

# MARRIAGE and Divorce

**KEEP THEM IN KINDNESS OR  
RELEASE THEM IN KINDNESS**



**Dr. Muhammad Jamil Ghazi**  
Cairo: Matb'at al-Madani, 1406/1986

Translated by Abu Zakariya James Pavlin

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release her in kindness...**

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*Marriage and Divorce: ...Keep them in kindness or release them in kindness...* by Sheik Muhammad Jamil Ghazi.

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## Publisher's Note

All praises are due to Allaah (SWT) for allowing us to strive and prosper. For years CWP Publishing and Distribution, through the mercy of Allaah, has provided to the public through its distribution efforts numerous authentic works on Islam from well known and reliable sources at affordable prices. Up until now our efforts have focused solely on distributing these materials. Now, with the help of Allaah (SWT), we are pleased to announce that we have published our first book (the English translation of *Marriage and Divorce: ...keep them in kindness or release them in kindness...*) and will soon co-publish our second book (translation of The Islamic Ruling Concerning Tasweer drawings, paintings, photography and sculpture).

To the best of our knowledge, these books provide the true Islamic representation of the issues they address. There are many other books which remain to be translated and written that will assist the English speaking reader in understanding and practicing this religion as it was practiced by As-Saalaf As Saalih (Righteous Predecessors). CWP is ready to accept the challenge to provide books which represent excellence in scholarship and publishing to the English speaking readers. Our mission statement supports our commitment: To serve the Muslim Community by working towards the goal of making Allaah's word supreme and establishing the Prophet Muhammad's (SAW) Sunnah throughout the world through the publication and distribution of the highest quality literature on Islam.

Through this humble effort we hope to make it convenient and affordable to study the authentic works of the scholars, both past and present, who have dedicated themselves to transmitting the knowledge of the companions (Sahabah) as they received it from the Messenger of Allaah (SAW). We intend to do this by providing to the public reasonably priced materials from reliable sources in order that they may be able to distinguish the truth of Islam from misguidance as manifested in religious innovations (bid'a), weak and fabricated hadeeths (traditions), and foreign concepts and ideologies which have marred the beauty of Islam.

Abu Ameer Kevin Williams  
CWP Publishing and Distribution

# Acknowledgements

The origin of this translation began in 1408/1988 when it appeared as a series of articles for *al-Hijra Magazine*. The translation was first made by Abdallah Mekkaoui and was edited by the staff of Dar al-Hadith. The last article in the series appeared in Rajab 1410/February 1990. We then began preparing a manuscript for publication as a book, which, by Allah's will, never came to pass. I kept the original manuscript in hope that it could some day be published. Thus, when CWP Publishing and Distribution approached me about doing a book, I immediately suggested *Marriage and Divorce*. I reworked the original translation and expanded the discussion through the footnotes. The final result is this publication, al-hamdu-li-lah!

There were many people involved in the preparation of this book, all of whom deserve a note of thanks. In particular, I wish to express my gratitude to Sister Shariffa A. Carlo and Sister Barbara Herbert for their editing skills, and Sister Lavette Ali for doing the typesetting.

***It is not fitting for a believer, man or woman, when Allah and His Messenger have decreed a matter, to have any further say in their affair... [al-Ahzab 33:36]***

**With the Name of Allah,  
the Infinitely Merciful, the Mercy-giving**

All praise is for Allah. We praise Him, seek help from Him and ask Him for forgiveness. We seek refuge with Allah from the evils of our souls and from the wickedness of our deeds. Whomever Allah guides, none can misguide; and whomever Allah allows to be misguided, none can guide. I bear witness that there is no deity but Allah, and I bear witness that Muhammad is His worshipper and messenger.

***O you who believe! Fear Allah as He should be feared, and do not die except as Muslims. [Al 'Imran 3:102]***

***O mankind! Fear your Lord who created you from a single soul and created from it its mate, and from these two He spread about many men and women; and fear Allah, through whom you demand your mutual (rights), and fear cutting the ties of kinship. Surely Allah is ever a Watcher over you. [al-Nisa' 4:1]***

***O you who believe! Fear Allah and always speak the truth. He will make your deeds righteous and will forgive you your sins. Whoever obeys Allah and His Messenger has truly succeeded in a great way. [al-Ahzab 33:70-71]<sup>1</sup>***

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1. This is the text of the **Khutbat al-Hajah** which is transmitted in the Five Canonical Collections of Hadiths (**al-Khamsah**), i.e., not by Ibn Majah. The wording of this text is confirmed by al-Nasa'i.

## Translator's Introduction

The purpose of presenting this translation is to add to the growing literature concerning married life in Islam. When I questioned myself as to why another book on marriage and divorce is necessary, I did not have to wait long for the answer. My own limited contact with the Muslims of northern New Jersey supplied the answer. First of all, there is a high divorce rate, which is reason enough for writing on the topic. However, it seems to me that many married couples, especially the wives, are merely existing in the marriage and not growing and benefiting from it in the Islamic sense of striving to increase one's worship of Allah. And if the women of Islam are suffering, then the men of Islam have failed in their duties to Allah. Concerning the institution of marriage, this means that more divorces are lingering on the horizon. Although I would like to hope that the situation in New Jersey is unusual, my contacts with Muslims from other parts of the country do not give me much to support my hopes. As for marriages throughout the Muslim world, I dare not even think of the problems and difficulties.

In order to answer the question of why Muslims seem to be losing the battle to maintain flourishing marriages, it might well be necessary to present a lengthy book investigating the causes of social problems in the Muslim community. Or, we can take the easy way out and simply blame Western society and the materialistic culture of the United States for corrupting the Muslims. This, unfortunately, is the preferred method of many Muslims. However, when one studies history from a Quranic interpretation, it becomes clear that Muslims from the time of Adam, the peace of Allah be upon him, have faced the onslaught of "materialistic culture." Is not the lure of the pleasures of this world Shaytan's greatest weapon against the believers? Thus what is needed, as is always the case, is an impetus for Muslims to look inward and ask ourselves "Have we changed the conditions of our hearts away from the pure worship of Allah, therefore making ourselves deserving of Allah's punishment?" In this case, our affliction is the decline of the Muslim family. It is my hope that this book by Sheik Muhammad Jamil Ghazi will supply some of the answers that concerned, inward-looking Muslims are searching for.

As for the scope and intentions of this book, I shall leave the explanation of these points to the author's own introduction, for he is obviously more qualified than I to present his case. I shall only say that I agree with Sheik Ghazi concerning his observations and interpretations related to the problems underlying the declining situation of marriage

among Muslims. (It should be noted that Sheik Ghazi is addressing the problems of Egyptian society, which further confirms the international scope of this shameful condition.) Likewise, I find the solutions he offers throughout the book to include some of the most fundamental steps necessary to correct the declining state of Muslim marriages. These solutions, of course, stem directly from the Quran and the Sunnah of Prophet Muhammad, the blessing and peace of Allah be upon him. Although it should go without saying that the salvation of the Muslims from our problems lies only in the Quran and the Sunnah, it is obvious that this needs to be said more frequently and more loudly. However, frequency and loudness are not substitutes for the careful elaboration of the correctly used answers from the Quran and the Sunnah. Moreover, without the actual application of the Quran and the Sunnah by the Muslims in spite of all hardships, one book, or one thousand books, will be of no use. Thus, it is my prayer to Allah, glorified be He, that He allow every Muslim family to take even one Sunnah from this book and start to apply it consistently in their lives. Then, step by step, we can begin the arduous, but spiritually joyous, journey to the Islam of the Prophet, to the only Islam that Allah will accept on the Day of Resurrection.

I wish now to explain some points related to the translation itself. I believe that any translation is ultimately subjective in nature, for the translator's beliefs and opinions work their way into the text through subtle ways such as choice of words or expressions. However, this is not a hindrance to good translations, for a translator should try to capture the spirit as well as the literal meaning of the text when rendering it into the target language of translation. I pray to Allah that I have given my best attempt at accomplishing this. Also, I must admit that every translation can be improved, and if I were to review this work again, I am sure I would make more changes. Moreover, if I were able to consult with others who are skilled in translation work, I am also sure I could gain valuable knowledge for improving this work. May Allah grant me the time and ability to present higher quality translations in the future. For now I must ask His forgiveness for the shortcomings of the work, and then I beg the reader to overlook these same faults.

The translation of the Quran, in light of the previous brief comments, is in the end an impossible task. Many attempts to translate it have been made over the years by a wide variety of scholars, both Muslim and non-Muslim. Each attempt turns out differently and each one fails ultimately in attaining its goal, for the Quran is an Arabic Quran and it will remain so forever, al-hamdu li-llah! Ideally, every Muslim should know enough



Arabic to read and understand the original text, but, pragmatically, this is an almost impossible scenario. Thus, translation attempts will continue. For the purposes of this book, I have chosen to render my own version of the verses with the help of some well-known published works. I have primarily used the *Noble Quran* of Muhsin Khan in order to gain the most authentic meaning of the verses. I have also referred to Pickthall's and Yusuf Ali's translations for the quality of the English language in spite of the archaic usages in the text. In addition to these translations, I have used John Penrice's *A Dictionary and Glossary of the Koran* to gain further insight into certain Quranic vocabulary. Finally, I have referred to the following Arabic exegetic works (tafasir) to gain a fuller understanding of certain verses: *Mukhtasar Tafsir Ibn Kathir*, *Tafsir Jalalayn*, and *Zubdat al-Tafsir min Fath al-Qadir*. My overall intention is to present the verses in plain English while stressing specific aspects of each verse which highlight the context in which they are used. May Allah forgive me for the less than perfect results.

Another point that needs explanation concerns the transliteration system. My basic approach to this issue is to transliterate only those words that seem to me to be critical to the understanding of the text. I have presented key Arabic terms that will enhance the understanding of the issues for those readers who know Arabic and for those who can have the terms further explained to them. As for the system itself, I have chosen to use a simplified version of an exact letter for letter transliteration. When such a system is fully employed, it means that for each Arabic letter and vowel sound there is a separate corresponding English letter. With such a system, those knowledgeable in Arabic can reproduce the exact Arabic word. The simplified system that I am using gives no regard to the long vowels and does not distinguish between similar sounding consonants such as the different "h" or "t" sounds. Those who know enough Arabic should be able to comprehend the exact word. Those who know little or no Arabic will need to seek the assistance of more knowledgeable brothers and sisters. Also, I have decided not to transliterate the many common laudatives that are used after mentioning Allah, the Prophet and the Companions. My assumption here is that anyone who has been a Muslim long enough knows these expressions and can easily say the Arabic phrase in the appropriate places. One other reason for doing this is that, in the hope of attracting a larger non-Muslim audience, I do not want to overburden the text with Arabic phrases.

I shall also like to briefly explain the footnotes to the text. Sheik Ghazi has supplied some footnotes to his book, and so I have kept them as they

appear. Thus, the primary footnotes are the author's. However, certain parts of the text are in need of further explanation for a non-Arabic speaking audience. Also, I felt compelled to add a few comments of my own to clarify some statements of the Sheik. My footnotes will be placed between brackets with the introductory words "trans. note:" in this manner: [trans. note: ...]. I have done this due to time constraints and in order to not make the text too cumbersome; thus I have kept the notes to a bare minimum.

May Allah bless this work, forgive me for its faults, and grant some benefit to those who read it.

Abu Zakariya James Pavlin  
Paterson, New Jersey  
Shawwal 1418/February 1998

## Author's Introduction

### The Importance of this Book<sup>2</sup>

One important aspect of this book is to outline the manner of divorce in Islam and to remove a certain obscurity from the rulings and judgements of divorce. To that purpose, I shall draw the knowledge concerning divorce fundamentally from the evident statements of the Quran and the authentic practices of the Sunnah.

Another important aspect of this book is to say to its reader that Islam is certainly an evidence against people and that the actions of people are not an evidence against Islam! If this book is able to confirm this principle and strengthen it with well-understood statements, then it will have succeeded in its importance to the farthest limit. This is necessary because many people —"And most people will not believe even though you want this"<sup>3</sup>— cast suspicions on us concerning our religion and pious acts while arguing their claims based on the actions and manners of the common folk. These are the ignorant and foolish people who say that Islam allows for an unconditional divorce and gives men an autocratic, boisterous mastery over women, and thus men will fool around and play however they want.

In spite of its smallness and low-keyed style, this book says to these people that Islam is certainly an evidence against them and that their actions are not an evidence against Islam! These clear verses of the Quran—never ceasing and always persisting—are preserved on printed lines and in hearts. These Hadiths of the Messenger, the blessing and peace of Allah be upon him, which are in front of us, guide to the truth and to a straight way. Read them! Study them! Do they contain oppression or confirm oppression? Do they contain unruliness or contentment with unruly behavior?

Another important aspect of this book is to engage in the battle against religious ignorance because religious ignorance is the most dangerous of

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2. The subject of this book is based on a Friday sermon that I gave in Masjid al-'Aziz bi-llahi in the Zaytun district of Cairo, on the 7th of Dhul-Hijjah 1389/13 February 1980. A large group of those who heard it requested that I turn the improvised sermon into a legible book.

3. [trans. note: The statement between the dashes is from Yusuf 12:103. The verse appears in the original text without the Sura and verse reference]

all (ignorances) that threaten civilization and order. It allows superstitions to corrupt minds in such a way that people are incapable of generosity, creativity and beneficence. Also, religious ignorance is the basis for various types of ignorance such as social, intellectual or moral ignorance.

Another important aspect of this book is to discuss the intended topic with clear and simple language, for many people are in need of this kind of clarity. At times they research matters with clarity while at other times they miss the point entirely. This book will discuss matters with a clarity that is, however, distanced from the profound analysis with which students and researchers are concerned more than other people. This book does not discuss issues on their behalf. Nevertheless, it will not turn away from particulars which might overburden it. However, it will not discuss the details and specifics of every legal issue. Therefore, this book has a broad-based position in relation to other books of the pure *shari'ah* to which the jurists adhere; and it is through them that civilization is strengthened and history is made glorious. This book will concern itself with indicating the wisdom behind the issues mentioned, verifying the correctness of each statement and pointing toward the straight way.

Another important aspect of this book is to repeat the pronouncement which Ibn 'Abbas, may Allah be pleased with him, made to a questioner who asked him about an innovated matter in divorce. He said, "If it is in the Book of Allah, then the Book of Allah explains it; if it is in the Sunnah of the Messenger of Allah, then the Sunnah of the Messenger of Allah explains it; and if it is from yourselves, then we are powerless to follow what you innovate."

However, it is not an important aspect of this book to impose fanciful propositions, for then the time of the writer and the reader would be lost in the artificial arguments of those propositions just as one is lost in incoherent speech. Rather, this book will maintain the kind of speech used by Ibn Mas'ud when he was asked about a hypothetical problem that had not occurred. He said, "Has that happened?" The questioner answered, "No." Then Ibn Mas'ud said, "Well then, leave it until it happens!" Therefore, everything that this book presents to the reader will be verses, Hadiths, and the intelligent insight of some of our leading scholars (a'immaḥ), may Allah be pleased with them, concerning these verses and Hadiths.

This small book will be a success if in the end it says to the reader in the name of Islam: When my merits, which you acknowledge, match my faults, then say to me, "How might I excuse you?"

Cairo, Muharram 1390/March 1970  
Doctor Muhammad Jamil Ghazi

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## The Beauty of Married Life

***...Consort with them in kindness, for if you dislike them it may be that you dislike a thing in which Allah has placed much good. [al-Nisa' 4:19]***

### **1 — al-Mithaq al-Ghalith (the solemn covenant)**

Islam honors the marriage contract ('uqdat al-nikah) and provides assurances to protect it. Islam ensures its permanence and continuity without causing or allowing any harm. The noble Quran refers to all contracts, including the contract of the marriage partnership, with the term "solemn covenant." Allah, the Exalted, says:

***If you want to exchange one wife for another, and you have given the first wife a large sum of gold, do not take any of it. Would you take it by slander and manifest sin? How could you take it back after one of you has entered the other, and they (the wives) have taken from you a solemn covenant? [al-Nisa' 4:20-21]***

When we carefully consider the statement of the Exalted One, "after one of you has entered the other," we realize the meaning that causes the 'uqdat al-nikah to become one of the strongest, surest, firmest, and most solemn contracts. For each one of the marriage partners has announced his innermost secrets to other; each one of the marriage partners has revealed to his companion that which he would not reveal to even his dearest relatives. Is not each spouse a garment for the other, covering the other, protecting the other, and fortifying the other? Allah, the Exalted, says:

***...They (the wives) are like garments for you, and you are like garments for them... [al-Baqarah 2:187]***

Islam does not allow its followers to break an agreement or to betray a contract, and it considers the marriage contract to take precedence before all other contracts and agreements. Thus al-Bukhari, Muslim and others narrated from 'Uqbah ibn 'Amir that the Messenger of Allah, the blessing

and peace of Allah be upon him, said: "The contract most deserving to be fulfilled is the one that makes the private parts (furuji) lawful for you."

## **2 — They (the wives) Have Rights Similar to the Obligations on Them**

Islam does not neglect the affairs between a husband and wife, allowing passions to have free reign between them and allowing them to wander through life without guidance. Rather, Islam establishes the limits the transgressor of which becomes an oppressor of his own soul (nafs). Allah, the Exalted, says:

***...These are the limits set by Allah, and whoever transgresses the limits set by Allah has surely oppressed his own soul... [al-Talaq 65:1]***

These limits (hudud), which Islam has established, contain the life of a person and his salvation, his security and integrity of action, and his guidance and best interests. The reason for this is that the one who legislated these hudud is Allah, the All-Knowing about the diseases of the soul and the Totally-Aware about the passions of the heart.

***Should He not know what He created? And He is the Benevolent, the Totally-Aware. [al-Mulk 67:14]***

Those who argue concerning the verses of Allah, His judgements, limits, legislation, commandments and prohibitions, without having received any authority, have in their chests only far-reaching arrogance.

***It is not fitting for a believer, man or woman, when Allah and His Messenger have decreed a matter, to have any further say in their affair; and whoever disobeys Allah and His Messenger has surely gone astray in manifest error. [al-Ahzab 33:36]***

***The only statement of the believers, when they are called to Allah and His Messenger in order that he judges between them, is: We hear and we obey. Those are the prosperous ones. They are those who obey Allah and His Messenger, fear Allah and act piously—then those are the successful ones. [al-Nur 24:51-52]***

Whoever studies the noble Quran and the Sunnah of the Messenger of Allah, the blessing and peace of Allah be upon him, finds that the rights

and duties have been distributed between men and women in a just and wise manner and in fair proportions. This noble verse indicates this:

**...They (the wives) have rights similar to the obligations on them in a manner that is reasonable, but men have a degree over them...(al-Baqarah 2:228)**

Ibn 'Abbas says in his exegesis (tafsir) of this verse, "I adorn myself for my wife just as she adorns herself for me. Also, I do not like to ask her to fulfill all the rights that she owes me, for then she would ask me to fulfill all the rights that I owe her."<sup>4</sup> Ibn 'Abbas also explained the meaning of degree (darajah) by saying, "The degree urges men to make married life beautiful and to extend to women wealth and morals, that is, it is fitting for the one higher in rank to burden himself." In commenting on Ibn 'Abbas' opinion, Ibn 'Attiyah<sup>5</sup> said, "This is an exquisitely adept expression." It is near in meaning to the statement of Allah, the Exalted:

**...Do not forget graciousness between yourselves... [al-Baqarah 2:237]**

One of the signs of graciousness, which Allah has asked a man not to forget in dealing with his wife, is to live with her in kindness. When the Quran calls for a married life filled with kindness, it calls for it in a merciful manner that has never before been known to humanity in all its stages. This appears in the verse:

**...Consort with them in kindness, for if you dislike them it may be that you dislike a thing in which Allah has placed much good. [al-Nisa' 4:19]**

Also, the Messenger of Allah, the blessing and peace of Allah be upon him, said: "A believing man should not hate a believing woman, for if he dislikes one of her habits, he would surely like another."<sup>6</sup>

al-Suyuti<sup>7</sup> says in *al-Iklil* concerning the explanation (tafsir) of the verse of Allah, the Exalted, ...Consort with them in kindness, for if you dislike them it may be that you dislike a thing in which Allah has placed much good [al-Nisa' 4:19], "This verse contains the obligation of kindness (ma'ruf), which includes the payment of the dowry, continual financial

4. See al-Qurtubi, vol.3, p.123.

5. [trans. note: This is Abu Muhammad 'Abd al-Haqq ibn Qhalib ibn 'Attiyah al-Andalusi, who died in 546 AH/1151 CE. Ibn 'Attiyah's exegesis is known as *al-Muharrar al-Wajiz fi Tafsir al-Kitab al-'Aziz*. He was one of al-Qurtubi's teachers.]

6. This is narrated in the Five Canonical Collections of Hadiths (al-khamsah).

7. [trans. note: This is the famous Hadith scholar and exegete (mufassir), Jalal al-Din al-Suyuti al-Shafi'i, who died in 911 AH/1505 CE.]

maintenance, ease in speech, and the avoidance of beating and harshness when no sin has been committed. Also, it is deduced from the general tone of the verse that there is an obligation to provide her with servants if she cannot serve herself.”

Then al-Suyuti continued, “This verse contains the recommendation of keeping a wife in kindness even if it is contrary to one’s own desire. It also indicates that divorce (talaq) is disliked.”

Ibn Kathir<sup>8</sup> says in his explanation of this verse, “Sweeten your speech to them (the wives), improve your deeds and beautify your appearance as much as you can. As you would love that from her, so do the same for her, as the Exalted One says:

**...They (the wives) have rights similar to the obligations on them... [al-Baqarah 2:228].”**

The Messenger of Allah, the blessing and peace of Allah be upon him, said, “The best of you is the one who is best towards his family, and I am the best of you towards my family.”<sup>9</sup> He, the blessing and peace of Allah be upon him, also said, “The best of you is the one who is best toward his family, and I am the best of you toward my family. It is only an honorable man who treats women honorably, and it is only a vile man who treats them disgracefully.”<sup>10</sup>

It is reported from Jabir ibn ‘Abd-Allah, may Allah be pleased with him, that he heard the Prophet, the blessing and peace of Allah be upon him, during the Farewell Pilgrimage say the following after having praised and extolled Allah and after reminding and warning the people, “Fear Allah concerning women, for you have them under Allah’s security, and you have the right to sexual intercourse with them by Allah’s word. You have the right to expect from them that they do not bring into your houses anyone whom you dislike. But if they do that, then strike them lightly, without violence. They, on the other hand, have the right to expect from you that you feed and clothe them reasonably.”<sup>11</sup>

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8. [trans. note: This is Abu-l-Fida’ Isma’il ibn ‘Umar ibn Kathir, who died in 774 AH/1373 CE. He is the famous Shafi’i scholar of Hadith who wrote the exegesis known as *Tafsir al-Quran al-Karim*. Ibn Kathir was a student of the Hanbali theologian Ahmad ibn Taymiyyah.]

9. This Hadith is narrated by al-Tirmidhi from ‘A’ishah, by Ibn Majah from Ibn ‘Abbas, and by al-Tabarani from Mu’awiyah.

10. [trans. note: Sheik Ghazi reports this Hadith from Ibn ‘Asakir who traces it to ‘Ali. I have not found this version in the standard collections of Hadith.]

11. [trans. note: In his text, Sheik Ghazi presents a Hadith with slightly different wording, which he states is narrated by al-Tirmidhi from ‘Umar. I have chosen to present the wording of the Hadith that appears in the sources that I consulted. See, for example, *Sahih Sunan Abi Dawud*, vol.1, p.358, and Ibn Kathir (*al-Bidayah wa-l-Nihayah*, vol.5, p.152).]

al-Ghazali<sup>12</sup> says in *al-Ihya'* concerning the "Etiquette of Married Life": "The second etiquette is to have the best manners with them (the wives) and to suffer any harm from them by asking for Allah's mercy on them because of the laxity of their reason. Allah, the Exalted, says: **...consort with them in kindness [al-Nisa' 4:19];**

and He says concerning the exaltation of their right: **...they (the wives) have taken from you a solemn covenant [al-Nisa' 4:21].**

Also, Allah, The Exalted, says: **...the companion by your side... [al-Nisa' 4:36],** about which it is said that it is the wife."

Then al-Ghazali continued, "You should know that having the best manners with her is not only to refrain from harming her, but to suffer any harm from her. It is also to be gentle in the presence of her thoughtlessness and her anger. This is in imitation of the Messenger of Allah, the blessing and peace of Allah be upon him, for his wives used to argue with him, and one of them used to avoid him the whole day until night."

Then he said, "The third etiquette is to go beyond suffering harm by having fun, joking, and playing, for these things sweeten the hearts of women. Thus, the Messenger of Allah, the blessing and peace of Allah be upon him, used to joke with them and come down to the various levels of their understanding in actions."

Islam goes even further than that in honoring and respecting a woman. Concerning this matter, the Messenger of Islam, blessing and peace be upon him, forbade men from pursuing the defects of their women and searching for their mistakes. Muslim has narrated from the Messenger of Allah, the blessing and peace of Allah be upon him, that he forbade a man to return to his family at night, distrusting them and searching for their shortcomings.<sup>13</sup> He, the blessing and peace of Allah be upon him, also commanded the one who is returning from a journey to delay coming to his family and to send a messenger to them informing them of his return so that "the unkempt one could comb her hair" and beautify herself to meet her husband.<sup>14</sup>

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12. [trans. note: This is the famous Shafi'i theologian Abu Hamid Muhammad ibn Muhammad al-Ghazali, who died in 505 AH/1111 CE.]

13. See the *Sahih* of Muslim (Kitab al-Imarah).

14. This is narrated in the Five Canonical Collections of Hadiths (al-khamsah).

The Prophet, the blessing and peace of Allah be upon him, educated his Companions in this polite style, and thus they conquered the world with their good manners before conquering it with their swords. Abu al-Darda', one of the Companions of the Messenger of Allah, the blessing and peace of Allah be upon him, said to his wife, "If you see me becoming angry, calm me, and if I see you becoming angry, I will calm you. Otherwise, we will not have companionship."<sup>15</sup> If Islam recommends that a husband should treat his wife well, it also recommends that a wife should treat her husband well. Has not Allah, the Exalted, said:

**...They (the wives) have rights similar to the obligations on them... [al-Baqarah 2:228]**

Abu Hurayrah, may Allah be pleased with him, reported from the Prophet, the blessing and peace of Allah be upon him, who said: "It is not allowable that a woman fasts while her husband is home except with his permission or that she lets anyone enter his house except with his permission."<sup>16</sup> It is reported in the *Sahih* that Abu Hurayrah, may Allah be pleased with him, said that the Messenger of Allah, the blessing and peace of Allah be upon him, said: "If a man calls his wife to his bed, and she refuses to come, and thus he sleeps while being angry with her, the angels curse her until the morning comes." In the *Sunan* and in the *Sahih* of Ibn Abi Hatim, as reported from Thawban, who said that the Messenger of Allah, the blessing and peace of Allah be upon him, said: "If any woman asks her husband for a divorce without a good reason, then the aroma of Paradise is forbidden for her." Also, in the *Sahih* of Ibn Abi Hatim, as reported from Abu Hurayrah, who said that the Messenger of Allah, the blessing and peace of Allah be upon him, said: "If a woman prays her five prayers, fasts her month (of Ramadan), remains chaste, and obeys her husband. she may enter from any gate of Paradise she wants."

### **3 — The Care of a Wife for Her House**

A wife is accountable for serving her husband and her children and caring for her house. The Messenger of Allah, the blessing and peace of Allah be upon him, said: "Each of you is a shepherd and each of you is

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15. This is reported by al-Shaykh Sayyid Sabiq in *Fiqh al-Sunnah*, vol.7, p.228.

16. The fasting mentioned in this Hadith refers to voluntary fasts, not obligatory fasts. This Hadith is reported in the Four Sunan Collections of Hadiths (al-arba'ah). [trans. note: al-Arba'ah refers to the collections of Abu Dawud, al-Tirmidhi, al-Nasa'i and Ibn Majah.]

accountable for his flock. Thus an emir is a shepherd and is accountable for his flock; a man is a shepherd for the people of his house and is accountable for his flock; and a woman is a shepherd for her husband's house and his children and is accountable for her flock. And so it is that each of you is a shepherd and each of you is accountable for his flock."<sup>17</sup>

If a man is commanded to strive and to work hard in order to spend on his family, then a wife is commanded to serve her house and to manage its affairs. The Messenger of Allah, the blessing and peace of Allah be upon him, judged between 'Ali ibn Abi Talib and his wife, Fatimah, when they complained to him regarding work duties. He judged that Fatimah should do the domestic service—serve the house—and that 'Ali should work outside the home. Domestic service includes kneading, cooking, preparing the mattress, sweeping the floor, bringing in water, and whatever is associated with such duties.<sup>18</sup> Asma' bint Abi Bakr said, "I used to serve al-Zubayr by serving the entire house. He had a horse which I used to groom, feed and care for." The former (Fatimah) was the daughter of the Messenger of Allah, the blessing and peace of Allah be upon him, and the latter (Asma') was the daughter of Abu Bakr, the first caliph of the Muslims. Each of them used to serve her husband!

Ibn al-Qayyim<sup>19</sup> says, "There is no doubting the fact that a wife must serve her husband. It is not correct to distinguish between a noble woman and one of a lower class, or between a poor woman and a rich one. This woman (Fatimah), the most noble of all women, used to serve her husband. When she came to her father, the blessing and peace of Allah be upon him, complaining about the work, he did not accept her complaint."<sup>20</sup>

#### **4 — al-Qiwamah (guardianship)**

Islam gives a husband the right of guardianship over his wife. But this is a guardianship that is neither arbitrary nor repressive, neither vicious nor degrading. Rather, it is in accordance with nature and justice, and Allah has justified this right for two reasons: the first is that He has

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17. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim). This narration is from Ibn 'Abbas.

18. This is reported by Ibn al-Qayyim in *Zad al-Ma'ad*, vol.4, p.61.

19. [trans. note: This is the famous Hanbali theologian Abu 'Abd-Allah Muhammad ibn Abi Bakr ibn Ayyub ibn Qayyim al-Jawziyyah, who died in 751 AH/1350 CE. He was the premier student of Ahmad ibn Taymiyyah.]

20. See *Zad al-Ma'ad*, vol.4, p.61.

avored some of them over the others, and the second is that they spend from their wealth. Allah, the Exalted, says:

***Men are guardians over women because Allah has favored them over the others and because they spend from their wealth... [al-Nisa' 4:34]***

Men are more favored than women, more capable and more experienced. They can carry out certain actions that women cannot. The people who say it is necessary to make men and women equal in all affairs, even in the matter of shaving,<sup>21</sup> are hurting women more than doing them good. They are actually forcing women into strenuous and enervating hardships and difficulties. As for the issue of "equality" between a man and a woman, it is an old issue. Umm Salamah had raised this issue, and revelation settled the matter long ago.

Imam Ahmad narrated from Mujahid that Umm Salamah, may Allah be pleased with her, said, "O Messenger of Allah, men go on military expeditions, and women do not. Also, we receive half of the inheritance (of a man)." Then the verse of Allah, the Exalted, was sent down:<sup>22</sup>

***Do not desire that with which Allah has favored some of you over others. Men have a share from what they earned, and women have a share from what they earned. Ask Allah for a share of His bounty. Allah is surely Knower of all things. [al-Nisa' 4:32]***

al-Hakim also narrated a similar Hadith and added, "Then Allah, the Exalted, revealed:

***Their Lord has heard them (and says): I surely do not allow a deed done by any of you, male or female, to be lost—you proceed one from another... [Al 'Imran 3:195]***

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21. al-Rafi'i says, "A woman is made equal to a man in all affairs, even in the matter of shaving, but when she goes to shave she does not find a beard." [trans. note: I assume that Sheik **Chazi** is using this as a mere example of the absurdity of equating man and woman, for it is well-known that according to the Sunnah it is not permissible for men to shave their beards! As for the source of this quote, I also assume that Sheik **Chazi** is referring to the modern Egyptian scholar Mustafa Sadiq al-Rafi'i (d. 1356 AH/1937 CE).]

22. This Hadith is also reported by al-Tirmidhi.



Mujahid said that Allah, the Exalted, revealed this verse concerning Umm Salamah:

**As for Muslim men and Muslim women, believing men and believing women, obedient men and obedient women, truthful men and truthful women, patient men and patient women, humble men and humble women, charitable men and charitable women, fasting men and fasting women, chaste men and chaste women, and men and women who remember Allah, surely Allah has prepared for them forgiveness and a great reward. [al-Ahzab 33:35]**

al-Tirmidhi narrated from Umm 'Umarah al-Ansariyyah that she came to the Prophet, the blessing and peace of Allah be upon him, and said: "I see that everything is for men only, and I do not see women being mentioned in connection with anything." Then the following verse was sent down: As for Muslim men and Muslim women..

It is better for a woman to be a woman, and it is better for a man to be a man. It is not in the capacity of either of them, nor is it in his or her interest, to change his or her reality or to escape from it. The English philosopher Jeremy Bentham (1748-1832)<sup>23</sup> said that those who want to make man and woman equal have set a trap for her. The author of the book *al-Talaq fi-l-Islam (Divorce in Islam)* commented on this statement by saying, "It is a practical expression that shows insight. Otherwise, how can a ship with two captains reach a safe harbor, each one turning the helm according to his own desire and not supervising the approach to the harbor?"

al-Qiwamah (guardianship) over the family is the right of a man because Allah has favored him and because he spends from his wealth. It is a right which is determined by the concepts of discipline, happiness, and security, which are sought and desired by each family.

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23. Bentham established his social philosophy on the principle of harmonizing pleasure and pain. See Muhammad 'Ali's book *al-Talaq fi-l-Islam*, p.53, translated by Habibah Yakun and published in Beirut. [trans. note: Although Sheik Ghazi refers to this European philosopher, the reader is warned against using the arguments of non-Muslim philosophers in support of Islamic beliefs. In many cases, the seemingly favorable statements are taken out of context in regard to the philosopher's overall philosophic system. (See Chapter 3, footnote 54, where Sheik Ghazi is confronted with this very problem.) Bentham's most basic belief is that every person is ultimately selfish and should be allowed utmost freedom in pursuing his ambitions. Accordingly, society will achieve a balance as different people check each others' ambitions with conflicting ambitions of their own. This is a classic example of the laissez-faire attitude of many 18th and 19th century European philosophers. These sorts of beliefs are opposed to Islamic principles concerning human nature and social organization. Information on Jeremy Bentham is taken from the *New Encyclopedia Britannica* (1987), vol.2, S.V. "Bentham, Jeremy."]

## 5 — al-Sadaq (dowry)

al-Qiwamah has its own consequences and responsibilities. Thus a man is the one who offers a sadaq (dowry) to his wife in compliance with the verse of Allah, the Exalted:

### ***Give women their dowries as a gift... [al-Nisa' 4:4]***

al-Awza'i said, "It is regarded as appropriate that one does not have intercourse with her until he offers her something." al-Zuhri said, "It is conveyed to us in the Sunnah that one should not have intercourse with his woman until he offers her a worthy gift<sup>24</sup> or provides her with clothes; this is one of the things that Muslims do." The noble Quran prohibits a husband from taking back anything he has given his wife, even if he had given her a large sum of money. The Quran clarifies that taking anything back is a form of slander and a manifest sin. Allah, the Exalted, says:

***If you want to exchange one wife for another, and you have given the first wife a large sum of gold, do not take any of it. Would you take it by slander and manifest sin? How could you take it back after one of you has entered the other, and they (the wives) have taken from you a solemn covenant? [al-Nisa' 4:20-21]***

The Quran explains in another verse that the prohibition against taking anything back is applicable when a woman does not happily offer to return it, for Allah, the Exalted, says:

***...but if they happily offer to return any part of it (the dowry), take it and use it profitably. [al-Nisa' 4:4]***

Another verse also indicates this points:

***...there is no sin for you concerning what you mutually agree to after the obligatory dowry has been paid... [al-Nisa' 4:24]***

Furthermore, the noble Quran emphasizes that a husband is not allowed to take back anything he has given to his wife without her consent except in the case of *khul'*,<sup>25</sup> which is when the two marriage

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24. [trans. note: I have used "worthy gift" for the term "nafaqah," which more specifically means the continuous financial support of the family. In the context of the discussion of the dowry, this translation seems appropriate. The term "nafaqah" will be discussed in more detail in section 6 of this chapter.]

25. [trans. note: *Khul'* is when the wife asks for a divorce. This topic will be discussed in chapters 4 and 5.]

partners fear that they cannot keep to the limits set for them by Allah. Allah, the Exalted, says:

**...it is not lawful for you (men) to take back anything you have given to them (your wives) except when both marriage partners fear that they cannot keep to the limits set by Allah. If you fear that they cannot keep to the limits set by Allah, there is no sin on the two of them if she returns it (the dowry) in order to end the marriage. These are the limits set by Allah, and so do not transgress them. Whoever transgresses the limits set by Allah is one of the oppressors. [al-Baqarah 2:229]**

## **6 — al-Nafaqah (adequate support)**

One of the consequences and responsibilities of qiwamah is that a man is responsible for providing for his family in accordance with the verse of Allah, the Exalted: **Let the wealthy man spend according to his means; and let the man whose provisions are restricted spend according to what Allah has given him. Allah does not burden a soul beyond what He has given it, and Allah will grant ease after a hardship. [al-Talaq 65:7]**

Islam gives a woman who suffers from the stinginess and greed of her husband the right to take without his knowledge a reasonable amount of his money to suffice her and her children. Hind, the wife of Abu Sufyan, said to the Prophet, the blessing and peace of Allah be upon him, "O Messenger of Allah! Abu Sufyan is a stingy man and does not give me and my children enough provisions except when I take something from him without his knowledge?" The Prophet, the blessing and peace of Allah be upon him, said: "Take what is reasonably sufficient for you and your children."<sup>26</sup>

This is the meaning of qiwamah as has been made clear by Islam. As you have seen and read, it is a guardianship without despotism or slavery. It is a guardianship without arbitrariness or oppression. In the magnanimity of this guardianship a woman finds every honor, respect,

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26. This hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

and admiration. This qiwamah is based on the statement of the Messenger, the blessing and peace of Allah be upon him: "Women are the partners of men."<sup>27</sup>

## **7 — The Messenger, the blessing and peace of Allah be upon him, with His Wives**

Before ending this chapter, I would like to present to its readers some authentic Hadiths that guide to the manner which the Messenger of Allah, the blessing and peace of Allah be upon him, used to follow in dealing with his wives. This manner should be an example and a model for us.

- 'A'ishah, may Allah be pleased with her, said that the Messenger of Allah, the blessing and peace of Allah be upon him, said; "I know when you are pleased with me and when you are angry with me." She said, "Then I said, 'How do you know that?'" He said: "When you are pleased with me you say, 'No! by the Lord of Muhammad!' But when you are angry with me you say, 'No! by the Lord of Ibrahim!'" 'A'ishah said, "I said, 'That's right! But, by Allah, O Messenger of Allah, I abandon only your name.'"<sup>28</sup>
- 'A'ishah, may Allah be pleased with her, said, "I was never as jealous of any of the women of the Prophet, the blessing and peace of Allah be upon him, as I was of Khadijah, yet I had never seen her. However, the Prophet, the blessing and peace of Allah be upon him, used to mention her often. Sometimes he used to slaughter a lamb, cut it into parts and send it as a charity on Khadijah's behalf. Other times I would tell him that it seemed as if there was no other woman in the world except Khadijah! To this he replied: 'She was like this and like that, and she had given me a son.'"<sup>29</sup>
- 'A'ishah, may Allah be pleased with her, said, "The Messenger of Allah, the blessing and peace of Allah be upon him, had raced with me and I won. After some time had passed, and I had become heavier, he raced with me again, and he won. He then said: 'This one is for that one.'"<sup>30</sup>

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27. This Hadith is narrated by Ahmad, al-Tirmidhi and Abu Dawud.

28. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

29. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

30. This Hadith is narrated by Ahmad and Abu Dawud.

- 'A'ishah, may Allah be pleased with her, said, "Abu Bakr came in while two girls of the Ansar were with me. They were singing the lyrics of the Ansar about the Day of Bu'ath, but they were not professional singers. Abu Bakr said, 'Is this the sounds of Shaytan in the house of the Messenger of Allah, the blessing and peace of Allah be upon him?' This was happening on the day of the 'Id, and so the Messenger of Allah, the blessing and peace of Allah be upon him, said: 'O Abu Bakr! Every people has an 'Id, and this is our 'Id.'"<sup>31</sup>
- 'A'ishah, may Allah be pleased with her, said, "It was the day of the 'Id, and the Sudanese were playing with shields<sup>32</sup> and spears. I asked the Prophet, the blessing and peace of Allah be upon him, or perhaps he said, 'Would you like to watch?' I said, 'Yes.' Then he put me behind him, my cheek on his cheek, and he said: 'Go ahead! O People of Arfadah.'<sup>33</sup> We stayed like this until I got bored, and so he said: 'Have you had enough?' I said: 'Yes.' He replied: 'Then go.'"<sup>34</sup>

The student of the Hadiths of the Messenger of Allah, the blessing and peace of Allah be upon him, of his excellent life (sirah), and of his manner in dealing with his wives, finds justice, love and mercy. Did he, the blessing and peace of Allah be upon him, not say: "The most perfect believer in regards to faith is the best in regards to manners, and the best of you is the one who is best to his women." He also said: "It is only an honorable man who treats women honorably, and it is only a vile man who treats them disgracefully." And he said: "Everything that a person amuses himself with is futile except three things: practicing archery, training his horse, and playing with his family. These are useful activities."<sup>35</sup>

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31. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

32. The word used is darq, which is the plural of daraqah. This is a leather shield that has no wooden support.

33. "People of Arfadah" (banu arfadah) is a nickname (laqab) for the people of Ethiopia (habashah).

34. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

35. This Hadith is narrated by Ahmad and the authors of the Sunan collections, that is, Abu Dawud, al-Tirmidhi, al-Nasa'i and Ibn Majah.

## The Fear of Recalcitrance and Brutality

***Men are guardians over women because Allah has favored them over the others and because they spend from their wealth. Thus righteous women are obedient and safeguard in secret that which Allah has guarded. As for the women from whom you fear recalcitrance, you should admonish them, and then turn away from them in bed, and then strike them. But if they obey you, then do not act unjustly toward them, for Allah is Lofty and Great. If you fear a separation between two marriage partners, then send an arbitrator from his family and an arbitrator from her family; if the two want reconciliation, Allah will cause such an agreement between them, for Allah is All-Knowing, Well-Informed. [al-Nisa' 4:34-35]***

### 1 — The Righteous Wife

The Messenger of Allah, the blessing and peace of Allah be upon him, was asked: "Which is the best kind of woman?" He replied: "She is the one who pleases you when you look at her, obeys you when you command her, and does not oppose you regarding what you hate in yourself and your wealth."<sup>36</sup> He, the blessing and peace of Allah be upon him, was also asked: "What kind of wealth should be sought?" He replied: "Each one of you should seek a thankful heart, a mindful tongue, and a believing wife who will help each of you in the matter of the Hereafter."<sup>37</sup> These two Hadiths clarify the meaning of this noble verse:

***...Thus righteous women are obedient and safeguard in secret that which Allah has guarded... [al-Nisa' 4:34]***

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36. This Hadith is narrated by Ahmad.

37. This Hadith is narrated by Ahmad and al-Tirmidhi, who declared it hasan (good).

Therefore, a virtuous wife fasts and stands at night in prayer. She is patient and thankful, speaks pleasantly, and prepares a comforting reception. She has a noble soul and is trustworthy in her private and public affairs. A virtuous wife is not deceptive and is not neglectful, and she fulfills her obligations with sincerity, faith, and sacrifice as both a mother and a wife. This virtuous wife, who has acquired each of these endearing qualities and who has adorned herself with goodness and righteousness, will not be criticized. Her husband will not turn away from her in bed and will not harm her. He will also not let her hear anything she dislikes. Moreover, he will shade her with the wings of his intimacy, love and mercy as the Exalted One says:

***One of His Signs is that He created partners for you from your own souls so that you might find comfort in them; and He placed love and mercy between you... [al-Rum 30:21]***

## **2 — The Fear of Nushuz (discord in a marriage)<sup>38</sup>**

The clearly worded Quran does not say “those women who have been recalcitrant” or “the recalcitrant women.” Rather, the verse is:

***...As for the women from whom you fear recalcitrance,... [al-Nisa' 4:34]***

This verse is in reference to a wife, but the same wording is used for a husband. The Quran does not state “a woman who is abused by her husband.” Rather, the verse is:

***If a woman fears abuse or desertion on the part of her husband, then it is not a sin on them to compromise between themselves, for a compromise is better... [al-Nisa' 4:128]***

Why are the verses worded this way? Because it is not suitable for a wife to be recalcitrant, and it is not suitable for a husband to abuse his wife. Furthermore, the marital relationship should rise above nushuz, which only serves to break up a family! From this point of view, the clearly

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38. Nushuz means disobedience and discord regarding family life. The root meaning of “turning away from obedience” comes from al-nashaz, which is an elevated section of land. It is said that a woman “elevates” herself above her husband by defying him, becoming arrogant toward him, hating him, and turning away from obeying him. [trans. note: The term nushuz also applies to a husband who abuses his wife. Thus I will translate the term as follows: in relation to the wife as “recalcitrance,” in relation to the husband as “abuse”, and in relation to both of them as “discord in a marriage.”]

worded Quran uses the terms “you fear” and “she fears” before attributing *nushuz* to either of the marriage partners. Islam drives away the fearful specter of discord in a marriage and, furthermore, wants no trace of *nushuz* in Muslim society. Islam does this so that discord in a marriage is not the cause for breaking bonds which Allah has commanded to be joined and for destroying the cooperation, love and harmony which Allah has commanded to be established. For this reason, Islam presents sound recommendations to marriage partners, which guarantee the secure direction of the marriage, without fear, anxiety and misery.

The question now is, What should a man do if his wife were to be recalcitrant toward him? Or, according to the Quranic expression, What should a man do if he fears recalcitrance from his wife? Does he divorce her? No! The noble Quran states:

***...As for the women from whom you fear recalcitrance, you should admonish them...[al-Nisa' 4:34]***

### **3 — Admonish Them**

Yes, admonish them and teach them, for the first step starts from here. It is incumbent on men to guide each woman to the correct path that is fitting for her to follow. Allah, the Exalted, says:

***O you who believe! protect yourselves and your families from a fire... [al-Tahrim 66:6]***

Therefore, a man is accountable for his family. He admonishes them, reminds them and saves them from the hellfire. Allah, the Exalted, says:

***Command your family to pray, and be consistent in it. We do not ask you for provisions; We provide for you. The result is based on piety. [Taha 20:132]***

Women have been isolated from their religion (*din*) and from its pure truths. This is the reason a woman might fall prey to magic, superstition, illusion, and deceit. The door to the *masjid* has been closed in her face,



and a door has been opened wide before her to whatever she desires and wishes. I ask the following questions: "Why have they closed the door of the masjid in her face? Was there not a place for her in the first masjid, which was founded on piety (taqwa) from the first day? Did she not participate in studying and understanding the issues of this religion from the first day it was revealed? Is she not addressed by the judgements and verses of this religion just as men are? Did not the Messenger of Allah, the blessing and peace of Allah be upon him, say: 'Do not prevent the female worshippers of Allah (ima'u-llah) from going to the masjids of Allah?'"<sup>39</sup>

The thirty-fourth verse of Sura al-Nisa' does not state: "Divorce them." Rather, it states: "Admonish them." That is, teach them their duties as wives, mothers, and ladies of the house (rabbatu-l-bayt). Teach them the meaning of a sound married life, of the value of this life, and of the role which is fitting for them to fulfill in order to make their families and homes happy.

Admonish them with the verses of the wise Book and the Sunnah of the noble Messenger. That is the best guidance because the marriage contract can only be established on a foundation of the Book of Allah and the Sunnah of His Messenger, the blessing and peace of Allah be upon him. This contract will not survive and will not have any strength or blessing unless it remains on the Book of Allah and the Sunnah of His Messenger, the blessing and peace of Allah be upon him. Narrate to them the stories of the devout, obedient, righteous women, whose names history has recorded and whose stories it preserves.

You should not think that the admonishment to which this noble verse calls is a easy matter! It is not merely fleeting words that are spoken once. The command "ithuhunna" (admonish them), which comes in the thirty-fourth verse of Sura al-Nisa', is a complete educational process. This command is a call that reverberates in the depths of the soul, demanding the education of the ignorant, the guidance of the confused, the directing of the astray, and the awakening of the inattentive. If a husband were to carry out the command "ithuhunna", it would occur

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39. [trans. note: This Hadith is narrated by Abu Dawud, who declared it authentic (sahih). The version of this Hadith in the *Mishkat al-Masabih* (Kitab al-Salah, Bab al-Jama'ah wa Fadliha, Hadith #1062) has "your women" instead of "the female worshippers of Allah."]

over a long period of time reckoned in months and years not in hours and days. This is necessary because the ignorant ones are not educated in hours, the confused ones are not guided in hours, the astray ones are not directed aright in hours, and the inattentive ones are not awakened in hours. Have you taken a good look at how long the first step will take?

#### 4 — Turn Away from Them in Bed

The second step is “turning away” (hajr), and there comes with it a few questions: How do we turn away from them? Where does this take place? Does “turning away” mean that we also stop talking to them?

This noble verse defines “turning away” to mean “turning away in bed.” Thus a husband does not have a right to drive his wife out of her house to another house, even if it were to her father’s house! al-Qasimi says in his exegesis (tafsir), *Mahasin al-Ta’wil*,<sup>40</sup> “turn away from them in bed’ means ‘do not let them come under your covers and do not approach them for sexual intercourse.’” Ibn ‘Abbas said, “‘turn away’ means that a husband does not have sexual intercourse with her and does not lie intimately with her in bed, but rather he turns his back on her.” This understanding of the verse also appears in the Hadith of Mu’awiyah ibn Haydah al-Qushayri as reported in the *Sunan* of Abu Dawud and the *Musnad* of Ahmad. He said, “O Messenger of Allah! What rights does one’s wife have in relation to him?” He said: “You must feed her when you feed yourself and clothe her when you clothe yourself. You should not hit her in the face or call her ugly. And you should not turn away from her except within the home.”

However, “turning away” does not mean that he should stop talking to her. This situation is not allowed between a Muslim and his Muslim brother, much less between him and his Muslim wife. The Messenger of Allah, the blessing and peace of Allah be upon him, said: “It is not allowable for a Muslim to turn away from his brother for more than three days. They meet, and this one turns one way and that one turns the other way. But the best of them is the one who initiates the greeting of peace (salam).”<sup>41</sup>

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40. See vol. 5, p. 1221.

41. [trans. note: Although Sheik Ghazi indicates that it is better for a husband to continue talking to his wife, there are a few narrations from some Companions that he should also not talk to her. See *Mukhtasar Tafsir Ibn Kathir*, vol.1, p.386.]

The Muslim jurists (fuqaha') have defined the period of "turning away." Some of them say, "The period of 'turning away' should be limited to one month, for this is the length of time that the Prophet, the blessing and peace of Allah be upon him, turned away from Hafsa when he told her a secret, and she then revealed it to 'A'ishah." However, another opinion states: "The time period for 'turning away' should not exceed the four-month limit which Allah has set for the one who vows abstinence from his wife (al-muli)."<sup>42</sup>

The four-month time period is actually the length of time in which the patience of a woman expires. It is narrated that 'Umar ibn al-Khattab, may Allah be pleased with him, was walking around one night in Medina and heard a woman reciting poetry in which she expressed her longing for her husband. The next morning 'Umar called for that woman and asked her, "Where is your husband." She replied, "You sent him to Iraq." Then he called for some other women and asked them about a woman's patience, and it is also said that he asked only Hafsa: "How long can a woman be patient while separated from her husband?" The women answered, "Two months is fair, and her patience diminishes by three months, and it is exhausted after four months." Therefore, 'Umar limited a man's participation in military campaigns to four months. At the end of four months, he would send one group of soldiers home and replace them with another group.<sup>43</sup>

This is the proper manner for "turning away" as well as its proper place and time. As you see, this manner of "turning away" is suited to human nature and is a merciful attempt to maintain the ties of intimacy between a married couple. This manner of "turning away" is meant to avoid the break up of homes, the destruction of families, and the increase of homeless children. But if a wife still does not respond to these measures and persists in her obstinacy, stubbornness, and recalcitrance, then it is necessary for the husband to take the third step.

## 5 — Strike Them!

This is the third step, a necessary and reasonable step. It complies

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42. According to al-Qurtubi (vol. 5, p. 172), the time period which Allah defined for the muli comes in Sura al-Baqarah 2:226-227: "For those who vow abstinence from their women, the waiting period is four months; then, if they go back on their vow—but Allah is Forgiving, Merciful. But if they decide on divorce—but Allah is All-Hearing, All-Knowing."

43. See al-Qurtubi (vol.3, p.108). [trans. note: This paragraph is actually the continuation of the previous footnote in Sheik Ghazi's original text. I felt its importance warranted its inclusion in the main text. Sheik Ghazi also included the poem of the woman who longed for her husband, but I chose not to include it in the translation.]

perfectly with logic and innate human disposition (fitrah). But people lacking in vision, who love to distort the true intentions of the revealed texts, either for a particular purpose or because of a sickness in their hearts, say: "How could Islam allow a man to strike a woman? This is humiliation and degradation!" These people, when they pose such a question, pose it haphazardly. If they had been acting fairly, they would have waited and answered the following questions first: What is the style of married life for which Islam calls, to which it invites, and which it emphasizes in many verses and Hadiths? What kind of woman is it whose husband is commanded by Allah to beat her? When does this command become effective? Why has this command been given? Furthermore, what kind of husband is it who has been given this right? What questions! We had hoped that those who desire to distort revealed texts would have first answered such questions before they said what they said.

We are obliged to realize that if we were to follow the guidance of Islam regarding the command "strike them," we would find that it agrees with the dictates of reasonable mutual interests. This guidance includes the following:

- Islam forbids a husband from harming his wife by word or deed as long as she remains righteous, fulfilling her duties in the best and most honorable way she can. 'Abd-Allah ibn Zam'ah, may Allah be pleased with him, reported that the Prophet, the blessing and peace of Allah be upon him, said: Let none of you whip his wife as if whipping a slave and then have intercourse with her at the end of the day.<sup>44</sup>
- Islam commands a husband, who has exhausted all other wise methods with his wife, to strike her only if she persists in her recalcitrant stance. Specifically concerning the manner of striking, the Prophet, the blessing and peace of Allah be upon him, ordered that it should be without violence. It is confirmed in the *Sahih* of Muslim from Jabir, may Allah be pleased with him, that the Prophet, the blessing and peace of Allah be upon him, said in the Farewell Pilgrimage: "Fear Allah concerning

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44. This Hadith is narrated by al-Bukhari and al-Tirmidhi.

women, for you have them under Allah's security, and you have the right to sexual intercourse with them by Allah's word. You have the right to expect from them that they do not bring into your houses anyone whom you dislike. But if they do that, then strike them lightly, without violence."<sup>45</sup>

- Islam considers this manner of punishment a husband's right under these circumstances. Abu Dawud and al-Nasa'i report that 'Umar, may Allah be pleased with him, struck his wife and then was censured for that. He said, "I heard the Messenger of Allah, the blessing and peace of Allah be upon him, say: 'A man should not be asked why he struck his wife."<sup>46</sup>
- The Muslim jurists (fuqaha') have placed conditions on this kind of punishment, among which are:
  - The striking should be for disciplinary purposes and not for the purpose of insult or abuse.
  - The force of the strike should not be so hard as to break a bone or even bruise a limb, which means not to use one's fist and not to kick.
  - The face should never be hit because it is the focal point of beauty and the seat of respect.
  - The focus of the striking should be spread over the woman's body and not be concentrated in one place.
- Moreover, the Muslim jurists have gone beyond this minimum in their rulings. Some of them said, "It is fitting to strike with a kerchief or by hand, but not with a whip or a

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45. Trans. note: [On the wording of the Farewell Pilgrimage, see Chapter 1, footnote 11.]

46. [Trans. note: I have only been able to find this Hadith in Abu Dawud and Ibn Majah, but not in al-Nasa'i. Sheik Nasir al-Din al-Albani considers it a weak (da'if) Hadith; see his Da'if Sunan Ibn Majah. An authentic Hadith reported by Abu Dawud and Ibn Majah reinforce the allowance for husbands to strike their recalcitrant wives while supporting the restrictions mentioned by the fuqaha: The Messenger of Allah said, "Do not strike the female worshippers of Allah (ima'-allah)." Umar came to the messenger, the blessing and peace of Allah be upon him, and said, "The women have become recalcitrant toward their husbands." The Prophet then gave permission to strike them. After that many women came around the family of the messenger of Allah, the blessing and peace of Allah be upon him, complaining about their husbands. The Messenger of Allah, the blessing and peace of Allah be upon him then said, "Many women are coming around the family of Muhammad complaining about their husbands. These are not the best men among you." See the *Mishkat al-Masabih* (Bab "Ishrat al-Nisa' wa ma li-Kulli Wahidah min al-Huquq, Hadith #3261).

stick.”<sup>47</sup> al-Razi<sup>48</sup> said in his *Tafsir*, “In general, easiness in regards to this issue of striking should be exercised as much as is possible.” ‘Ata’ said, “I asked Ibn ‘Abbas about the meaning of striking without violence. He said, ‘It is done with the tooth stick (siwak) or something similar to it.’”

This is the manner of striking which Allah has commanded to be the last resort for a cure. And as it is said, “The last resort in medicine is to cauterize!” This is the way of Islam. It does not reflect badly on Islam that people deviate from its guidance—for Islam is certainly an evidence against people, and the actions of people are not an evidence against Islam!

## 6 — The Two Arbitrators

The thirty-fifth verse of Sura al-Nisa’ says:

***...If you fear a separation between two marriage partners, then send an arbitrator from his family and an arbitrator from her family; if the two want reconciliation, Allah will cause such an agreement between them, for Allah is All-Knowing, Well-Informed.***

This noble verse is addressed to arbitrators, relatives, neighbors and friends. This verse wisely starts with the statement of Allah, the Exalted, “If you fear,” for the separation of a married couple is a fearful matter and reconciliation between them is one of the greatest acts of kindness. One incident of divorce spreads fear throughout society because it tears apart family ties and creates situations in which children might become homeless. Is not society comprised of groups of families held together by close ties of kinship?

This is not the only verse that uses the term “fear” in reference to the problems of married life. Many other verses use the same expression:

\*In Sura al-Baqarah 2:229, Allah, the Exalted, says:

***...it is not lawful for you (men) to take back anything you have given to them (your wives) except when both marriage partners fear that they cannot keep to the limits set by Allah. If you fear that they***

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47. This is reported by al-Qasimi, vol.5, p.1222.

48. [trans. mote: This is Fakhr al-Din al-Razi, who died in 606 AH/1209 CE. His exegesis is known as Mafath al-Ghayb.]

**cannot keep to the limits set by Allah, there is no sin on the two of them if she returns it (the dowry) in order to end the marriage. These are the limits set by Allah, and so do not transgress them. Whoever transgresses the limits set by Allah is one of the oppressors.**

\*In Sura al-Nisa' 4:3, Allah, the Exalted, says:

***If you fear that you will not deal justly with orphan girls, then marry other women who are pleasing to you, two, three, or up to four at one time; but if you fear that you will not deal justly with them, then only one...***

\*In Sura al-Nisa' 4:34, the Exalted One says:

***...As for the women from whom you fear recalcitrance, you should admonish them, and then turn away from them in bed, and then strike them.***

\*In Sura al-Nisa' 4:128, the Exalted One says:

***If a woman fears abuse or desertion on the part of her husband, then it is not a sin on them to compromise between themselves, for a compromise is better..***

Thus, the Exalted One says in the verse of the two arbitrators:

***...If you fear a separation between two marriage partners, then send an arbitrator from his family and an arbitrator from her family... [al-Nisa' 4:35]***

In regard to the statement of Allah, the Exalted, "If you fear a separation between two marriage partners," Ibn 'Abbas, may Allah be pleased with him, said, "When the situation between a man and a woman becomes estranged. Allah commands that you appoint a righteous man from the man's family and a righteous man from the woman's family so that they might determine which of the two spouses is acting improperly."<sup>49</sup> 'Abdah al-Salmani, may Allah be pleased with him, said,

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49. This opinion is reported by Ibn Jarir, Ibn al-Mundhir, Ibn Hibban and al-Bayhaqi in his *Sunan*.

"A man and a woman came with a group of people to 'Ali to have him judge between them. 'Ali ordered them to appoint an arbitrator from his family and an arbitrator from her family. He then told the two arbitrators, 'Do you know what your responsibility is? It is your responsibility to keep them together, but if in your opinion it is better that they separate, then let them separate.' The woman said, 'I am contented with the Book of Allah, with my obligations and my rights.' The man said, 'As for the separation, I do not accept it.' Then 'Ali said to him, 'By Allah, you deny the Book of Allah until you confirm it the same way she did.'"50 Ibn 'Abbas, may Allah be pleased with him, said, "Mu'awiyah and I were appointed by 'Uthman, may Allah be pleased with him, to be arbitrators. We were told, 'If in your opinion the married couple can stay together, then let them do so, but if in your opinion they should separate, then let them separate.'"51

There is another opinion which states that the two arbitrators have only the right of reconciliation but not that of separation. al-Hasan said, "The two arbitrators are appointed only for reconciliation and for testimony concerning the injustice of the unjust person. As for separation, it is not in their hands."52

The thirty-fifth verse of Sura al-Nisa' confirms that if the two arbitrators "want reconciliation," then Allah, glorified and exalted be He, "will cause such an agreement between them." But if the two arbitrators lack sincerity, honor and courage, and go to the reconciliation session while holding a grudge, seeking revenge, and maintaining a clannish mentality, then there is no doubt that they are just wasting their time.

There is one last insightful point concerning the thirty-fifth verse of Sura al-Nisa' on which we should ponder, namely, this noble verse refers to reconciliation, not divorce, for Allah, the Exalted, says, "...if the two want reconciliation, Allah will cause such an agreement between them." Why is it worded in this way? Because divorce is a matter which Allah,

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50. This Hadith is reported by al-Shafi'i in his *al-Umm* and by 'Abd al-Razzaq in his *al-Musannaf*. It is also narrated by Sa'id ibn Mansur, 'Abd ibn Humayd, Ibn Jarir, Ibn al-Mundhir, Ibn Abi Hatim, and al-Bayhaqi in his *Sunan*.

51. This Hadith is reported by 'Abd al-Razzaq, 'Abd ibn Humayd, Ibn Jarir and Ibn al-Mundhir.

52. This opinion is also reported by 'Abd al-Razzaq, 'Abd ibn Humayd, Ibn Jarir, Ibn al-Mundhir, Ibn Abi Hatim and al-Bayhaqi.



glorified and exalted be He, hates. The Messenger of Allah said, "The most hated of allowable matters before Allah is divorce."<sup>53</sup>

Finally, what should we do when a marriage has passed through all these steps, i.e., admonishment, turning away, striking and arbitration, and yet we have no success in achieving any solution? Should married life continue even if the married couple despise it? Should we force the spouses to live together anyway? No! For married life should not turn into a disaster. Under such circumstances, one spouse might seek freedom from the other through Islamically illegal behavior. Moreover, a family whose home life is based on continuous fighting and constant tension produces for society children who are overwhelmed by destructive psychological complexes. Thus, at this point, Islam leads a married couple to divorce court. It is a despised court; but sometimes it becomes the one safe place of refuge for those who fear the high waves of an oncoming storm and a horrible flood.

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53. [trans. note: In the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-Khul' wa-l-Talaq, Hadith #3280), this Hadith is reported by Abu Dawud. However, Sheik Nasir al-Din al-Albani states that its chain of narrators is defective (ma'lul). Another Hadith in the *Mishkat* (Hadith #3294) with a similar meaning is reported by al-Daraqutni. al-Albani remarks that its chain of narrators (isnad) is weak (da'if) and cut off (munqati').]

### al-Talaq (divorce)

***O Prophet! When you (men) divorce women, divorce them in accordance with their prescribed waiting period. Keep to the completion of the waiting period and fear Allah, your Lord. Do not expel them from their homes, but do so only if they commit a clear act of adultery. These are the limits set by Allah, and whoever transgresses the limits set by Allah has surely wronged his own soul. You do not know if Allah might afterwards bring forth a new situation. [al-Talaq 65:1]***

If matters between a married couple reach a critical point, and the hope for a successful reconciliation between them vanishes, then divorce imposes itself as the last resort for this tense situation.<sup>54</sup>

***But if they separate (by divorce), Allah will compensate each from His abundance... [al-Nisa' 4:130]***

However, how will they separate? Although the question is short, its answer is lengthy:

#### **1 — al-Ihsan wa'l-Ma'ruf (beneficence and kindness)**

We have shown that married life in Islam is established on a firm foundation of ihsan and ma'ruf (beneficence and kindness). Likewise, if a marriage comes to an end, it must also be on the basis of ihsan and ma'ruf. Allah, the Exalted, says:

***Divorce is allowable two times, then either stay together in kindness or separate with beneficence... [al-Baqarah 2:229]***

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54. [trans. note: In the original text. Sheik Ghazi has here a lengthy three page footnote which contains his answer to Jeremy Bentham's view that divorce should not be allowed. I have decided not to translate it for it adds nothing significant to the Islamic understanding of divorce, which the Sheik clearly explains in this book. As I have indicated above in Chapter 1, footnote 23, reference to statements of non-Muslim thinkers in support of Islamic beliefs and practices is generally not advisable.]

There is also the statement of the Exalted One:

***When you have divorced women, and they have fulfilled their prescribed waiting period, either take them back in kindness or set them free in kindness. But do not take them back to harm them so that you become transgressors. Whoever does that has oppressed his own soul... [al-Baqarah 2:231]***

Also, the Exalted One says:

***When they have fulfilled their prescribed waiting period, either take them back in kindness or set them free in kindness... [at-Talaq 65:2]***

## **2 — The Procedure for Talaq (divorce)<sup>55</sup>**

The noble Quran and the pure Sunnah have defined the procedure in which divorce is performed, and it is not fitting for a Muslim to transgress it. We can summarize this procedure with the following points:

- A husband divorces his wife by making one verbal declaration of divorce after she has purified herself from her menses, that is, after making major ritual bathing (ghusl), and before having sexual intercourse with her. He then avoids having sexual intercourse with her but does not fully divorce her until her waiting period ('iddah) elapses. She remains in the same home in which she has lived with her husband during the days of the 'iddah and should not leave it.
- If the husband wants to return to her during the 'iddah, it is his right to do so, without needing her approval nor that of her guardian (wali). Also, there is no need for a new dowry (mahr).
- If he leaves her when her 'iddah elapses, then he should leave her in kindness, for she is now separated from him.
- If he wants to marry her after her 'iddah has elapsed, it is allowable for him to do so. But this remarriage takes place through a new contract ('aqd) as if he were marrying her for the first time.

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55. The following Hadith is narrated from Ibn 'Abbas and other Sahabah: "Divorce is performed in four different ways, two of them are allowable (halal) and two of them are forbidden (haram). The two halal ways are when a man divorces his wife while she is in a state of ritual purity after her menstruation and before having sexual intercourse with her, or when he divorces her while she is clearly known to be pregnant. The two haram ways are when a man divorces his wife during her menstruation, or when he divorces her after having sexual intercourse with her, not knowing if she has become pregnant or not." This is reported by al-Daraqutni and others.

- If he has returned to her or has married her a second time, and then wants to divorce her again, he divorces her in the exact manner as just described.
- If he divorces her a third time, she is forbidden to him until she has married another husband.
- If the woman is one who does not menstruate, either because she is too young or is too old, then he can divorce her whenever he wants, whether he had sexual intercourse with her or not. In this case, her 'iddah is measured according to the lunar months and not menstrual periods.

This generalization is in need of details and proofs, which we shall supply in the following sections.

### **3 — The Wisdom of Three Divorces**

Islam requires three divorces in order to grant a married couple time to bring their affairs into balance and to correct any flaws in their behavior. But when they fail to do this, Islam opens the way for the dissolution of the marriage.

***But if they separate (by divorce), Allah will compensate each from His abundance... [al-Nisa' 4:130]***

Ibn al-Qayyim, may Allah have mercy on him, said, "Allah has perfected His legislation (shar) and completed His bounty for His worshipper by empowering him with the right to separate from his wife and to take another one. It might be that the first wife was not suitable for him and did not harmonize with him. Allah did not make her to be an iron collar around his neck, a chain on his leg and a burden on his back."<sup>56</sup>

Allah has legislated that a husband separate from his wife in the most perfectly suitable manner for both of them. He divorces her once, during which time she waits for three menstrual periods, which in most cases is

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56. See *I'lam al-Muwaqqi'in*, vol.3, p.59.

three months.<sup>57</sup> If his soul yearns for her, and he has a desire for her, and if Allah, who changes hearts, directs his heart toward the love of her, then it will be possible that he finds a way to return to her and finds the door open. He has now returned to his lover and looks forward to a new future. What the hand of anger, and the temptations of Satan, had driven away now comes back to him.

However, the force of habits and the temptations of Satan are not secured to the point that the spouses will never return to their old ways. Thus, a second divorce is possible in such a case. But the hope is that the wife has now tasted the bitterness of divorce and the destruction of the home and that this will prevent her from doing those things that angered her husband. Also, the husband has tasted the pain of separating from her, which might prevent him from rushing into another divorce.

But if the third talaq is declared, then Allah's command cannot be repulsed. It will be said to him, "You have indulged in your own desires by way of the first and second divorces. After this third talaq there is no easy way for you to go back to her!" When he knows that the third talaq is a final separation between him and her and that it is a decisive judgement, then he might refrain from allowing it to happen. He might refrain from it when he knows that after the third divorce his ex-wife is not lawful for him unless:

- She waits through three menstrual periods.
- Then she marries a man who desires her in marriage and who fully intends to keep her as his wife.<sup>58</sup>
- As part of her new marriage, she and her husband have sexual intercourse in a full and complete manner so that each of the newly married couple tastes the sweetness of the other in this sexual union. This will help to prevent the couple from rushing to a new separation. Now the former husband of this woman must wait until the second husband separates from her through death, divorce or khul'.
- She then waits for the end of the complete 'iddah from her second husband.

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57. This means that he divorces her by a revocable divorce (talqah raj'iyyah) during her time of purity after menstruation and without having had sexual intercourse with her.

58. [Trans. note: The desire should be mutual. See Chapter 4, Section 3 for the matter of contrived marriages.]

In explaining the despair of the third divorce, each of the currently married spouses will know that there is almost no chance of returning to each other, even if it is the will of both to do so.

#### **4 — al-Talaq is Two Times**

In Sura al-Baqarah is this verse of the Exalted One:

***Divorce is allowable two times, then either stay together in kindness or separate with beneficence... [al-Baqarah 2:229]***

The intended meaning of talaq in this verse is the the revocable divorce (talaq raj'i) because there is no revocation after the third divorce. Imam Ahmad ibn Hanbal, may Allah have mercy on him, said, "I have carefully studied the Quran and found that every talaq in it is talaq raj'i<sup>59</sup> except the verse of the Exalted One:

***If he has divorced her a third time, then she is not lawful for him after that until she has married another husband... [al-Baqarah 2:230]***

Allah, glorified and exalted be He, says: "Divorce is allowable two times" (al-talaq marratani). He did not use the term "twice divorced" (talqatani). This points to the fact that it is proper for divorce to occur one time after the other and not twice simultaneously.

Islam has limited the number of divorces in order to eliminate an ancient custom from the time of Jahiliyyah according to which a man was granted the right to divorce his wife as many times as he wished. He could also divorce her in a manner that enabled him to impose much harm on her, for she would remain suspended between two states, neither married nor divorced. Imam Malik, Imam al-Shafi'i and others reported from Hisham ibn 'Urwah from his father who said, "A man used to divorce his wife, returning to her just before the completion of her 'iddah. That was his right, even if he divorced her a thousand times. Thus a man would fully intend to divorce his wife, wait until her 'iddah was about to elapse, and then take her back just to divorce her again. He would then say to

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59. This refers to a divorce from a marriage which was consummated.

her, 'By Allah, I shall never shelter you nor release you.'" Thus, Allah, the Exalted, revealed:

***Divorce is allowable two times, then either stay together in kindness or separate with beneficence... [al-Baqarah 2:229]***

From that day on, people accepted divorce in this new way, whether they had divorced according to the old way or not.

The one who reflects on this verse in Sura al-Baqarah notices that it contains the three divorces. A man came to the Prophet, the blessing and peace of Allah be upon him, saying, "O Messenger of Allah! I have seen the verse of Allah, the Exalted, 'Divorce is allowable two times,' but where is the third divorce?" He said: "'Separate with beneficence' (al-tasrih bi-ihisan) is the third."<sup>60</sup> Also, Ibn Abi Hatim reported from Yazid ibn Abi Habib who said, "'Separate' in the Book of Allah means divorce."<sup>61</sup>

The term "two times" (marratani) in this verse indicates that this is the talaq after which a return is possible. However, the third divorce is the one after which a wife is no longer lawful for her first husband until she marries another husband according to the verse of the Exalted One:

***If he has divorced her a third time, then she is not lawful for him after that until she has married another husband... [al-Baqarah 2:230]***

Ibn Mas'ud, may Allah be pleased with him, gave this explanation (tafsir) for the verse of Allah "Divorce is allowable two times:" "It is the time during which a return is possible, that is, when a husband has divorced his wife one time or two times. Then he either keeps her and returns to her in kindness or he keeps quiet concerning her until her 'iddah has elapsed, at which time she will be on her own."

### **5 — Pronouncing the Three Divorces Simultaneously**

A husband misuses the right of talaq if he divorces his wife three times during a period of purity after menstruation by pronouncing the three divorces in one statement or several statements. Some examples of this

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60. This Hadith is reported by 'Abd al-Razzaq, Sa'id ibn Mansur, al-Bayhaqi and others from Abu Razayn al-Asri.

61. The term "separate" (al-tasrih) appears in the noble Quran four times, in al-Baqarah 2:229 and 231 and in al-Ahzab 33:28 and 49.

are: "You are divorced three times;" "You are divorced and divorced and divorced;" "You are divorced, then divorced, then divorced;" "You are divorced. You are divorced. You are divorced;" or "You are divorced three times, ten times, a hundred times, a thousand times." There are many statements similar to these which a husband might use. But regardless of the expressions, his multiple divorce is forbidden, and only one divorce will be accepted from him.

This opinion has been reported by scholars past and present (al-salaf wa-l-khalaf) such as the Sahabah al-Zubayr ibn al-'Awwam, 'Abd al-Rahman ibn 'Awf, 'Ali ibn Abi Talib, Ibn Mas'ud and Ibn 'Abbas. It is likewise the opinion of the Followers (tabi'un) and those who came after them such as Tawus, Khilas ibn 'Amr, and Muhammad ibn Ishaq. It is the opinion of Dawud al-Zahiri and many of his companions. And the same opinion is reported from Abu Ja'far Muhammad ibn 'Ali bin al-Hasan and his son Ja'far ibn Muhammad and from other Shiite scholars. Finally, it is the opinion of some of the companions of Abu Hanifah, Malik and Ahmad ibn Hanbal.<sup>62</sup>

This verse, "Divorce is allowable two times," because of the way it is worded, means that divorce occurs one time after the other. A husband has no right to pronounce three divorces simultaneously. This issue of simultaneous pronouncements is treated similarly in the Book and the Sunnah for cases such as the oath of condemnation (li'an), swearing an oath (qasamah), confessing fornication or adultery (zina'), remembering Allah (dhikr), and requesting permission to enter a house (isti'dhan).

- In the case of li'an, Allah, the Exalted, says:

***As for those who accuse their wives but have no witnesses except themselves, the testimony of any of them must be four testimonies by Allah that he is speaking the truth. The fifth testimony must be to invoke the curse of Allah on himself if he is telling a lie. But her punishment will be averted if she testifies four times by Allah that her husband is telling a lie. The fifth testimony must be to invoke the wrath of Allah on herself if he is speaking the truth. [al-Nur 24:6-9]***

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62. This list of opinions is taken from *Majmu'at Fatawa Shaykh al-Islam Ibn Taymiyyah*, vol.33, p.9. [trans. note: 1) Although some readers might be surprised by the inclusion of the Zahiriyah and the Shi'ah, it is well-known that Ibn Taymiyyah often includes the opinions of a wide range of Islamic groups and sects when he discusses a matter of jurisprudence (fiqh) as well as of creed ('aqidah). 2) In his original text, Sheik Ghazi includes a short paragraph about modern Egyptian law on divorce, which I have chosen not to include here.]



If a husband were to say, "I testify by Allah with four testimonies that I am speaking the truth," or if the wife were to say, "I testify four times by Allah that he is telling a lie," then these would be considered as one testimony, not four.

- In the case of qasamah, Allah, the Exalted, says:

***O you who believe! There should be two just men of your people to witness your testimony at the time of a bequest when death approaches any of you. Or, two other men could be witnesses if you are traveling through the land and the calamity of death befalls you. Detain both of them after prayer. But if you have doubts, then let them swear this oath by Allah: "We shall not take any bribe in this affair even though the beneficiary may be our near relative and we shall not hide the testimony of Allah, for then we will be sinners." But if it becomes known that these two are guilty of the sin of perjury, then let two others, who are relatives deserving of inheritance, take their place. Let them swear this oath by Allah: "Our testimony is truer than that of the other two, and we have never transgressed the truth, for otherwise we would be unjust men." Thus it is more likely that either they will bear true witness or fear that another oath will be taken in place of theirs. So fear Allah and obey what you hear. Allah does not guide a rebellious folk. [al-Ma'idah 5:106-108]***

Thus, in the matter of swearing an oath (qasamah), if a person were to say, "I swear 50 times by Allah that this person is his killer," this would be considered as only one oath.

- In the case of confessing zina':

If a person were to confess to committing zina' by saying, "I confess four times that I committed zina'," it would be considered as if he made only one confession.

- In the case of remembering Allah:

The Messenger of Allah, the blessing and peace of Allah be upon him, said: "Glorify Allah (tasbih), praise Allah (tahmid) and magnify Allah

(takbir) 33 times after each prayer.” If a person were to remember Allah by saying, “I glorify, praise and magnify Allah 33 times,” he would not get the reward of this dhikr until he repeats each statement one time after the other. This holds true for other types of dhikr.

- In the case of requesting permission to enter a house, Allah, the Exalted, says:

***O you who believe! Let your slaves and your children who have not reached puberty ask your permission before entering your presence at three times of the day... [al-Nur 24:58]***

If a visitor were to say, “I request permission three times to enter,” it would be considered that he asked only once.<sup>63</sup>

These examples are not very different than the verse of the Exalted One “Divorce is allowable two times.” What we have observed in all these examples is agreeable with what we observe in this noble verse.<sup>64</sup>

## **6 — The Talaq of Innovation**

A divorce is an innovated deviation from Islamic Law (talaq al-bid'ah) when a man divorces his wife by simultaneously declaring more than one divorce, or by divorcing her during her menses, or by divorcing her during a period of purity but after having had sexual intercourse with her. However, the scholars of the Law ('ulama' al-shari'ah) have differing opinions regarding talaq al-bid'ah. The Hanafiyyah and a majority of scholars from the Malikiyyah, the Shafi'iyyah and the Hanabilah have ruled that a husband's talaq in this case is effective but that he is a sinner who has contradicted the legislated course for divorce.

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63. [trans. note: There is some confusion in the way Sheik Ghazi presents this argument. for the commentators (mufasssirin) agree that this verse refers to requesting permission to enter at three separate times of the day, not making three requests at one of the stipulated times. It should be understood that one must make a new request at each time rather than making three requests simultaneously, which would then be valid all day long. Another related issue not mentioned by Sheik Ghazi is the Hadith in which a person made three requests to enter 'Umar's home but then left when there was no response. He made three separate requests; he did not make three requests at once and then leave. See the Arabic-English version of Sahib al-Bukhari, vol.8, p.173.]

64. See Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, vol.3, p.4.

According to the Imamiyyah Shiites, a divorce is not effective when the three declarations are made simultaneously or when talaq is pronounced while the wife is menstruating because it is an illegal innovation (*bid'ah muharramah*). The Prophet, the blessing and peace of Allah be upon him, said: "Whoever performs an action which is not a part of our affairs has that action rejected."<sup>65</sup>

Ibn Taymiyyah and Ibn al-Qayyim take the position that talaq al-*bid'ah* is not effective and that declaring three divorces simultaneously is considered one divorce. Their proof for this is the Hadith of Ibn 'Umar which is reported by Malik in *al-Muwatta'* from Nafi', may Allah be pleased with him:<sup>66</sup> "During the time of the Messenger of Allah, the blessing and peace of Allah be upon him, 'Abd-Allah ibn 'Umar had divorced his wife while she was menstruating. 'Umar ibn al-Khattab asked the Messenger of Allah, the blessing and peace of Allah be upon him, about that matter. The Messenger of Allah, the blessing and peace of Allah be upon him, said: 'Order him to get back with her and to keep her until she purifies herself from this menses, has another menses, and purifies herself again. Afterwards, if he wills, he may keep her, or if he wills, he may divorce her before having sexual intercourse with her. This is the *'iddah* (the waiting period) according to which Allah has ordered that women be divorced.'"

Ibn Taymiyyah and Ibn al-Qayyim draw the following conclusions from this Hadith:

(1) The statement of the Messenger, the blessing and peace of Allah be upon him, "Order him to get back with her (*fa-l-yuraji'ha*)," does not mean that the divorce was effective. On the contrary, it means the exact opposite because Ibn 'Umar physically separated himself from his wife, for it was customary that when a man divorced his wife they physically separated from each other. The Messenger's words to 'Umar were "Order him to get back with her," not, "Return to her for remarriage (*fa-l-yartaji'ha*)." "Getting back with each other" (*muraja'ah*), which is a mutual action by two parties, means that she went back to him physically so that they be reunited as they were before because the divorce was not effective. He could divorce her only during the time permitted by Allah.

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65. See al-Shawkani, *Nayl al-Awtar*, vol.6, p.143.

66. See *al-Muwatta'*, vol.4, p.96. This is an authentic Hadith narrated by al-Bukhari and Muslim from Malik.

The term “muraja’ah,” which is the verbal noun (masdar) of the verb “yuraji’,” is being used in the Hadith and the previous explanation according to its linguistic meaning. Although this same term is now used in reference to a revocable divorce (al-talqah al-raj’iyyah), this is a usage according to the legal terminology introduced by the jurisprudents (fuqaha’) after the time of the Prophet. This new usage as a legal term is not a meaning found originally in the Qur’an. Instead, the terms used in the Qur’an in reference to a return after the first or the second divorce are “al-radd” and “al-imsak.” For example, see Sura al-Baqarah 2:228, 229 and 231. The term “muraja’ah” is used in the Qur’an with a different legal meaning than that adopted by the fuqaha’. Its usage in the Qur’an is in reference to a return after the third divorce, that is, after a divorced woman has married another husband, is divorced from him, and then returns to the first husband on a new marriage contract. See Sura al-Baqarah 2:230.<sup>67</sup>

(2) If the divorce between Ibn ‘Umar and his wife were finalized, i.e., it was the third divorce, then there would not have been any benefit in ordering a return so that he could divorce her a second time. On the contrary, such an order would have been harmful to both of them because it would have increased the number of divorces, lengthened the ‘iddah and punished both spouses.

(3) The Messenger did not order Ibn ‘Umar to have witnesses for returning to his wife as Allah and His Messenger had ordered in the case of a return based on a new marriage contract. If the divorce were effective, he would have ordered Ibn ‘Umar to have witnesses for the return.

(4) If Ibn ‘Umar’s prohibited divorce, which he declared during his wife’s menses, were made effective, then corruption, which Allah and His Messenger hate, would have occurred. This corruption would not have been eliminated by his return to her, after which a divorce would still be allowable, because the precedent of allowing a prohibited act would have been established. Allah and His Messenger are exalted above giving such an order. Also, there would have been no benefit in the Prophet’s specific order to return if the talaq were valid, for Ibn ‘Umar could have chosen to

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67. See al-Shaykh Ahmad Shakir, *Nizam al-Talaq fi-Islam*, p.30. [trans. note: This entire paragraph appears in the original text as a footnote explaining the term “muraja’ah.” I felt that the importance of this explanation required its inclusion in the main text. Also, I added a few minor points of explanation that do not appear in Sheikh Ghazi’s footnote.]

return to her, if he desired her. And if he had no desire for her, he could not have been obligated to return to her. There is no legislated basis that promotes the common good (maslahah shar'iyyah) by ordering a return after a divorce has been established. Instead, there is an increase in corruption. The Messenger, the blessing and peace of Allah be upon him, is necessarily exalted above any command from which an increase of corruption results. Allah and His Messenger have forbidden the innovated divorce (talaq bid'i) in order to prevent corruption. How then could they order that which would increase corruption?<sup>68</sup>

## 7 — The Oath of Condemnation

The previous Hadith of Ibn 'Umar and the conclusions drawn from it establish an important principle concerning divorce. Muslim jurists use it to prove that a declaration of divorce is without effect if it is made during the wife's menses. We shall now similarly review the issue of the oath of condemnation (li'an or mula'anah). The following Hadith is reported by Ahmad and the "Two Sheiks" (al-Bukhari and Muslim) from Sahl ibn Sa'd who said: "Uwaymir al-'Ajlani came to the Prophet, the blessing and peace of Allah be upon him, and said, 'O Messenger of Allah! What advice would you give to a man who finds another man with his wife? Should he kill him, and thus he himself be put to death for murder? What should he do?' The Messenger of Allah, the blessing and peace of Allah be upon him, said: 'Allah has revealed a Quran verse concerning you and your wife. Go and bring her.' So they swore the oath of condemnation in the presence of the Messenger of Allah, the blessing and peace of Allah be upon him, while I (Sahl ibn Sa'd) and some others were there. When it was over, 'Uwaymir said, 'O Messenger of Allah! If I keep her as a wife, then I have lied concerning her.' So he divorced her three times before the Messenger of Allah, the blessing and peace of Allah be upon him, had ordered him to do so."

In the version of the Hadith according to Muslim and Ahmad, this ruling is given: "His separation from her is an obligatory Sunnah in the matter of the oath of condemnation." In another narration, it is reported

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68. The discussion of these points can be found in *Majmu'at Fatawa Shaykh al-Islam Ibn Taymiyyah*, vol.33, p.22.

that after having said “then I have lied concerning her,” ‘Uwaymir said: “She is divorced. She is divorced. She is divorced.” It is not reported in any of the narrations that the Messenger of Allah, the blessing and peace of Allah be upon him, objected to what ‘Uwaymir said. The clarification of this matter is in accordance to what al-Shawkani has said: “The Prophet, the blessing and peace of Allah be upon him, remained silent about the three simultaneous proclamations of talaq because the oath of condemnation itself effectuates a divorce, and so there is no need for a husband to declare any talaq after that.”<sup>69</sup>

## 8 — The Position of ‘Umar Concerning Three Simultaneous Divorces

During the time of the Messenger of Allah, the blessing and peace of Allah be upon him, and Abu Bakr and during the first two years of ‘Umar’s caliphate, three simultaneous declarations of talaq used to be considered one declaration. Then ‘Umar ibn al-Khattab, may Allah be pleased with him, said, “People are rushing into a matter that used to be one of lengthy deliberation for them. How would it be if we were to enforce this on them.” And so he executed this order.<sup>70</sup> Therefore, whoever declared three divorces at one time became fully separated from his wife, and his triple talaq was not considered one declaration as was the case during the time of the Messenger of Allah, the blessing and peace of Allah be upon him.

Ibn al-Qayyim says in *I‘lam al-Muwaqqi‘in*: “‘Umar’s authorization to enforce the three simultaneous declarations of talaq when people practiced this type of divorce was a disciplinary punishment for them. He authorized it because people were opposing what Allah had legislated concerning divorce, which is to be invoked one time after the other, so that they might return to the Sunnah. He enacted this rule in regards to that particular time.” Ibn al-Qayyim continues by saying: “However, acting in the public good (maslahah) today requires a return to the Book and to what is authentically reported in the Sunnah concerning the days of the Prophet, the blessing and peace of Allah be upon him, and the first

69. See *Nayl al-Awtar*, vol.7, pp.12-13. [trans. note: Imam al-Shafi‘i makes the same point in his *Risalah fi Usul al-Fiqh* that the process of li‘an ends the marriage (see the translation by Majid Khadduri, pp.146-148). This is what is meant by the ruling of Ahmad and Muslim that the separation is an “obligatory Sunnah.” As al-Shafi‘i explains throughout his *Risalah*, the Sunnah of the Prophet details many obligations that are only implied by the Quran. Some other obligations concerning li‘an that are found only in the Sunnah are a husband’s denial of paternity if the wife is pregnant and the right of a judge to overturn this denial should the child show clear signs of resemblance to the father.]

70. This is reported by Muslim and Ahmad.

caliphate. This means that a husband can choose between keeping his wife (imsak) and divorcing her (tasrih) in the first talaq and then again in the second talaq. But if he definitively declares the third talaq, then the matter will be out of his hands. By this time, a couple would have tried three times to make their marriage work but failed in their attempts.”<sup>71</sup>

## 9 — The Conditional Divorce (al-talaq al mu-allaq)

Divorce is divided into two types: unconditional (munjaz) and conditional (mu'allaq). The talaq munjaz is a divorce which occurs in a straightforward manner without being conditioned by any qualifications or oaths. Some examples of munjaz declarations are: “You are divorced;” “You are the one divorced;” “She is divorced;” “You are the divorced one;” or “I have divorced you.” These are clear, unambiguous statements. This form of declaring talaq is without disagreement among the scholars, providing the conditions that we have detailed above have been met.

The talaq mu'allaq is a divorce which occurs by way of a qualification. An example of this is “If you enter the house you are divorced.” Sheik Ahmad Shakir, may Allah have mercy on him, says in his valuable book, *Nizam al-Talaq fi-l-Islam*: “Every kind of talaq mu'allaq is not correct and not effective because it is not a form of permissible divorce. A man has no authority to divorce except in accordance with what Allah, glorified and exalted be He, has permitted. Also, by conditioning his divorce on a future event, he turns his declaration of talaq into a false statement because establishing a divorce can only be based on pre-existing conditions. It cannot be dependent on what might occur in the future.” He continues by saying: “All the evidences that we have presented to prove the illegality of the innovated divorce (talaq bid'i) are valid concerning the judgement that the conditional divorce is also illegal.”<sup>72</sup>

## 10 — Swearing an Oath to Divorce

Swearing an oath that might result in divorce is an innovation (bid'ah), and every bid'ah is a means of going astray, and every means of going

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71. See *I'lam al-Muwaqqi'in*, vol.3, p.34. [trans. note: Ibn al-Qayyim is indicating that 'Umar's authorization to enforce three simultaneous declarations of divorce was a form of ijtiḥad necessary for the circumstances prevalent at that time. Writing over 700 years after the time of 'Umar, Ibn al-Qayyim is reminding the Muslims that following the Sunnah of the Prophet is the best course of action but that the exigencies of particular circumstances might permit the 'ulama' and rulers to exercise ijtiḥad based on the Quran and the Sunnah.]

72. [trans. note: In Sheik Ghazi's original text, a paragraph following this one explains that in modern Egyptian law the talaq mu'allaq is considered illegal.]

astray leads to the Hellfire. This innovation never existed at the time of the Messenger of Allah, the blessing and peace of Allah be upon him. The oath resulting in divorce was first innovated by al-Hajjaj ibn Yusuf al-Thaqafi. Ibn Taymiyyah explains what had occurred at that time: "The Sunnah concerning the pledge of allegiance (bay'ah) is that people should give their bay'ah just as they make a contract for things such as business transactions or marriage; or they should state their conditions on which they will pledge their allegiance and then say: 'We pledge allegiance to you based on these conditions.' This is how the Ansar pledged allegiance to the Prophet, the blessing and peace of Allah be upon him, on the Night of 'Aqabah. But, when al-Hajjaj started introducing many corrupt practices, one of them was to force people to swear an oath of allegiance to the Caliph 'Abd al-Malik ibn Marwan (d. 86 AH/705 CE) based on these conditions: They had to swear to divorce, to free their slaves, to treat it as an oath to Allah, and to give charity from their wealth. These four oaths are the earliest innovated oaths related to the bay'ah. Thereafter, later generations of leaders, whether caliphs or kings, introduced many more conditional oaths than those of al-Hajjaj, and the habits of these people concerning innovated oaths varied greatly. May the one who introduced innovated oaths carry the sin of the evil consequences caused by these oaths."<sup>73</sup> Elsewhere in the same book he says, "Swearing an oath to divorce is an innovated novelty in this religious community (ummah)."<sup>74</sup>

An authentic narration from 'Ikrimah regarding a judgement on swearing to divorce states, "It is following the footsteps of Shaytan, so it is not binding." Also, an authentic narration from Shurayh and Ibn Mas'ud states, "The divorce of talaq mu'allah is not binding."<sup>75</sup>

Swearing an oath to divorce comes under the statements of the Messenger, the blessing and peace of Allah be upon him, concerning swearing any oath: "Whoever swears an oath, let him swear by Allah or let him be silent." "Allah has forbidden you from swearing oaths by your fathers." "Whoever swears an oath by other than Allah has surely associated partners with Allah."

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73. See Ibn Taymiyyah, *al-Qawa'id al-Nuraniyyah al-Fiqhiyyah*, p.323.

74. See Ibn Taymiyyah, *al-Qawa'id al-Nuraniyyah al-Fiqhiyyah*, p.952.

75. See Jamal al-Din al-Qasimi, *Mahasin al-Ta'wil*, vol.3, p.594.



The essential point related to divorce is that the divorce that has been legislated by Allah is the revocable divorce (talaq raj'i). This is when a man divorces his wife with one declaration (talqah) while she is in a state of ritual purity after menstruation, and he has not yet had sexual intercourse with her. She stays safely with him in the house in which they have been living until her prescribed waiting period ('iddah) is completed. Allah, the Exalted, says:

***...fear Allah, your Lord. Do not expel them from their homes, but do so only if they commit a clear act of adultery.... [al-Talaq 65:1] This is the judgement of Allah, and these are His limits: ...These are the limits set by Allah, and whoever transgresses the limits set by Allah has surely wronged his own soul... [al-Talaq 65:1]***

One might ask, "How can a husband keep a woman, whom he has just divorced, in his house? Or, how can a wife stay safely in a house the owner of which has just divorced her?" Allah, the Knower of the inner aspects of affairs, the Perfectly-Informed of a soul's innermost thoughts, says:

***"...You do not know if Allah might afterwards bring forth a new situation." [al-Talaq 65:1].***

### Points of Importance

#### 1 — The Return (al-raj'ah)

A husband has the right to return to his wife as long as she is still in her prescribed waiting period ('iddah).<sup>76</sup> He indicates his return to her through an expression or an action which will be clearly understood as his return to her. Also, it is incumbent on him that there are witnesses for this return. Sa'id ibn al-Musayyab, al-Hasan al-Basri, Ibn Sirin, al-Zuhri, 'Ata', Tawus and al-Thawri said, "If he had intercourse with her, then he has returned to her." They also said, "His return to her should be declared before witnesses." The Sunnah indicates that he should declare his return before he embraces her, kisses her, or has sexual intercourse with her.

Imam Malik, may Allah be pleased with him, said, "If he has sexual intercourse with her during the 'iddah with the intention of returning to her but did not know that he should declare this before witnesses, then it is still considered as raj'ah." Imam Abu Hanifah and his companions said, "If he has sexual intercourse with her, or touches her with desire, or looks to her private parts with desire, then this is considered as raj'ah." This is also the statement of al-Thawri who said, "It is incumbent on him to have witnesses."<sup>77</sup> Allah, glorified and exalted be He, has ordered the witnessing of the return in the noble Quran:

***When they have fulfilled their prescribed waiting period, either take them back in kindness or set them free in kindness, and let two just persons among you witness this... [al-Talaq 65:2]***

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76. This is valid for the first and second divorces only, not for the third.

77. See al-Gurtubi, vol.3, p.121.

Allah, the Mighty and Sublime, does not discriminate between returning and divorcing in regard to having witnesses.

al-Tabari<sup>78</sup> narrates in his *Tafsir* from Ibn 'Abbas who said, "If a husband wants to return to his wife before her 'iddah is complete, then there should be two witnesses, for Allah, the Exalted, says 'let two just persons among you witness this.' This is necessary for a divorce or a return." Also, he narrates from 'Ata' who said, "Marriage requires witnesses, divorce requires witnesses, and returning requires witnesses."

If the 'iddah of the wife has been completed after the first or the second divorce, then she is on her own. However, her husband can return to her, with her approval and on a new marriage contract in accordance with the verse of Allah, the Exalted:

***...their husbands have a better right to return to them at that time, if they wish for reconciliation... [al-Baqarah 2:228]***

al-Bukhari and al-Tirmidhi report a Hadith from Ma'qil ibn Yassar concerning the cause of the revelation of this verse. Ma'qil had married off his sister to one of the Muslims during the time of the Prophet, the blessing and peace of Allah be upon him. She stayed with him for a certain time, and then he divorced her by declaring one talqah. But he did not return to her until her 'iddah was completed, for he desired her and she desired him. However, when he asked her to remarry him, her brother, Ma'qil, told him, "O you disgraceful one! I honored you by way of her, I married her off to you, and then you divorced her. By Allah! She will never return to you." But Allah knew his need for her and revealed this verse. When Ma'qil heard it he said, "Hearing and obedience are for Allah." He called him and said to him, "I will marry her off to you and I will honor you."

The point of this Hadith is that her husband wanted to return to her in order to reconcile with her. Had he intended to harm or harass her, then returning to her would be forbidden (haram) because Allah prohibits a return in order to cause harm:

***...But do not take them back to harm them so that you become transgressors... [al-Baqarah 2:231]***

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78. [trans. note: This is Abu Ja'far Muhammad ibn Jarir al-Tabari, who died in 310 AH/922 CE. His exegesis is known as *Jami' al-Bayan 'an Ta'wil Ay al-Quran*.]

## 2 — al-'Iddah (prescribed waiting period)

### A. The six types of 'iddah:

- The 'iddah of a pregnant woman lasts until the birth of the baby as Allah, the Exalted, says:

***...The waiting period of those who are pregnant is until they give birth... [al-Talaq 65:4]***

- The 'iddah of a woman whose husband has died is four months and ten days as Allah, the Exalted, says:

***If any of you die and leave behind wives, the wives must keep to themselves and wait for four months and ten days... [al-Baqarah 2:234]***

- The 'iddah of a divorced woman who has her menses is three menstrual periods (quru') as Allah, the Exalted, says:

***Divorced women must keep to themselves and wait for three menstrual periods... [al-Baqarah 2:228]***

- The 'iddah of a divorced woman who does not menstruate is three months as Allah, the Exalted, says:

***Those of your women who despair of having menses have a prescribed waiting period, if you have doubts, of three months, and so have those who do not menstruate... [al-Talaq 65:4]***

- A woman who did not have sexual intercourse with her husband does not have an 'iddah as Allah, the Exalted, says:

***O you who believe! When you marry believing women and then divorce them before you have had sexual intercourse with them, you do not have to wait***

***through a prescribed period concerning them... [al-Ahzab 33:49]***

- A woman whose husband dies before having had sexual intercourse with her must observe the 'iddah of widows according to a ruling by Ibn Mas'ud, may Allah be pleased with him. Also, Ma'qil al-Ashja'i, may Allah be pleased with him, said, "The Prophet, the blessing and peace of Allah be upon him, had decreed this."

**B. The Rights Pertaining to the 'Iddah**

There are many rights pertaining to the 'iddah of a woman who is being divorced:

- There are the rights owed to Allah, glorified and exalted be He, which include obeying His command and seeking His pleasure.
- The right of the husband is the length of time allowable for him to return to her.
- The divorced wife has a right to financial support (al-nafaqah) and to stay safely at home as long as she is in 'iddah.
- The right of the children is to have their lineage confirmed and not confused with that of any others.
- There is also the right of the second husband, which is that he is not held accountable for the first husband's offspring.

The Divine Legislator has arranged for the fulfillment of these rights through suitable judgements:

- In order for the woman to observe her duties to Allah, He has arranged for her to stay safely at home, for she should not leave home nor be driven from it.

- He has also arranged for the fulfillment of her rights by obliging the husband to maintain her in his residence.
- The Divine Legislator has arranged for the fulfillment of the right of the divorcing husband by enabling him to return to his wife as long as she is in 'iddah.
- Allah has arranged for the right of the children to be fulfilled by requiring affirmation of their lineage and by linking them to their own father and not to someone else.
- He has arranged for the right of the second husband to be fulfilled by ensuring that he will marry a woman who is not pregnant and that he will not be obliged to care for another man's offspring.

These conditions refer to the first and second divorces, that is, the revocable divorces (al-talaq al-raj'i). After the third divorce, the right of the husband to return to his wife is terminated. However, the woman in this case still must observe the legislation of the 'iddah for various reasons. For example, there must be assurances that she is not pregnant. Thus, the third divorce is governed by the same judgements pertaining to the two previous divorces so that the rules concerning talaq will not change. With the third divorce, however, there is a form of punishment for the husband. The Divine Legislator has made the thrice-divorced wife forbidden for the first husband until she marries another husband. An aspect of the completeness of this penalty is that the Divine Legislator has prolonged the time period in which she is forbidden for him. This shows the serious nature of what the Divine Legislator has intended by this punishment. A husband now knows that his wife will not be allowable for him until she completes an 'iddah of three menstrual periods and then enters into marriage with another man based on sincere desire. This means that the new marriage cannot be contrived in order to allow her to remarry the first husband, this being an act which is cursed. She then must be divorced by the second husband and wait for the completion of three more menstrual periods. This extensive waiting period and a

husband's lack of patience would hopefully cause him to refrain from proclaiming the third divorce.<sup>79</sup>

### C. The Wisdom of the 'Iddah

Based on the above discussion, it is possible to summarize the wisdom of the 'iddah in the following four points:

- The 'iddah confirms the knowledge of the purity of the womb so that lineages are not mixed.
- It magnifies the seriousness of the marriage contract, elevates its value and manifests its honor.
- It prolongs the time allowed for the divorcing husband to return to his wife so that he might have remorse and reverse his decision; thus he is provided with enough time to enable him to return.
- It satisfies the right of the husband and manifests to the wife one consequence of losing him, which is not having someone for whom she beautifies and adorns herself.<sup>80</sup> For this reason it is legislated that the widow's mourning period for her husband is longer than that for her father or son.<sup>81</sup>

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79. [trans. note: This entire paragraph appears as a footnote in Sheik Qhazi's text. He also makes a brief mention of the man who conspires with the first husband to contrive a marriage with the thrice-divorced wife. The intention of this contrived marriage is that the second husband consummates the marriage and then immediately divorces the woman so that the first husband can remarry her. Such a man is called a muhallil and is cursed by Allah. This topic will be discussed below in section 3 of this chapter.]

80. [trans. note: It appears that Sheik Qhazi is referring here to the 'iddah after the third divorce, for he mentions below in section D of this chapter that a wife may beautify herself during the 'iddah of a revocable divorce.]

81. See Ibn Qayyim al-Jawziyyah, *I'tam al-Muwaqqi'in 'an Rabb al-'Alamin*, vol.2, p.56. There is also another reason for making the 'iddah of a widow four months and ten days. It is during this time that it will be known if she is pregnant or not, for a fertilized egg is an embryonic drop for forty days, then a clot of blood for forty days, then a morsel of flesh for forty days. This is four months, after which time the soul is blown into it in its fourth stage of development. Ten more days are added on so that the life of the fetus will be made apparent by its movement in the womb.

As we have said, this is the case in relation to the wife who is going through a revocable divorce. As for the wife who is going through the third, irrevocable divorce, we have said that the 'iddah in relation to her has two meanings: knowing the purity of the womb and chastisement for the husband.

#### D. The Etiquette of the 'Iddah

A wife who is going through a revocable divorce remains safely in the house used by the married couple during her 'iddah and should not leave it. This is according to the verse of Allah, the Exalted:

***...fear Allah, your Lord. Do not expel them from their homes, but do so only if they commit a clear act of adultery... [al-Talaq 65:1]***

Divine legislation has imposed on a husband and wife a certain etiquette that is fitting for them to observe:

- His sleeping place should be isolated from her sleeping place. But if they have only one place to sleep, they must put up a curtain between themselves.
- The husband should request permission if he wants to enter where she is, and he should greet her with "al-salam 'alaykum."
- The wife who is in 'iddah after a revocable divorce is not prevented from beautifying and adorning herself.

### **3 — al-Muhallil (the one who contrives a marriage)<sup>82</sup>**

If a husband divorces his wife for a third time, then she becomes irrevocably separated from him and is not allowable for him unless she marries another husband, from whom she is later divorced. This is a clearly established legislation (shari'ah muhkamah). However, some deceitful people attempt to avoid the judgement of Allah by using suspicious practices which are morally and religiously objectionable. Such a man might contrive a marriage contract between his irrevocably divorced wife and another man in order to carry out this deception. The

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82. [trans. note: The word "muhallil" means in general one who dissolves or analyzes a thing, or one who makes a thing permissible. The word is defined here in its specific application to Islamic Law.]



second husband then divorces her, enabling the former husband to return to her. This is employing tricks in relation to the verse of Allah, the Exalted,

**“If he has divorced her a third time, then she is not lawful for him after that until she has married another husband...” [al-Baqarah 2:230]**

The intent of this noble verse is one thing, but what some people do is another. The verse means that a divorced woman must marry another man in an Islamically legislated marriage, not limited by any time frame. Then she stays with her new husband unless something happens between them that leads to their divorce, which must occur according to the manner previously described. After this legitimate divorce, the former husband has a right to propose marriage to her as would any other man.

But people act contrary to this verse and give free reign to the muhallil. This, however, has been forbidden by the Prophet, the blessing and peace of Allah be upon him, in many Hadiths. He, the blessing and peace of Allah be upon him, said: “Allah curses the following people: the tattoo artist and the one who gets tattooed, the one who fits others for wigs or hairpieces and the one who wears them, the muhallil and the one who uses a muhallil, the one who takes interest (riba) and the one who pays interest.”<sup>83</sup> He, the blessing and peace of Allah be upon him, also said in a separate Hadith; “May Allah curse the muhallil and the one who uses a muhallil.”<sup>84</sup> He, the blessing and peace of Allah be upon him, also said: “Shall I not inform you about the borrowed stud goat.” They said: “Yes, O Messenger of Allah.” He said: “He is the muhallil. May Allah curse the muhallil and the one who uses a muhallil.”<sup>85</sup>

Many Hadiths with similar meanings have been narrated from Ibn ‘Abbas, Ibn ‘Umar, Abu Hurayrah and Jabir, may Allah be pleased with them. It is also narrated from ‘Umar ibn al-Khattab who said, “If I were ever brought a muhallil and the one who used a muhallil, I would surely stone them both.”<sup>86</sup> It is narrated from ‘Uthman, may Allah be pleased

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83. This Hadith is reported by al-Nasa’i and Ahmad from Ibn Mas’ud, may Allah be pleased with him. [trans. note: Sheikh Ghazi has two footnotes explaining two terms used in the Hadith. The first term is “al-washimah,” the tattoo artist, and the second term is “al-wasilah,” the one who fits others for wigs and hairpieces.]

84. This Hadith is reported by Abu Dawud, al-Tirmidhi and al-Nasa’i from ‘Ali ibn Abi Talib, may Allah be pleased with him.

85. This Hadith is reported by al-Hakim in his *Sahih* from ‘Uqbah ibn ‘Amir, may Allah be pleased with him.

86. See *Majmu‘at Fatawa Ibn Taymiyyah*, vol.32, p.93.

with him, who said, "There is no marriage except an intentionally sought marriage. There is no deceptive marriage." Also, Ibn 'Abbas was asked about the muhallil. He replied, "Whoever tries to deceive Allah, Allah will leave him in deception."

Finally, Sufyan al-Thawri said, "If a man marries a woman with the intention to make her allowable for her first husband but then changes his mind and wants to keep her, she would not be allowable for him until he marries her on a new marriage contract."<sup>87</sup>

#### **4 — al-Khul' (separation initiated by a wife)**

If Islam has given men the right of divorce (talaq), it has also given women the right of khul'. Khul' literally means that a wife ransoms herself.<sup>88</sup> It is derived from the expression "khala'a al-thawb" (to remove a garment), for a woman is the garment of man and he is her garment. Allah, the Exalted, says:

***...They (the wives) are like garments for you and you are like garments for them... [al-Baqarah 2:87]***

A verse in Sura al-Baqarah establishes the principle of khul'. Allah, the Exalted, says:

***...if you fear that they cannot keep the guidelines set by Allah, there is no sin on the two of them if she returns it (the dowry) in order to end the marriage... [al-Baqarah 2:229]***

However, just as the Sunnah shows that talaq is the most disliked of allowable acts before Allah, it also shows that khul' is hated by Him, glorified be He.<sup>89</sup> The condemnation of the women who initiate khul' is reported in numerous Hadiths. "If a woman requests her husband to divorce her for a reason other than being harmed, then the smell of

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87. See al-Qurtubi, vol.3, p.149

88. [trans. note: **Khul'** is not actually a divorce (talaq), which is only the right of a husband. It is a dissolution or annulment of the marriage. According to Ahmad ibn Hanbal, Ibn 'Abbas interpreted al-Baqarah 2:229-230 by saying: "Allah has mentioned divorce in the beginning, ransoming in the middle and divorce after that." However, it is reported that **Uthman** held that **khul'** is divorce, but Ibn Hanbal did not accept the isnad of that narration. See *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*, p.108.]

89. [trans. note: On the weakness of this opinion see Chapter 2, footnote 52.]

Paradise is forbidden for her.”<sup>90</sup> “The women who initiate *khul'* are hypocrites.”<sup>91</sup> “Any woman who requests her husband to divorce her for other than a truly sincere reason will never find the breeze of Paradise.”<sup>92</sup>

Unfortunately, some husbands might try to exploit the principle of *khul'* by harming and abusing their wives in order to force them to ransom themselves by returning the dowry. This is exactly what Allah, glorified and exalted be He, has forbidden in this verse:

***...do not treat them harshly so that you can take back part of what you have given them... [al-Nisa' 4:19]***

Ibn 'Abbas commented on this verse: “It is when a man has a wife to whom he owes a dowry but whose companionship he dislikes. Thus he harms her so that she ransoms herself.”<sup>93</sup>

## **5 — al-Ila' (the oath of sexual abstinence)**

The linguistic meaning of *ila'* is to swear an oath (half, *qasam*). One example of its usage is in the verse of Allah, the Exalted:

***Let not those of you who have dignity and wealth swear not to give support to their relatives, to the needy, and to those who have emigrated for the cause of Allah. Let them pardon and forgive... [al-Nur 24:22]***

The legislative meaning of *ila'* is a man's oath not to approach his wife for sexual intercourse. This oath of sexual abstinence was an old custom of the Arabs before Islam. As a consequence of the husband's oath, the wife usually spent the rest of her life suspended in a state of being neither married nor divorced. Then the noble Quran came to rectify this custom by ordering the husband to divorce his wife after four months if their married life has become impossible. Allah, the Exalted, says:

***Those who swear sexual abstinence from their wives must wait four months. Then if they break the oath (and return to their wives)—Allah is Oft-Forgiving, Most Merciful. And if they decide on divorce—Allah is All-Hearing, All-Knowing. [al-Baqarah 2:226-227]***

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90. [trans. note: This Hadith is reported in the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-*Khul'* wa-l-Talaq, Hadith #3279). Sheik Nasir al-Din al-Albani says its chain of narrators (*isnad*) is good (*jayyid*).]

91. [trans. note: This Hadith is reported in the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-*Khul'* wa-l-Talaq, Hadith #3290). Sheik al-Albani does not comment on it.]

92. [trans. note: This Hadith is reported by Ibn Majah (Kitab al-Talaq, Bab #21).]

93. [trans. note: See *Mukhtasar Tafsir Ibn Kathir*, vol.1, p.368. More details concerning *khul'* will be mentioned in Chapter 5.]

## 6 — al-Zihar (treating one's wife as his mother)<sup>94</sup>

Zihar is forbidden in accordance with the verse of the Exalted One:

***...they have spoken an ill word and a lie... [al-Mujadilah 58:2]***

The one who declares zihar is a liar for treating his wife as if she were his mother. Allah, the Exalted, says:

***...they are not their mothers. Their mothers are only those who gave birth to them...[al-Mujadilah 58:2]***

Allah, the Exalted, also says:

***...He has not made your wives, whom you treat as if they were your mothers, your mothers... [al-Ahzab 33:4]***

Allah, the Exalted, has revealed His verses concerning zihar:

***Allah has surely heard the statement of the one who disputes with you (Muhammad) concerning her husband and who complains to Allah. Allah hears the arguments between both of you, for Allah is All-Hearing, All-Seeing. There are those of you who treat their wives as if they were their mothers; they are not their mothers. Their mothers are only those who gave birth to them; and so they have spoken an ill word and a lie. But Allah is Oft-Pardoning, Oft-Forgiving. Those who treat their wives as if they were their mothers and then go back on what they have said must free a slave before they touch one another. You are admonished by this; and Allah is Well-Aware of what you do. The one who does not find the means to free a slave must fast two months consecutively before they both touch one another; and the one who is unable to fast must feed sixty poor people. This is so that you might believe in Allah and His Messenger. These are the guidelines set by Allah. And for the disbelievers there is a painful punishment. [al-Mujadilah 58:1-4]***<sup>95</sup>

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94. [trans. note: During the Jahiliyyah period, the pagan Arabs would sometimes make a vow of zihar by which a man would abandon his wife without divorcing her merely by saying, "Your back (zahr) is as my mother's back for me."]

95. [trans. note: This verse was revealed concerning Khuwaylah bint Tha'labah, who was complaining to the Prophet about her husband, Aws ibn al-Samit. See Chapter 5, section 4, for more information on the topic of zihar.]

These verses dictate that the one who declares zihar against his wife must atone for this sin. The prescribed atonement is to free a slave. If he is unable to do so, then he should fast for two months consecutively. If he cannot do that, then he must feed 60 poor people. Also, these verses indicate that it is forbidden for the one who declares zihar to touch his wife before atoning for this sin.

### Legal Rulings (fatawa) of the Messenger, the blessing and peace of Allah be upon him, concerning Marriage and Divorce

*...Whatever the Messenger brings to you, take it, and from whatever he forbids you, avoid it... [al-Hashr 59:7]*

#### 1 — On Marriage

- A. The Prophet, the blessing and peace of Allah be upon him, was asked which woman is best. He answered: "The one who pleases you when you look at her, obeys you when you order her to do something, and does not oppose you concerning that which you dislike about yourself and your wealth."<sup>96</sup>
- B. He, the blessing and peace of Allah be upon him, was asked which type of wealth should be sought. He said: "Each one of you should seek to obtain a grateful heart, a mindful tongue, and a believing woman who will help each of you concerning the issue of the Hereafter."<sup>97</sup>
- C. A group of Companions came to the Prophet, the blessing and peace of Allah be upon him, to find out about something. They said, "The wealthy people among us get more reward than us. They pray just as we pray and they fast just as we fast, but they can give charity from their wealth. He said: "But has not Allah given to you what you can give as charity? Each glorification of Allah (tasbih) is a charity (sadaqah), each magnification of Allah (takbir) is a charity, each praise of Allah (tahmid) is a charity and each declaration of Allah's oneness (tahlil) is a charity. Every command for good is a charity and every prohibition from evil is a charity. And every act of sexual

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96. This Hadith is reported by Ahmad.

97. This Hadith is reported by Ahmad and al-Tirmidhi, who declared it good (hasan).

intercourse with women lawful for you is a charity.” They said, “O Messenger of Allah! When desire for sex comes to one of us, will he be rewarded for that?” He said: “What do you say to this—if he were to satisfy his desire in a prohibited (haram) manner, would he be punished? Thus, in similar fashion, when he satisfies his desire in an allowable (halal) manner, he will be rewarded.”<sup>98</sup>

- D. The Prophet, the blessing and peace of Allah be upon him, was asked what is the right of a woman on her husband. He, the blessing and peace of Allah be upon him, said: “It is her right that he feeds her when he feeds himself, and clothes her when he clothes himself, and that he does not strike her in the face, tell her she is ugly, or turn away from her except within the house.”<sup>99</sup>

## 2 — On Divorce

- A. ‘Umar ibn al-Khattab, may Allah be pleased with him, asked the Messenger of Allah, the blessing and peace of Allah be upon him, about his son who divorced his wife while she was menstruating. The Prophet ordered him to get back with her and to keep her until she purifies herself from this menses, has another menses, and purifies herself again. Afterwards, if he wills, he may keep her, or if he wills, he may divorce her.”
- B. A man came to the Prophet, the blessing and peace of Allah be upon him, and told him about his wife’s obscenities. He, the blessing and peace of Allah be upon him, said, “Divorce her!” The man said, “But she has some good qualities and a child.” Then the Prophet said, “Command her to do good and tell her what is right. If she has any good in her, she will act accordingly. And do not strike a woman who is used to luxury as you would strike your slave girl.”<sup>100</sup>
- C. A woman came to the Prophet, the blessing and peace of Allah be upon him, to ask him something. She said, “My husband had divorced me for the third time, and I then married another man. He came to me but was as limp as this robe. He did not come close to

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98. This Hadith is mentioned by Muslim.

99. This Hadith is mentioned by Ahmad and the compilers of the Sunan collections.

100. This Hadith is reported by Ahmad.

me except once, but he could not perform; and he did not get anything from me. Am I now allowable for my first husband?" The Messenger of Allah, the blessing and peace of Allah be upon him, said, "You are not allowable for your first husband until the second husband tastes your sweetness ('usaylah) and you taste his sweetness."<sup>101</sup>

- D. The Prophet, the blessing and peace of Allah be upon him, was asked about a man who divorced his wife three times. Another man married her, locked the door and drew the curtain, but then he divorced her before having had sexual intercourse with her. He, the blessing and peace of Allah be upon him, said, "She is not allowable for the first husband until another husband has had sexual intercourse with her."<sup>102</sup>
- E. The Prophet, the blessing and peace of Allah be upon him, was asked about a man who divorced his wife three times simultaneously. The Prophet rose up in anger saying, "Do you play with the Book of Allah even while I am still amongst you?" Then another man stood up and said, "O Messenger of Allah, shall I not kill him."<sup>103</sup>
- F. Rukanah ibn 'Abd Yazid, who was one of the Banu Muttalib, divorced his wife three times in one sitting. She was terribly sadden by this. Then the Messenger of Allah, the blessing and peace of Allah be upon him, asked him, "How did you divorce her?" He said, "I divorced her three times." The Messenger of Allah asked, "In one sitting?" He said, "Yes." Then the Messenger of Allah said, "This is only one divorce, take her back, if you want." The narrator of the Hadith said, "And so he returned to her." Ibn 'Abbas used to report that divorce is only at the time of purification from menstruation.<sup>104</sup>

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101. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim). [trans. note: According to Ahmad ibn Hanbal, who quotes from Sufyan al-Thawri and 'Ali ibn Abi Talib, a virgin wife must wait one year from the time she brings the matter of her impotent husband to the attention of the judge (imam). If the marriage is not consummated within one year, the couple are separated. If a marriage has been consummated, the wife has no right to request a divorce. See *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*, pp.79 and 113.]

102. This Hadith is mentioned by Ibn Majah.

103. This Hadith is mentioned by al-Nasa'i.

104. This Hadith is mentioned by Ahmad. Ibn al-Qayyim reports in *Zad al-Ma'ad* (vol.2, p.258) that Rukanah divorced his wife after that incident for a second time during the period of 'Umar's caliphate. He then divorced her a third time during the time of 'Uthman. [trans. note: A slightly different version of this Hadith appears in the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-Khul' wa-lTalaq, Hadith #3273).]



- G. A man asked the Prophet, the blessing and peace of Allah be upon him, "If I marry so-and-so, then she is irrevocably divorced." The Prophet, the blessing and peace of Allah be upon him, said, "Marry her! For divorce only occurs after marriage."

The Prophet, the blessing and peace of Allah be upon him, was asked about a man who said, "The day I marry so-and-so, she will be divorced." The Prophet said, "He divorces what he does not possess."<sup>105</sup>

- H. A slave asked the Messenger of Allah, the blessing and peace of Allah be upon him, "My master married me to a slave girl but now wants to separate me from my wife. Is that allowable?" The Messenger of Allah, the blessing and peace of Allah be upon him, praised and extolled Allah and then said, "What is wrong with these people that they marry their slaves to their slave girls and then want to separate them. The right of divorce is only for the husband."<sup>106</sup>

### 3 — On *Khul'*

- A. *Thabit ibn Qays* asked the Prophet, the blessing and peace of Allah be upon him, "Is it correct that a man takes some of his wife's wealth in order to separate from her?" He said, "Yes." *Thabit* said, "I gave her two gardens as a dowry, and she has possession of them." The Prophet, the blessing and peace of Allah be upon him, said, "Take them back and separate from her."<sup>107</sup>
- B. *al-Bukhari* mentions that the wife of *Thabit ibn Qays* complained about him to the Prophet, the blessing and peace of Allah be upon him, saying, "O Messenger of Allah! As for *Thabit ibn Qays*, I find no fault in him concerning behavior and religion, but I dislike that the ingratitude of a wife for her husband might ruin her Islam." He said,

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105. [trans. note: Sheik *Ghazi* mentions that these two Hadiths are reported by *al-Daraqutni*. I have not been able to find them reported in any of the other Hadith collections. A Hadith conveying a similar meaning appears in the *Mushkat al-Masabih* (Kitab al-Nikah, Bab al-*Khul'* wa-l-Talaq, Hadith #3281). *Ahmad ibn Hanbal* states that if before his marriage a man vows to divorce his wife immediately after marrying her, the divorce does not come into effect, and the couple stays together. See *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*, pp.123-124.]

106. This Hadith is mentioned by *al-Daraqutni* and *Ibn Majah* (Kitab al-Talaq, Bab #31).

107. This Hadith is mentioned by *Abu Dawud*.

“Will you return his garden to him?” She said, “Yes.” Then the Messenger of Allah, the blessing and peace of Allah be upon him, said to him, “Take back the garden and divorce her one time.” This version is reported by Ibn Majah and al-Nasa’i.<sup>108</sup>

- C. The Prophet, the blessing and peace of Allah be upon him, gave the following judgement: “If a woman calls for a separation from her husband and goes before one just witness, she must then exact an oath from her husband. If he swears an oath supporting her claim, the testimony of the witness is confirmed; and if he refuses to testify, then his refusal is at the level of another witness, and the divorce is allowed.”<sup>109</sup>

#### 4 — On Zihar

- A. The Prophet, the blessing and peace of Allah be upon him, was asked about a man who declared zihar on his wife but then had sexual intercourse with her before having made atonement. He, the blessing and peace of Allah be upon him, said, “What made you do that?” He said, “I saw her anklets shining in the moonlight and could not restrain myself.” The Prophet said, “Do not approach her until you have fulfilled what Allah, the Mighty and Sublime, has commanded.”<sup>110</sup>

108. [trans. note: The wife of Thabit ibn Qays was Habibah bint Sahl (see *The Women of Madinah*, pp.288-289). She was completely incompatible with him and feared that her faith would decrease if she stayed with him. On the issue of ransoming, the majority of scholars agree that a wife should return the dowry that was given her or less, if the husband agrees, but not more. Also, the *khul'* takes effect as soon as the husband receives the ransom price. There is a difference of opinion, however, regarding the length of her 'iddah. Some scholars say it is one menstrual period while others say it is three as with a divorced woman. But it is agreed that the husband does not have a right to return to his wife during the 'iddah of a *khul'*, but he can contract a new marriage with her. See *Mukhtasar Tafsir Ibn Kathir*, vol. 1, pp.204-209; and *Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh*, pp.107-109 and 250-252.]

109. This Hadith is mentioned by Ibn Majah. [trans. note: The rulings related to this Hadith are: 1) Divorce or separation is not valid with only one witness, even if the wife swears an oath that she wants a separation. 2) The husband's oath in favor of separation strengthens the testimony of the witness, thus validating the separation. 3) The husband's refusal to swear an oath is an evidence for the validity of the wife's claim. See Ibn al-Qayyim, *Zad al-Ma'ad*, vol.5, pp.282-285.]

110. [trans. note: This Hadith is reported in the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-Mutallaqah Thalathah. Hadith #3302). Sheik Nasir al-Din al-Albani does not comment on it.]

- B. Salamah ibn Sakhr al-Bayadi told the Prophet, the blessing and peace of Allah be upon him, that he declared zihar on his wife, which was to last until the end of Ramadan. But when only half the month had passed, he went to her and had sexual intercourse with her. The Prophet, the blessing and peace of Allah be upon him, said, "Free a slave." He said, "I can not get one to free." The Prophet then told him to fast for two months consecutively, but he said, "I can not do that." The Prophet said, "Feed 60 poor people." Salamah said, "I cannot find the means to do that." Then the Prophet, the blessing and peace of Allah be upon him, said to Farwah ibn 'Amr, "Give him a basket of dates so that he can feed 60 poor people."<sup>111</sup>
- C. Khuwaylah bint Malik<sup>112</sup> told the Prophet, the blessing and peace of Allah be upon him, that her husband, Aws ibn al-Samit, declared zihar on her. She did not leave until Allah, the Exalted, revealed the verses of al-Mujadilah 58:1-4. The Messenger of Allah, the blessing and peace of Allah be upon him, then said, "He must free a slave." Khuwaylah said, "He is not able to do that." He said, "Let him fast two consecutive months." She said, "He is an old man and cannot stand fasting." The Prophet said, "Let him feed 60 poor people." She said, "He does not have anything to give as charity." Then the Prophet, the blessing and peace of Allah be upon him, brought a basket of dates. Khuwaylah said, "I will help him with another basket." The Prophet said, "You are good. Go and feed 60 poor people on his behalf, and then go back to your husband."<sup>113</sup>

## 5 — On Li'an

- A. A man asked the Prophet, the blessing and peace of Allah be upon him, "If a man were to find another man with his wife and then make an accusation of adultery, would you have him flogged for

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111. [trans. note: Sheik Ghazi narrates a similar Hadith as reported by Ahmad. However, I have used the version which appears in the *Mishkat al-Masabih* (Kitab al-Nikah. Bab al-Mutallaqah Thalathan, Hadith #3299). Sheik Nasir al-Din al-Albani does not comment on it.]

112. [trans. note: This Hadith is about Khuwaylah bint Tha'labah, who is the daughter of Tha'labah ibn Malik. An alternative pronunciation of her first name is Khawlah. See *Mukhtasar Ibn Kathir*, vol.3, pp.458-459. Also, it is mistakenly reported that the verses of al-Mujadilah 58:1-4 were revealed about Khawlah bint Samit ibn Qays; see *The Women of Madina*, p.252. This latter book also gives a fuller account of Khawlah bint Tha'labah on pp.252-254.]

113. [trans. note: This Hadith is reported by Ahmad and Abu Dawud. Sheik Ghazi gives other versions of this Hadith, which I have not included here.]

slander? And if he were to kill the other man, would you have him executed for murder? And if he were to remain silent, should he always keep silent about the rage within him?" He, the blessing and peace of Allah be upon him, said, "O Allah, resolve this problem." The Prophet supplicated to Allah, and then the verses of li'an were revealed [al-Nur 24:6-9]. The man and his wife then came to the Messenger of Allah, the blessing and peace of Allah be upon him, and the two of them swore the oaths of condemnation.<sup>114</sup>

- B. A man came to the Prophet, the blessing and peace of Allah be upon him, and said, "My wife has given birth to a black son and I have disowned him because there are no blacks in my family." The Messenger of Allah, the blessing and peace of Allah be upon him, said to him, "Do you own camels?" He said, "Yes." He asked, "What color are they?" The man said, "Red." He said, "Is there a gray one amongst them?" He said, "Yes." The Prophet said, "Where did that one come from?" He said, "Perhaps it reverted to the color of an older stock." He, the blessing and peace of Allah be upon him, said, "Perhaps your son reverted to the color of an older stock!" The Prophet would not allow him to disown the child.<sup>115</sup>

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114. [trans. note: This Hadith is reported in the *Sahih* of Muslim (Kitab al-Li'an, Hadith #10).]

115. [trans. note: This version of the Hadith is taken from the *Mishkat al-Masabih* (Kitab al-Nikah, Bab al-Li'an, Hadith #3311), which is a slightly different version than the Hadith given by Sheik Ghazi. The Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).]

## Conclusion

Follow and do not innovate! Now my turn to talk has come to an end. I have said what is well-known, and Allah knows best. I do not say that I have reached the end of this topic with my speech and that it is better to say nothing else about it. Also, I do not say that I have brought anything that the earlier generations of Muslims did not have, for the earlier generations of this ummah did not leave out anything that is necessary for its later generations. In fact, the earlier generations transmitted the whole religion with perfect trustworthiness. They explained the correct paths to follow with perfect clarity. They laid down the laws with full understanding and detailed any generalizations with complete knowledge. They defined the aim of our religion intelligently and clarified its final goal with true vision so that the Law of Allah (shari'at Allah) is clear, distinct, firm and illuminated. Only the one destined for destruction will deviate from it.

Follow and do not innovate! This will suffice for you. I have spoken on this topic and explained some of its details based on the Book of Allah and the Sunnah of His Messenger. I supplicate to Allah that He opens hearts through my speech so that they believe in the necessity of returning to the guidance of the salaf, may Allah be pleased with them all. For is there any good other than the guidance of the salaf? And so, before I close the chapters of this book, I place before the reader these last few noble statements from the Book of Allah, the Mighty and Sublime, and from the Hadiths of the Messenger, the blessing and peace of Allah be upon him. Allah, the Exalted, says:

***But no! By your Lord, they will not believe until they make you (Muhammad) the judge for every dispute amongst them, finding no objections within themselves for what you have decreed. And they should submit completely. [al-Nisa' 4:65]***

***...let those who oppose his (Muhammad's) command beware that turmoil will afflict them or a painful punishment will come to them. [al-Nur 24:63]***

***There is surely a good example for you in the Messenger of Allah, for whoever is hoping for Allah and the Last Day. [al-Ahzab 33:21]***

***...whatever the Messenger gives you, take it; and whatever he forbids you, avoid it... [al-Hashr 59:7]***

The Messenger of Allah, the blessing and peace of Allah be upon him, said, "The worst affairs in Islam are newly introduced matters, every newly introduced matter is an innovation, every innovation is a means of going astray, and every means of going astray is in the Hellfire."<sup>116</sup> He also said, "Whoever introduces something in this affair of ours, which is not originally a part of it, will have it rejected."<sup>117</sup>

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116. This Hadith is reported by Abu Dawud and Ibn Majah.

117. This Hadith is muttafaq 'alayhi (i.e., reported by al-Bukhari and Muslim).

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## About the Author

Dr. Muhammad Jamil Ghazi, may Allah have mercy on his soul, passed away about seven or eight years ago. After graduation from al-Azhar University, Sheik Ghazi dedicated his life to studying, teaching and reviving the Sunnah of Prophet Muhammad, may the blessing and peace of Allah be upon him. His major affiliation in these endeavors was with the Ansar al-Sunnah organization in Egypt. Besides the present book, Sheik Ghazi wrote or edited many important books relative to understanding Islam as preached and practiced by al-Salaf al-Salih. Some of the titles which were published in Arabic in the 1970s and 1980s are: *al-Hasanah wa-l-Sayyi'ah li-Ibn Taymiyyah* (1972), *Istishhad al-Husayn li-Ibn Kathir wa Ra's al-Husayn li-Ibn Taymiyyah* (1977), *al-Amr bi-l-Ma'ruf wa-l-Nahy 'an al-Munkar li-Ibn Taymiyyah* (1979), *Tafsir Surat Ibrahim 'alayhi-l-salam* (1980), *al-Sufiyyah: al-Wajh al-Akhar* (1980), and *al-Takhwif min al-Nar wa-l-Ta'rif bi-Hal Dar al-Bawar li-Ibn Rajab* (1981).

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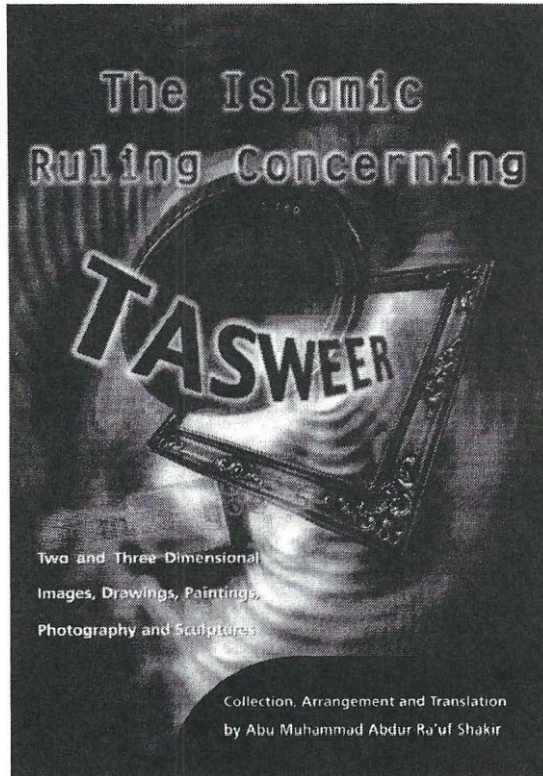
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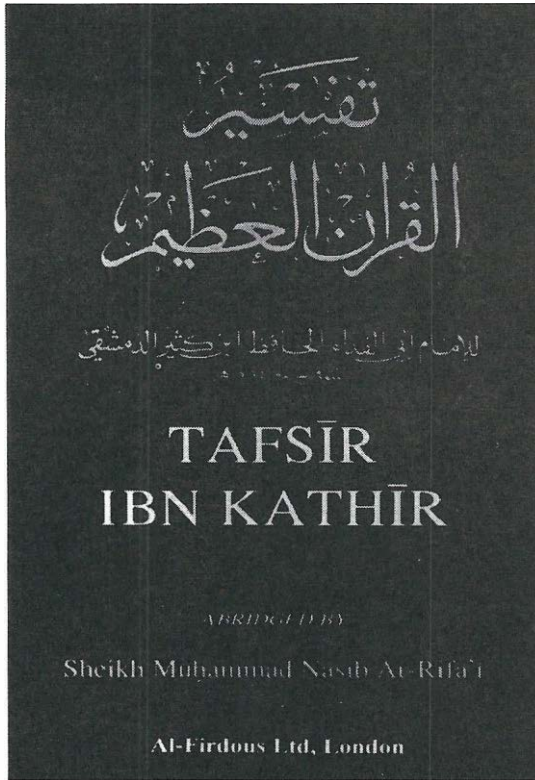


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