

Rendered into English by
Shaikh Mir Asedullah Quadri

The Issue of Divorce

WRITTEN IN URDU BY
HADHRAT MOHAMMED ABDUL
QADEER SIDDIQUI (رحمة لله عليه)

ISSUE OF DIVORCE

طلاق کا مسئلہ

Written in Urdu By

**Hadhrat Mohammed Abdul Qadeer
Siddiqui (رحمة لله عليه)**

Rendered into English by

Shaikh Mir Asedullah Quadri

Under the guidance of

Hadhrat Ghouse Mohiuddin Siddiqui

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FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

The issue of Divorce has been misunderstood by many people. For instance, some people believe that the right of Divorce in Islam has been given only to men. This is not true as both men and women enjoy equal rights in all walks of life. Islam is a natural religion and treats individuals of both genders on par and in consideration of their socio-economic responsibilities, clearly specifying the moralistic code of conduct for humanity as a whole.

This is an interesting book recommended for reading by one and all. Mir Asedullah Quadri is undertaking a great job by translating the works of one of the greatest Shuyookh of our modern Muslim World. He deserves all our appreciation and support in this endeavor.

May Allah (عَزَّ وَجَلَّ) accept these English translations as their original work in Urdu and let all of us benefit from them.

AL-FAQEER

Ghouse Mohiuddin Siddiqui, Son and successor of Shaikh Mohammad Abdul
Qadeer Siddiqui (رحمة الله عليه)

17th Muharram, 1423 AH (April 1st, 2002)

PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين ، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

The issue of Divorce, is the twenty first book translated in the series of English translations of Hadhrat Mohammed Abdul Qadeer Siddiqui's (رحمة الله عليه) works which were written in Urdu, Persian, Arabic and mostly published during his lifetime (1871 - 1962).

Shaikh has concentrated his entire work towards clearing the misconceptions about Islamic teachings and practices and at times, has solved, great puzzles in the light of imperatives in the Quran and Sunnah.

The book '**The Issue of Divorce**' covers the rules of divorce in Islam. The book is based on the exegesis of the Quranic verses related to Talaq. It is recommended for reading by everyone who is interested in Muslim Personal law related to Marriage.

I am greatly indebted to Hadhrat Ghouse Mohiuddin Siddiqui, the son and successor of Shaikh Mohammad Abdul Qadeer Siddiqui (رحمة الله عليه) for his support, and encouragement in this task.

I pray to Allah (عَزَّ وَجَلَّ) and seek the Prophet's (صلى الله عليه و آله وسلم) blessing in letting me and its readers benefit from this endeavor.

Shaikh Mir Asedullah Shah Quadri

13th Moharram, 1423 H (28th March, 2002)

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THE ISSUE OF TALAQ

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الحمد لله رب العالمين ، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

It is in Quran - [لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ -] For those who have vowed (in temper) not to go in to their wives, a respite of four months is prescribed. If they choose to go back upon their vow (ايلا) during this period, then, verily Allah is Gracious and Merciful] **(Al-Baqara-226)**

Gentlemen, there are different types of oaths, as follows:

(i) Sinful Oath (يمين غموس)

An oath which is extremely sinful and untruthful oath (جهوٹی قسم) to cause someone harm by deceit, by telling a lie or speaking against the fact of the matter is known as Sinful Oath. There is no expiation (كفاره) for it as this is a wholesome sin. Except penitence (توبه) nothing else is of use in this regard. To pardon or not, is in the hands of Allah (عزَّ وَجَلَّ).

Alas, the epidemic of taking false oaths has spread deep into our society. Some people have even adopted it as a profession which shows that there is no fear of Allah (عزَّ وَجَلَّ) and no shame left in their hearts and they consider themselves free to do anything they like.

(ii) Absurd Oath (يمين لغو)

It is a nonsensical and an unintended oath. Since the Forgiver (Allah) (عزَّ وَجَلَّ) is affable, He (عزَّ وَجَلَّ) does not hold you on it because it is an act of absurdity and foolishness. Saying 'By God' or 'I swear to God', on everything is an absurd oath.

(iii) Intentional Oath (بيمين منعقده)

The oath, taken with an intention and resolve, to do or not to do a thing, is known as an 'intentional oath. If the work is bad and you have taken an oath of not doing it, you should hold on to your oath. If the work is virtuous and you have taken an oath of not doing it, then you should break it and continue doing the good work. However, for breaking an oath, you are liable for expiation (كفّاره). The expiation for it is, to feed an average amount of food to 10 poor people for one time or provide them with clothing which are suitable for them in performing Salah or liberate a slave and if you can, fast for 3 days. The details of this issue are in Surah Al-Ma'ida of the Quran.

(iv) Oath of Separation (ايلا)

The husband takes an oath to separate himself from his wife. The duration of this separation has been fixed by Allah (عَزَّ وَجَلَّ) to be 4 months. If he unites with his wife during this period, he has to offer an expiation and if this separation is extended beyond 4 months, it will become a 'cogent divorce' or 'effective divorce (طلاق بائن). In a cogent divorce, the husband does not have the right to call back his wife. However, if the woman is willing, she can marry him with a new dower (مهر). Payment of the first dower was already expedient upon the husband. Now, a fresh dower will also become payable. This is the result of getting overwhelmed with anger on petty issues and using the name of Allah (عَزَّ وَجَلَّ) for vows.

It is in Quran - [وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ - (Al-Baqara - 227).
verily Allah hears and He knows.]

It is in Quran - وَالْمُطَلَّقاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۗ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۗ وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۗ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ [The divorced women shall not feel themselves free (to enter into marriage with others) until they have had their courses thrice, and it is not proper for them to conceal the knowledge of that Allah has created in their wombs, if they believe in Allah and the last day; and their husbands have the right to claim back their wives within this period if they desire to improve relations. It is but fair that women should have rights over men, even as men have rights over women, albeit men rank a degree above them, and Allah is mighty and wise.] (Al-Baqara - 228).

Gentlemen, this is an important verse, about which there are many misunderstandings. The world is drowning into the pit of indignity because of these misunderstandings.

Shaikh says that love descends from the divine empyrean (عرش اعظم) and stays in the hearts of human beings. What does it do? It eliminates the differences among individuals and creates unity between them. It turns two different individuals into one. Unification (توحيد) is the soul of love. The children of your brothers and sisters are called your nephews and nieces. Is there anyone who can say that, 'my children are yours and your children are mine'? Yes, it is only the wife who can say that your children are hers. Love has unified wife and husband and has erased their duality. Alas, nowadays, love has been banished from the cities, rather it has been expelled from the countries all together. The sweetness of love which prevailed earlier, is no more to be seen. Everywhere you look, you find unpleasantness, bitterness, enmity and hostility.

The chickens and pigeons live in a nest, nourish their offspring, take out eaten grain from their stomach to feed their young. Similarly, husband and wife, should live in the same house and grow up their children. It is a universal understanding that if someone works for somebody, his livelihood becomes the responsibility of his caretaker or employer. Consider the nature of a woman. After marriage, she becomes pregnant and unpleasantness overtakes her otherwise pleasant behavior and often she finds a need to lay on her bed to rest. It becomes difficult for her to work and as the due date approaches, her normal movements also begin to get restricted. She is unable to get up or sit down properly. When the child is born, the suckling period begins and the mother has to provide extra care in raising the new born. Now let someone say with all sincerity, who needs to bear the financial cost of the woman and her child. Definitely, it is the responsibility of the husband. He will earn to support his wife and children.

Then what should be the responsibilities of the woman? She should take care of her husband, nourish her children and take care of their early education etc. Alas, what is happening now! People eat in hotels and the newborn is left into the hands of a housemaid. Instead of receiving the milk and affection of his mother, the child is left at the mercy of a hired maid who would have to feed the child buffalo milk from a bottle. The characteristics of children will reflect the way they were raised. The kids develop attributes of their nurses or servant maid if left to be taken care by them. Where will they get the enterprising characteristics and the emotions of their brave forefathers. When the child is left at the mercy of the Nanny, how will he develop love for his parents. Both the husband and wife are working and every morning, they both leave for their jobs and come back late in the evening tired. Some women and men become members of some entertain clubs. They prefer to spend their evenings in these clubs separately. What will happen to the children in this scenario.

Shaikh says, in his time, wives used to cook, take care of their household, stitch clothes and never allow their clothes to be stitched by tailors. Some house wives, used to get their clothes washed only at their house and never outside. Nowadays, a cook is hired for home cooking, the tailors stitch the clothes, the dry cleaners clean the clothes and the money is spent in many other things that can be done economically at home. The result reflects in your ill health, disintegration of the fabric of household and children getting emotionally detached from their parents. They are unaware of the closeness and intimacy of their families.

Shaikh says that a friend of his used to say to him that if someone convinces a European that having an amulet (تعويذ) around his neck or arm will result in his wife loving him, he will willingly give you half his wealth. Allahu Akbar, what sort of times are we in, watching the disintegration of the social fabric of our society. (العياذُ بالله). People are living in a kind of hell already in this world. We are lucky, let us stay in the heaven of our household with our families.

Gentlemen, always keep this in your minds, that only the required knowledge should be sought, as more than that is a waste of time. There are specific responsibilities of both spouses and whatever you do, these responsibilities won't go away from you. Like the woman has to bear children. She is responsible for their feeding and upbringing. The husband can help her in these tasks. But the ultimate responsibility lies with her. Similarly, Islam recognizes the husband to be the bread winner of the family. Let whatever he does, he cannot get away from this responsibility. If you put women to work and men to take care of the house hold responsibilities, the house becomes a mess. As men have rights over women, similarly, women have rights over men, but their primary responsibilities are distinct and well defined by nature.

We need to live as per the borderlines stipulated by Allah (عَزَّ وَجَلَّ) and His Apostle Mohammad (صلى الله عليه و آله وسلم). Quran has defined the roles of men and women very clearly. Men and women have equal rights in Islam. But once they join in the institution of marriage, their roles become distinct from each other. Quran says men (husbands) have preeminence over women (their wives). What is this preeminence? It is his responsibility to take care of his wife and children. He is responsible to provide food, shelter and every single need. If he has one bread, his wife will share half of it. See how beautiful are the teachings of Islam. And look at what is happening in the Western world.

From the absence of marriage and destruction of the institution of marriage, the honor and distinction of individual children does not remain intact. They are looked upon differently in the society and their nourishment which is the exclusive responsibility of father also vanishes. The living of humans become the living of animals.

The objective of marriage is to bear virtuous descendants, that will add to the following of Prophet Mohammad (صلى الله عليه و آله وسلم). When you bear virtuous people, they will also contribute to the peace and prosperity of this world. If you focus on only sex with consensual partners by destroying the sanctity of marriage and avoid the responsibility of children, one day the human race will vanish from the Planet Earth.

Polygamy was the ancient practice. It was not introduced by Islam. Rather it restricted people from keeping unaccounted number of wives to only 4, that too in demanding circumstances provided you do justice with every wife equally. Shaikh says that during World War II, hundreds of millions of men were killed in Europe. Who will take care of their hapless wives and children? Muslim men are morally bound to help helpless and destitute women by way of financial assistance of giving them social equal status by marrying them.

It is in Quran - الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا ۚ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ [A return to each other is permissible even after the divorce has been pronounced twice (or in two successive months). Then a honorable retention or a graceful parting (may be effected). And it shall not be proper for you to take away a part of what you had given to them, unless both fear that they cannot keep within the parameters set by Allah. Then no blame shall attach to either for what the woman shall herself give away for her redemption. These are the parameters of Allah, therefore do not over step them, for who overstep the bounds of Allah are indeed transgressors.] (Al-Baqara - 229).

It is in Quran - فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۗ تِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ [If he divorces her (finally), it is not lawful for him to take her again until she shall have married another, and this another also has divorced her; then there shall be no blame on the first husband and the woman, if they return to each other trusting that they will keep within the bounds set by Allah. And these are the parameters of Allah clearly explained for the people who understand]. (Al-Baqara - 230).

It is in Quran - وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ ۚ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِيَتَّعِنَدُوا ۚ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۚ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا ۚ وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِتَتَعَدُّوا ۚ وَمَنْ يَعْظَمْ بِهِ ۚ وَأَتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ [And when you divorce women, and the period of waiting is nearing its end, either retain them with due propriety or part with them with due propriety; and retain them not just to cause them hurt and commit excesses . He who does so, does in fact harm himself. Make not the commandment of Allah a jest, and remember the favor of Allah shown to you and that which He has revealed unto you -

the Book, and its underlying purposes wherewith to counsel you; and be mindful of Allah and know that Allah knows everything.] (Al-Baqara - 231).

Gentlemen, marriage and divorce are not the plaything of kids. The culture of a nation depends upon the rules of marriage and married life. When both the bulls of a bullock Cart walk in harmony, the cart moves smoothly. If one becomes mischievous and stubborn, the cart does not move forward and stops in the middle. The issues related to divorce are very important and there are misunderstandings in their comprehension. Voluminous books have been written on this subject. Shaikh says that he will mention here some principles in this context and prays Allah (عَزَّ وَجَلَّ) for all Muslims to benefit from them.

Shaikh explains certain terms below, which are used in issues related to divorce.

Nuptial agreement (نكاح)

Marriage ceremony is the culmination of an agreement between a man and a woman in which the first party (man) takes the responsibility of protection and sustenance of the second party (woman), and the second party agrees for adherence and obedience to the first party. Nikah is a permanent thing. But sometimes it breaks because of certain difficulties. The break up of marriage is known as divorce (طلاق).

Temporary marriages, marriage for a short fixed period of time, (like Muta, Misyar and others) are forbidden in Islam. The only way to establish a sexual relationship with a woman is by way of Islamic marriage.

Before the advent of Islam, slavery was widespread in the world. Islam eliminated slavery gradually. During the transition period Muslims were allowed to have a special wedlock with slave women. Rules in this context have been described in Quran.

There are three types of divorces, as follows.

(i) Revocable Divorce (طلاق رجعي)

A divorce in which the husband can call his wife without a fresh nuptial agreement. This can be done only twice.

(ii) Cogent Divorce (طلاق بانن)

It is an effective divorce in which the husband and wife are technically separated and their re-union is subject to the following conditions: (a) the wife should agree to unite, (b) they should enter into a fresh nuptial agreement, and (c) fresh dower (مهر) is payable by husband.

(iii) Irrevocable divorce (طلاق مُعَلِّظ)

This is the third and final divorce, after which the woman is absolutely free. It is not possible for husband to unite with his wife again unless she marries another man and the other man also divorces her; then the first husband can marry her by a fresh nuptial agreement (نكاح). This will be treated as fresh marriage wherein the husband will get the right of 3 divorces.

As per Islamic Law (شريعة), the correct way of giving divorce is that the husband gives first (or one) divorce when the wife is clean (she has had finished her mensuration for that month). The period of waiting for the first divorce is one month. If the anger of both wife and husband is not decreased within one month and the mutual unhappiness prevails, the husband will give second divorce in the second month. And if the mutual strife did not calm down during the second month also, and there is no way to unite, the husband will give the third divorce in the third month when the woman is clean which will be treated as last and final. During the time of divorce, the wife will stay at husband's house and the husband will pay for her maintenance. To spend time in this fashion is known as 'waiting period (عِدَّت). There are a lot of advantages of the waiting period, chiefly among them are : (i) there is no confusion in the fatherhood of the child, if woman is pregnant, and (ii) the divorced woman can call her relatives during the waiting period to sort out differences on her behalf. The period of waiting is limited to three calendar months.

If the woman becomes widow after the death of her husband, the waiting period for her (before marrying someone else) is 4 months and 10 days. If the woman is pregnant, then the waiting period is till the child is born.

If the woman was divorced after the intercourse or a chance was given to get into physical intimacy, then the husband has to give full amount of dower (مهر). And if the intercourse was not done, then the husband has to pay half of the dower. And if there was no intercourse and no dower was fixed, then the husband will give her 2 sets of cloths.

Is it possible to give two or three divorces at one time? Yes, and these will be technically fastened (treated as such), but this action will be against Sunnah.

If a person proclaims 'Talaq, Talaq, Talaq' three times; meaning gives three divorces at the same time, what is the ruling ?

During the time of Prophet Mohammad (صلى الله عليه و آله وسلم) and Hadhrat Abu Bakr Siddiqui (رضى الله تعالى عنه), the three times repetition of Talaq was to emphasize, but the purport was only one talaq. However, during the times of Hadhrat Umar (رضى الله تعالى عنه), the idiomatic usage of the word 'talaq' was changed. He consulted several linguistic experts, all of whom unanimously concluded that the repetition of the word 'Talaq' at that time was not to stress upon one (the first) talaq, but it was to establish three Talaqs.

Thus, if the repetition is used to stress upon one Talaq, it is one Talaq; but if the purport of repetitive talaqs is for the purpose of completion of the requirement of three talaqs, it will be treated as such.

Some scholars are confused about it in view of their misunderstanding which should be avoided at all costs.

Matrimonial abrogation (خُلْع)

What is matrimonial abrogation (خُلْع)? It is a divorce obtained on the initiative of the wife. If the relationship of wife and husband is strained and in spite of repetitive trials, the differences are not sorted out, then the only course of action is to arrange a smooth parting. The correct Quranic way in this context is that, a person each from the wife's and husband's families are made 'arbitrators (حَكَم). And if from the efforts of the arbitrators both wife and husband are united, it is well and good. If truce cannot be achieved, then separation is the only course of action.

A general mistake committed now-a-days is that people do not differentiate between the responsibilities of (i) an awakener (ناصح), (ii) an affectionate friend (مُشْفِق), and (iii) an arbitrator (حَكَم). The arbitrator decides and orders, which could be in favor or against. In either of the case, his decision is obligatory on both the parties. If the man, in spite of the arbitrator's order to divorce his wife, does not give divorce, then wherever Quazi is available, he will give the divorce, meaning the Quazi will give the divorce as an Grantor (وكيل). In cases like impotency, (عِين), and adultery (لعان) and in unbearable ailments, the Quazi will ask the husband to give divorce and if his order is not obeyed, Quazi himself will give divorce as an Grantor (وكيل). Where, there are no Quazis, the arbitrators will decide. The appointment of arbitrators is for the eradication of the

problem. If the differences between the parties are not removed, their appointment does not serve any purpose.

There is another misunderstanding here. Some people say that if the husband sleeps with his wife once, the right of wife is fulfilled by him. This argument is wrong. During the time of his caliphate, Hadhrat Umar (رضي الله تعالى عنه) inquired from the mother of faithful, Sayyida Hafsa (رضي الله تعالى عنها), as to how much time a woman can remain patient without her husband? The mother indicated from her right hand fingers # 4; meaning, if the period of separation from husband is beyond 4 months, it is inconvenient for women. On this Hadhrat Umar (رضي الله تعالى عنه) ordered that the military personnel should be transferred every four months so that they can be with their families.

There is a well known formula in Islamic jurisprudence. لَا ضَرَرَ وَلَا ضِرَارَ (Do not trouble or get troubled). Also, a well known principle of Islamic jurisprudence is that in disputes, the ruler will arrange removal of differences between the parties and will decide a course of action. If his decision is not accepted, he will get it implemented from his statutory powers. It will not be that he will advise and sit down helplessly if his counsel is not adhered.

During the time of Prophet Mohammad (صلى الله عليه و آله وسلم), a woman approached and submitted that she was unhappy with her husband and does not want to stay with him. The Prophet (صلى الله عليه و آله وسلم) inquired the reasons for it. She said, he does not fall short of, in taking care of her rights and she even does not have any doubt about his religious activities; but she has natural hatred towards him. Prophet (صلى الله عليه و آله وسلم) arranged return of dower from her and got her divorced from her husband.

Some people do not understand the status of Quazi. They think that Quazi is a person who is appointed by the Government to perform marriages as per Muslim personal law. This is done currently. But earlier, Quazis were actually judges of Muslim Courts who used to issue judgments in public disputes, and were responsible for eradication of the causes of disputes. Their judgments were implemented by executive authorities in Islamic countries.

There is another important issue in which people commit mistakes. It is obvious that the teacher will discipline his students, the King will admonish his subjects, and the judge will chastise the parties in dispute and sometimes will impose punishments. But the punishments should be to the extent of correction, and not go beyond, to manifest harsh cruelty. Another principle of Islamic jurisprudence is that suppression (ظلم) should be eradicated at all costs. If a man is behaving cruelly with his wife, and has ignored the warnings of the judicial authority, then the judiciary's iron hand should hold him by his neck and punish him appropriately. In which Islamic jurisprudence book, in which Indian penal code, it is mentioned that suppression of wife is allowed for men? As per

the law of the land and also the law of Islamic jurisprudence if a husband is punished for his atrocities on wife, his intoxication will vanish abruptly and his acts of hurling of insults on the wife and foul mouth will transform into flattery and sycophancy.

It is a general maxim with Hanafis that if their judges (Quazis) suspected that in a certain course of action, as per the Hanafi school of thought, the woman may be subjected to ill treatment by her husband, they would refer the case to other Quazis who decide as per the school of thought of Shafii, Maliki or Hanbali. The judgment of the other Quazi in this case was treated as rational and no other Hanafi Quazi was empowered to reverse that decision.

Some women include certain clauses in their nuptial agreement by which if the husband does not abide by the agreement, the marriage is considered abrogated, parties stand divorced and the woman will be free forthwith.

There are many facilities provided in Islam. Islam keeps an eye on all virtues and evils of a specific case. Readers should refer Islamic jurisprudence books to know more about this issue. The purpose of this book is limited to guide people about various aspect of divorce.

Gentlemen, the commandments about 'divorce and matrimonial abrogation' (طلاق اور خلع) in Islam are comprehensive and practical. Such rules and regulations are not in existence in other religions. You will not find them in any other religious books. Alas, what Muslims have done to their religion. They have complicated the simple rules and have made them extremely difficult, whereas the adversaries have adopted them and are reaping the benefits. They laugh at us and try to show to the world that Islam suppresses its women. **Allahu Akbar.**

What is 'matrimonial abrogation (خلع) ? It is an initiation of divorce from the wife. If the man is held responsible for the unbearable ill treatment towards his wife, the official appointed by the Government (Quazi) will order the husband to divorce his wife and pay the dower (مهر). If the cause of trouble and disobedience is from the wife's side, then she has to forgo full or part of her dower for getting the divorce. If the official (Quazi) considers it necessary, it is possible that, she has to pay back more than just the dower. As we have mentioned earlier, Prophet Mohammad (صلى الله عليه و آله وسلم) had asked a husband to give divorce to his wife on return of the dower which was paid by him earlier.

What is the reason behind lengthy delays in matrimonial abrogation in Muslim society? It is because, the woman does not want to forgo her dower which is generally fixed very high. In this uncertainty, the ages of women are being ruined. In these lengthy disputes, the husband does not look at his wife for years and the wife gets caught in an unpleasant situation.

Now-a-days, we are facing some new realities in Islamic society. It looks the period of oppression of men on women is over and the period of oppression of women on men has begun. In place of a religious lawful Nikah, people are opting for civil marriages. The modern lady complains to judiciary that she is not able to sleep as the man snores and therefore her marriage should be quashed. On very simple things, divorces are taken. What type of civilization is this? The women divorces her husband and as per the law of the land, gets half of husband's salary as maintenance for life. God forbid, Islam is free from all such manmade practices.

It is in Quran - تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا [These are the parameters of Allah, do not go near them]. (Al-Baqara-187)

It is in Quran - وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ۗ ذَٰلِكَ - [And when you have divorced your women, and they have, thereafter, completed the prescribed period of waiting, let them not be hindered from re-marrying their husbands when they are agreed on it among themselves in all propriety. Here is a counsel for him among you who believes in Allah and the Day-After. For you, this is the way to decency and purity. And Allah knows what you know not.] (Al-Baqara - 232).

There are three aspects for a woman after the divorce, (i) the man goes back to her or calls her back into matrimony. (ii) The man does not call her until the waiting period is over, and (iii) the man gives third divorce and separates from her.

We have described it earlier that as per Prophet's (صلى الله عليه و آله وسلم) tradition, every month one divorce will be given. But if someone gives two or three divorces simultaneously, these will be technically fastened, but this act will be against the tradition of Prophet Mohammad (صلى الله عليه و آله وسلم). After the third irrevocable divorce (طلاق مُعْتَصِفٌ), and after completing the waiting period, the woman can marry another man. Later, after getting divorce from the second husband, she can re-marry her first husband and as such this marriage is permissible and rightful.

If someone marries a woman with the intention that after marriage, he will divorce her in order to facilitate her to re-marry her earlier husband, then this women is legitimized (حَتَّى تَنْكِحَ) to get married to the first husband after divorce. The purport of (حَتَّى تَنْكِحَ) is legitimize intercourse with the second husband. The Arabic word (نِكَاح) comes both in the meaning of nuptial agreement and legitimate intercourse, because the original meaning of the word are to 'make a hole' or 'to pick a thorn'. It is in Hadith (حَتَّى تَذُوقِي) - till the lady, has tasted his honey of her second husband] the purport of which is, intercourse.

But marrying with an intention of giving divorce is certainly a very disgraceful and discreditable act. Islamic laws are fool proof. They would not allow you to make

mockery of rules and break them at your will to your advantage or to exploit others. Islam does not leave loopholes that can be used by selfish people to their advantage.

Shaikh has described here an episode of his time. A young husband gave three divorces to his wife in sheer stupidity. He was neither rich nor well built, but was surely guilty of ill treatment of his wife. In order to legitimize her for remarriage, the woman was married to an old Arab who was physically well built and was good mannered as well. What happened! Neither the lady left the Arab, nor the Arab divorced her. The result was destruction of the stupid groom and permanent separation from a good wife. People used to lough at him.

It is in Quran - وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بَوْلِهَا وَلَا مَوْلُودٌ لَهُ بَوْلُهُ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ فَصَالًا عَنِ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا [Mothers (when divorced) will give suck to their children two full years - should one desire that the suckling be completed - and this devolves on the father her maintenance and clothing in an appropriate manner. No one shall be charged beyond his means. A mother shall not be made to suffer for her child, nor a father for his child. And the same responsibility devolves on the guardian. And if they choose to wean the child by mutual consultation and consent, no blame shall rest on them. But if you choose to have a nurse for your child, no blame shall rest on you, provided you pay to the mother what you had promised her in all propriety. And be mindful of Allah and know that Allah sees what you do.] (Al-Baqara - 233).

It is obvious that when the woman has been divorced and there is no way to return back to her husband, it affects the new born and his nourishment and training. there are two aspects arising out of this situation, viz., (i) mother will give suck to her baby, or (ii) a nurse is appointed to feed the baby. In both the cases differences arise for baby feeding and also for the sustenance and clothing of the mother and/or the nurse. Allah (عَزَّ وَجَلَّ) has commanded that arrangement for the food and clothing of the woman should be made as per the known practice of the society in such a way that neither the mother nor the father of the child is put to strain. If the father is dead, and someone else has become his guardian, then he should arrange the food and clothing for the caretaker woman. The above verse clarifies and establishes the fact that child belongs to father and the inheritance lineage of the child will go towards his father.

The suckling period of the baby is fixed for 2 years and it is father's responsibility to support it monetarily during that period unless both parents agree to reduce this period in mutual consultation. If suckling of the baby is to be discontinued within the stipulated period of two years with the consent of both parents, it is permissible. However, the maintenance allowance payable by the father will be for the actual period of suckling, ie., two years. If the baby is allowed to suckle for 30 months, ie., two and half years, it will be treated as lawful suckling period, but is is not compulsory for the

father to pay for the extra 6 months as he is responsible for only 2-years maintenance. Thus the meaning of the verse (حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ) will be that the actual period of maintenance and expenses for clothing, etc., is two years only. And the meanings of (وَفِصَالُهُ تَلْتُونَ شَهْرًا) are that without demanding maintenance if a woman wishes, she can feed her baby for 30 months. This is the edict of Imam Abu Hanifa (رضي الله تعالى عنه). With other Imams, the maximum suckling period of the infant is two years only.

It is in Quran - وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذُرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِي مَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ [If any of you die leaving wives behind, these women shall wait for four months and ten days, and when this period expires, you shall not be answerable for the way in which they shall dispose of themselves with propriety; and Allah is aware of what you do.] (Al-Baqara - 234)

No one has the right to force the woman to mourn the death of her husband for more than the period specified by Allah (عَرَّ وَجَلَّ). Muslims in India have been infected from the practices of others and in view of this infection, some Muslim families force their women to remain unmarried for one full year till the first death anniversary of their husbands. Alas, women are suppressed to act against their well being while men are allowed to marry immediately after the death of their wives. In Hindus, widow is forced to shave her head and is subjected to such inhuman treatment that in a few weeks time she also dies of this social torture. This is the reason Allah (عَرَّ وَجَلَّ) says وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ [Allah is aware of what you do].

The death of a husband is indeed a grave incident in a woman's life. This is the reason waiting period for the widow has been fixed at 4 months and 10 days which is more than the waiting period for the divorced woman. This waiting time is also important in protecting the inheritance of the unborn child of the deceased.

It is in Quran - وَلَا جُنَاحَ عَلَيْكُمْ فِي مَا عَرَّضْتُمْ بِهِ مِنْ خُطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ ۖ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا ۖ وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّىٰ يَبْلُغَ الْكِتَابُ أَجَلَهُ ۖ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ ۖ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ [And then, no blame shall attach to you (if during the period of waiting) you make proposal of marriage to such women informally or entertain in your hearts any such wish. Allah knows that you will keep them in your thoughts. But do not hold out any promise to them in private except in conventional terms and resolve not on marriage until the period prescribed is complete and know that Allah knows what is in your minds. Therefore, be not unmindful of Him and know that Allah is indulgent and forbearing]. (Al-Baqara - 235).

The fact is that the waiting time of the widow is actually the period of mourning. The death is a natural shock and she needs time to recover and think about her future. To talk with her about re-marriage during this period is against politeness and our cultural traditions. Caution must be exercised even if one wishes to marry the widow. The wish

could be indicated in such an ambiguous words which point to more towards the wish but again are capable of being interpreted differently. One should not promise or propose directly, in plain words, like 'I am interested to marry you, or will you marry me, or he will be lucky a man with whom you may incline to marry, etc.

It is in Quran - لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُ - [No blame shall attach to you if you divorce your women before you have touched them or settled the dower on them, but make provision for them - the affluent in accordance with his means and the straitened according to his means, as considered fair. This is an obligation on those who act kindly.] (Al-Baqara - 236).

It is in Quran - وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفَ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ [And if you divorce them before you have touched them but after you have settled a dower on them, then (give them) half of what you have settled for them, unless they, by themselves forgo it, or he, in whose hands is the marriage tie, chooses to remit the whole of it. And if you so remit, it will be nearer to piety. And do not forget to emulate each other in kindness. Surely Allah watches over what you do.] (Al-Baqara - 237).

It is observed that after women are divorced, great injustices are meted out to them. Therefore, Allah (عَزَّ وَجَلَّ) provides protection to them, as follows:

- (i) If the dower (مهر) was fixed and intercourse was done, then husband is required to pay full dower.
- (ii) If the dower was fixed and the woman was divorced before the intercourse, then half of the dower will be payable.
- (iii) If the dower was not fixed, but the intercourse was done, then the husband will pay full dower which is equal to what is generally fixed as dower in wife's family.
- (iv) If the dower was not fixed and also the intercourse was not done, then husband will pay as per his financial capability, or at least something like a suit to wear.

The above verse is directly connected with the preceding and following verses in Quran in the sense that the matrimonial rights can only be fulfilled when a person has fear of Allah (عَزَّ وَجَلَّ) in his heart and opts for servanthood and obedience to Allah (عَزَّ وَجَلَّ).

It is in Quran - وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ ۚ فَإِنْ خَرَجْنَ فَلَا وَآلِهِنَّ يَتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْحَوْلِ غَيْرَ إِخْرَاجٍ ۚ فَإِنْ خَرَجْنَ فَلَا [And those among you who feel the approach of death and are to die and leave wives behind, shall bequeath for their wives a year's maintenance without requiring them to quit their homes; but if they quit them voluntarily, then no blame shall attach to you for any arrangement that they may make for themselves in a appropriate manner; and Allah is mighty, wise.] **(Al-Baqara 240).**

It is in Quran - وَلِلْمُطَلَّقاتِ مَتَاعٌ بِالْمَعْرُوفِ ۗ حَقًّا عَلَى الْمُتَّقِينَ [And for the divorced women, let there be a fair provision. This is an obligation on those who are mindful of Allah.] **(Al-Baqara - 241).**

It is in Quran - كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَعْقِلُونَ [Thus Allah clears His commandments to you so that you may understand.] **(Al-Baqara - 242).**

It is in Quran - يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ ۖ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبَيَّنَةٍ ۚ وَتِلْكَ حُدُودُ اللَّهِ ۚ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ ۚ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا [O' Prophet (صلی اللہ علیہ و آلہ وسلم) announce to Muslims) When you divorce women, divorce them when they are in free state (after they are free of menses) and calculate the 'period of waiting' exactly, and fear Allah. Turn them not out of their houses (during this period), and they, on their part, should not themselves depart, unless they have committed an open indecency. These are the direction of Allah, and whosoever violates them, he indeed has wronged himself. You may not know that Allah may perhaps bring about a situation (which may result in reconciliation between you.) **(At-Talaq - 1).**

It is a well known fact that the facility of divorce is only available in Islam. In case of difficulties, both men and women are free to seek divorce. Islam provide freedom to both men and women When husband and wife cannot live together, the only remedy is divorce.

But what is happening in Muslim society? The dower is fixed very high which is not possible for the husband to pay. Therefore, he does not divorce his wife as he knows that rest of his life will be spent in payment of the dower. The woman does not seek matrimonial abrogation because it is difficult for her to forego such a huge amount.

Hindus do not have comprehensive divorce regulations. When husband dies, poor hapless woman should also die by jumping into the funeral pyre of her husband. This rule is not applicable to men as they need not burn themselves alive on the funeral pyre of their wives. The women burning alive on the husband's funeral pyre is known as 'Sati'. It was banned when Islamic Government was in force in India. However, even now, the widow is forced to shave her head and be subjected to inhuman treatment through out her remaining life as she is not allowed to remarry. With Christians, divorce can be sought only when fornication by the partner is proved. What an awkward separation is this.

Looking at Muslims, people from other religions have started realizing the benefits of divorce rules. Shaikh says that, let every one in this world study Islam the truth of this religion will come out distinct for him.

In the end, Shaikh provides jist of divorce rules mentioned all through this book.

(i) How many types of divorces are there? These are of three types, (a) Revocable divorce (طلاق رجعي), (b) Cogent divorce (طلاق بائن), and (c) Irrevocable divorce (طلاق مُعْظَم).

(ii) On simple one talaq, you can unite with your wife. This is revocable divorce (طلاق رجعي) which does not have any waiting time.

(ii) If intensity is developed in divorce, and second Talaq is also given, then the husband cannot unite with his wife, but can remarry her with her consent. This is known as Cogent Divorce (طلاق بائن). In this the second dower (مهر) will also be payable by the husband. If the woman is not interested to re-marry him, then he cannot marry her.

(iii) If someone gives three divorces at a time in stupidity, the wife will go out of his hands. He cannot marry her again even if he wishes. This is known as Irrevocable Divorce (طلاق مُعْظَم).

(iv) There are three divorces in the hands of a man, irrespective of whether he gives them simultaneously or in intervals on one month each. In any case, the wife will be out of purview of matrimony after three divorces. Now she cannot be subjected to the oppression in the hands of an unjust husband. She has seen it once, twice and thrice and when there is no hope of improvement, it is better to say good bye, marry again to someone else and live happily.

(v) What is matrimonial abrogation (خُلْع)? It is a divorce obtained on the initiative of the wife. If the relationship of wife and husband is strained and in spite of repetitive trials, the differences are not sorted out, then the only course of action is to arrange a smooth parting. The correct Quranic way in this context is that, a person each from the wife's and husband's families are made 'arbitrators (حَكَم). And if from the efforts of the arbitrators both wife and husband are united, it is well and good. If truce cannot be achieved, then separation is the only course of action.

(vi) What is 'waiting period (عِدَّت)? At the time of divorce or death of the husband, it is possible that the woman is pregnant. In three months time, or after three menstruations, it is possible to know if she is pregnant or

not. During the waiting period, her relatives are informed about the development so that she can return back to her parents at the end of waiting period. Her livelihood maintenance during this prescribed waiting time is the responsibility of her husband as she lives in his house for his sake only. With Imam Abu Hanifa (رضي الله تعالى عنه), the time span of waiting period is three menstruations. If the woman is old and her menstruations have stopped, then the waiting period will be three calendar months. With Imam Shafii (رضي الله تعالى عنه) also, the waiting period is three menstruations. If the woman is pregnant, the waiting period is till she delivers the baby. The moment she delivers the baby, her waiting period is over. For instance, consider a man divorces his wife, when she is pregnant and suppose she delivers the baby the next day, thus her waiting period will be over, the next day, when she has delivered the baby.

(vii) If the husband dies, the waiting period of the wife is 4 months and 10 days. This is because, she needs sometime to come out of the grief that has struck her badly. These are the parameters of Allah (عَزَّ وَجَلَّ). For more details, readers please refer to books of Islamic Jurisprudence.
