

The first question of Fatwa no. 13329

Q 1: We live in the Egyptian desert where there are no Shari`ah Courts. We are governed by `Urf (custom) and we are ignorant of many religious matters. However, we have begun to be enlightened by Tawhid (monotheism) and religious knowledge. We have come to know that many of our actions are against Tawhid and Shari`ah (Islamic law). It happened once that a husband traveled to work in Libya and after four years, the family of his wife asked for divorce at the request of the wife. After some attempts, the husband's brother divorced her reluctantly, for he first refused arguing that he was not entitled to divorce her as the husband was absent. However, he finally divorced her according to our `Urf, which also gives the father the right to divorce his son's wife in his presence and absence, despite the son's refusal. After the lapse of her `Iddah (woman's prescribed waiting period after divorce), I concluded a marriage contract with her and paid her Mahr. Now, we have two daughters. Please bear in mind that the destination of her husband was known when she was divorced. Our `Urf allows the husband's long absence.

What is the ruling of Shari`ah on this? Kindly advise us. May Allah reward you best.

After studying this case, we hope you would give us your Fatwa (legal opinion issued by a qualified Muslim scholar) concerning the following:

- 1. What is the ruling on Talaq that is pronounced by anyone other than the husband whether the husband is present or absent?**
- 2. What is the ruling on her marriage to the second husband, bearing in mind that he was aware of the case of her divorce?**
- 3. What is the ruling on the children if the second marriage is Batil (null and void)? To whom they should be attributed?**
- 4. What is the ruling of Islam on the husband's absence for a long period, bearing in mind that `Urf approves of this? Is there a certain period allowed for the husband's absence?**

Please explain this issue in detail along with evidence. May Allah reward you best.

A: First, the basic rule concerning divorce is that it is one of the husband's rights that should be pronounced by him. The Prophet (peace be upon him) said:

"The husband is the only one who has the authority to divorce."

Second, the second man's marriage to the woman divorced by her husband's brother is Batil.

Third, the second husband's children from the woman should be attributed to him because of the doubtful marriage.

Fourth, a man should not be absent from his wife for more than four months unless they both agree.

May Allah grant us success. May peace and blessings be upon our Prophet Muhammad, his family, and Companions.

The Permanent Committee for Scholarly Research and Ifta'

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