

# Divorce

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكٌ مِّمَّعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَنٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا  
ءَاتَيْتُمُوهُنَّ 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 فَأُولَئِكَ هُمُ الظَّالِمُونَ



Divorce is twice. Then [after that], either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allāh. <sup>1</sup> But if you fear that they will not keep [within] the limits of Allāh, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allāh, so do not transgress them. And whoever transgresses the limits of Allāh - it is those who are the wrongdoers [i.e., the unjust].

- Divorce may take any of the five legal rulings
  1. Permissible if there is a need.
  2. Disliked for no reason.
    - a. Majority vs Hanafi and Ibn Taimiya (Divorce without a valid reason is prohibited)
  3. Preferred, if continuing the marriage may lead to harm for the husband and wife.
  4. Obligation in case of Ilaa' (the husband makes an oath to avoid intimacy with the wife for more than four months).
    - a. Some scholars mention that if a women committed adultery, then she should be divorced.
  5. Prohibited if done in a prohibited way (talaq bidi'e).
- It is valid only from the accountable husband.

عَنْ أَبِي ذَرِّ الْعَفَّارِيِّ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " إِنَّ اللَّهَ تَجَاوَزَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ " <sup>1</sup>.

Allah has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do."

- It is not counted if it was from:
  - The insane
  - The intoxicated (if it was through a permissible means)
  - One who is forced
    - Majority vs Hanafi
  - One in extreme anger that causes him to lose his sanity
- Divorce from an insane person is not counted.
- A person who is intoxicated is considered insane, his divorce is not counted (if intoxication was through a permissible means (sedatives for medical use and not a sin like drinking).
  - If it was through drinking or other prohibited means then his divorce will be counted, that is the opinion of the four Imams.
  - Ibn Taimiya, Ibn al Qayim and many of our contemporary scholars like the council of senior scholars deem the divorce uncountable. They follow a principle that the intoxicated is accounted for his actions and not his sayings.
- If a person was forced to divorce his wife, then that divorce is considered invalid if:

---

<sup>1</sup> Sunan Ibn Majah 2043

- He was forced unjustly (It is considered valid if he was forced by a judge for a valid reason)
- Was threatened with force and punishment from a person who is able and capable of such harm. (valid if it was a mere harmless threat from someone who is unable to harm him)
- Divorce from a person in anger is valid, unless his anger causes him to lose sanity.

## The Sunnah In Divorce

عن ابن عمر، أَخْبَرَهُ أَنَّهٗ، طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ، فَذَكَرَ عُمَرُ لِلنَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَتَعَيَّظَ فِيهِ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ثُمَّ قَالَ " لِيُرَاجِعَهَا، ثُمَّ لِيُمْسِكَهَا حَتَّى تَطْهُرَ، ثُمَّ تَحِيضَ فَتَطْهُرَ، فَإِنْ بَدَا لَهُ أَنْ يُطَلِّقَهَا فَلْيُطَلِّقَهَا "2.

Narrated `Abdullah bin `Umar:

That he had divorced his wife during her menses. `Umar mentioned that to the Prophet. Allah's Apostle became angry and said, "He must take her back (his wife) and keep her with him till she becomes clean from her menses and then to wait till she gets her next period and becomes clean again from it and only then, if he wants to divorce her, he may do so."

- The Sunnah in divorce, is for the husband to divorce his wife with a single count of divorce in a purity in where there was no intercourse, then waiting for the iddah (waiting period) to end.

---

<sup>2</sup> Sahih al-Bukhari 7160

## Forms Of Bidi'e Divorce

- If the divorce was not according to the Sunnah, then it will be called a bidi'e divorce which is considered a sin even though it will be counted.
  - It is preferred to take back the wife in bidi'e divorce then divorce her according to the sunnah if the husband still wants to.

### Examples:

- More than 1 count of divorce with a single or multiple statements. (counted all 4 imams)
- Divorcing the wife in her menses (counted all 4 imams)
- Divorcing the wife in a purity after intercourse (counted all 4 imams)
- Divorcing the wife in the waiting period (counted all 4 imams)
- The bidi'e divorce applies to nonpregnant women after consummation.
  - Divorcing a women in her pregnancy or before consummation at any time (even in her period) is valid and not considered bidi'e.

## The wording of divorce

عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدُّ النِّكَاحِ وَالطَّلَاقُ وَالرَّجْعَةُ " <sup>3</sup>.

The Prophet (ﷺ) said: There are three things which, whether undertaken seriously or in jest, are treated as serious:

Marriage, divorce and taking back a wife (after a revocable divorce)

- A clear divorce is by using the words of divorce, saying: you are divorced, I divorce you.
- If a man was asked "Did you divorce your wife?" and answered with "Yes" then it occurs as a divorce.
- Statements which have a clear indication of divorce are considered valid divorce, no intention is required nor is the intention considered. If a man directs a clear statement of divorce to his wife, then she is considered divorced, it is counted even if he claimed that he was joking.
- The sayings of the heart have no rulings, so if someone says that he divorced in his heart then it is not counted. (all scholars)

---

<sup>3</sup> Sunan Abi Dawud 2194

## Unclear divorce statements (words that might imply divorce)

عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّ ابْنَةَ الْجَوْنِ لَمَّا أُدْخِلَتْ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَدَنَا مِنْهَا قَالَتْ أَعُوذُ بِاللَّهِ مِنْكَ. فَقَالَ لَهَا " لَقَدْ عُدْتِ بِعَظِيمٍ، الْحَقِي بِأَهْلِكَ " <sup>4</sup>.

`Aisha said, 'When the daughter of Al-Jaun was brought to Allah's Messenger (ﷺ) (as his bride) and he went near her, she said, "I seek refuge with Allah from you." He said, "You have sought refuge with The Great; return to your family."

- If a husband says to the wife any of the following statements, then the intention is considered, if he intended a divorce then it is counted as a divorce (the number of counts also depends on the intention) otherwise it has no ruling.
  - You have no husband
  - You are free of any husband
  - You are in an irrevocable state
- All 4 imams consider the intention in unclear divorce statements,
  - The hanbali madhhab declared that certain statements that imply irrevocability will be counted as 3 counts.
- Writing the words of divorce requires the intention and verification.
- Clear Thihar statements are never counted as divorce even if the intention was divorce.

---

<sup>4</sup> Sahih al-Bukhari 5254

## The counts of divorce

- If a husband uses the word divorce, then it is counted as a single count, unless he intends more.
- If he uses statements that imply more than a single count then it will be counted.
  - For example: I divorce you two times, will be counted as two, I divorce you with the number of stars or a million or any other statement that implies a number, then the divorce count will be equal to that number up to 3, anything more will have no ruling.

## Repeating The Divorce

- Repeating the statement of divorce will increase the divorce count (unless he did not intend repeating the talaq).
  - If consummation did not occur, then after the first count the wife will be in an irrevocable state and divorce after the first count will have no effect on her.
- For the repeated divorce to be considered a confirmation of the first it must be of the exact words, and without “and” or “then”.

## Conditional Divorce

- A conditional divorce is not valid except from a husband, and the condition is not valid if made before marriage (If a man said to a woman before the marriage contract, if you leave my house in my presence then you are divorced).

- If a condition is made then the wife is not divorced before the condition is met. Once the condition is met the wife will be divorced, this is the opinion of all 4 imams.
  - Example: If you leave the house today then you are divorced, if the wife leaves the house on the same day, then she becomes divorced (regardless of the intention of the husband)
  - The opinion of Ibn Taimiya is that in a conditional divorce we go back to the intention of the husband.
- If a condition is made then it cannot be changed, even if divorce is made after the condition, it will have no effect on it, once the condition is met the divorce will occur.
- If a conditional clause is used like “if”, “when”, “once”, if the husband intended it to be effective immediately, only pertaining to the day or circumstance then it will only be effective for that period of time, otherwise it will be effective even if the action is delayed.
- These clauses do not imply repetition unless the words “every time” are used which imply repetition.
- If the condition was Allah’s will then it has no effect,
  - Examples: You are divorced if Allah wills (إن شاء الله) it is directly counted as divorce.
  - You are divorced if you leave the house tonight, if Allah wills (إن شاء الله). She is divorced as soon as she leaves the house.

## Doubt In Divorce

- Certainty is not removed by doubt, this is the principle to act upon in this section.
- If a man is sure of his divorce but is in doubt whether it was conditional or direct, we act on certainty which is a direct divorce.
- If a man divorced his wife but is in doubt whether it was one count or three count divorce, we act on certainty which is one count.
- If a man was doubtful about a statement, he said whether its divorce or thihar, then it's not counted as anything.

## Section Of Revocability

- It is to bring back a revocable wife into the marriage without a contract.

## Conditions Of Revocability

1. A revocable wife is one in her waiting period , who was divorced without any compensation (money or anything of value), after consummation, with a count of divorce less than 3.
2. In her waiting period. (after the waiting period expires, she becomes irrevocable)

3. Without any compensation: (if the divorce was a result of a payment by the wife, then it will be irrevocable in the madhhab)
4. After consummation: (a divorce before consummation will deem the wife irrevocable, she also has no Iddah)
5. With a count of divorce less than 3 in total, (after a three-count divorce she is considered irrevocable)

### Taking the wife back

- This is done by any words that signify wanting the wife and taking her back.

Examples: I have taken my wife back or I take her back.

- Having witnesses is preferred but not an obligation (All 4 madhhabs)
- Intercourse between the husband and the revocable wife is considered a form of taking the wife back regardless of intention.
  - Hanafi: kissing or any action with desire like kissing, touching or intercourse regardless of intention
  - Maliki: just like the above but with the intention.
  - Shafie: It must be done verbally, no action suffices regardless if he intended or not.
- In the madhhab the iddah is until she washes from the third period and not just the start of purity, that is the opinion of the seniors among the companions like Abu Bakr, Omar, Ali and Ibn Masood, may Allah be pleased with them.

- The counts of divorce will not reset unless she reached a 3 count divorce and then remarried and divorced, in this case if the previous husband marries her he will get three more counts of divorce.
  - If the divorce counts were not exhausted previously before she (the wife) marries another husband, then they will remain for him if he marries her again (1 or 2 count divorce) (opinion of majority vs Hanafi)
  
- If a wife reaches a 3-count divorce, then she will be irrevocable to the first husband until she marries another man and intercourse occurs then divorces.
  - The intercourse should be in purity, it will not be counted if it was in her menses, postpartum bleeding, or ihram vs majority

## Matters Of Elaa'

لِّلَّذِينَ يُؤْلُونَ مِن نِّسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِن فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ﴿٢٢٦﴾

For those who swear not to have sexual relations with their wives<sup>1</sup> is a waiting time of four months, but if they return [to normal relations] - then indeed, Allāh is Forgiving and Merciful.

- Elaa' is when a husband makes an oath to refrain from intercourse with his wife for more than 4 months.

- It is not Elaa' unless he makes an oath, and the time period of abandonment is more than 4 months. If 4 months pass, unless intercourse occurred, the husband is commanded to divorce his wife.
- If he refuses intercourse or divorce, then the judge may divorce them or annuls the contract. (This is a situation when a forced divorce is valid and not considered an oppression)
- Anal intercourse or any form of sexual penetration does not remove the ruling or Elaa', it is strictly vaginal intercourse.
- If a husband abandons his wife without an excuse, intentionally harming her for more than 4 months then the rulings of Elaa' is applied (he either has intercourse with her or is forced to divorce.)

## Matters Of Thihar

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِمَّا هُنَّ أُمَّهَاتُهُمْ إِنْ أُمَّهَاتُهُمْ إِلَّا اللَّاتِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوفٌ غَفُورٌ ﴿٢﴾

Those who pronounce *zihār*<sup>1</sup> among you [to separate] from their wives - they are not [consequently] their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allāh is Pardoning and Forgiving.

- Thihar is prohibited
- It is when a husband says to the wife: “You (or mentions any of her body parts) are to me like the back of my mother (or any of his mahrams or a man)”.

- It is to describe his wife as one who is unmarriageable to him permanently.

Examples:

“You are to me like my mother.”

“You are to me like my father.”

You are prohibited on me

- In the madhhab the above statement is considered thihar vs majority it goes back to his intention whether divorce or thihar.
- If a man says to his wife “You are to me like my sister” intending to honor her and not making her unmarriageable then it is not considered thihar.
- If the wife says it then it’s not thihar.
  - They differed whether she should do the expiation of breaking an oath or nothing is on her, but its not considered thihar.

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ذَلِكُمْ  
تُوعِظُونَ بِهِ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿٣﴾

And those who pronounce zihār from their wives and then [wish to] go back on what they said - then [there must be] the freeing of a slave before they touch one another. That is what you are admonished thereby; and Allāh is Aware of what you do.

عَنِ ابْنِ عَبَّاسٍ، أَنَّ رَجُلًا، أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَدْ ظَاهَرَ مِنْ امْرَأَتِهِ فَوَقَعَ عَلَيْهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَاهَرْتُ مِنْ زَوْجَتِي فَوَقَعْتُ عَلَيْهَا قَبْلَ أَنْ أَكْفِرَ . فَقَالَ " وَمَا حَمَلَكَ عَلَى ذَلِكَ يَرْحَمُكَ اللَّهُ " . قَالَ رَأَيْتُ خُلْخَالَهَا فِي ضَوْءِ الْقَمَرِ . قَالَ " فَلَا تَقْرَبْهَا حَتَّى تَفْعَلَ مَا أَمَرَكَ اللَّهُ بِهِ " 5 .

A man came to the Prophet, and he had uttered Zihar upon his wife then he had intercourse with her. So he said: 'O Messenger of Allah! I uttered Zihar against my wife, then I had intercourse with her before atoning.' He (pbuh) said: "What caused you to do that, may Allah have mercy upon you?" He said: 'I saw her anklets in the moonlight.' He said: 'Then do not go near her until you have done what Allah ordered (for it).'"

- In Thihar intercourse is prohibited before the expiation, but the expiation is not obligated until the husband intends intimacy, the expiation must be done before intimacy (any type of intimacy).
- If the husband made thihar and then divorced there is no expiation required.

<sup>5</sup> Jami` at-Tirmidhi 1199

## The expiation of thihar

1. Freeing of a neck
2. Fasting two consecutive months
3. Feeding 60 poor people

In that order

## Fasting

- Fasting should be consecutive unless it was broken by a prohibited day to fast like Eid and the days of Tashreeq or the obligatory fasting of Ramadan or menses and illness, or if he broke his fast unwillingly or due to forgetfulness or an excuse that permits one to break the fast like travel.
- Intimacy should be delayed until after the expiation is complete, if it interrupted the fasting before completing two months then he must start the 2 month count again.

## Important point regarding fasting:

- Some people will claim that they are unable to fast 2 consecutive months, even though they were able to fast Ramadan which is 30 days, they are not excused they must fast the 2 consecutive months, the hardship here is intended due to the severity of the sin, after all it is a major sin.

## Feeding:

- Feeding has the same rulings as zakat al Fitr: 2.5 kg of wheat, barley, dates, raisins if this is not found then from what is common in the country like rice.
  - (Not the madhhab) But since Allah mentioned feeding it suffices if the person feeds the poor ready meals

- The verse mentions 60 poor people so it won't suffice to feed a poor person for 60 days, given that he can find 60 poor people.
- The intention must be there in fasting and feeding.

## Book of Li'an (Invoking Mutual Curses)

- Testimonies under oath from both husband and wife accompanied with curse or anger

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٤﴾

And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient,

- If a husband accuses his wife with adultery, he must bring witnesses that will testify seeing her commit adultery, with the testimony she will be deserving of the punishment, if the husband fails to bring witnesses, then he will be punished for his accusation.
- Based on the above if a man sees his wife committing adultery, he either comes with witness or he stays silent. In this case the husband he can protect himself with li'an

- Li'an is only between the husband and wife, it can be in Arabic or any other language when needed.

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ فَشَهَدُوا أَحَدِهِمْ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ﴿٦﴾

And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allāh that indeed, he is of the truthful.

وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ﴿٧﴾

And the fifth [oath will be] that the curse of Allāh be upon him if he should be of the liars.

- The husband makes an oath and testifies that his wife, pointing to her or mentioning her name that she committed adultery four times, and in the fifth he says that Allah's curse is upon him if he was lying in this claim.

By Allah I bear witness that my wife has committed adultery  
 By Allah I bear witness that my wife has committed adultery  
 By Allah I bear witness that my wife has committed adultery  
 By Allah I bear witness that my wife has committed adultery  
 Allah's curse is upon me if I am lying.

- The wife then protects herself from the punishment if she makes an oath and testifies four times that he (the husband) is lying in his claim, and in her fifth statement says that she is deserving of Allah's anger if he was telling the truth.

By Allah I bear witness that he (the husband) is lying

By Allah I bear witness that he (the husband) is lying  
By Allah I bear witness that he (the husband) is lying  
By Allah I bear witness that he (the husband) is lying

Allah's anger is upon me if he is telling the truth.

- The Li'an is not valid if
  - the wife starts first (because he needs to testify and make the claim first)
  - Or there one of them misses a statement (husband 5, wife 5)
  - Or if these statements were not in front of the judge or one who acts as the judge.
  - Or changed any of the statements with similar meaning.
- Of the conditions of Li'an is that the husband must explicitly accuse the wife with adultery, this does not include rape.
- Li'an is when the wife denies the accusation, if she confesses then its not li'an and she is deserving of punishment.
- Li'an is an obligation if the wife's pregnancy is not from him, this is the only way to prevent the child from being attributed to the husband.
- If a husband is certain of his wife committing adultery he can divorce her, but if there was pregnancy the husband can do a DNA test, and if it happened that he is not the father he may use li'an to cut the tie of the pregnancy to him, the child will be attributed to the mother.

## In the case of rape

- Some scholars like Ibn Taimiya mentioned that Li'an from the side of husband alone may be used to cut the ties the pregnancy that was a result of rape.

## The effects of Li'an

عَنِ ابْنِ عُمَرَ، أَنَّ رَجُلًا، لَأَعَنَ امْرَأَتَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَفَرَّقَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمَا وَأَلْحَقَ الْوَلَدَ بِأُمِّهِ<sup>6</sup>

Nafi' reported on the authority of Ibn Umar (Allah be pleased with them) that a person invoked curse on the wife during the lifetime of Allah s Messenger (ﷺ), so he effected separation between them and traced the lineage of the son to his mother.

- The punishment for the accusation is dropped (husband)
- A Permanent separation between the husband and wife occurs (by the judge)
- The son is not linked to the father if he denied him in li'an.
- If after some if the husband says that he lied in his claim, in this case he will be deserving of punishment and the child will be attributed to him, but the separation stays.

---

<sup>6</sup> Sahih Muslim 1494a

## Section On Waiting Periods (Iddah)

يَأَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسَّرَّحُوهُنَّ سَرَاحًا جَمِيلًا ﴿٤٩﴾

O you who have believed, when you marry believing women and then divorce them before you have touched them [i.e., consummated the marriage], then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release.

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَيُعَوِّلُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٢٣٨﴾

Divorced women remain in waiting [i.e., do not remarry] for three periods,<sup>1</sup> and it is not lawful for them to conceal what Allāh has created in their wombs if they believe in Allāh and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation.<sup>2</sup> And due to them [i.e., the wives] is similar to what is expected of them, according to what is reasonable.<sup>3</sup> But the men [i.e., husbands] have a degree over them [in responsibility and authority]. And Allāh is Exalted in Might and Wise.

- Iddah is the Period of time where the wife waits and is forbidden to marry after a separation from a husband in his life or due to his death.
  - Of the wisdoms of iddah is to ensure that there is no pregnancy in the womb.
- It is an obligation on every women who is separated from a husband
  - by a divorce or khul',
  - after consummation or after a seclusion where intercourse could have occurred,

- or separated by death regardless if consummation occurred.
- There is no Iddah (waiting period) for a separation in life before consummation or seclusion, (even if they did touch like a hug or handshake or kissed) because of certainty that there is no pregnancy.

### Women in waiting period are 4 types

1. A pregnant women: her iddah (death or divorce) ends by giving birth.
  - The rulings apply in a miscarriage if formation occurs.
    - In the madhhab it is permissible to abort a fetus before the completion of 40 days with a permissible medication and the permission of the husband.
    - The least period of time where formation occurs is 81 days.
    - The soul is blown into the child after the completion of 120 days.
2. Women whose husband passed away: her iddah is 4months and 10 days (regardless if consummation occurred or not)
  - The iddah for a women in a revocable divorce will become 4 months and 10 days as soon as the husband dies (not from the start of her knowledge of his death).

- Death of the husband will not affect the iddah of a women in a non-revocable divorce (annulment, 3 count divorce, khul')
3. The iddah of separation of a non-pregnant women from a living husband is 3 full menstruation cycles.
- This is the opinion of The Hanbalies and Hanafies vs Malikies and Shafies, who claim that it is three purities, counting the purity in which divorce was in.
    - On the first opinion the iddah ends as soon as purity starts after three complete menstrual periods, if she was divorced in a period then it will be not counted.
    - On the second opinion Iddah ends as soon as the menstruation period starts after three purities (the purity in which the divorce was on is counted)
    - Based on the above: if a women was divorced in a purity, she will get her first period then purity, then second period then purity and as soon she gets the third period her iddah will end based on the second opinion (Maliki Shafie), and as soon as purity from the third period is achieved, she will end her iddah on the first opinion (Hanbali Hanafi)
4. If she has no menstruation cycles, then her iddah is three months, given that it was medically proven that she is not pregnant.
- The iddah starts from the moment the separation occurs (due to death, divorce or other causes) and not from the time the wife is noticed.

- If a husband passes away and 6 months later the wife gets the news, then there is no iddah (and no mourning) because it ended before the knowledge of his death.
- One who committed zina will have the same iddah as divorce.
  - If she was pregnant until giving birth, otherwise 3 full menstruation cycles, or 3 months if she does not menstruate.

### Intercourse during a waiting period from another

- If a women has intercourse during a waiting period from a non husband (due to a misconception or fornication) then she has to complete the current iddah then start another for the intercourse.
- If a married women had intercourse from another man then she must observe a iddah, and the husband must not engage in intercourse unless the iddah ends.

# Mourning

عَنْ أُمِّ سَلَمَةَ، زَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَلْبَسُ الْمُعْصَفَرَ مِنَ الثِّيَابِ وَلَا الْمُمَشَّقَةَ وَلَا الْحُلِيَّ وَلَا تَخْتَضِبُ وَلَا تَكْتَجِلُ<sup>7</sup>.

The Prophet (ﷺ) said: A woman whose husband has died must not wear clothes dyed with safflower (usfur) or with red ochre (mishq) and ornaments. She must not apply henna nor collyrium kohl.

- Mourning a husband is an obligation on every wife whose husband passed away in a valid contract.
- It is to avoid all forms of beautification (includes jewelry and perfume) during the period of the iddah.
- It includes everything that is customarily considered beautification. It includes all types of makeup, henna, dying the hair perfume, jewelry, nail polish and kohl.
- Mourning due to divorce is not legislated for a women, whether it is a revocable or irrevocable divorce, mourning the husband is only in death.
  - This is the opinion of the majority vs Hanafies: all the rulings of mourning are applied to a women who is divorced an irrevocable three count divorce.

---

<sup>7</sup> Sunan Abi Dawud 2304

- The Iddah from a revocable divorce, and the death of a husband must be in the house.
  - If she moved out of fear, or was removed from the house (end of rent), she may move to anywhere she wishes.
- She may leave the house during the day for a need, like buying groceries, work or study. But she may not leave at night unless it is for a necessity.
- If she left the mourning then she is considered a sinner, but it has no effect on the iddah.

## Breast Feeding

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرَّضَاعَةَ (٢٣٣)

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period].

- The matter of breast feeding is regarding sucking or drinking milk that came from a pregnancy by a child younger than two years.
- Milk from a virgin women does not count in the madhhab vs it counts the majority.
- Prohibition due to milk is identical to prohibition due to lineage

عَنْ عَائِشَةَ، أَنَّهَا قَالَتْ كَانَ فِيهَا أَنْزَلَ مِنَ الْقُرْآنِ عَشْرُ رَضَعَاتٍ مَعْلُومَاتٍ يُحَرِّمَنَّ .  
ثُمَّ نُسِخْنَ بِخَمْسٍ مَعْلُومَاتٍ فَتُوفِّيَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُنَّ فِيهَا يُقْرَأُ  
مِنَ الْقُرْآنِ<sup>8</sup> .

'A'isha (Allah be pleased with, her) reported that it had been revealed in the Qur'an that ten breastfeedings shall cause prohibition, then this was abrogated by five breastfeedings and Allah's messenger (ﷺ) died and it was still recited by the Muslims.

The hadith states the 5 breast feedings causes prohibition was part of revelation and recitation of it was abrogated late in the life of the messenger's life peace and blessings be upon him

### Conditions of the prohibition (Breast feeding)

1. 5 complete breast feedings (hanbali and shafie vs Hanafi and Maliki : 1 breast feeding.
2. In the first 2 years
  - If the child had 4 complete breast feedings (he drank until letting go of the breast) then it has no effect. If a child sucked milk after completing 2 years, then it has no effect, or if it suckled 4 times during the 2 years and once after the completion of the 2 years then it has no effect.

---

<sup>8</sup> Sahih Muslim 1452a

- Milk due to pregnancy is effective in the ruling, even if it was outside marriage (but the child is not attributed to the adulterer)

## Rulings associated with breastfeeding

- The child has the same rulings as the child from birth, he can look at his milk mother, be in seclusion with her and becomes a mahram for her.
- The same can be said about his milk sisters and milk daughters.
- The rulings of breast feeding do not affect the parents nor siblings of the child. The child's father or brother, may marry his milk mother or milk sister.
- If there was doubt whether the child did breast feed or not, or whether the total number of sucklings are completed or not then there is no prohibition, so if there is a doubt there is no prohibition.

## Financial Maintenance

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ۗ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا ءَاتَاهُ اللَّهُ لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا مَا ءَاتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا



Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allāh has given him. Allāh does not charge a soul except [according to] what He has given it. Allāh will bring about, after hardship, ease [i.e., relief].

عَنْ عَائِشَةَ، أَنَّ هِنْدَ بِنْتَ عُتْبَةَ، قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ،  
وَلَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي، إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ "   
خُذِي مَا يَكْفِيكِ وَوَلَدِكَ بِالْمَعْرُوفِ " <sup>9</sup>.

Hind bint `Utba said, "O Allah's Messenger (ﷺ)! Abu Sufyan is a miser and he does not give me what is sufficient for me and my children. Can I take of his property without his knowledge?" The Prophet (ﷺ) said, "Take what is sufficient for you and your children according to the custom.

- To provide the dependents what is sufficient in terms of food, clothing and accommodation, it is an obligation on the husband for the wives and children.
- If the husband and wife are of different levels of wealth then what is taken as customary is what is middle between them.
  - Some madhhabs chose what is customary in the level of the husband (Shafie) others chose what is customary in the level of the wife (Hanafi)
- Women in a revocable state are financially maintained, just like a wife, but they lose their nights (if she has a co wife).
  - The cowife in a revocable state loses her nights in shafie and some Hanbalies, vs Hanafi and some Hanbalies.
- Women in an irrevocable state (3<sup>rd</sup> count divorce, khul' or annulment) is not provided for, unless she was pregnant.
- A women who defies the husband has no maintenance.

---

<sup>9</sup> Sahih al-Bukhari 5364

- A widow has no financial maintenance because she will get her share from the inheritance.
- If the husband left the wife for a period of time then he is responsible for the financial maintenance for that period
- If the husband was unable to provide for his wife, then she has the right to ask for an annulment through the judge because it is unbearable harm.

### Maintenance for relatives

- For parents (fathers and mothers) and children (sons daughters) : the rich must provide for the poor.
- The father may take from the wealth of the son as long as it does not harm the son vs majority he may take from his son if he was in need and not more.

## Custody

- It is to preserve the young from harm and nurturing him with what he needs.
- It's an obligation for the young and insane.
- The most rightful to have custody is the mother, then her mothers. Then the father then his mothers.
- The custody is transferred by refusal or unworthiness.

- There is no custody for a known sinner (فاسق) or disbeliever over a believer.
- The custody is removed from the mother by completing the marriage contract from another man. Once the cause of prevention is removed the right of custody returns.

### Travel of one of the parents

- If one of the parents travels a long journey to reside, with a safe route then custody is for the father.
- If it was a short travel, for a need and with the intention of returning then the custody is for the mother.
- The madhhab states that the resident is always given precedence in custody.
- Short journey to reside : stays with mother, because it has the ruling of no travel.

### The end of custody:

- When a boy reaches 7 years, he is given the choice to live with any of his parents.
- As for a girl once she reaches 7 she moves with her father.
  - The Maliki madhhab states that custody with the mother for a girl is until marriage and for a boy until he reaches puberty.