

ISLAMIC FIQH SERIES

THE ISSUE OF DIVORCE

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PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

The commandments about divorce have been described in the Quran and Ahadith. In Tafseer-e-Asedi, under the explanation of related verses. These explanations have been collected and provided in this book for the benefit of our readers. This book is a good read for those who are interested to know details in this context.



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MARRIAGE IN ISLAM

Marriage is a foundation for a healthy home. Allah (عَزَّ وَجَلَّ) has commanded us to ensure stability and happiness in our lives. It is imperative that we choose the right person 'as our spouse for life' who is at the same wave length on issues related to this world and Hereafter.

It is in Quran - وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلَأَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ وَاللّٰهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ [Do not marry the women who associate partners with Allah until they believe. A believing servant-girl is better than a free woman who associates partners with Allah, even though she pleases and attracts you. Nor give your women in marriage to men who associate partners with Allah until they believe. A believing slave is better than a free man who associates partners with Allah, even though he pleases and attracts you. They call to the Fire, while Allah calls to Paradise and towards His forgiveness (and mercy). He makes clear His Revelations to people, that they may remember.] (Al-Baqara - 221)

We are prohibited from marrying non-believing women because the wife is a cornerstone of peaceful home. Marrying someone following a different religion will create a lot of confusion among children. Children grow on the lap of the mother and are attached to her all through their lives. Father's role is secondary and comes much later than the mother. Thus if the mother is a polytheist and the father is a believer, the child will be introduced to faith well after being exposed to polytheism in his initial years and will be less inclined to accept Islam in his youth.

Likewise, if you are a believing woman, you must not marry a polytheist because, after marriage, you will move into his world, his family, and his relatives. Your child will be repeatedly exposed to a polytheistic environment that is contradictory to Islamic faith.

MARRYING CHASTE WOMEN FROM THE PEOPLE OF THE BOOK IS ALLOWED

It is in Quran - الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ ۚ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلَلٌ لَّكُمْ وَطَعَامُكُمْ حَلَلٌ لَهُمْ ۗ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ ۗ وَمَنْ يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ [Today all good things have been made lawful for you. The food of the People of the Book is lawful for you as your food is lawful for them. So are chaste, believing women as well as chaste women of the people who were given the Scripture before you, as long as you have given them their bride-gifts and married them, not taking them as lovers or secret mistresses. The deeds of anyone who rejects faith will come to nothing, and in the Hereafter he will be one of the losers.] (Al-Maaida - 5)

Allah (عَزَّ وَجَلَّ) says that we can marry chaste women from the people of book. What is the meaning of 'Chastity' in this verse? Here, chastity means, they should be morally chaste as well as their beliefs should also chaste. What is the meaning of chastity of belief? It means, they should not believe that Isa (عليه السلام) or Uzair (عليه السلام) are the sons of God. They should not worship the Idols of Prophets kept in Churches and Synagogues. Since the scriptures given to Christians and Jews have been corrupted, they should be inclined to believe their religions in their purest forms avoiding the corrupted version contained in their books. They should believe in the version of Quran which shows the correct version of belief in Allah. Quran is the only book that has not been corrupted so far. It is also important that they believe in the Prophet-hood of Prophet Mohammad (صلى الله عليه و آله وسلم) as the seal of Prophets. This is the meaning of chastity in beliefs

It is in Quran - قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلَّا نَعْبُدَ إِلَّا اللَّهَ وَلَا نُشْرِكَ بِهِ [Say: "O People of the Book! come to common terms as between us and you: That we worship none but Allah; that we associate no partners with him; that we erect not, from among ourselves, Lords and patrons other than Allah." If then they turn back, say ye: "Bear witness that we (at least) are Muslims (bowing to Allah's Will)] (Aal-e-Imran - 64).

It is in Quran - لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ ثَلَاثَةٌ ۚ وَمِنْ إِلَهِ إِلَّا إِلَهُ وَاحِدٌ ۚ وَإِنْ لَمْ يَنْتَهُوا عَمَّا يَقُولُونَ لَيَمَسَّنَّ الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابٌ أَلِيمٌ [Indeed those who say: 'Allah is the third of the Trinity' became unbelievers. There is but One God. If they do not desist in what they say, a painful punishment will afflict those of them that disbelieve.] (Al-Ma'eda - 73)

It is in Quran - وَقَالَتِ الْيَهُودُ عُزَيْرٌ ابْنُ اللَّهِ وَقَالَتِ النَّصَارَى الْمَسِيحُ ابْنُ اللَّهِ ذَلِكَ قَوْلُهُمْ بِأَفْوَاهِهِمْ ۖ قَالَتَهُمُ اللَّهُ ۖ أَنَّى يُؤْفَكُونَ [The Jews call 'Uzair a son of Allah, and the Christians call Christ the son of Allah. That is a saying from their mouth; (in this) they but imitate what the unbelievers of old used to say. Allah's curse be on them: how they are deluded away from the Truth!] (At-Taubah - 30)

SEXUAL RELATIONS AFTER MARRIAGE

In the following verse, Allah (عَزَّ وَجَلَّ) explains what is lawful in sexual relations.

It is in Quran - نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنفُسِكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مِلَاقُهُ وَبَشِّرِ الْمُؤْمِنِينَ [Your wives are the bearers of your seed; so, approach your tillage however you wish and send good ahead for yourselves. Act in due reverence for Allah, and know that you are to meet with Him; and give glad tidings to the believers.] (Al-Baqara - 223)

It is lawful to have vaginal sexual intercourse and absolutely unlawful to have annul intercourse. The rectum is a place of storage of human toxic waste that comes out of anus. It is disgusting even to think of annul intercourse. Even the animals won't resort to this practice.

What is the meaning of نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ [Your wives are the bearer of your seed, so approach your tillage however you wish]? It means that you can only enter and plant your seed at the location reserved for reproduction. The verse specifies the exact location of intercourse in most clear terms.

What is the meaning of وَقَدِّمُوا لِأَنفُسِكُمْ [and send good ahead for yourselves.]? It means that do not think your marriage is only for sexual gratification. As a matter of fact, marriage is your investment for your progeny. You are investing in your off springs who are required to be chaste believers.

OATHS IN ISLAM

It is in Quran - [لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا كَسَبَتْ قُلُوبُكُمْ وَاللَّهُ غَفُورٌ حَلِيمٌ - Al-Baqara - 225) Allah will not call you to account for what is vain in your oaths, but He will call you to account for what you mean in your hearts. Allah is most forgiving and forbearing.]

There are different types of oaths. This verse describes about the absurd oaths people take and they don't mean anything from them. Broadly speaking, there are 4 types of oaths, as follows.

(i) Absurd Oath (يمين لغو)

It is a nonsensical and an unintended oath. Since Allah (عَزَّ وَجَلَّ) forgives most of the minor and even major sins, He does not hold people for verbal oath which is a nonsensical act of absurdity and foolishness. Saying 'By God' or 'I swear to God', on everything is an absurd oath.

(ii) Sinful Oath (يمين غموس)

This kind of oath is known as 'immersive oath' (يمين الغموس). This is a sinful false oath taken consciously and deliberately to conceal a truth. A false witness/testimony in a Court of law comes under this category. You lied to hurt a person. In this case you need to seek forgiveness of Allah (عَزَّ وَجَلَّ) and that person and compensate him for the loses he incurred as a result of your false testimony.

(iii) Intentional Oath (يمين 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 (كفاره). The expiation 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 for Salah or free a slave and if you cannot afford these, then fast for 3 days.

It is in Quran - لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّعْنَةِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا عَقَدْتُمْ مِنَ الْأَيْمَانِ تَكْفَارُتُهُ إِطْعَامُ عَشْرَةِ مَسْكِينٍ مِنْ أَوْسَطِ مَا تُطْعَمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ وَاحْفَظُوا أَيْمَانَكُمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ [Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for (breaking) what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your (own) families or clothing them or the freeing of a slave. But whoever cannot find (or afford it) - then a fast of three days (is required). That is the expiation for oaths when you have sworn. But guard your oaths. Thus does Allah make clear to you His verses that you may be grateful.] (Al-Maaida - 89)

(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 - لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ [For those who vow abstinence from their wives there is a respite of four months. If they go back on their vow, then surely Allah is All Forgiving, All Merciful.] (Al-Baqara - 226)

Before the advent of Islam, people used to vow not to have sexual relations with their wives in order to discipline them or in some cases punish them. A man would vow to abstain from having sexual relations with his wife and deprive her of intimacy for a specified period. This would last for weeks and months. In some cases, at the end of this specified period, he would make another oath to extend the sexual deprivation for his wife for a few more months. This led to the humiliation of women and denial of marital and sexual rights.

Islam did not completely outlaw this practice but refined it in such a way that the rights of both husband and wife are protected. Allah (عَزَّ وَجَلَّ) is aware of our common marital problems. Just as men abused their marital responsibilities, a woman might exploit the husband's desire for her to gain advantages and humiliate him.

This verse puts a limit on spouses' segregation. For a serious marital discord, men were allowed to abstain from their wives for a maximum of four months. Four months is a long enough period to solve problems and sort out complex matters, yet it is not too long to cause psychological harm and loss of connectivity between spouses. As we have described above, this is known as Oath of Separation (إيلا). 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).

It is in Quran - وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ [But if they are determined to divorce, remember that Allah is All Hearing and Most Knowledgeable.] (Al-Baqara - 227)

Marriage is the culmination of a **Nuptial agreement** (نكاح) 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.

It is in Hadith - Ummul Momineen Aisha (رضي الله تعالى عنها) narrated that the Apostle of Allah (صلى الله عليه وآله وسلم) said : Marriage is part of my Sunnah, and whoever does not follow my Sunnah has nothing to do with me. Get married, for I will boast of your great numbers before the nations. Whoever has the means, let him get married, and whoever does not, then he should fast for it will diminish his desire.] (Ibn Maja)

Nikah is a permanent thing. Temporary phony marriages like Shia's Muta, Salafi's Misyar and similar others are forbidden in Islam. The only way to establish sexual relationship with a woman is by way of Islamic marriage.

DIVORCE IN ISLAM

Sometimes marriages break down in view of certain difficulties. The break up of marriage is known as divorce (طلاق). There are four 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 is also known as one or first Talaq in which the husband proclaims Talaq one time. In this Talaq, the husband can revoke it before the end of one month. This kind of Talaq can be given only twice.

(ii) Cogent Divorce (طلاق بائن)

It is an effective divorce. Also known as second divorce which is generally given after the end of one month from the first talaq. In this Talaq, the husband and wife are technically separated and their re-union is subject to the following conditions. (a) The husband cannot call back his wife unless the wife agrees for re-union. (b) In this case, they need to enter into a fresh nuptial agreement, and (c) a fresh dower (مهر) as mutually agree has to be paid by the husband.

(iii) Irrevocable divorce (طلاق مُعْلَظ)

This is the third and final divorce which is given at the end of second month. After this divorce, the woman is absolutely free. It is not possible for them to unite again. The only way to unite would be sometimes in future when the woman got married to someone else and her husband died and gives her Talaq. This is known as **Halala** which is a remote possibility.

Halala - Some Muslims misuse this facility. They arrange a person to temporarily marry the woman they divorced, and she is allowed to sleep with the new man once to have intercourse with him. After the intercourse, this man formally divorces her. Once this is done, the old husband marries her again. Some people are paid for Halala. Some people use their relatives or friends for Halala in order to get married to their wives again. Some people do it as business to make money. Needless to say that all these practices are shameful and criminal, therefore, should be treated as such.

As per Islamic Law (شريعه), 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 parties did not reconcile during this time, the husband will give second divorce in the second month.

If no reconciliation was possible even during the second month, then 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 (عِدَّتْ). 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 is disliked and 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 (رضي الله تعالى عنه), the three times repetition of Talaq was to emphasize, but the purport was only one talaq.

During the times of Hadhrat Umar (رضي الله تعالى عنه), the idiomatic usage of the word 'talaq' was changed. He consulted several experts, all of whom confirmed 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.

With the above, it is known that the intention of the husband has to be taken into account in case of three simultaneous Talaqs. If he intended to specify and stress upon the one talaq by repeating it three times, it can be taken as such. If the intention was to give three Talaqs at the same time, it can be taken as such.

The Muftis following all 4 schools of thoughts treat proclamation of three talaqs by a husband as three only. The Husband is not asked if his intention was to emphasize one Talaq or it was the intentional proclamation of three Talaqs.

This is an important issue which should be viewed in its proper perspective.

When a man divorces his wife, a period of time has to pass before he can divorce her again, making it two divorces. Thereafter, a period of time has to pass yet again before the choice in this verse comes into effect, then, the wife may be retained honorably with courtesy or released with good will. The wisdom behind spreading divorce over three periods is to give the couple ample time to reconsider. Often the feelings of regret and the desire to return to each other prevail. Moreover, a single incident of one divorce is a tool that can help correct significant flaws in mutual behavior. The fear of losing one's family in a second or third divorce is a great motivator to tackle serious problems.

In domestic heated up arguments between spouses sometimes the tempers get flared up and they do not know what they are talking. Like if a person testifies before the Qazi/Judge that in his angry proclamation of three Talaqs his intention was to emphasize on one Talaq only, and he never intended to divorce his wife permanently, then his testimony can be treated as one talaq. However, if the person, on some other occasion in future proclaims three talaqs once again, he should not be asked as to what was his intention in proclaiming three talaqs. His proclamation of three talaqs can be treated as three and fastened permanently. Because, this man is making mockery of Islamic Laws.

There are differences of opinion among scholars in this context. Shaikh Mohammad Abdul Qadeer Siddiqui (رحمته الله عليه) was of the opinion that

if a person proclaimed three talaqs at one time and his intention was to emphasize on one Talaq, then it should be treated as such. However, other scholars think that three talaqs are three, there is no room to ask for a person's intention in it.

There can be a meaningful discussion about it among the Ulema to arrive at a unanimous conclusion.

(iv) Matrimonial abrogation (خُلْع)

Matrimonial abrogation (خُلْع) 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 of both wife and husband are united, it is well and good. If truce cannot be achieved, then separation is the only course of action. The arbitrator (s) decide and order, which could be in favor or against individual spouse. In either of the case, his/their 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 (وکیل). In cases like impotency, (عَیْنِ), and adultery (لَعَان) 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 (وکیل). 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.

People think that Quazi is a person who is appointed by the Government to perform marriages as per Muslim personal law which is done currently. Earlier, during Islamic rule, 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.

During the time of Prophet Mohammad (صلی اللہ علیہ و آلہ وسلم), a woman approached and submitted that she was unhappy with her husband and does not want to stay with him. The Prophet (صلی اللہ علیہ و آلہ 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 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.

It is in Quran - وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَجِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ [Divorced women keep themselves in waiting for three menstrual cycles, and it is not lawful for them, if they believe in Allah and the Last Day, to conceal what Allah has created in their wombs. In such a situation their husbands have better right to take them back, if they desire a settlement. According to customary good and honorable norms, women have rights similar to those against them, but men have a degree above them. Allah is Almighty, All Wise.] (Al-Baqara - 228)

The long wait of three months ensures that the woman is not bearing children in her womb from the marriage; a three month-period also gives the couple time to rethink their situation.

What is the meaning of وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ [According to customary good and honorable norms, women have rights similar to those against them, but men have a degree above them.]?

The roles of men and women are clearly defined in Islam. Essentially, men and women have equal rights. However their responsibilities are different when they get married. After marriage, their roles become distinct from each other. The above verse stipulates that husbands have preeminence over 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.

If the meanings of 'a degree of preeminence' to mean authority and guardianship, it is also correct. The degree of authority is something we need in all aspects of our lives. Any meeting of a team of people requires a team leader to preside over and organize. Similarly, any operation regardless of how small it is, requires a person to manage it. **This authority is actually a burden.** The verse stipulates that men should manage the affairs in consultation with their wives and children. The father has to be

compassionate, should think of his family and well being of his wife and children. The mother and children should cooperate with him in this task and his decision, in the end of the conversation should be followed by all. If everyone in the family starts disputing with each other and try to run affairs as per their whims, the house become a mess.

It is in Quran - الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ 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 [Divorce is twice; then, the wife may be retained honorably with courtesy or released with good will. It is not lawful for you to keep anything you have given them unless the couple fears that they will not remain within Allah's limits. If you fear that they will not remain within Allah's limits, there is no blame in the wife ransoming herself with some of what she received. These are Allah's limits, so do not overstep them. Those who overstep Allah's limits are wrongdoers.] (Al-Baqara - 229)

There are three aspects for a woman after the divorce, (i) the man goes back to her or calls her back into matrimony. This can be done within one month from the first divorce. (ii) The man cannot go back to her and call her into matrimony unless she agrees for it. This is second Divorce mentioned in this Sura. In this case the husband and wife are technically separated and their re-union is subject to the following conditions. (a) The husband cannot call back his wife unless the wife agrees for re-union. (b) In this case, they need to enter into a fresh nuptial agreement, and (c) a fresh dower (مهر), as mutually agreed, has to be paid by the husband. (iii) If the man gives third divorce they are separated irrevocably.

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).

The phrase: "**divorce is twice**" means that the man and the woman has the say in the initial two divorces, but after the third divorce, the choice is not up to them anymore. Why? Because after the third divorce, the matter is irrevocable, and the couple cannot get back together.

In the following verse (230) Allah (عَزَّ وَجَلَّ) says - If a man divorces her again (third time), she becomes unlawful for him until she has married another man.

Allah (عَزَّ وَجَلَّ) says that it is not lawful for men to keep anything they have given to their wives after divorce. The husband must give a dowry at the time of marriage as a token for intimacy. If divorce occurs, the husband is not permitted to take back the dowry. Allah (عَزَّ وَجَلَّ) wants to give the woman a way out if she was the subject of harm and abuse. Thus, the woman is allowed to ransom herself by giving some of the dowry money back if she is afraid that the man is not in observance of Allah's (عَزَّ وَجَلَّ) limits.

HALALA

It is in Quran - فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ [If a husband re-divorces his wife after the second divorce, she will not be lawful for him until she has taken another husband; if the latter husband divorces her, there will be no blame if she and the first husband return to one another, provided they feel that they can keep within the bounds set by Allah. These are Allah's bounds, which He makes clear for those who know.] (**Al-Baqara - 230**)

The above verse gives details about the third and final irrevocable divorce. After this divorce, the woman is absolutely free. It is not possible for the couple to unite again. The only way to unite would be when the woman got married to someone else and her husband gives her Talaq. This is known as **Halala**.

Sometimes it so happens that in anger the husband gives 3 talaq in the same breath and soon he realizes that the breakup of his family has ruined his home and he wants his wife back to save his family. The options open for him are as follows.

(i) If someone sends a marriage proposal to the divorced woman with the intention to help, and his options are open either to keep her or divorce her in future. And he marries her without any precondition that he will divorce her after marriage.

(ii) If the woman gets married to someone after divorce, and hopes that he will divorce her so that she will be free to marry her previous husband.

There are hundreds of cases where a person married a divorced woman, but later realized that he is happy with her and the woman is also happy with him. So they never left each other.

(iii) With Hanafis, if a person, without any precondition, marries the divorced woman, purely for the sake of making her free to remarry her first husband (and does not let anybody know of his intention), is considered to have done a praiseworthy deed. After consummating marriage with him and gaining a divorce she will become free to marry her first husband again. (**Fathul Qadeer** Vol. 4 Pg. 34/ **Al Bahrur Raiq** Vol. 4 Pg. 58)

Some people misuse the laws of Sharia. They arrange a person to temporarily marry the woman they divorced on some payment, and she is allowed to sleep with the new man once to have intercourse with him. After the intercourse, this man formally divorces her. Once this is done, the old husband re-marries her. All this is done in secrecy and with swiftness. Some people use their relatives or friends for Halala in order to get married to their wives again. Some people do it as business to make money. Needless to say that all these practices are shameful and forbidden in Islam.

It is in Hadith - It is narrated on the authority of Hadhrat Ali (رضي الله تعالى عنه) that the Prophet (صلى الله عليه وآله وسلم) said : 'Curse be on the one who marries a divorced woman with the intention of making her lawful for her former husband and upon the one for whom she is made lawful. (**Sunan Abu Dawood**)

In the above Hadith the statement 'with the intention of making her lawful to her former husband' show that it is a fixed Halala.

TREATMENT OF DIVORCED WOMEN

It is in Quran - وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَن يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَادْكُرُوا اللَّهَ عَلَيْهِمْ [When you divorce women and they have reached (towards) the end of their term, then either keep them in a fair manner or release them in a fair manner. Do not hold on to them with the intent to harm them and commit aggression. Anyone who does this, wrongs himself. Do not make a mockery of Allah's revelations. Remember the favor He blessed you with, and the Quran and wisdom He sent, to teach you. Be mindful of Allah and know that He has full knowledge of everything.] (**Al-Baqara - 231**)

Allah (عَزَّ وَجَلَّ) orders all men to be compassionate towards their wives, even while they are being divorced. They should not hold them in matrimony with the intention to harm. Allah (عَزَّ وَجَلَّ) says that people should not use the flexibility in Islamic laws to harm their spouses. Allah (عَزَّ وَجَلَّ) wants to keep the door of reconciliation open until the very last minute for both the spouses. They can reconsider and bring back the family's unity, preserving a home for their children where children have the love and care of both their parents.

Allah leaves the decision either to unite or separate in the hands of the couple without any outside interference. It is because, when a third party interferes, the situation gets aggravated. People, such as parents or siblings, do not have the emotional connection the couple shares. They do not consider the intimacy and tenderness of the husband towards his wife, or the wife towards her husband. These emotional, psychological, and physical matters play a significant role in solving marital problems. A man who is attracted to his wife's beauty may forget about their problems. A woman may see something in her husband that she does not want to lose.

It is therefore necessary that disputes remain confined between the husband and wife. Often, there is an emotional attraction between them, and this attraction is often the reason for reconciliation. This is the reason Allah (عَزَّ وَجَلَّ) does not want that a man proclaims 'Talaq' during menstruation. The reason behind it is, there is no intimacy between the couple during this time and particularly the wife has mood swings during this time.

The men are specifically warned that they should not hold on to their wives with the intention to harm them and commit aggression on them. Some men pretend to be upright, while in reality, they want to harm and humiliate their wives. For instance, a man may claim that 'I do not want to divorce my wife, and I would like for my family to get back together. On the surface, this appears to be an act of goodwill to preserve a home, while in reality, the man has no interest in reconciliation or normalcy in daily life. He intends to abuse his wife emotionally or physically. This kind of behavior is known as 'Dhirar' (الضرار) and it is forbidden in Islam.

The name 'Dhirar' (الضرار) was used at the time of the Prophet Mohammad (صلى الله عليه و آله وسلم). There was a Mosque referred to as Masjid al-Dhirar (مسجد الضرار) or the Mosque of Harm. On the surface, it was built as a house of prayer, but the builders/hypocrites had ulterior motives to use it as a pulpit to divide believers.

A divorcing husband should not fall under the illusion that he is harming his wife by retracting the divorce for abuse; rather he should know that he is harming and abusing himself. The moment someone starts harming and abusing a person, the affected person turns towards Allah (عَزَّ وَجَلَّ) and prays for help. While you abuse your wife, Allah (عَزَّ وَجَلَّ) is not on your side. In this scenario, Allah (عَزَّ وَجَلَّ) is on the side of your wife and

you are slated as Dhalim (ظالم) and an enemy of your wife and Allah (عَزَّ وَجَلَّ) both. In addition, you fall into the category of people who are mocking the commandments of Allah (عَزَّ وَجَلَّ) by abusing people while pretending to follow His commandments. Remember this is one of the attributes of Munafiqeen.

In the end of the verse, Allah (عَزَّ وَجَلَّ) reminds Muslims about His favors on them by sending His Prophet (صلى الله عليه و آله وسلم) and establishing a fair Islamic living system for them for their welfare in both the worlds.

THE ROLE OF RELATIVES IN RESOLVING DISPUTES OF SPOUSES

It is in Quran - وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَمْ أَرْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ [When you divorce women and they have reached their set time, do not prevent them from remarrying their husbands if they both agree to do so in a fair manner. Let those of you who believe in Allah and the Last Day, take this to heart as this is more wholesome and purer for you. Allah knows (what) you do not know.] (Al-Baqara - 232)

This verse is about the middle men and relatives in the family who may try to break the matrimonial relationship of the couple by their personal enmity or prejudice or stupidity. This happens when the waiting period of the second divorce is about to end and both husband and wife are inclined to re-establish their matrimony by a fresh nuptial agreement (Nikah). At this time, some relatives from either of the side interfere to prevent the couple from getting back together. They get in the way of reconciliation without taking into account the emotional connection the couple shares. They may be doing it out of some goodwill, but they should know that by preventing the couple to unite, they may be doing a bigger harm and they have no right to harm the couple in this fashion.

The phrase '**do not prevent them from remarrying their husbands**' explicitly implies that Allah (عَزَّ وَجَلَّ) has given the marriage approval in the hands of the woman at second divorce. In other words, returning to the husband requires the woman's consent. So, if the couple agrees to get back together and if they satisfy the condition mentioned in the verse, ie, '**to do so in a fair manner**', then family members intending to oppose must stay away. Allah (عَزَّ وَجَلَّ) says '**Let those of you who believe in Allah and the Last Day take this to heart, that is more wholesome and purer for you.** Allah (عَزَّ وَجَلَّ) is All Wise, All Knowing. Regardless of how bad the situation between the couple might have been; regardless of what you think you know, always keep in mind that Allah (عَزَّ وَجَلَّ) knows what you do not know.

PROTECTION OF INFANTS OF DIVORCED WOMEN

It is in Quran - وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِمَّ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ 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 آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ [(Divorced) mothers can breastfeed their children for two whole years, (if the fathers) wish to complete the nursing period. During this time the father is responsible for their provision and clothing, according to custom. No one will be subject to more than his capacity. And no mother or father should be subject to harm because of their child. The same applies for the heir. If they mutually agree to wean the child before the end of the two years, there is no blame upon them. If you wish to have your children nursed (by a wet nurse), there is no blame upon you so long as you pay the required (sum) according to what is customary. Protect yourselves from Allah's (anger) and know well that He is seeing you.] (Al-Baqara - 233)

The above verse is related to the protection of the infant after divorce. It explains that no matter how ugly the divorce was, it should not be a source of misery for the innocent child.

Allah (عَزَّ وَجَلَّ) wants to protect the child from the unpleasantness between his parents after divorce. Divorce breeds discord between the couple, but Allah (عَزَّ وَجَلَّ) wants to shield the children from the parent's disagreements.

Both the infant and the nursing mother have to be provided by the ex-husband. Allah (عَزَّ وَجَلَّ) says : 'Mothers should breastfeed their children for two full years; for those who wish to complete the full term of nursing, and clothing and maintenance must be borne by the father in a fair manner.' So the father is responsible for supporting the child and his mother who is nursing the child according to his ability.

The verse continues "No one should be burdened with more than they can bear : no mother shall be made to suffer harm on account of her child, nor any father on account of his. Both parents are addressed here. It is not acceptable to exhaust the father with nagging demands beyond his financial ability. Similarly, the father must not harm the mother by leaving her to fend for herself and her baby. In either case, the child must not be used as a source of stress or a tool for revenge between the divorced couple. Allah (عَزَّ وَجَلَّ) sets a precise framework to guarantee child's rights.

If the father of the infant child dies in between these two years the responsibility of providing support to the mother and infant should not stop. In this case, Allah (عَزَّ وَجَلَّ) says, the duty of the father's heir is to provide this support.

The verse continues: 'nor will there be any blame if you wish to engage a wet nurse, provided you pay as agreed in a fair manner.' When the father entrusts his child to his divorced wife for nursing, the child receives warmth and love from the mother. But in cases where she cannot nurse the child due to weakness or health issues, then the father can look for a wet nurse to breastfeed the newborn. Again, the father has the responsibility to provide the wet-nurse with whatever she demands for breastfeeding the child.

The verse ends with the commandment that 'Be mindful of Allah knowing that He sees everything you do.' Allah (عَزَّ وَجَلَّ) is warning all parties against dishonesty and injustice. It is a warning for a father who does not provide what he can; a mother who uses her newborn as an excuse to overburden her ex-husband, or a wet-nurse who does not care for the child properly and makes unnecessary overburdening demands. Allah (عَزَّ وَجَلَّ) is warning all involved in child's care by saying that Allah (عَزَّ وَجَلَّ) sees what you do and what you keep in your hearts.

WAITING PERIOD OF A WIDOW

It is in Quran - وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ [If any of you die and leave widows, the widows should wait for four months and ten days (before they remarry). After this period, there is no blame upon them for what they do according to custom (getting married to someone else). And Allah, knows what you do'.] (Al-Baqara - 234)

There is a waiting period known as 'Iddah' prescribed for the woman after the marriage ends in divorce or after the death of her husband. The waiting period after divorce is three complete menstrual cycles. If the divorcee is in menopause or she does not menstruate, then the waiting period is three full months.

In the case of first divorce, the husband can call his wife back on his own within the Iddah period. In case of second divorce, the wife has to agree for the union within the Iddah period. In this case, a new nuptial contract has to be signed and fresh dowry paid. If all three divorces have been pronounced in one sitting, then the right of remarrying your ex-wife with a new contract and dowry is lost. The woman is free to marry someone else after the Iddah.

The waiting period of a widow (iddah), if she is not pregnant, is four months and ten days. If the widow is pregnant, then her 'iddah' is the child's birth or 4 months and 10 days, whichever is longer. For instance, if a woman who is nine months pregnant, and her husband dies and she delivers the baby a week later, her Iddah period will be 4 months and 10 days. If the woman is one month pregnant at the time of her husband's death, her Iddah period will be the birth of her child which is more than 8 months.

In the case of a pregnant divorcee the waiting period ends when she gives birth; even if she gives birth a week after the divorce is finalized.

It is in Quran - وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاخِذُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ [There is no blame upon you if you hint a proposal of marriage to (divorced or widowed) women (during their waiting period), or conceal it in your heart. Allah knows that you will be inclined towards them. But do not enter into any hidden arrangements with them outside of what is customary nor bond in marriage with them until the end of the waiting period. Know that Allah knows what is in your hearts, so heed Him. Remember that Allah is most forgiving and forbearing.] (Al-Baqara - 235)

In this verse, Allah (عَزَّ وَجَلَّ) addresses the feelings of men and women by saying that 'You will not be blamed whether you give a hint that you wish to marry these (divorced) women or keep it to yourselves. Allah (عَزَّ وَجَلَّ) knows that you intend to propose to them. Do not make a secret arrangement with them; speak to them honorably and do not confirm the marriage tie until the prescribed period (Iddah) reaches its end."

The phrase "to give a hint" means to allude to something without clearly stating it. Allah gives both men and women an outlet for their emotions. During the waiting period, it is prohibited to express interest in marriage or engagement explicitly. However, implicit expression as a show of interest in marriage allows the divorced woman or the widow to weigh her options rather than rush into a new relationship. It acts as a shield for her while keeping her options open for a future marriage.

DIVORCE BEFORE CONSUMMATION OF MARRIAGE

It is in Quran - لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمُؤْسَعِ قَدَرُهُ وَعَلَى الْمُقْتَرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ [There is no blame upon you if you divorce women when you have not yet slept with them or specified a dowry for them. But provide them (your ex-wives) with benefits according to your ability. Those with greater financial means should provide according to their capacity; those with lesser financial means should provide according to custom to the best of his ability. This is an obligation upon the doers of good.] (Al-Baqara - 236)

The above verse indicates that there will be no blame upon a couple if they divorce before having sexual intercourse and a specific agreed dowry. Allah (عَزَّ وَجَلَّ) says, in such a case, 'make fair provision for them, the rich according to his means and the poor according to his. The provision should be as per customary and honorable practices.

It is in Quran - وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَيَصِفْ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ [If you divorce them after specifying a dowry but before you sleep with them, give them half the specified dowry. Unless they or those in whose hand lies the marriage contract forgoes it. To give them the full amount (of the dowry) is closer to taqwa. Do not forget to treat each other with grace. Certainly Allah sees what you do.] (Al-Baqara - 237)

This verse clarifies that if the divorce takes place before consummating the marriage, then half of the fixed dowry is payable to the ex-wife. However, men have been encouraged to pay full dowry by saying 'paying full dowry is closer to Taqwa'.