

A man does not have the authority or power to ask his wife to leave their home before the Iddat period is over so that it is easy for them if they decide and wish to reconcile. Additionally, there are more chances of them reconciling if they are living in the same house as they will be seeing and talking to each other regularly and the issues that led to the divorce may be resolved by themselves and they may decide to remain together and live harmoniously. This is the wisdom behind ordering the man to allow his wife to remain in their home during the Iddat period as Islam desires that the marriage should remain intact if at all possible. The Holy Qur'an states:

لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ ط

“...do not expel them from their houses during the appointed period nor should they leave on their own, unless they bring about some matter of blatant lewdness...” (*Surah Talaq Verse 1*)

However, as a result of the divorce, if the woman is tormenting or abusing the family members, disrespecting her husband, using foul and abusive language and generally disrupting the peace of the home then in all these instances it is permissible to force her to leave the home and it is actually better to do so. Allah Ta'ala states:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تَضْرِبُوهُنَّ لِيُضْيِقُوا عَلَيْهِنَّ ط وَ ٥
إِنْ كُنَّ أُولَاتٍ حَمِلٌ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ ء فَإِنْ أَرْضَعْنَ لَكُمْ

فَاتُوهُنَّ أَجُورَهُنَّ ۚ وَاتَّبِعُوا بَيْنَكُمْ بِالْعُرْفِ ۚ وَإِنْ تَعَاَسَرْتُمْ فَسْتَزِجْ لَهُ أُخْرَىٰ

ط ۚ لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ط ۚ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ ط

لَا يَكْفِ اللَّهُ نَفْسًا إِلَّا مِمَّا آتَاهَا ط سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۙ ۝

“Accommodate them where you also reside, according to your means, and do not harass them to make it difficult upon them; and if they are pregnant, give them the provision till they deliver their burden; then if they suckle the child for you, pay them its due; and consult with each other in a reasonable manner; and if you create hardship for one another, the child will get another breast feeding nurse. Whoever has the capacity must give provisions according to his means; and the one whose sustenance is restricted upon him, must give provisions from what Allah has given him; Allah does not burden any soul except according to what He has given it; Allah will soon, after the hardship, create ease.”

(Surah Talaq Verse 1)

These verses explain the orders for Iddat in detail so that during this important time neither the man nor woman makes any mistakes or does not fulfil the rights of the other because although divorce terminates the marriage, they still have rights over each other until the full course of Iddat has passed and these need to be respected and fulfilled. The orders that are given in these verses are as follows:

1. A woman should not be removed from the home as soon as she is divorced but the man should arrange for her accommodation according to his means. If the divorce given is a reconcilable divorce (one or two divorces) then allow her to remain in the same room as in this instance there is no veil between the man and woman. If the divorce is non-reconcilable (three divorces) then the woman should veil herself from the man and the man should arrange alternative accommodation for her.

Rights of Spouses

2. A man does not have permission to make things difficult for the divorced and helpless woman and drive her to the point where she has no other option but to leave the home. Specifically, it states that do not **'harass'** them as this will be like rubbing salt into their wounds which will case her even more pain on top of the pain of divorce. Causing pain in this manner is not permissible.
3. The responsibility for housing and providing for the woman who is pregnant lies with the man until she delivers the child. Pregnant woman are specifically mentioned separately because their helplessness is more delicate than non-pregnant women's even though the man is responsible for providing for both of them as is mentioned in verse 241 of Surah Baqarah where it states, **"And for divorced women also, is a complete provision in reasonable manner; this is a duty upon the pious."** All believers should and do fear Allah Ta'ala and they are ordered to pay for the expenses of their divorced wives until the period of Iddat is complete. **'Reasonable manner'** means the same manner that they were used to before they were divorced.
4. A pregnant woman's Iddat ends with the birth of the child and therefore breastfeeding the child is not her responsibility. Therefore, if he wants her to breastfeed the child he should pay her for it and the amount of payment will be the amount that the man and woman mutually agree to. If the man cannot pay what the woman asks for or she is unable to feed the child for any other reason like she wants to remarry and her new husband will not allow it then she cannot be forced to breastfeed the child. In this instance the man must arrange for someone else to breastfeed the child.
5. The amount of maintenance and accommodation costs depends on the financial means of the man. If he is wealthy then the costs he must pay should be similar to what wealthy people spend and if he is poor then he

Rights of Spouses

should pay according to the means of poor people. In other words, he must maintain his wife in the same manner that she was used to before the divorce. Therefore he must try and be as generous as possible and not to short change her which is why the word 'reasonable' is used here. The same order applies for widows in that their expenses should be paid for from the inheritance left by her husband and if he has not left anything then this responsibility falls on his heirs and successors.

Regardless of whether a woman is divorced or widowed, Islamic law does not allow her to be left alone and helpless. The marriage that makes a man responsible for the well-being, welfare and maintenance of a woman also insists that he fulfils this responsibility until the period of Iddat is complete even though there may be others (someone who wants to marry her or her family members) who may be willing or able to undertake this responsibility. The Qur'an and Ahadith make it quite clear that a divorced woman is not allowed to leave her home for any reason as this is strictly forbidden. She is told to ask the man to fulfil all the requirements (outside the home) as this is his responsibility and if he does not fulfil this then he is a grave sinner. A widow is allowed (if absolutely necessary) to leave her home as her husband has died and she has to perform her duties herself. If there is no-one who can help her then she is allowed out to visit the doctor and to go and buy food etc for herself as this is a necessity. However, she is not allowed to go shopping (without need), go out for a walk or fresh air, attend gatherings or visit friends etc.

Compulsory to Mourn During Iddat

Hazrat Umme Salma رضي الله عنها narrates that RasoolAllah ﷺ said, "The woman whose husband passes away should not apply perfume, don ornaments, jewellery or decorations of any sort, wear eye makeup such as Kohl (antimony), apply colour on

Rights of Spouses

the lips, teeth or gums, apply oil on the head, comb the hair (in order to beautify herself), use henna, wear silken or other gaudy dresses." (*Mishkat-ul-Masabih*)

When a woman is divorced or her husband passes away it is necessary for her to live in the same home that she shared with her husband until the waiting period is complete. It is not permissible to leave this home and go to another house. Many women leave their matrimonial homes and go to their parent's homes as soon as they are divorced or their husband passes away. This is against Islamic law and is a sin. It is not permissible for her to leave nor is it permissible for the in-laws to force her to leave the home as Allah Ta'ala has stated, "**...do not expel them from their houses during the appointed period nor should they leave on their own, unless they bring about some matter of blatant lewdness...**" (*Surah Talaq Verse 1*)

However, if a woman is widowed and has no means of income then she is allowed out to work in order to earn money to sustain herself but she must return to the home she shared with her husband before sunset each day. There is a misconception amongst many people that during the waiting period a woman must remain in one corner or one room of the home. There is no such requirement and she is allowed to move freely around the home during the waiting period. Additionally, it is not proper for women who have been given a reconcilable divorce (one or two divorces) to leave the home either. They should also spend their waiting period in their husband's homes.

Along with remaining at home, women in Iddat have been ordered to mourn. Mourning means not to beautify themselves through make up, clothing or jewellery etc and the clarification of mourning has been explained in the Hadith which is mentioned above. Where mourning is ordered for those women whose husband's have passed away, those women who have been given a divorce are also guided to mourn. In short, it is necessary for those women whose

Rights of Spouses

husband's have passed away and those who have been given a permanent (non-reconcilable) divorce to mourn during the waiting period and once the waiting period is over the mourning should stop. Due to the fact that it is forbidden to marry during the waiting period, and beautifying oneself is for the husband, therefore the order to not beautify themselves is given to women during this period. To mourn means not to apply make-up, jewellery etc and not to wear such clothes and garments that will attract men's attention towards them. This is why those women (on whom mourning is necessary) are ordered not to wear bright clothes, not to apply perfume, not to wear perfumed clothing, not to wear jewellery, not to beautify their hair, not to apply oil on their hair and not to apply kohl or eyeliner in their eyes. If there is affliction in the eye she is allowed to apply kohl for remedy but should apply it during the night and should remove it during the day. She is allowed to bathe and clean herself but should not use fragranced soaps or oils when bathing. If oil needs to be applied to the head because of pain she is allowed to apply oil but should use un-fragranced oil and should not part her hair or beautify it in any way. It is not allowed for the woman who is mourning to apply colour on the teeth or gums by eating beetle-leaf (paan), to wear flowers, apply henna or to colour her lips or nails.

Issue: To mourn is an order of Islam and the Shariah. Even if the freedom obtained by the woman as a result of the death of the husband or divorce pleases her, it is still compulsory (Wajib) for her to mourn.

Issue: It is necessary for a woman to perform Iddat and mourn if a court annuls the marriage (and it is also considered annulled by Islamic law).

Issue: If a pre-pubescent girl is widowed or divorced then mourning is not compulsory on her.

Issue: The woman who is given a permanent divorce must live in the same home as her husband but should veil herself from him. The woman who is given a reconcilable divorce (one or two divorces) should continue to beautify herself and should not mourn.

Method of Iddat During Days of Ignorance

Hazrat Umme Salma رضي الله عنها narrates that a woman came to RasoolAllah ﷺ and said, "My daughter's husband has passed away and she has pain in her eyes. Can we apply kohl (surma) in her eyes?" He replied, "No." She asked the same question two or three times and each time RasoolAllah ﷺ replied that she could not. Then the mercy to all the worlds ﷺ said, "(In Islamic law) this is Iddat and mourning which lasts for four months and ten days. (It seems as though this is difficult) but in the days of ignorance if a woman's husband died her waiting period was a full year and when the year had passed she would throw camel dung to signify that her waiting period was over." (*Bukhari and Muslim*)

In the pre-Islamic days of ignorance different areas and different tribes had all kinds of peculiar customs that a woman was forced to obey if her husband died. These customs were regarded as being religious as well as local and communal customs. In India, Hindus would burn the widow alive along with the body of her dead husband and this was called 'sati.' In Arabia, when a husband would die, the following year would be extremely difficult for her and details of this are described as follows in Sunan Abu Dawood whilst a similar Hadith is also found in Bukhari Shareef Hadith 5337.

'When a woman's husband would die she would be made to live in a wretched small room and wear the worst clothes she had for one year and would not be able to wear any perfume or use anything to clean herself or her body. After a year passed, an animal like a donkey or goat or bird was brought to her and she would rub her private parts against the animal.

Rights of Spouses

Due to the fact that she had been living in extremely unhygienic conditions for a year and would have many viruses and diseases, most of the time the animal which she rubbed her private parts against would die. After this she would come out of the small room and would be given camel droppings and she would then throw this all around herself. This would be a sign to everyone else that her waiting period was now over and the aim was to throw away her difficult time just as she was throwing the camel droppings away. After this she was allowed to use perfumes and scents as she desired. (These things were considered to be a remedy for breaking spells and were done in order to remove calamities). RasoolAllah ﷺ reminded everyone about these practices of the days of ignorance and told everyone that, "Mourning and the waiting period is only four days and ten months when the husband dies. Islam has saved you from all kinds of inhumane rituals and troubles and still you are trying to get out of the favourable and thoughtful limits that Islam places on you?"

This Hadith tells us that even though the woman had pain in her eyes, RasoolAllah ﷺ did not give her permission to apply kohl in her eyes. Commentators of Ahadith have stated that this woman's illness was curable without kohl but she wanted to apply it in order to beautify herself which is why RasoolAllah ﷺ did not give permission and the ruling of Hazrat Umme Salma (who narrates the Hadith) is that kohl can only be applied at night by a woman in Iddat if it is absolutely necessary.

A Woman Should Remarry if She is Widowed

It is considered a fault and blemish if a woman marries again after her husband dies. The continuous sorrow and insults from her in-laws would not allow her to lead a respectful or comfortable life and according to religious and communal laws it was necessary for her to spend the rest of her life alone

Rights of Spouses

regardless of how old she was when she was widowed. Burning herself alive was a religious issue and if she lived she would be looked at with contempt and hatred for the rest of her life so without hesitation she would jump on her dead husband's funeral pyre and prefer to be burned alive than live in those conditions. In complete opposition to this, not only did Islam give permission for a widow to remarry but it urged widows to remarry and declared it to be a preferred and better act than living alone. In some circumstances, Islam states that it is compulsory (Wajib) for a widow to remarry after completing her waiting period and if he dies to marry for a third time and if he dies to marry a fourth husband etc. RasoolAllah ﷺ acted upon this order and most of his blessed wives were widows whose previous husbands had passed away and some were previously divorced.

Even today there are certain communities (who call themselves Muslims) where it is considered a blemish and fault for a widow to remarry and if a husband dies the widow remains alone and unmarried for the rest of her life. May Allah protect! Considering an act and deed that was performed by RasoolAllah ﷺ to be a blemish or fault is great ignorance and lack of knowledge. There is a fear of losing your faith with thoughts and beliefs like this and those who think like this should immediately repent.

Islam has granted women a great status and blessed her with respect and dignity. She has been taken from the depths of despair and raised up to great heights but it is a shame that women still ignore the laws and orders of Islam (which are complete mercy for them) and are running towards ignorance.

Mourning Anyone Other Than a Husband

Hazrat Abu Salma's ﷺ daughter Hazrat Zainab ﷺ states that, "Three days after receiving news of the death of her father Hazrat Abu Sufyan ﷺ, Ummul Mo'mineen Hazrat Umme Habiba ﷺ asked for a perfume which contained

Rights of Spouses

yellow scent. First she perfumed one of the girls with it and then rubbed some on her own cheeks and then said, 'I am not in need of this perfume (but I have applied it so that I am not counted amongst those who mourn for more than three days). I have heard RasoolAllah ﷺ say that it is not lawful for any woman who believes in Allah Ta'ala and on the Last Day to mourn for a dead person for more than three days unless it is her husband for whom she should mourn for four months and ten days.'" (Bukhari and Muslim)

May Allah Ta'ala guide us all to act upon Islamic teachings, Aameen.

Swearing Oaths

Allah Ta'ala states in the Holy Qur'an:

لِّلَّذِينَ يُؤْلُونَ مِن نِّسَائِهِمْ تَرْتِيصٌ أَرْبَعَةَ أَشْهُرٍ ۖ فَإِنْ قَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ﴿٢٢٦﴾

"Those who swear not to touch their wives have four months time; so if they turn back during this period, indeed Allah is oft Forgiving, Most Merciful." (Surah Baqarah Verse 226)

In relation to the above verse, Mufasssir-e-Shaheer Hazrat Allama Syed Na'eemuddin Muradabaadi writes:

'During the days of ignorance, it was the habit of men to ask their wives for goods and possessions. If they did not give them what they asked for they would swear an oath not to go near their wives (sexually) for one, two or three years or sometimes even longer than that. The wife would be left stuck as she was not a widow and could not marry anyone else and neither could she seek comfort with the husband that she had. Islam destroyed this cruel practice and stipulated a maximum term of four months for those who swore this type of oath. It stated that a person who has sworn such an oath has four months to think about whether it is better to take his wife back or to divorce her. If he decides it is better to keep her and reconciles then the marriage will remain valid and he will

Rights of Spouses

have to pay a compensation (kaffarah) for the oath that has been broken. If he does not reconcile in this time-frame then the marriage is broken and a non-reconcilable divorce becomes applicable. (*Khaza-inul Irfan*)

There are two types of oaths that are undertaken – the first type is taking an oath by Allah Ta’ala or one of His Qualities that an oath can be taken by (e.g. His Magnificence, His Majesty, His Dignity, His Awe, His Words etc). The second type is swearing an oath by association meaning saying something like ‘If I have relations with her then my slaves are free’, or ‘my wife is divorced if I have relations with her’, or ‘I will perform so many Fasts or perform Hajj’ etc. (*Hidaya etc*)

Types of Oaths

Issue: There are two types of oaths or vows of chastity. The first is an oath taken to refrain from sexual activity for four months and the second is an unlimited vow which has no time limit. In either case if sexual relations with the wife take place within four months then the vow is broken and compensation is payable if the oath was taken by the Name of Allah Ta’ala or one of His Qualities. If the oath was one of association then that thing will be applicable. For example, if the oath taken was one where the man said ‘if I have relations with her then my slaves are free’ then if relations take place within four months, the slaves will now be free. If sexual relations do not take place within four months then a non-reconcilable divorce will be applicable. If the oath was time-limited (four months) and it is cancelled through sexual relations then performing Nikah again with her will cancel the effects of the oath.

If the oath taken is not time-limited then one divorce is applicable and the oath is still valid meaning if Nikah is performed with her again and sexual relations take place within four months, compensation will have to be paid (if applicable) or the oath that was taken will have to be fulfilled (freeing slaves, performing Fasts etc). If four months pass and

Rights of Spouses

relations do not take place, one reconcilable divorce will be applicable and the oath will still be valid. In the same manner if he performs Nikah with her a third time and does not have relations with her for four month then a permanent divorce becomes applicable and he cannot marry the same woman again unless Halalah is performed. If he married her again after the Halalah then the vow (of chastity) is cancelled and even if he does not have relations with her for four months there is no divorce applicable. However, the oath is still valid and if he does have relations with her then he will have to pay compensation.

If the woman marries someone else after one or two divorces have been given and then remarries her original husband then he will now have three divorces but the oath will still be valid and if he does not have relations with her then one divorce will be applicable. (*Hindiya, Bahaar*)

Conditions for Taking Oath

Issue: A condition of vowing chastity is that a person must be one who has the right to give divorce meaning he cannot be insane or pre-pubescent as they do not have the right to give divorce. (*Durr-e-Mukhtar, Bahaar*) Another condition is that it cannot be for less than four months and a place cannot be specified. This means that a person cannot say 'I will not have sexual relations with you at this place.' If a condition like this is stipulated then the oath is not valid. An oath cannot be taken with the wife and a hand-maid together and if this is done then the oath is not valid. Another condition is that the length of time cannot be altered by saying 'I will not have relations with you for four months less a day' etc. Another condition is that the oath of chastity cannot be combined with anything like saying, 'I will not have sexual relations with you nor will I call you onto my bed.' Combining things like this invalidate the oath. (*Khaaniya, Durr-e-Mukhtar, Radd-ul-Mukhtar etc*)

Words of Oath

Some words of oath are explicit and obvious whilst others are implied and indirect. Obvious words are those which makes one think of sexual intercourse and are words which are generally used for that. If obvious words are stated there is no need to make intention for taking an oath, the oath will be valid. If a person uses explicit and obvious words and then says that I did not mean sexual relations then that will not be accepted and the oath will stand. Implied and indirect words are those which are not specifically used for sexual intercourse and are used for other things also. If implied words are used an oath is not valid unless the intention is made for it. If a person states that he did not mean sexual intercourse when using implied words then he should be believed and the oath is not valid. (*Radd-ul-Mukhtar, Bahaar*)

Issue: If a person says to his wife 'If I have relations with you then you are unlawful to me' and his intention was to take an oath then the oath is valid. (*Hindiya, Bahaar*)

Issue: If a condition is placed that sexual relations will not be performed until something happens or some place is reached and the time frame for that thing is at least four months then this is considered as taking an oath. For example, if a man says in the month of Rajab 'I will not have relations with you until I have Fasted in the month of Muharram' or he says 'I will not have relations with you until we reach such a place' and that place is at a distance of four months or he says 'I will not have relations with you until the child stops breast-feeding' and there is still more than four months left for breastfeeding then in all these instances the oath is considered valid. If what he says could happen within the four months but because the Nikah will break if it happens the oath will be considered valid. For example he says 'I will not have relations with you until you die or until I die' or says 'I will not have relations with you until I am killed or you are killed' or says 'I will not have relations with you until I kill you or you kill me' or says

Rights of Spouses

'I will not have relations with you until I divorce you three times.' (*Joharah, Bahaar etc*)

Issue: If a person takes an oath and then wants to break it within the four months but is not able to have sexual relations with his wife for any reason beyond his control (e.g. He is ill or his wife is ill, she is menstruating, he is impotent, he has been castrated, his wife is so far away that he is not able to reach her before the four months are up, he is imprisoned, the wife will not allow him to have relations with her, or he does not know where she is etc). In situations like this he should revoke the oath with his words and say 'I reconcile with you' or 'I cancel the oath' or say 'I take back my oath' etc and saying these words will cancel and invalidate the oath. This means that even if relations do not take place within the four months a divorce will not be applicable. To be on the safe side, these words should be said in front of witnesses. However, if the oath was absolute then the conditions still apply and when he does have sexual relations with her he will have to pay compensation for breaking the oath. If the oath was for four months and he has relations with her after four months then no compensation is payable. A condition of the verbal revoking of the oath is that the conditions which do not allow him to reconcile by having sexual relations have to be applicable for the whole time. If the conditions change within the four months and he is able to have relations with his wife then he must do so in order to reconcile. (*Durr-e-Mukhtar, Joharah, Bahaar etc*)

Issue: Reconciliation is not valid if a person who cannot reconcile through sexual relations reconciles in his heart but does not say anything with his tongue. (*Radd-ul-Mukhtar, Bahaar etc*)

Issue: If the oath was taken when he was not helpless but then became helpless before he could reconcile then verbal reconciliation is not sufficient. Similarly, if a healthy person takes an oath and then becomes ill a verbal reconciliation is not sufficient and sexual relations must take place for the reconciliation to be valid. However, if he takes an oath and

Rights of Spouses

falls ill right away and there was not enough time to have sexual relations before he fell ill then verbal reconciliation will be valid. (*Durr-e-Mukhtar, Radd-ul-Mukhtar, Bahaar*)

Issue: Kissing or touching passionately, looking at her private parts or having intercourse through any passage other than the normal passage does not constitute reconciliation. (*Hindiya, Bahaar*)

Issue: If intercourse takes place during menstruation, even though this is strictly forbidden and unlawful, the oath will be cancelled and reconciliation will be valid. (*Hindiya, Bahaar*)

Issue: If the husband and wife disagree about the length of the oath then the husband's word shall be accepted. However, if the wife knows the husband is lying it is not permissible for her to stay with him. She must take her belongings and separate from him. If the husband states that he had intercourse within the time-frame then he will be believed and if he says that intercourse took place after the time had lapsed then he will not be believed until the wife testifies to his truthfulness. (*Hindiya, Joharah, Bahaar*)

Issue: If a man says 'You are unlawful to me' with the intention of an oath then the oath is valid and if the intention is to liken her to one's mother or sister then a permanent divorce is applicable. If not then it is a reconcilable divorce and if the intention is for three divorces then three divorces are applicable. If the wife says 'I am unlawful for you' then this is an oath and if the husband forces intercourse with his wife or she allows him to have intercourse with her then she must pay a penalty. (*Durr-e-Mukhtar, Radd-ul-Mukhtar, Bahaar*)

Issue: If a husband says 'You are my mother' to his wife and the intention is to make her unlawful then she does not become unlawful but it is considered a lie. (*Joharah, Bahaar*)

Khula

The Holy Qur'an states:

فَإِنْ خِفْتُمْ أَلَّا يَاقِبَا أَحَدُوكُمُ اللَّهُ ۖ فَلَا جُنَاةَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ

...so if you fear that they may not be able to observe the limits of Allah, then it is no sin on them if the woman pays to get her release...” (Surah Baqarah Verse 229)

In Tafseer Khaza-inul Irfan it states:

‘This verse was revealed in relation to Jameela binte Abdullah who was married to Thaabit bin Qais bin Shamaas and hated him. She came to RasoolAllah ﷺ and complained about her husband and was not willing to stay with him under any circumstances. Hazrat Thaabit said that he had given her an orchard and if she was not willing to stay with him and wanted separation then she should give him the orchard back and he would release her. Jameela accepted this, returned the orchard and Hazrat Thaabit divorced her.

A Hadith reported by Imam Bukhari states that Hazrat Abdullah Ibne Abbas ؓ narrates that the wife of Thaabit bin Qais ؓ, came and asked for separation (Khula) from him said, “I do not have any problem with Thaabit’s character or his piety as he is a very nice and religious person. However, I do not want infidelity to enter my religion meaning I do not want to praise him with my tongue but do not love him in my heart. This is deception which is not allowed in Islam, and therefore please ask him to divorce me.” Upon hearing this RasoolAllah ﷺ asked, “Will you return the orchard to Thaabit that he gave you as Mehr?” She replied that she would. RasoolAllah ﷺ called Hazrat Thaabit ؓ and said, “Thaabit take this orchard of yours and give her one divorce.” Hazrat Thaabit ؓ did as he was ordered and gave her one divorce. (Bukhari Shareef)

Khula – Description and Orders

Khula means to take off. In this context it means to remove the bond of marriage (by women). Allah Ta’ala gave the husband the right to divorce and to balance the rights of the

Rights of Spouses

spouses He gave the women the right to separate. Giving up possession of something in exchange for ending a marriage relationship is called Khula. The woman has to agree to the contract otherwise it is not valid. The words that must be said are fixed and using any other words will not make the Khula valid.

Issue: If there is continuous disagreement between a husband and wife and there is a fear that they will not be able to observe the limits of Shariah then there is nothing wrong with allowing them to perform Khula. Once Khula is performed then divorce becomes applicable and the woman must return the item or items she agreed to. (*Hidaya, Bahaar*)

Issue: The items that can be given as Mehr can be given back in Khula and things that cannot be given as Mehr can also be given back in Khula. For example, less than 10 Dirhams cannot be given as Mehr but it can be given back in exchange for Khula. (*Durr-e-Mukhtar*)

Issue: Khula depends on the woman accepting the agreement. If the woman agrees to return the goods then the divorce is valid and not reconcilable. If the husband says the words of Khula but the woman has not yet accepted the terms he does not have the authority to reconcile nor can he change the conditions. (*Khaaniya, Bahaar*)

Issue: Khula is on behalf of the woman whereby she can give up something in return for freeing herself from the marriage. If the woman initiates the Khula but the man has not yet accepted the terms the woman can reconcile or can postpone it. The postponement can be for longer than three days if she desires but the transaction cannot be postponed for longer than three days. If either of them leaves the gathering then the woman's words are cancelled and negated. (*Khaaniya, Bahaar*)

Issue: Due to the fact that Khula is compensation it is conditional on the woman understanding fully what she is agreeing to and if she just says the words without understanding the consequences then Khula is not valid. (*Durr-e-Mukhtar, Bahaar*)

Rights of Spouses

Issue: As Khula is divorce for the man it is necessary for him to be of sound mind and post pubescent age because an insane or pre-pubescent man does not have the authority to divorce. Another condition is that the woman must be divorceable meaning if she has already been given a non-reversible divorce Khula cannot be performed even if she is in Iddat. Similarly, if the marriage has been annulled or the woman leaves Islam there is no Khula as there is no marriage to end because the marriage has already terminated. If the woman is serving Iddat for a reconcilable divorce then Khula can be performed. (*Durr-e-Mukhtar, Radd-ul-Mukhtar, Bahaar*)

Issue: If the husband says 'I want Khula from you' but does not mention any amount or items then Khula has not been performed but divorce is applicable and is not dependant on the acceptance of the wife. (*Badaa'i, Bahaar*)

Issue: If the husband says 'I free you on payment of such and such a thing' and the wife says 'ok' then Khula has not been performed. She has to say 'I agree' or 'I permit that.' Only if this is said is Khula performed. In a similar manner, if the wife says 'I will accept divorce for 1000 Rupees' and the husband says 'ok' then divorce will be applicable. (*Hindiya, Bahaar*)

Issue: All the rights that each one of them has over the other as a result of Nikah are cancelled once Khula is performed. Those rights that are outside of the rights of Nikah are not cancelled like paying for the maintenance of the wife whilst she is in Iddat. However, if that is one of the conditions of the Khula then that too will be cancelled. Similarly, maintenance for children and payment for breastfeeding is not cancelled unless it is agreed to beforehand. If the child dies before the breastfeeding ends the husband can ask for the remaining money back. If the agreement states that the wife will feed the child with her money for 10 years she can ask her husband for money for clothing etc. If the agreement states that she will pay for food and clothing then she cannot ask her husband for maintenance for the child. If the woman abandons the child the husband can demand payment of maintenance for the

Rights of Spouses

remainder of the term of the agreement. An agreement can be made that the child will remain with the mother until the child reaches puberty but only for girls and not for boys. (Hindiya, Bahaar)

Issue: If a woman is divorced and then remarried and then Khula is agreed to in return for the Mehr that was paid then the second Mehr is cancelled but not the first. (Joharah, Bahaar)

Issue: If Khula is arranged in return for alcohol, pork or dead animals and not a monetary item then Khula is invalid but an irrevocable divorce is valid and there is no liability on the woman. If a woman has nothing in her hand and says 'I want Khula in return for what is in my hands' and the husband agrees then nothing is payable by the woman. (Durr-e-Mukhtar, Joharah)

Issue: If the husband offers Khula with the intention of divorce and the wife accepts then this constitutes a non-reversible divorce and the Mehr will not be cancelled, it has to be paid. Even if the woman does not accept it the rule is still the same. If the husband says that he did not say it with the intention of divorce then it will not be applied until the woman accepts it. If he says that I will give you Khula in exchange for such a thing then it will not be applicable until the woman accepts his proposal. If the man states that he did not mean divorce after the woman has accepted then his words will not be believed. (Khaaniya, Bahaar)

Zihar – Comparing One's Wife to One's Mother

Allah Ta'ala states:

قَدْ سَبَّ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ يَسِبُ
الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِمَّنْ نَسَأْتِهِمْ مِمَّا هُنَّ تَحَاوَرَكُنَّ ۗ إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ ۝
أُمَّهَاتِهِمْ ۗ إِنَّ أُمَّهَاتِهِمْ إِلَّا إِلَىٰ وِلْدَانِهِمْ ۗ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِّنَ الْقَوْلِ وَزُورًا ۗ

وَالَّذِينَ يُطَهِّرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرٌ وَإِنَّ اللَّهَ لَعَفُوفٌ غَفُورٌ ۝
 فَمَنْ رَقَبَةٌ مِّن قَبْلِ أَنْ يَبَاسًا ۗ ذَٰلِكُمْ تُوَعُّظُونَ بِهِ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ۝
 لَّمْ يَجِدْ فَصِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَبَاسًا ۗ فَمَنْ لَّمْ يَسْتَطِعْ
 فَاطْعَامَ سِتِّينَ مِسْكِينًا ۗ ذَٰلِكُمْ لِيَتُومِنُوا بِاللَّهِ وَرَسُولِهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ ۗ وَ
 لِلْكَافِرِينَ عَذَابٌ أَلِيمٌ ۝

“Allah has indeed heard the speech of the woman who is arguing with you concerning her husband, and is complaining to Allah; and Allah hears the conversation of you both; indeed Allah is All Hearing, All Knowing. Those among you who have proclaimed their wives as their mothers – so their wives are not their mothers; their mothers are only those that gave them birth; and undoubtedly they utter evil and a blatant lie; and indeed Allah is Most Pardoning, Oft Forgiving. And those among you who have proclaimed their wives as their mothers and then wish to revert to the matter upon which they had uttered such an enormous word, must then free a slave before they touch one another; this is what you are advised; and Allah is Aware of your deeds. So one who cannot find a slave, must then fast for two successive months before they touch one another; and one who cannot even fast, must then feed sixty needy ones; this is in order that you keep faith in Allah and His Noble Messenger; and these are the limits of Allah; and for the disbelievers is a painful punishment.”

(Surah Mujadilah Verse 1-4)

Zia-ul-Ummah, Hazrat Allama Peer Muhammad Karam Shah Azhari writes:

‘This is a reference to the pre-Islamic Arabian custom whereby a husband could divorce his wife by simply declaring, ‘*Anti ‘alaiya ka-zahri ummi*’ – ‘You are (as unlawful to) me to as my

Rights of Spouses

mother's back.' This statement would break the Nikah and the divorce was irrevocable (non-reconcilable) and the woman would forever be unlawful for him. This act is known as Zihar.

The above verses were revealed in regards to the first incident of Zihar that occurred in Islam in which the Qur'anic orders related to Zihar are clearly stated. The incident was that one day Hazrat Ubadah's ﷺ brother Aus Ibne Saamat was upset with his wife Hazrat Khaula binte Thalaba for some reason. As a result of old age he had become very grumpy and in anger he said, '*Anti 'alaiya ka-zahri ummi.*' As soon as he said it he regretted what he had done and attempted to get Khaula to come close to him. The pious lady said, "By the Lord Who controls my life. Until Allah and His Prophet do not make a decision regarding us you may not come close to me." Khaula went to RasoolAllah ﷺ and said, "When Aus married me I was young and wealthy and my family members were all alive. Now my youth has gone, I am old, have spent my wealth and my family members are no longer alive and now Aus has said these words to me. Is there any chance that we can remain together?" RasoolAllah ﷺ replied, "No order has come to me yet regarding you." She then kept repeating, "He did not use the word divorce" and RasoolAllah ﷺ kept giving the same reply. Together with this she kept complaining to Allah Ta'ala by saying, "O Lord! I am complaining to You about being alone and separation from my husband." In one narration it is reported that that her words were, "I am complaining about my poverty and distressed state. I have small children and if I hand them over to their father I will lose them and if I keep them they will starve." She would look up at the heavens again and again and complain and it was not long before Allah Ta'ala listened to the plight of His distressed and upset slave and sent Hazrat Jibreel with these verses. RasoolAllah said, "Congratulations Khaula. Allah Ta'ala has revealed orders in relation to you. Go and call your husband. When Hazrat Aus ﷺ came

Rights of Spouses

RasoolAllah ﷺ said, "Free a slave." He stated that he did not have any slaves. RasoolAllah ﷺ told him to fast for two months consecutively. He said, "If I do not eat three times a day then my eyesight will fail. How can I Fast for that many days?" The Beloved Prophet ﷺ said, "Then feed sixty needy people." He said, "I am very poor so please help me so I can feed the needy." The merciful Prophet ﷺ gave him 15 Sa'a of food from himself and he was able to feed 60 needy people. In this manner Hazrat Khaula went back to her home and these verses were revealed in relation to her.

Due to this distinction the Companions respected her greatly. One time during his rule Hazrat Umar ؓ was mounted on an animal and passed by Hazrat Khaula. A large crowd of people was with him. Hazrat Khaula stopped him and started giving him advice. She said, "O Umar! Do you remember the time when people used to call you Omair. Then they referred to you as Umar and now people are addressing you as Ameer-ul-Mo'mineen. Therefore O Umar! Remain fearful of Allah Ta'ala. The person who fears death is always worried about forgetting or missing something important. The person who believes in accounting (on the Day of Judgement) always fears punishment." Hazrat Umar ؓ calmly and patiently listened to her words of advice. When quite a bit of time had passed people said, "Ameer-ul-Mo'mineen! How long are you going to stay here and listen to this old lady?" He replied, "By Allah! If she keeps me here from morning to night I will stay here. I will only ask for leave when it is time for Prayers and return. Do you not know who this old lady is? This is Khaula binte Thalaba whose complaint was heard by Allah Ta'ala above the seven heavens. How can it be possible that the Lord listens to her and Umar will not?"' (*Zia-ul-Qur'an Vol 5 Pages 135-136*)

Definition of Zihar

In order to understand the definition of Zihar in terms of Shariah, it should be noted first that there are some women

Rights of Spouses

who are permanently forbidden for a man, such as mother, sister, daughter and others in the prohibited degree. Although looking at such women is permissible in general, yet looking at some parts of their body is not permissible, (like abdomen, back etc.) The definition of Zihar is 'to compare one's wife with any of such parts of the body of such prohibited women.'

Issue: If a woman says the words of Zihar to a man there is no problem. (*Joharah, Bahaar*)

Issue: If a wife is referred to as 'mother', 'sister' or daughter then this is not Zihar but it is disliked to say this. (*Hindiya, Bahaar*)

Result of Zihar

The result of Zihar is that until compensation (Kaffarah) is not completed, sexual relations, lustful kissing, hugging or looking at the private parts of one's wife is forbidden. There is nothing wrong with kissing or hugging without lust and desire. However, kissing the lips even without lust is not permissible. If sexual relations take place before compensation is paid then repentance (Tauba) should be made; there is no further compensation due. However this should not be done and the wife should ensure that she does not allow her husband to have relations with her until he has paid the compensation. (*Joharah, Durr-e-Mukhtar, Bahaar*)

Compensation for Zihar

If a person who commits Zihar wants to have sexual relations with his wife it is compulsory to offer compensation. If he does not wish to have relations with her and wishes her to be unlawful for him forever then compensation does not need to be offered. If he intended to perform sexual intercourse but the wife died then compensation is not compulsory. (*Hindiya, Bahaar*) The compensation for Zihar is to free a slave and if this is not possible then he must Fast for two consecutive months

Rights of Spouses

before sexual intercourse takes place. If he does not have the ability or strength to Fast for two months then he must feed sixty needy people. (*Hidaya etc*)

Issue: If intention is made to Fast as compensation, the month of Ramadhan or the days of Eid-ul-Fitr or Adha or the days of Hajj cannot fall during that period. If the person is a traveller he can make intention to fast in Ramadhan as compensation but he cannot Fast during the forbidden days even if he is a traveller. (*Durr-e-Mukhtar, Joharah*)

Issue: If a Fast of compensation is broken (with or without cause), or if relations take place (during the day or night) with the woman who the Zihar was committed on within the two months (intentionally or unintentionally), then the sixty days Fasting will have to be started again and the Fasts that have already been kept are wasted. The reason for this is that sixty consecutive Fasts have to be kept before sexual relations can take place. (*Durr-e-Mukhtar, Radd-ul-Mukhtar*)

Issue: If a person cannot Fast because of illness or old age then sixty needy people must be fed a full meal two times. He has the authority to feed all sixty at once or separately. However, a condition is that he must not be capable of Fasting otherwise the feeding will become a voluntary good deed and the Fasts will still have to be kept. If he feeds sixty needy people one meal and feeds a different sixty people the second meal then compensation has not been fulfilled. He must feed one of the group of sixty a second meal for the compensation to be valid. (*Durr-e-Mukhtar, Radd-ul-Mukhtar, Hindiya*)

Issue: None of the people who are fed can be pre-pubescent. If he is made the owner of all the food that a normal person would eat then this is permissible. (*Durr-e-Mukhtar, Radd-ul-Mukhtar*)

Issue: It is also possible to give each needy person an amount equal to Sadqa-e-Fitr instead of feeding them. It can only be given to those people who are deserving of Sadqa-e-Fitr. It is

Rights of Spouses

also possible to feed them one time and give them the equivalent amount for the other time or thirty people can be fed and thirty people can be given the equivalent amount. In short, he can do a combination of feeding and giving the equivalent amount as long as sixty people are given food or equivalent for two meals. (*Durr-e-Mukhtar, Radd-ul-Mukhtar*)

Issue: When feeding the condition is that the person must be fed until they are full even if they are full after eating only a little. If someone was already full then his eating will not be counted. It is preferred to feed wheat flour chapatti and a food dish and if it is better food than that then that is superior. If the chapatti is made from barley then a food dish must also be served. (*Durr-e-Mukhtar, Radd-ul-Mukhtar, Bahaar*)

Issue: It is also permissible to feed one needy person twice a day for sixty days or he can be given the equivalent amount for sixty days. If a needy person is given all of it in one day (either completely or divided into sixty parts) then only one day's compensation will be paid. If thirty people are given double the amount on one day then only thirty will have been fed and another thirty need to be fed. If they are given the correct amount on two days then this is permissible and sufficient. (*Hindiya, Bahaar etc*)

Issue: If Zihar is committed it is essential to feed sixty people first and if sexual intercourse takes place before all sixty are fed then even though this is unlawful (Haram) he will not have to feed all sixty again. He should feed the rest and his compensation will be fulfilled. (*Joharah, Bahaar etc*)

Issue: If a person dies before he is able to pay the compensation and his heirs feed sixty people or give them the amount equivalent to food then his compensation will be fulfilled. If they free a slave his compensation will not be fulfilled. (*Radd-ul-Mukhtar*)

Rights of Spouses

Note: For comprehensive details regarding swearing oaths, Khula and Zihar refer to Fatawa-e-Razvia, Bahar-e-Shariat and other similar books.



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Yaa Ayyohal Latheena Aamanu, Allama Sa'aadat Ali Qadri

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