

## CHAPTER 10

### NIKĀH [MARRIAGE]

The believing man and woman should get married as soon as they are ready and able. The majority of the scholars are of the opinion that it is *mustahabb* [beloved by Allāh] to do so.

Allāh the Almighty, said:

﴿وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾

﴿And marry those among you who are single [i.e., a man who has no wife and the woman who has no husband] and [also marry] the *ṣālihūn* [pious, fit and capable ones] of your [male] slaves and maid servants [female slaves]. If they be poor, Allāh will enrich them out of His Bounty. And Allāh is All-Sufficient for His creatures needs, All-Knowing [about the state of the people].﴾ 24:32

And His Prophet ﷺ said,

"O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty [i.e., his private parts from committing illegal sexual intercourse etc.] and whoever is not able to marry should fast as fasting diminishes his sexual power."<sup>298</sup> In another version of the same *ḥadīth* in Imam Muslim's *Ṣaḥīḥ* collection there is the addition, "I lost no time in marrying."<sup>299</sup>

<sup>298</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol.7 #4].

<sup>299</sup> *Ṣaḥīḥ Muslim* [Eng. Trans. vol. 2 #3234].

"Allāh's Messenger [ﷺ] used to command us to marry and severely forbid celibacy and say, '*Marry women who are prolific and loving, for I shall outnumber the prophets by you on the Day of Resurrection*'. "<sup>300</sup>

## 1) The age to do so.

Contrary to popular opinion especially in the west, there is no real age to 'wait' for marriage. What is amazing is that some western parents prefer their children to 'date' around and even provide opportunities and advice for 'safe sex' with whomever they wish. These parents get 'worried' if they perceive their child is not yet doing so if they feel they are now old enough!

These breeds a generation of twisted immoral people who find illegal sexual intercourse to be perfectly normal and marriage to be a burden and something to steer clear of. An average teenager in the west will be pushed out on a 'date' with a smile and a nod of encouragement. However, if that same teen came and informed their parent that they have found someone and they would like to get married, the parent is appalled, and depending on the personality of the parent the teen will be punished in some way, sometimes going to the 'law' of the land for help to stop this honorable deed!

On the contrary, the purpose of marriage is to provide comfort, love, security and create a legitimate family while satisfying in a legal manner the sexual needs of both spouses as Allāh created both male and female with this urge although the man may tend to be more driven in this aspect,

﴿وَخُلِقَ الْإِنْسَانُ ضَعِيفًا﴾

﴿And man was created weak [cannot be patient to leave sexual intercourse with woman]﴾ 4:28

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<sup>300</sup> Found in *Musnad* of Ahmad declared *sahīh* by Ibn Hibbān also in *Sunan* of Abū Dāwud [Eng. Trans. vol.2 #2045]. Declared *hasan sahīh* by Sheik Al-Albānī.

Allāh will put love between their hearts. The Prophet [ﷺ] said to a young companion of his who had married a matron instead of someone close to his age [because he [ﷺ] knew the urges found in the human],  
*"Why didn't you marry a young girl so that you could sport with her and she could sport with you, or you could amuse her and she could amuse you?"*<sup>301</sup>

Allāh created us and placed certain qualities and desires in us, this is our nature. To follow the laws He sent us that perfectly fit our natures, is appropriate and obligatory. To fight the laws and put our own ideas and ideals in first position is futile. In other words, to try to make people pretend they don't need the love and comfort and satisfaction in a marriage, as opposed to illegal and artificial means of achieving what they try to deny exists in them, is ridiculous. For example, illegal sexual intercourse with numerous partners, human milk banks, human sperm banks [for those who feel men are not necessary yet the natural urge to have kids overwhelms them, or those who wish to produce 'genetically superior' kids etc.], going to a bar or restaurant to find 'company' because they don't want to go home to a empty apartment because of that natural urge for companionship of the opposite sex. All this is eliminated by the will of Allāh by marriage in Islām. Therefore an appropriate age is whenever they start gaining serious interest in the opposite sex.

"The Prophet [ﷺ] married ['Ā'ishah [ﷺ]] when she was six years old and consummated his marriage when she was nine years old and then she remained with him for nine years [till his death]."<sup>302</sup>

'Ā'ishah was fifteen<sup>303</sup> years old when he [ﷺ] died, she was the most beloved of his wives to him and was one of the most learned female scholars ever at that age narrating a huge number of *ḥadīth* [from memory] at that age.

<sup>301</sup> *Ṣaḥīḥ Muslim*, [Eng. Trans. vol. 2 # 3460].

<sup>302</sup> *Ṣaḥīḥ Al-Bukhārī* [Eng. Trans. vol. 7 #65]

<sup>303</sup> Some say eighteen years of age.

## 2) Those whom it is not permissible to marry.

Allāh, the Exalted said:

﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمَنَّ وَلَا أَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ أُولَئِكَ يَدْعُونَ إِلَى النَّارِ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ ءَايَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ﴿٢٢١﴾﴾

﴿ And do not marry the mushrikāt [idolatresses, etc.] till they believe [worship Allāh Alone]. And indeed a slave woman who believes is better than a [free] mushrikah [idolatress], even though she pleases you. And give not [your daughters] in marriage to the mushrikūn till they believe [in Allāh Alone] and verily, a believing slave is better than a [free] mushrik, even though he pleases you. ﴾ 2:221

﴿وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا ﴿٢٢٢﴾ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمُ مِنَ الرَّضْعَةِ وَأُمَّهُتِ نِسَائِكُمْ وَرَبِّبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِنْ لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا ﴿٢٢٣﴾﴾

﴿ And marry not women whom your fathers married, except what has already passed; indeed it was shameful and most hateful, and an evil way. Forbidden to you [for marriage] are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brothers daughters, your sister's daughters, your foster mother who gave you suck, your foster milk-suckling sisters, your wives' mothers, your step-daughters under your guardianship, born of you wives to whom you have gone in-

*but there is no sin if you have not gone in to them [to marry their daughters], - the wives of your sons who [spring] from your loins, and two sisters at the same time, except what has already passed; verily, Allāh is Oft-Forgiving, Most Merciful. Also [forbidden are] women already married, except those [slaves] whom your right hand possess. Thus Allāh ordained for you. All others are lawful, provided you seek [them in marriage] with Mahr [bridal money given by the husband to the wife at the time of marriage] from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed; ﴿ 4:22-24*

The sister just needs to replace the female with the male equivalent in the verses with the exception of, the man already married, as the man can have up to four wives at one time and the payment of *Mahr* as only men are required to do so. There is an opinion that it is permissible to marry stepdaughters or stepsons even if one has had relations with the parent because Allāh said, "...*who are under your guardianship*." Therefore they say if the child was not under your guardianship it is permissible, However, and Allāh knows best, the correct opinion is that it is not lawful because the Prophet ﷺ had a step-daughter who was not under his guardianship and when it was proposed that he marry her he said it was not lawful.<sup>304</sup>

### 3) *Mahr* [dowry].

Allāh, the Almighty said:

﴿وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا

مَّرِيئًا﴾

﴿And give to the women [whom you marry] their Mahr [obligatory bridal-money given by the husband to his wife at the time of marriage] with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it without fear of any harm [as Allāh has made it lawful].﴾ 4:4

<sup>304</sup> *Sahīh Al-Bukhārī* [Eng. Trans. vol. 7 #42]. [Details in both chapter and *ḥadīth*]

## 1) The amount to be given.

There is no set amount, however it should not be so high it prevents marriage.

Allāh the Almighty said:

﴿وَأَتَيْتُمُ احْدَنَهُنَّ قِنْطَارًا﴾

﴿ and you have given them a qintār [of gold i.e., a great amount] ﴾ 4:20

﴿وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُم بِهِ مِنْ بَعْدِ الْفَرِضَةِ﴾

﴿ But if after a Mahr is prescribed, you agree mutually [to give more], there is no sin on you. ﴾ 4:24

It is not permissible for the man to ask for it back except [according to some scholars] in the case of open illegal sexual intercourse [however the Prophet ﷺ gave the ruling in *Li'ān* that she retains it as he had enjoyed intercourse with her]. Allāh said to give it with a good heart. Also this is not a way of buying a woman, it is a gift Allāh has ordained. The woman or her family should not make the amount so incredibly high that she cannot get married as no man can afford such a *Mahr*. This defeats the understanding of a gift it seems to me she is affixing a price on herself, this also seems to stem from culture and needs to be rectified. It should be asked for in accordance to the means of the brother to be married. If he is very wealthy and chooses to give a substantial amount it is alright, however, if the brother is poor and gives a little it is also acceptable in accordance with the above verse.

## 2) The Mahr can be other than a monetary gift.

i] Teaching her the Qur`ān.

"Do you know something of the Qur`ān [by heart]?" He replied, 'I know [by heart] such and such Sūrah.' The Prophet ﷺ said, 'Go! I have married her to you for what you know of the Qur`ān [by heart].'"<sup>305</sup>

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<sup>305</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol. 7 #79].

The man was too poor to find wealth to give her. In spite of his poverty, man still provides for his family i.e., Allāh will make a way for him to do so. I am by no means implying that a brother who cannot provide some kind of housing and food should try to get married in that state as Allāh says,

﴿وَلَيْسَتَعَفِيفِ الدِّينَ لَا يَجِدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ﴾

﴿And let those who find not the financial means for marriage keep themselves chaste, until Allāh enriches them of His Bounty.﴾ 24:33

Allāh provides but He likes for one to try hard to achieve what they want and He aids you, and His Prophet ﷺ said,

*"who ever is not able to marry, fast..."*

as obviously it may not be in everyone's grasp to get married the instant they want to.

ii] In the case of a captive it could be her freedom.

"The Prophet ﷺ set Safiyyah [رضي الله عنها] free and made her freedom her *Mahr*."<sup>306</sup>

iii] Any thing else agreeable to her [a garden, a head of cattle, gold, an iron ring].

A man told the Prophet ﷺ,

"I have married a woman and gave her gold equal to a date stone in weight [as *Mahr*]."<sup>307</sup>

The Prophet ﷺ did not disapprove. The Prophet ﷺ said to another man:

*"Marry her even with [a Mahr equal to] an iron ring."*<sup>308</sup>

To a woman seeking divorce [see divorce] the Prophet ﷺ said:

*"Will you give back the garden which your husband gave you [as Mahr]?"*<sup>309</sup>

<sup>306</sup> *Sahīḥ Al-Bukhārī*, [Eng. Trans. vol.7 #23]

<sup>307</sup> *Sahīḥ Al-Bukhārī*, [Eng. Trans. vol. 7 #78].

<sup>308</sup> *Sahīḥ Al-Bukhārī*, [Eng. Trans. vol.7].



## 4] The Marriage Contract.

This is a contract drawn up between the bride-to-be and groom-to-be, where they stipulate the guidelines for their marriage agreeable to both once drawn and signed it must have witnesses and both parties have to abide by it. The Prophet [ﷺ] said:

*"The stipulations most entitled to be abided by are those with which you are given the right to enjoy the [women's] private parts [i.e., the stipulations of the marriage contract]."*<sup>310</sup>

### i] Permissible inclusions in the Marriage contract.

It must be based on the Qur'ān and *Sunnah* according to the understanding of the *Salaf*. A stipulation that does not go against Islāmic teaching, for example she may not want to move far away from her family to another town or country she may put that down in it. Or she may want him to teach her or provide the means [tutor] to help her learn something more from the religion or whatever else the individual desires that is not against the Islāmic Doctrine.

### ii] Forbidden inclusions in the Marriage document.

Anything against the teachings and spirit of Islām. For example the Prophet [ﷺ] said,

*"It is not lawful for a woman [at the time of her wedding] to ask for the divorce of her sister [i.e., the other wife of her husband-to-be] in order to have everything for herself, for she will take only what has been written for her."*<sup>311</sup>

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<sup>309</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. Vol.7 #197] The companion in question was said to be a very ugly man.

<sup>310</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. Vol.7 # 81].

<sup>311</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol.7 # 82].



Or to say she never wants to have children, or anything that would put severe pressure on the husband like excessive lifestyles where he will go into debt for the rest of his life trying to please her.

At this point, the marriage is legal once the contract is signed and witnessed, and a wedding banquet should be held as soon as possible.

**Other facts she should know on marriage.**

**1] The acceptance by the woman of the man she is to marry.**

She may not be married against her will [i.e., to a man she does not find appealing]. If she is, then a judge from the *Shari'ah* courts [Enforcing Islāmic law] can declare the marriage annulled.

"Khansā' bint Khidhām Al-Ansāriyyah narrated that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allāh's Messenger[ﷺ] and he declared that marriage invalid."<sup>312</sup>

The same happened when a virgin approached the Prophet [ﷺ] with the same problem and he allowed her to choose.<sup>313</sup> This is with regard to the personality or appearance or religion of the man. However if a religious man who will take good care of her comes to ask for her hand she should fear Allāh and if upon seeing him she finds it is possible to be married to him she should not refuse. The Prophet [ﷺ] said:

*"A woman may be married for four reasons: for her property, her status, her beauty and her religion; so try to get the one who is religious and prosper."*<sup>314</sup>

The same advice may be used in regards to finding a husband, as the man is the head of his household and if he is religious then the house will be

<sup>312</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol.7 #69].  
<sup>313</sup> Sunan of Abū Dāwud, [Eng. Trans. vol. 2 #2091]. Declared *sahīh* by Shaykh Al-Albānī.  
<sup>314</sup> Sunan of Abū Dāwud, [Eng. Trans. vol. 2 #2042]. Declared *sahīh* by shaykh Al-Albānī.

tranquil. And if the woman is also religious then by the will of Allāh the family can deal with whatever problem arises according to the commands of Allāh. The Prophet ﷺ said:

*"The whole world is a provision, the best treasure [good of this world] is the pious woman."*<sup>315</sup>

## 2] What exactly are foster relationships?

Allāh the Almighty, said:

﴿وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ﴾

﴿[Forbidden to you are]...and your foster mothers and your foster sisters...﴾ 4:23

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِّمَنۢ أَرَادَ أَنۢ يَّتِمَّ الرُّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةُ بَوْلِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنۢ أَرَادَا فِصَالًا عَن تَرَاضٍ مِّنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنۢ أَرَدْتُمْ أَنۢ تَسْرِعُوا فِصَالَهُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَاءً آتَيْتُمْ بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ﴾

﴿The mothers shall give suck to their children for two whole years, [that is] for those [parents] who desire to complete the term of suckling...If they both decide on weaning, by mutual consent, and after consultation, there is no sin on them. And if you decide on a foster suckling-mother for your children, there is no sin on you, provided you pay [the mother] what you agree to give her on reasonable basis.﴾ 2:233

This is where a lady suckles [nurses] more than her own child and anyone suckled by her is related to her, her children, family and anyone else she suckles before or after them. However the suckling has to have happened

<sup>315</sup> *Sahīh Muslim*, [Eng. Trans. vol.2 #3465].

under the age of two where milk is the only food of the baby. The Messenger of Allāh [ﷺ] said:

*"Be sure as to who is your foster brother, for foster suckling relationship is established only when milk is the only food of the child."*<sup>316</sup>

*"The milk belongs to the husband [if one drinks the milk of a lady then her husband is just like his father i.e., foster father]."*<sup>317</sup>

As for any set number of sucklings mentioned,

"Amrah reported that she heard 'Ā'ishah [رضي الله عنها] discussing fosterage which [make marriage] unlawful; and she [Ā'ishah [رضي الله عنها]] said: There was revealed in the Holy Qur'ān ten clear sucklings, and then five clear [suckling]." [i.e., ten was abrogated]<sup>318</sup>

All relatives by fostering become like real relatives in all aspects except inheritance [i.e., they don't automatically inherit like blood relatives do]. The Messenger of Allāh [ﷺ] said:

*"All things which become unlawful because of blood relations are unlawful because of the corresponding foster suckling relations."*<sup>319</sup>

This means you may have foster uncles and aunts, foster nieces and nephews, foster brothers and sisters and foster fathers [anyone your foster mother marries or is married to]. Note that Human Milk banks are unlawful, as one cannot acknowledge their foster relatives, thus marriage etc. may happen.

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<sup>316</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol.7 #39].

<sup>317</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol. 7 Chapter. 23].

<sup>318</sup> *Ṣaḥīḥ Muslim*, [Eng. Trans. vol. 2 #3422] For the sister to understand this more, some important points about the Qur'ān have to be explained. When the Qur'ān was revealed to the Prophet [ﷺ] some abrogation's were made by Allāh in His infinite Wisdom, through His Prophet [ﷺ] in the Qur'ān. a) The kind of abrogation where the text and the ruling were both abrogated. b) The abrogation where the text remained but the ruling was abrogated or nullified. c) The kind where the text was abrogated but the ruling stands. Such was the case with the verse on the amount of sucklings [i.e., point c)] .

<sup>319</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol.7 #166].

### 3) Disclosing marital secrets.

Allāh's Messenger [ﷺ] said:

*"The most wicked among the people in the sight before Allāh on the Day of Judgment is the man who has intercourse with his wife and she with him, and then spreads her secrets."*<sup>320</sup>

This holds true for the woman also. It shows the gravity of the sin of divulging marital secrets. Whatever happens between the man and wife is never to be discussed with anyone not your mother or best friend nor in passing conversation, in any manner.

### 4] Sodomy is strictly forbidden in Islām.

A man may approach his wife however he wishes but avoiding her anus. Abū Hurayrah [رضي الله عنه] said that the Prophet [ﷺ] said:

*"He who has intercourse with his wife through her anus is accursed."*<sup>321</sup>

And what is your chance of achieving Paradise with its Owner's Curse upon you? And Allāh Knows best.

### 5] The time spent with each wife [if a man has more than one].

i) If one marries a virgin or a matron;

*"When anyone who already has a wife marries a virgin, he should stay with her for seven nights [and then turn to his other wife], but when anyone having a virgin with him [as his wife] marries a woman who has been previously married he should stay with her for three nights."*<sup>322</sup>

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<sup>320</sup> *Sahīh Muslim*, [Eng. Trans. vol.2 #3369]

<sup>321</sup> Sunan of Abū Daud [Engl. Trans. Vol.2 #2157 pg. 579]. Declared *hasan* by Shaykh Al-Albānī.

<sup>322</sup> *Sahīh Muslim*, [Eng. Trans. vol. 2 #3448]

The above ḥadīth counts from the day of the wedding [or whenever all parties involved agree on in case of the parties living in different countries etc.] the time division must be equal as seen in the next point, the reason behind this is to give the virgin time to get used to married life while the matron only has to get used to her new husband.

i] Sharing time equally between wives;

First, let us clarify the use of the word 'time' here. The man's time between *Fajr ṣalāh* and '*Asr ṣalāh*' is his to work, provide and do as he deems necessary. He may visit all his wives and then the time after '*Asr*' he retires to the house of the one whose night it is. Therefore it is the night i.e., '*Asr*' to *Fajr* that is for the wife whose turn it is. He should only have sexual relations with whosever's turn it is but in case he did it with another wife in the day time it is not forbidden as the Prophet [ﷺ] used to go to all his wives in one day, however to avoid ill feelings it is best to avoid this. In addition, Allāh informed the Prophet [ﷺ] unlike the rest of the men in his Ummah, he did not have to observe the times however he was nevertheless equal to all his wives.

﴿ You [O Muḥammad [ﷺ]] can post pone [the turn of] whom you will of them [your wives] and you may receive whom you will. And whomever you desire of those whom you have set aside [her turn temporarily] it is no sin on you [to receive her again], that is better; that they may be comforted not grieved. ﴾ 33:51

Besides which, the Prophet [ﷺ] was said to have the strength of thirty men.

*"Whenever the Prophet [ﷺ] finished his 'Asr prayer, he would enter upon his wives and stay with one of them."*<sup>323</sup>

<sup>323</sup> Ṣaḥīḥ Al-Bukhārī, [Eng. Trans. vol.7 #143].

## 6] A wife may give her turn to another wife;

" Sawdah bint Zam'ah gave up her turn to me [Ā'ishah] and so the Prophet [ﷺ] used to give me both my day and Sawdah's."<sup>324</sup>

## 7] Marriage under false pretexts;

This is in reference to the groom or guardian not informing the concerned parties of any defects [or the like]. In such a case divorce is permitted. If intercourse [sexual] took place she keeps the *Mahr* if not he should get it back and if he wishes to give her a gift he may. 'Umar Ibn Al-Khattāb [رضي الله عنه] said,

" If any man marries a woman and after cohabitation with her finds that she is mad or affected with leprosy, she gets her *Mahr* [after he divorces her] for having intercourse with her and it is due to him from the one who has deceived him with her."<sup>325</sup>

## 8] If one spouse embraces Islām before the other;

If it is the husband who embraces Islām before his wife and his wife is either a Christian or Jew he may keep her or divorce her, as Allāh permitted the marriage of a Muslim male to a chaste woman of the book [Christian or Jew] in the verse. Note that she must be chaste and have the ability to want to stay as such protecting his and her honor:

﴿وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ﴾

﴿And a chaste woman from the people of the book [are lawful for you].﴾ 5:5

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<sup>324</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol. 7 #139].

<sup>325</sup> Sa'īd Ibn Manṣūr, Mālik and Ibn Abī Shaybah reported it. Its narrators are said to be reliable by Al-Hāfidh Ibn Hajar Al-'Asqalānī.

However, if his wife is from any other religion or an outright pagan he must divorce her. This includes some so-called 'Muslim' sects [e.g. the Twelve Imamer Shiites<sup>326</sup>] that are not in the fold of Islām [as their innovations in the religion are so great]. This is in accordance with the verses of Allāh,

﴿وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلَا أَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ

أَعْجَبَتْكُمْ﴾

﴿And do not marry the mushrikāt [idolatresses, etc.] till they believe [worship Allāh Alone]. And indeed a slave woman who believes is better than a [free] Mushrikah [idolatress], even though she pleases you.﴾

2:221

﴿وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ وَسْأَلُوا مَا أَنْفَقْتُمْ﴾

﴿Likewise hold not the disbelieving women as wives, and ask for [the return of] that which you have spent [as Mahr]﴾ 60:10

If during her 'Iddah [waiting] period she accepts Islām, he may take her back. If it is the wife who accepts Islām first then no matter what religion he is from he is not legal for her to stay married to. In fact, the simple fact that she is now a Muslim nullifies the marriage and she must commence her Iddah.

### 9] Nikāh Al-Mut'ah [Temporary Marriage];

This has been forbidden till the Day of Judgment.

"Allāh's Messenger [ﷺ] said, 'I had permitted to you the temporary marriage of women, but Allāh has prohibited you from that till the Day of Resurrection. So if anyone has a woman by temporary marriage he should let her go and do not take back any of your gifts from them'." <sup>327</sup>

<sup>326</sup> Rāfidah- the name given to the twelve Imamer Shiites after they refused to follow Zayd Ibn 'Alī Ibn Hussein when he disapproved of their insult to the companions of the Prophet [ﷺ] especially the first of them Abū Bakr, 'Umar and 'Uthmān [رضي الله عنهم].

<sup>327</sup> Sahīh Muslim, [Eng. Trans. vol. 2. #3255].



## 10] *Shighār* contracts [exchange of family members in marriage instead of *Mahr*];

These are also prohibited,

"Allāh's Messenger [ﷺ] prohibited *Shighār* which means that a man gives his daughter in marriage on condition that the other gives his daughter to him in marriage without any dower being paid by either."<sup>328</sup>

Allāh the Exalted and His Messenger have informed us of the method by which marriage is to be contracted. This should neither be ignored nor should it be added to.

## 11] It is forbidden for a *muḥrim* [one in the state of *Iḥrām*] to marry or propose;

The Messenger of Allāh [ﷺ] said:

*"A Muḥrim should neither marry himself nor should he be got married to anyone, nor should he make the proposal of marriage."*<sup>329</sup>

## 12] It is permissible to look at a woman before marrying her;

It is permissible to look at a woman's face or hands before marrying her [not her body]. The Prophet [ﷺ] asked a man who had married a woman:

*"Did you cast a glance at her? He replied, 'No'. He [ﷺ] said, 'Go and cast a glance at her, for there is something in the eyes of the Anṣār."*<sup>330</sup>

In other circumstances it may be that he might see something to induce him to marry her or like in this case to make sure he wanted to marry her.

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<sup>328</sup> *Saḥīḥ Muslim*, [Eng. Trans. vol. 2 #3295].

<sup>329</sup> *Saḥīḥ Muslim*, [Eng. Trans. vol. 2 #3280].

<sup>330</sup> *Saḥīḥ Muslim*, [Eng. Trans. vol.2 #3314].

# The Rights of the Spouses.

## The Husband.

### i] Obedience.

Allāh the All-Mighty, the Wise said,

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ﴾

﴿ *Men are the protectors and maintainers of women, because Allāh has made one of them to excel the other, and because they spend [to support them] from their means. Therefore the righteous women are devoutly obedient [to Allāh and to their husbands] and guard in the husbands absence what Allāh orders them to guard [e.g. their chastity, their husbands property etc.].* ﴾ 4:34

She should obey her husband in everything except if he orders her to do something against the laws of Allāh or His Messenger [ﷺ], as there is no obedience to created beings in disobedience to the Creator [Allāh]. An example:

1. He asks for food or a book or to correct something in her behavior or worship, in this he is to be obeyed.

Another example:

2. He orders you to break fast in *Ramadān* [when you are not ill or traveling], or wear false hair, or remove your *hijāb* in the presence of non-*mahram* males, in this he is not to be obeyed. We see this when the Prophet [ﷺ] was approached by a woman for a verdict.

"An Anṣārī woman gave her daughter in marriage and the hair of the latter started falling out. The Anṣārī woman came to the Prophet [ﷺ] and mentioned that to him and said, 'Her [my daughters] husband suggested that I should let her wear false hair.' The Prophet [ﷺ] said, 'No, [don't do that] for Allāh sends His Curses upon such ladies who lengthen their hair

artificially and there is no obedience to created things in disobedience to Allāh." <sup>331</sup>

## ii) The right to discipline his wife.

The rest of the above stated verse continues as follows,

﴿وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ ۖ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ۝﴾  
﴿ As for those women on whose part you see ill-conduct admonish them [first], [next], refuse to share their beds, [and last] beat them [lightly, if it is useful], but if they return to obedience, seek not against them means [of annoyance]. Surely, Allāh is Ever Most High, Most Great. 4:34

- First, he admonishes her. This is the first step that Allāh has ordered and it may not be overlooked. And this could be in the form of body language like a frown or silence or talking nicely about the problem or even angrily [loudly]. Most ladies respond to this, however if the woman ignores it then the next step ordered is taken.
- He may then refuse to share her bed. In other words her sexual needs are not met and he may move to sleep in another room, or stay in the same room but not have sexual contact with her etc.
- Finally, if it is deemed useful, he may beat her lightly. This needs to be clarified. Beating is to be done lightly only if it is deemed a useful solution to the problem as it may worsen the situation with no chance of reconciliation. Also, it may be that if the situation has reached this point, a divorce might be better and Allāh knows best. The Prophet ﷺ never used to beat his wives, children or slaves and in him is the best example. I urge the sisters to pay heed and not anger their husbands with such bad conduct for him to actually have to consider this last point. Some scholars of the *Salaf* are of the opinion that it is strictly forbidden to beat the women except for lewd conduct or such. Furthermore, it is forbidden

<sup>331</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol. 7 #133].

to hit her severely that it would break a bone otherwise he would have to pay the penalty [of injuring another Muslim] and he may not hit her face.

*"None of you should flog his wife as he flogs a slave then have sexual intercourse with her in the last part of the day."* <sup>332</sup>

The Prophet ﷺ also said:

*"Do not beat Allāh's handmaidens", but when 'Umar (رضي الله عنه) came to the Messenger of Allāh ﷺ and said, 'women have become emboldened towards their husbands', he (ﷺ) then gave permission to beat them. Then many women came round the family of the Prophet (ﷺ) complaining against their husbands. So the Prophet of Allāh (ﷺ) said, 'Many women have gone round Muḥammad's family complaining about their husbands. They are not the best among you'."* <sup>333</sup>

**iii] He has the right to fulfill his needs [sexual] with her whenever he pleases.**

Allāh said,

﴿ نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَأَتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنفُسِكُمْ وَاتَّقُوا اللَّهَ ۖ وَاعْلَمُوا أَنَّكُمْ مُّلتَقُونَ بِهِ وَبَشِّرِ الْمُؤْمِنِينَ ﴾

﴿ *Your wives are a tilth for you, so go to your tilth, when or how you will [have sexual relations with your wives in any manner you choose as long as it is in the vaginal opening and not the Anus as that is forbidden]* ﴾ 2:223

﴿ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا ﴾

﴿ *... and man was created weak [cannot be patient to leave sexual; intercourse with woman].* ﴾ 4:28

<sup>332</sup> *Ṣaḥīḥ Al-Bukhārī*, [Eng. Trans. vol. 7 #132].

<sup>333</sup> Sunan of Abū Daud, [Eng. Trans. vol. 2 #2141]. And declared *ṣaḥīḥ* by Sheik Al-Albānī.

His Prophet [ﷺ] said:

*"If a man invites his wife to sleep with him and she refuses to come to him, then the angels send their curses on her till morning."*<sup>334</sup>

Also, because of this right a woman may not fast supererogatory fasts without her husband's permission.

*"A woman should not fast [optional fasts] except with her husband's permission if he is at home [staying with her]."*<sup>335</sup>

If the woman is fasting it hampers her husband's ability to fulfil his desire with her hence since it is supererogatory she must ask his permission if he is at home [i.e., not traveling etc.]. This does not only refer to the night time for there is another ḥadīth that says even if she were occupied at the oven baking bread [or cooking] and he calls her, she must respond.<sup>336</sup>

**iv] It is also from his rights that she never allows anyone in his house without his permission.**

The Prophet [ﷺ] said about a wife:

*"She should not allow anyone to enter his house except with his permission."*<sup>337</sup>

In another ḥadīth, she should not let anyone sit on his bed without his permission. This is in reference to enemies, or people he dislikes as they may be bad influences, or even that he wants to find no one other than his family when he returns for one reason or another.

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<sup>334</sup> Ṣaḥīḥ Al-Bukhārī, [Eng. Trans. vol.7 #121].

<sup>335</sup> Ṣaḥīḥ Al-Bukhārī, [Eng. Trans. vol. 7 #120].

<sup>336</sup> Sunan of At-Tirmidhī #284. Declared ḥasan ṣaḥīḥ gharīb by Shaykh Al-Albānī.

<sup>337</sup> Ṣaḥīḥ Al-Bukhārī, [Eng. Trans. vol. 7 #123].

v] He may also ask her to see to the affairs of the house and children.

The Prophet [ﷺ] said:

*"All of you are guardians and are responsible for your wards. The ruler is a guardian; The man is a guardian of his family. The lady is a guardian and is responsible for their husband's house and his offspring and so all of you are guardians and are responsible for your wards."* <sup>338</sup>

vi] He also has the right to expect her to look attractive for him.

This includes obvious basic hygiene, like baths or brushing ones teeth, clipping nails, shaving the pubes and under arms as well as the other aspects like wearing attractive clothing and wearing perfume [at home only]. The Prophet [ﷺ] and his companions [رضي الله عنهم] were returning from an expedition in this hadīth,

*"Then we approached [Medina] and were going to enter [it], the Prophet [ﷺ] said, 'wait till you enter [your houses] at night [in the first part of the night] so that the ladies with unkempt hair may comb their hair, and those whose husbands have been absent [for a long time] may shave [their pubic hair]."* <sup>339</sup>

vii] She should be grateful to him for all he does for her.

The Prophet [ﷺ] said:

*"Then I saw the [Hell] Fire and I have never before, seen such a horrible sight as that and I saw the majority of it's dwellers were women! The people asked, 'O Allāh's Messenger, what is the reason for that?' He replied, 'Because of their ungratefulness.' It was said, they disbelieve in Allāh [are they ungrateful to Allāh]? He replied, 'They are not thankful to their husbands and are ungrateful for the favors done to them. Even if you do*

<sup>338</sup> Sahīh Al-Bukhārī, [Eng. Trans. vol. 7 #128].

<sup>339</sup> Sahīh Al-Bukhārī, [Eng. Trans. vol. 7 #172].

good to one of them all your life, when she sees some harshness from you, she will say, 'I have never seen any good from you!' " 340

## The Rights of the Wife.

Allāh the Almighty, said,

﴿ وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴾



﴿ And they [women] have rights [over their husbands as regards living expenses etc.] similar [to those of their husbands] over them [as regards obedience and respect etc.] to what is reasonable, but men have a degree [of responsibility] over them. And Allāh is All-Mighty, All-Wise. ﴾ 2:228

A man asked the Prophet ﷺ,

"What is the right of the wife of one of us over him? He ﷺ said: 'That you should give them food what you have for yourself, and clothe them by which you clothe yourself, and do not strike her on the face, do not revile her or separate yourself from her except in the house'." 341

**i] She has the right to expect protection and maintenance from him.**

And Allāh the Exalted, said,

﴿ الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ

أَمْوَالِهِمْ

﴿ Men are the protectors and maintainers of women, because Allāh has made one of them to excel the other and because they spend [to support them] from their means. ﴾ 4:34

<sup>340</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol. 7 #125].

<sup>341</sup> *Sunan of Abū Dāwud*, [Eng. Trans. Vol. 2 #2139]. Declared *hasan sahih* by Shaykh Al-Albānī.



He should clothe, feed and house her as he does himself, and wherever the need arises, protect her from harm, and this includes the Hereafter [advice on the religion] or worldly affairs [actual bodily harm or insult]. This is the way of Islām. For this, she is grateful to her Lord [Allāh] and her husband. I might remind the sister that from his sense of protection will be his jealousy, she should not find it offensive, if she is indeed a believer.

**ii] She has the right to expect mercy and kindness from him.**

The Messenger of Allāh [ﷺ] said:

*"Whoever believes in Allāh and the Last Day should not hurt [trouble] his neighbor. And I advise you to take care of women for they are created from a rib and the most crooked portion of the rib is the upper part; if you try to straighten it, it will break [divorce her] and if you leave it, it will remain crooked. So I urge you to take care of women."*<sup>342</sup>

Women can be emotional thus irrational at times, they also have different views on subjects compared to men. However, they should both try to avoid points of argument, and he should be patient with her. Also, see the hadīth of Abū Zar' covered under point [v].

**iii] She may expect him to converse and communicate with her.**

The Prophet [ﷺ] used to converse with his wives and Ibn 'Umar said:

"During the lifetime of the Prophet [ﷺ] we used to avoid chatting leisurely and freely with our wives lest some divine inspiration might be revealed concerning us. But when the Prophet [ﷺ] died we started chatting leisurely and freely [with them]."<sup>343</sup>

<sup>342</sup> Saḥīḥ Al-Bukhārī, [Eng. Trans. vol. 7 #114].

<sup>343</sup> Saḥīḥ Al-Bukhārī, [Eng. Trans. vol. 7 #115].

iv] She has the same rights for sexual gratification as he does.

Allāh the Exalted, said,

﴿أُحِلَّ لَكُمْ لَيْلَةَ الصَّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ﴾  
﴿It is made lawful for you to have sexual relations with your wives on the night of As-Sawm [fasts]. They are a libās [i.e., body cover, or screen or sakan [i.e., you enjoy the pleasure of living with them see Tafsīr At-Tabarī] of verse 7:189] for you and you are the same for them.﴾ 2:187

In the beginning, in Islām they were forbidden to have sexual intercourse with their spouses at all in the month of *Ramādān*, then Allāh revealed this verse.

v] She to has the right to expect him to look attractive for her.

He should also practice the basic hygiene necessary in Islām and should perfume himself and wear clean attractive clothing. At this point we shall cover the long *ḥadīth* of Abū Zar' to gain a better understanding of the points above and more. It should be noted that this *ḥadīth* describes a type of gathering before the coming of Islām and one should not discuss their husbands as such, as it involves backbiting them. 'Ā'ishah [ﷺ] the wife of the Prophet [ﷺ] narrated:

"Eleven women sat [at a place] and promised and contracted that they would not conceal anything of the news of their husbands. The first one said, 'My husband is like the meat of a lean weak camel which is kept on top of a mountain which is neither easy to climb, nor is the meat fat, so that one might put up with the trouble of fetching it'. The second one said, 'I shall not relate my husbands news for fear that I may not be able to finish his story, for if I describe him, I will mention all his defects and bad traits.' The third one said, 'My husband is a tall man; if I describe [and he hears of that] he will divorce me, and if I keep quiet, he will neither divorce me nor treat me as a wife.' The fourth one said, 'My husband is a moderate person like the night of Tihama which is neither hot nor cold. I am neither afraid of him nor

am I discontented with him.' The fifth one said, 'My husband when entering [the house] is a leopard, and when going out is a lion. He does not ask about whatever is in the house.' The sixth one said, 'If my husband eats, he eats too much [leaving the dishes empty], and if he drinks he leaves nothing, and if he sleeps he sleeps alone [away from me] covered in garments and does not stretch his hands here and there so as to know how I fare [get along].' The seventh one said, 'My husband is a wrong doer or weak and foolish. All the defects are present in him. He may injure your head or body or both.' The eighth one said, 'My husband is soft to touch like a rabbit and smells like a Zarnab [a kind of good smelling grass].' The ninth one said, 'My husband is a tall generous man wearing a long strap for carrying his sword. His ashes are abundant and his house is near the people who would easily consult him.' The tenth one said, 'My husband is Mālik, and what is Mālik? Mālik is greater than whatever I say about him. [he is beyond and above all praises, which can come to mind. Most of his camels are kept at home [ready to be slaughtered for guests] and only a few are taken to the pastures. When the camels hear the sound of the lute [or tambourine] they realize that they are going to be slaughtered for the guests.' The eleventh one said, 'My husband is Abū Zar', and what is Abū Zar' [what should I say about him?]. He has given me many ornaments and my ears are heavily loaded with them and my arms have become fat [i.e., I have become fat]. And he has pleased me, and I have become so happy that I feel proud of myself. He found me with my family who were mere owners of sheep and living in poverty, and brought me to a respected family having horses and camels and threshing and purifying grain. Whatever I say, he does not rebuke or insult me. When I sleep, I sleep till late in the morning, and when I drink water [or milk] I drink my fill. The mother of Abū Zar', and what may one say in the praise of the mother of Abū Zar'? Her saddlebags were always full of provision and her house was spacious as for the son of Abū Zar', what may one say of the son of Abū Zar'? His bed is as narrow as an unsheathed sword and an arm of a kid [four months] satisfies his hunger. As for the daughter of Abū Zar', she is obedient to her father and to her mother. She has a fat well built body and that arouses the jealousy of her husband's other wife. As for the [maid] slave girl of Abū Zar', what may one say of the [maid] slave girl of Abū Zar'? She

does not uncover our secrets but keeps them, and does not waste our provisions and does not leave the rubbish scattered everywhere in our house.' The eleventh lady added, 'one day it so happened that Abū Zar' went out at the time when the milk was being milked from the animals, and he saw a woman who had two sons like two leopards playing with her two breasts, [on seeing her] he divorced me and married her. There after I married a noble man who used to ride a fast tireless horse and keep a spear in his hand. He gave me many things and also a pair of every kind of livestock and said, 'eat [of this] O Umm Zar' and give provision to your relatives.' She added 'Yet all of those things which my second husband gave me could not fill the smallest utensil of Abū Zar's.' Ā'ishah [ؓ] then said, "*Allāh's Messenger[ﷺ] said to me, 'I am to you as Abū Zar' was to his wife Umm Zar'.*"<sup>344</sup>

Notice which one the Prophet [ﷺ] likened himself to for his behavior. As for the meanings meant in some of the descriptions:

- (a) Her husband was badly behaved, worthless, arrogant and miserly.
- (b) She compares her husband with a leopard, which is well known for being shy, harmless and fond of too much sleep. She compares him with a lion when he is out for fighting. Besides, he does not interfere in the home affairs e.g. he does not ask her how much she spends, nor does he criticize any fault he may notice.
- (c) He is noble and brave.
- (d) He is so generous that he always makes fires for his guests to entertain them, hence the abundant ashes.
- (e) He lives near to the people so he is always at hand to solve their problems and help them in hardships and give them good advice.
- (f) They were rich farmers- Her husband took her out of poverty into prosperity.
- (g) She was well off and generous.
- (h) He was a slender man who ate little.
- (i) She was trustworthy, careful and clean.

<sup>344</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol. 7 #117].

Another right that both the husband and wife share is the right to have children.

Allāh the [Only] Originator, the Creator, said in His Book:

﴿فَالَّذِينَ بَشِرُوا هُنَّ وَأَبْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ﴾

﴿So now have sexual relations with them and seek that which Allāh has ordained for you [offspring],﴾ 2:187

Neither spouse may partake in any birth control method without real reason and without approval of the other spouse. The Prophet [ﷺ] said:

*"Seek to have offspring, seek to have offspring!"*<sup>345</sup>

A man came to the Prophet [ﷺ] and said:

"I have found a woman of rank and beauty, but she does not give birth to children. Should I marry her?" He said, 'No'. He came again to him, but he prohibited him. He came to him a third time, and he [the Prophet [ﷺ]] said: *"Marry women who are loving and very prolific, for I shall out number the peoples by you."*<sup>346</sup>

#### - Summary:

- To get married both parties may have representatives however the man can represent himself but the woman needs a *walī* or guardian to act on her behalf. Preferably this should be a male from her family, however if no Muslim male exists to help her she may approach the Imam of her local *Masjid* to act on her behalf.
- Once suitable parties [future spouses [acceptable to the bride and groom to be]] have been located then a contract must be drawn up including the *Mahr* [dowry] agreed upon and then it is signed by witnesses.
- At this point, they are legally married; a Wedding banquet should be held as soon as they are able. [See Chapter 5 under 'Special occasions' for detail on the banquet]

<sup>345</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol.7 #174].

<sup>346</sup> Sunan of Abū Dāwud. [Eng. Trans. Vol.2 #2045]. Declared *hasan saḥīh* by Shaykh Al-Albānī.

TALĀQ [DIVORCE]

Allāh the Exalted, the Wise, said:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا ﴿١﴾ فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَى عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ كُمْ يُوعَظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا ﴿٢﴾﴾

﴿ When you divorce women, divorce them at their 'Iddah [prescribed periods] and count [accurately] their Iddah. And fear Allāh your Lord [O Muslims]...Then when they are about to attain their term appointed, either take them back in a good manner or part with them in a good manner. And take as witnesses two just persons from among you [Muslims]...﴾

65:1-2.

This is a sad end but is legal in Islām as a way out of a failed marriage and Allāh has revealed an entire Sūrah [Chapter] in the Qur'ān devoted to it in addition to Āyāt [verses] in other Sūrahs. It is a serious institution and is not to be toyed with [used every time one wants to 'teach' her/or him a lesson or whenever they get angry.]. The woman may also ask for a divorce if necessary [*Khul'ah*]. She may not ask for one without good reason as Paradise is forbidden for one who asks her husband for one without good cause.

# The Sunnah of Divorce.

## 1) First of all, the wife is not to be on her period.

She should be clean from her period.

"Ibn 'Umar [ؓ] reported that he divorced his wife while she was menstruating during the lifetime of the Prophet [ﷺ]. 'Umar Ibn Al-Khattāb [ؓ] asked Allāh's Messenger [ﷺ] about it, whereupon Allāh's Messenger [ﷺ] said, "Command him [Ibn 'Umar] to take her back [and keep her] and pronounce divorce when she is purified." <sup>347</sup>

## 2) She may only be divorced twice, after the third time she has to marry someone else and be divorced by him before her former husband can remarry her.

Allāh the Almighty said,

﴿الطَّلُقُ مَرَّتَانٍ فَأَمَّا سَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَنٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا﴾

«The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you [men] to take back [from your wives] any of your Mahr, which you have given them.» 2:229

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ وَإِذَا طَلَقْتُمُ النِّسَاءَ فَلَمْ يَكُنْ لَكُمْ عَلَيْهِنَّ أَجْلٌ فَامَسْكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرَّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لَتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا

<sup>347</sup> Sahīh Muslim, [Eng. Trans. vol. 2 #3473].



ءَايَاتِ اللَّهِ هُزُوءًا وَآذَكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ

يُعِظُكُمْ بِهِ وَآتَقُوا اللَّهَ وَأَعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٣٠﴾

﴿ And if he has divorced her [the third time], then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel they can keep the limits ordained by Allāh. ﴾ 2:230

One divorce is described below; the divorce is not to be pronounced three times all together, as this is a violation of the laws of Allāh and His Messenger. Allāh further says,

﴿ وَإِذَا طَلَقْتُمُ النِّسَاءَ فَلْيُغْنِ أَجَلُهُنَّ فَامْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ

وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَن يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا

ءَايَاتِ اللَّهِ هُزُوءًا وَآذَكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ

يُعِظُكُمْ بِهِ وَآتَقُوا اللَّهَ وَأَعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٣١﴾

﴿ And when you have divorced women ...But do not take them back to hurt them, and whoever does that, then he has wronged himself. And treat not the Verses [laws] of Allāh as a jest, but remember Allāh's Favors on you [Islām], and that which He has sent down to you of the Book [Qur`ān] and Al-Hikmah [the Prophet ﷺ] Sunnah-Islāmic Jurisprudence] whereby He instructs you. And fear Allāh, and know that Allāh is All-Aware of Everything. ﴾ 2:231

3] After the one pronouncement of divorce, he has the choice to return to her during the three the prescribed period, if this time elapses he can only return to her with a new marriage contract. If however, it were the third time, he is prohibited from returning to her.

*"Command him to take her back until she is pure and then enters the second menses and then becomes pure. Then either divorce her or retain her."*<sup>348</sup>

The divorce should only be pronounced when the sister is pure [not menstruating]. Her husband says: "you are divorced" [or the equivalent] and then she starts her Iddah [waiting period], which lasts for three consecutive menstrual periods. If he has not returned to her during her 'Iddah then he can only take her back with a new marriage contract. If he has relations with her during her Iddah, that nullifies his intention of divorce, it also counts as one divorce. In Islām divorce is only twice [i.e., doing the above actions [two periods each] twice] after the third time he cannot take her back until she marries someone else and he divorces her [i.e., has a normal marriage including sexual relations]. It is explicitly forbidden for a man to marry a woman with the intention of making her legal for her first husband, he should be marrying her with the intention of keeping her as his wife.

## Other Facts She Should Know.

### 1] Her Iddah [waiting period].

Allāh the Exalted the Mighty said,

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَلْمَلْنَ لَهُنَّ إِصْرًا دُؤَا عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾  
﴿And divorced women shall wait [as regards their marriage] for three menstrual periods, and it is not lawful for them to conceal what Allāh has created in their wombs, if they believe in Allāh and the Last Day. And

<sup>348</sup> Sahīh Muslim [Eng. Trans. vol. 2 #3480].

their husband's have more right to take them back in that period, if they wish for reconciliation... ﴿ 2:228.

﴿ وَأُولَئِذَا أَجْمَلُ أَجْلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ ﴾

﴿ And those of your women as have passed the age of monthly courses, for them the Iddah, if you have doubt, is three months; and for those who have no courses [[immature] their Iddah is three months likewise, except in the case of death]. ﴿ 65:4

She commences her waiting period:

- a) Immediately after her husband pronounces the divorce. The waiting period ends either when he returns to her, or after the end of her third period he divorces her.
- b) Also at the confirmation of the death of her husband. This period will end after four months and ten days, the length of the morning period for the loss of a husband [the death of anyone else has a morning period of three days only]. The Prophet of Allāh ﷺ said:

*" It is not lawful for a lady who believes in Allāh and the Last Day to mourn for a dead person for more than three days unless he is her husband for whom she should mourn for four months and ten days."*<sup>349</sup>

She may pass this period in the house of her husband or in the house where she receives the news of her husband's death and the latter opinion was held by two of the righteous Caliphs [ʿUmar and ʿUthmān] among others. During this period she may not beautify herself i.e., using *kuhl*<sup>350</sup>, perfume, saffron and related cosmetics nor may she wear bright attractive clothing and she should not leave the house except for an emergency like a visit to the hospital [for real need].

<sup>349</sup> *Sahīh Al-Bukhārī*, [Eng. Trans. vol. 7 Chapter 46. #251].

<sup>350</sup> *Kuhl* a black substance used as eyeliner.

- c] For those women who are pregnant, her Iddah ends [if her husband died or she is of those whom divorce is pronounced] when she delivers regardless of whether it is in one day or nine months. After which she may remarry even when she is still bleeding but her husband cannot have relations with her till she is purified.

﴿ وَاللّٰتِي يَسْنَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ فَعِدَّارْتَبْتُمْ ثَلَاثَةُ أَشْهُرٍ وَاللّٰتِي لَمْ يَحْضُنَّ وَأُولَتْ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ ۚ ﴾

﴿ And for those who are pregnant [whether they are divorced or their husband's are dead], their Iddah is until they lay down their burden; ﴾

65:4

2] During the Iddah [for the one who has been divorced by her husband one or two times] she is to remain in the house of the husband and he must continue to provide for her.

Allāh the Exalted said:

﴿ لَا تَخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُّبَيِّنَةٍ ۚ ﴾

﴿... turn them not out of their [husband's] homes nor shall they [themselves] leave, except in case they are guilty of some open illegal sexual intercourse.﴾ 65:1

﴿ أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَأَتُوهُنَّ رُضْعَانِ أَجُورَهُنَّ وَأَتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَسْتَزْعِجْ لَهُ أُخْرَى ۚ ۚ لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا ءَاتَاهُ اللَّهُ لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا مَا ءَاتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۚ ﴾

﴿ Lodge them [the divorced women] where you dwell, according to your means, and do not harm them so as to straighten them [that they are obliged to leave your house]. And if they are pregnant, then spend on

*them till they lay down their burden. And if they give suck to the children for you, give them their due payment, and let each of you accept the advice of the other in a just way. But if you make difficulties for one another some other woman may give suck for him. Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allāh has given him. ﴿ 65:6-7*

### 3) Divorce before [sexual] relations have taken place.

This applies to both before and after *Mahr* has been agreed upon. Allāh said:

﴿ لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمْ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرَهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَّعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ ﴾

﴿ *There is no sin on you, if you divorce women while you have not yet touched them [had relations], nor appointed unto them their Mahr. But bestow on them [a suitable gift], the rich according to his means and the poor according to his means, a gift of reasonable amount is a duty on the doers of good. ﴿ 2:236*

﴿ وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَنِصْفُ فَرَقَدٍّ مَا فَرَضْتُمْ إِلَّا يَعْفوَا عَقْدَةُ النِّكَاحِ وَأَنْ تَعْفوَا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴾

﴿ *And if you divorce them before you have touched them, and you have appointed unto them the Mahr, then pay half of the [Mahr], unless they [the women] agree to forgo it, or he [the husband], in whose hands the marriage is, agrees to forgo and give her full appointed Mahr. And to forgo and give [her the full Mahr] is nearer to Taqwā [piety, righteousness]. And do not forget liberality between yourselves. ﴿ 2:237*

#### 4) *Al-Khul'ah*. [separation from the wife for compensation]

This is where the woman asks her husband for a divorce and agrees to return her *Mahr* [dowry] in exchange. She should have a valid reason for doing so as the odor of Paradise is forbidden for the one who asks for a divorce without a strong reason.<sup>351</sup> A woman came to the Prophet [ﷺ] and said:

"O Allāh's Messenger, I do not find fault with Thābit Ibn Qays in respect of character or religion, but I, being a Muslim dislike to behave in an un-Islāmic manner.' Allāh's Messenger [ﷺ] asked her, ' Will you give him back his garden?' And she replied, ' Yes'. So Allāh's Messenger [ﷺ] said to him, 'Accept the garden and divorce her once.'<sup>352</sup>

It was reported by Ibn Mājah that 'Amr Ibn Shu'ayb [from his father] said. "Thābit Ibn Qais was ugly and his wife said, 'Were it not for the fear of Allāh, when he entered my presence I would spit on his face.'"

#### 5) *Adh-Dhihār* [the making of a vow to stay away from one's wife i.e., making her unlawful for himself] and related topics.

This is where the man would say to his wife, 'You are like the back of my mother to me' meaning unlawful. This would be said out of anger and the wife would be left in a hanging state [as to the state of her marriage]. And Allāh the Exalted the Mighty said:

﴿الَّذِينَ يُظَاهِرُونَ مِنكُم مِّن نِّسَائِهِم مَّا هُنَّ أُمَّهَاتُهُمْ إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِّنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوءٌ غَفُورٌ ﴿١﴾ وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَنْ يَتَمَاسَّا ذَٰلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿٢﴾ فَمَنْ لَّمْ يَجِدْ فَصِيَامٌ

<sup>351</sup> Sunan of Abū Dāwud, [Eng. Trans. vol. 2 #2218] Declared *sahīh* by Shaykh Al-Albānī.

<sup>352</sup> *Sahīh* Al-Bukhārī, [Eng. Trans. vol. 7 #197].

شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا فَمَنْ لَمْ يَسْتَطِعْ فِإِطْعَامُ سِتِّينَ مِسْكِينًا  
 ذَٰلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ وَتِلْكَ حُدُودُ اللَّهِ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ ﴿٥٨﴾  
*Those among you who make their wives unlawful to them by [dhihār] they cannot be like their mothers. None can be like their mothers except those who gave them birth. And verily, they utter an ill word and a lie. And verily, Allāh is Oft-Pardoning, Oft-Forgiving. And those who make unlawful to themselves their wives by dhihār and wish to free themselves from what they uttered; [the penalty] in that case is the freeing of a slave before they touch each other. This is an admonition to you [so that you may not repeat such an ill thing]. And Allāh is All-Aware of what you do. And he who finds not [the money for freeing a slave] must fast two consecutive months before they touch each other. And he, who is unable to do so, should feed sixty masākīn [poor people]. That is in order that you may have perfect Faith in Allāh and His Messenger. These are the limits set by Allāh. And for disbelievers, there is a painful torment.﴾ 58:2-4*

The wife is always lawful for her husband and neither one of them can change this right except for her privates during her menses or sexual intercourse during the daytime in *Ramadān* or while in *Ihram*, or if it is the third divorce,. So when the husband makes such an oath he has disobeyed Allāh and His Messenger [ﷺ] and must pay the penalty. Likewise, he should not make any other such oath of abstention [from her]; except for disciplinary purposes, the duration of which may not exceed four months and at the end of this period or less [whatever time he stipulated but no more than four months] he should return to her or divorce her. In the time of ignorance, the people would stay away from their wives for one or two years and Allāh appointed a period of no more than four months<sup>353</sup>. Ibn 'Umar [رضي الله عنه] narrated " When a period of four months elapses, the one who swears to stay away from his wife must be made to return to her or divorce her, and the divorce is not valid until the husband pronounces it." And Allāh the Almighty said:

<sup>353</sup> Sūrah Al-Baqarah: 226.

﴿ And set them free [divorce the women] in a handsome manner. ﴾ 33:49.

Therefore, it is agreed amongst the scholars that it is the man who pronounces the divorce.

**6) Al-Li'ān [invoking the curse of Allāh by the spouses on themselves in the case of unproven adultery].**

The husband has the right to use *Li'ān*. A woman is not entitled to maintenance after this. Once the accusation has been made, if it is revoked then the accuser will be punished for slander [80 lashes with a whip and his/or her word will not be accepted as witness]. And if it is true the liar will be punished in the next world for making a false oath in the Name of Allāh and the adultery.

Allāh the Almighty said,

﴿ وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدُوا أَحَدِهِمْ أَرْبَعَ شَهَدَاتٍ بِاللهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ۝ وَالْخَمِيسَةَ أَنْ لَعَنَتَ اللهُ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ۝ وَيَذَرُوا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَدَاتٍ بِاللهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ۝ وَالْخَمِيسَةَ أَنْ غَضَبَ اللهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ۝ ﴾

﴿ And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies [i.e., four times] by Allāh that he is one of those who speak the truth. And the fifth [testimony should be] the invoking of the Curse of Allāh on him if he be of those who tell a lie [against her]. But he shall avert the punishment [of stoning to death] from her, if she bears witness four times by Allāh, that he [her husband] is telling a lie. And the fifth [testimony] should be that the Wrath of Allāh be upon her if he [her husband] speaks the truth. And the fifth [testimony] [should be] the invoking of the curse of Allāh on him if he be of those who tell a lie [against her]. But it shall avert the punishment [of stoning to death] from her, if she bears witness four times



*by Allāh, that he [her husband] is telling a lie. And the fifth [testimony] should be that the Wrath of Allāh be upon her if he [her husband] speaks the truth.﴾ 24:6-9*

Ibn 'Umar [ؓ] when asked about *Li'ān* by Sa'īd Ibn Jubayr [the narrator of the *ḥadīth*] said: "The first one who asked about it was so and so. He said, 'O Allāh's Messenger, tell me if one of us finds his wife committing adultery what should he do? If he talks he would talk about a grievous affair, and if he keeps silent it is also [something great] [which he cannot afford to do].' Allāh's Messenger [ﷺ] kept quiet [for some time]. After that time he [that very person] came to him and said: 'I have been involved in that very case about which I had asked you.'" Allāh the Exalted and Majestic then revealed the verses of Sūrah Nūr: "*Those who accuse their wives.*" And he [the Prophet ﷺ] recited them to him and admonished him, and exerted him and informed him that the torment of the world is less painful than the torment of the Hereafter. He said, 'No, by Him Who sent you with the Truth, I did not tell a lie against her. He [the Prophet ﷺ] then called her [the accused] and admonished her, and exhorted her, and informed her that the torment of this world is less painful than the torment of the Hereafter. She said, 'No, by Him Who sent you with the Truth, he is a liar. [It was] the man who started the swearing of oath and he swore in the name of Allāh four times that he was among the truthful, and at the fifth turn he said, 'Let the curse of Allāh be upon me if I am among the liars. Then the woman was called and she swore four times in the name of Allāh that he [her husband] was among the liars, and at the fifth time she swore, 'Let the curse of Allāh be upon me if he were among the truthful'. He [the Prophet ﷺ] then effected separation between the two."

And in another *ḥadīth*, Ibn 'Umar also mentioned that the Prophet [ﷺ] said to them [the invokers]: "*Your account is with Allāh. One of you must be a liar. You have no right over this woman.*" He said, 'Messenger of Allāh, what about my wealth [dower]? He said, '*You have no claim to wealth. If you tell the truth, it is the recompense for your having had the*

right to intercourse with her, and if you tell a lie against her it is still more remote from you than she is."<sup>354</sup>

After this, the Prophet asked that she should be observed to see the features of the child she bears i.e., to see if it resembled her former husband or the man she was accused of adultery with. She had in fact lied and the child she bore resembled the man she had committed adultery with. The children from *Li'ān* are attributed to the mother only.

## 7) On suspected paternity.

It is upon the woman to be honest and the man not to be highly suspicious [without reason]. A man came to the Prophet [ﷺ] and said: "My wife has given birth to a black son. He [ﷺ] said, 'Have you any camels?' He said, 'They are red'. He asked, 'Is there a dusky one amongst them?' He replied, 'Some of them are dusky.' He asked, 'How do you think they have come about?' He replied, 'This may be a strain to which they reverted.' He said, 'And perhaps this is a strain to which the child has reverted.'" <sup>355</sup>

## 8) Guardianship of children in divorce.

The woman has more right to retain the children [if she is Muslim] unless she remarries then the man may demand them. A woman said: "Messenger of Allāh, my womb is a vessel to this son of mine, my breasts, a water skin for him, and my lap a guard for him, yet his father has divorced me, and wants to take him away from me.' The Messenger of Allāh [ﷺ] said, 'You have more right to him as long as you do not marry.'" <sup>356</sup>

<sup>354</sup> *Sahīh Muslim*, [Eng. Trans. vol. 2 #3556 and #3557 respectively.]

<sup>355</sup> *Sunan* of Abū Dāwud [Eng. Trans. vol.2 #2253]. Declared *sahīh* by Shaykh Al-Albānī.

<sup>356</sup> *Sunan* of Abū Dāwud [Eng. Trans. vol. 2 #2269]. Declared *hasan* by Shaykh Al-Albānī.

And in another *ḥadīth* the choice was given to the child by the Prophet [ﷺ] to pick either of his parents and he chose his mother. The child was about seven years of age.<sup>357</sup>

Also in the case of an orphan with no parents alive the maternal aunt gets custody, assuming she is Muslim. The Prophet [ﷺ] said:

*"The maternal aunt is like the mother."*<sup>358</sup>

Otherwise, if the mother is dead or insane or a non-Muslim the father has more right to the children first. The same applies to a divorce where one parent accepts Islām and the other does not the child goes to whichever parent is Muslim.

"Rāfi' Ibn Sinān [ؓ] narrated that he accepted Islām but his wife refused to accept it. The Prophet [ﷺ] then made the mother sit down to a side and the father to another side and made the daughter sit down between them. She [the daughter] then inclined to her mother, the Prophet [ﷺ] then said: *"O Allāh! Guide her."* The daughter then inclined towards her father and he took her."<sup>359</sup>

However the man is responsible for the expenses of the children in any case [i.e., food, clothing].

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<sup>357</sup> *Sunan* of Abū Dāwud [Eng. Trans. vol.2 #2270]. Declared *ṣaḥīḥ* by Sheik Al-Albānī.

<sup>358</sup> *Sunan* of Abū Dāwud [Eng. Trans. vol.2 #2273]. Declared *ṣaḥīḥ* by Shaykh Al-Albānī.

<sup>359</sup> *Sunan* of Abū Dāwud [Eng. Trans. vol.2 #2236]. Declared *ṣaḥīḥ* by Shaykh Al-Albānī.