

Chapter – 23

Divorce

(طلاق)

Quran:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ

{This type of divorce is up to twice; the women must then be returned on good terms or released with kindness. (02:229)}

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ

{Then if he divorces her third time, she will not be lawful to him until she has stayed with another husband. Then if the other husband divorces her, it is no sin for these two to reunite if they consider that they can keep the limits of Allah established. (02:230)}

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً

{And give their bridal money willingly. (04:04)}

Hadith:

Narrated Abu Hurairah:

The Prophet said, "Allah has forgiven my followers the evil thoughts that occur to their minds, as long as such thoughts are not put into action or uttered." And Qatada said, "If someone divorces his wife just in his mind, such an unuttered divorce has no effect. (Sahih Bukhari: 4914)

Narrated Nafey and Yunus Ibn Jubair:

Ibn 'Umar divorced his wife while she was having her periods. Prophet ordered him to take her back till she became clean. And when she got another period and she became clean again and only then, if he wanted to divorce her, he could do so but before having sexual relations with her. ---- Later, Ibn Umer added that, if you divorced her thrice, she is no longer lawful for you unless she marries another man (and the other man divorces her in his turn). He further said, 'would you people only give one or two divorces, because the Prophet has ordered me so.' (Sahih Bukhari: 4969and4970)

Narrated Al-Hassan:

The sister of Ma'qil bin Yasar was married to a man and then that man divorced her and remained away from her till her period of the 'Iddah (waiting of the divorced without an intercourse for three clean periods) expired. Then he demanded for her hand in marriage, but Ma'qil did not agree. Then Allah revealed as follows:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ
إِذَا تَرَاضَوْا بَيْنَهُم بِالْمَعْرُوفِ

{And when you have divorced women and complete their waiting periods then do not prevent them from marrying their (former) husbands if they agree themselves in accordance with Islamic law. (02:232)}

So the Prophet sent for Ma'qil and recited to him (Allah's order) and consequently Ma'qil gave up his pride and arrogance and yielded to Allah's order. (Sahih Bukhari: 4967and4968)

Narrated 'Aisha:

The wife of Rifa'a Al-Qurazi came to Allah's Prophet and said, "O Noble Prophet! Rifa'a divorced me irrevocably. After him I married 'Abdur-Rahman bin Zubair Al-Qurazi but he proved to be impotent." Allah's Prophet said to her, "Perhaps you want to return to Rifa'a? But you cannot return to Rifa'a until you and 'Abdur-Rahman consummate your marriage." (Sahih Bukhari: 4906)

Narrated Sahal bin Saad, Ibn Abbas, Abdullah bin Umer:

Uwaimir came to the Prophet and said, "A man has found another man doing sex with his wife! What should he do?" Prophet said, "For this Allah has revealed the following verse":

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ . وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ

{And those who accuse their wives and do not have witness, except their own statements, for such the testimony is that he bear testimony four times by the name of Allah that he is truthful. And the fifth time, that the curse of Allah be upon him if he is a liar. (24:06and07)}

So 'Uwaimir did Mula'ana (curse) with her and then divorced her on his desire. ---Yet Allah's Prophet said, "When Uwaimir's wife delivers child look at the child whether he has resemblance to Uwaimir or not!" Later on she delivered a child but did not resemble to Uwaimir. Therefore the child was ascribed to its mother henceforth. Later, she got inheritance according to the law of Sharee'ah. (Sahih Bukhari: 4406to 4409)

Important Aspects of Islamic Doctrine

❖ Divorces are of three types:

1. **Revocable Divorce** (طلاق رجعي): The divorce in which husband and wife can rejoin is called Revocable Divorce. This can happen two times only. More than that is not permitted.
2. **Irrevocable Divorce** (طلاق بائن): The divorce in which husband and wife are separated but if they want to rejoin it is possible but for this they need to make a new contract with new dowry. This divorce is known as Irrevocable Divorce. In this, husband uses harsh words for divorce, such as “Now you go to your parent’s house”, “From today onwards the camel’s rope is in your hand”, “I give you the ultimate divorce” etc.
3. **Offensive Divorce** (طلاق مغلظة): Third divorce is a final divorce. After this, woman will be totally free. Later, if both men and women wish to rejoin, it is not allowed. However, the new marriage is only possible when woman marries to someone and then her second husband gives divorce to her.

Miscellaneous (متفرق)

(1) Divorce is permissible but without any solid reasons it is forbidden. The Noble Prophet said, “With Allah SWT, among all permissible things divorce is the most undesirable item.” (Sunan Abu Daood)

(2) During menstruation period divorce is not permissible. If anyone gives divorce in this situation then once he has to take back his wife. Divorce is given at that time only when wife is in a cleaned condition. Secondly, during this period there should be no occurrence of the sexual relations. Otherwise he would wait till his wife is finally cleaned. Such divorce is called Heretical Divorce (طلاق بدعي).

(3) The right procedure of giving divorce is: Husband should give his first divorce when wife is free from menstruation and having no sex relations. Then he has a chance to rejoin her up to the expiry date of Iddah. He can join her but with a fresh Nikah. If he has determined to give three divorces then husband should give his second divorce when wife is free from menstruation and having no sex relations. Similarly, he can give his third and final divorce when wife is free from menstruation and having no sex relations. Such divorce is called Suitable Divorce (طلاق حسن).

(4) The second right procedure of giving divorce is: Divorce should be according to the procedure mentioned in Hadiths 4969 and 4970 above. Such divorce is called More Suitable Divorce (طلاق احسن).

(5) Divorce is not effective until and unless the words are spoken loudly. The clear wordings for divorce are: “I give you divorce”, “This divorce is for you”, and “I have left you” “You are divorced” and “You the divorced” etc. Such clear words would be effective for giving divorce. No matter by heart you have intension of divorce or not.

(6) If husband says “Talaq” or “Divorce” once or thrice, in both conditions it will be considered as “one divorce”. This is called Revocable Divorce (طلاق رجعي).

(7) If husband does not use clear words but still he has full intension of giving divorce, then the divorce will become effective, provided he has used indirect words such as, “leave the house”, “you are now separated”, “wind up your things”, “go to Hell”, and “you are free” etc. This is called Irrevocable Divorce (طلاق بائن).

(8) If husband gives loud and clear three divorces with the words “I give you three divorces”, then all three divorces would be effective. This is called Offensive Divorce (طلاق مغلظة).

(9) If wife says “Give me three divorces” and husband says “Yes given” then three divorces are effective. But if he replies with the words “I give you divorce”, then it will be considered as one divorce.

(10) Divorce given in the condition of anger would be effective.

(11) Divorce given during the period of menstruation is forbidden. But if it is done would be counted as one divorce.

(12) If husband has given three clear divorces then it is effective and Offensive Divorce. After that the woman is no longer lawful for him unless she goes with Halala, i.e. the woman marries another man and he consummates the marriage and then the other man divorces her in his turn. Quran says:

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{Then if he divorces her the third time, she will not be lawful to him until she has stayed with another husband; then if the other husband divorces her, it is no sin for these two to reunite if they consider they can keep the limits of Allah established. (02:230)}

Note: *If all this procedure is adopted with any corrupt intentions then this would not be considered as “keeping the limits of Allah established”.*

