

**“THREE DIVORCES AT ONE INSTANCE WITH  
SPECIAL REFERENCE TO  
THE FATĀWĀ OF IBN TAYMIYYAH”**

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## *Abstract*

"Three Divorces at one instance with special reference to the Fatāwa of ibn Taymiyya."

The legal issue concerning three divorces at one instance and one sitting has been regarded as highly controversial.

Muslims opinion on this issue all along 1400 years remained divided. Juristic development on this controversial issue can be divided into three phases:

1. From the time of Prophet (saws) up to two years of the Khilafah of äUmar.
2. From the Caliph äUmar to the period of the Imām ibn Taymiyyah (1263-1328AD/661-728AH)
3. From the Imām ibn Taymiyyah (1328AD/728AH) to date.

An attempt has been made to present the views of the most prominent Jurists who support the legal effect of three divorces at one instance as absolutely irrevocable and the legal views of Jurists who consider the matters as one revocable divorce.

The selection of the celebrated works representing both views are such that they cover all three phases mentioned above on this legal issue.

Concerning the first view, the verdict (Qarār) of the fatāwa on the subject "Three divorces in one instance by the renowned Islamic Organisation of Saudi Arabia "*Dār al-Iftā*" which has sanctioned by the honourable Shaykh Abdul Aziz ibn Abdullah ibn Bāz, the President of *Dār al-Iftā*, the grand Muftī of the kingdom of Saudi Arabia. And the very recent views of leading Hanafī scholars of India under the leadership of Hadrat Mawlana Sayed Asāad Madani, Amir al-Hind have been translated.

As regards to the second view the relevant pages of the celebrated *fatāwa* of the Imam ibn Taymiyyah has been translated.

This study also presents the evaluation of both views, and is divided into two chapters. The chapter one is sub-divided into two sections. Section one includes a brief introduction of divorce, its Classification and revocation. Section two contains the English translation of above mentioned two contemporary legal verdicts on this issues.

The chapter two presents the English Translation of the relevant aspects of the *fatāwa* of the Imam ibn Taymiyyah.

The Conclusion deals with a critical evaluation of both legal views enabling Muslims who are divided in this issue to decide by themselves whenever they confront with such problems.

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## *Transliteration Table with Arabic Terminology*

Hamzah	ء	’	Lām	ل	l
Bā	ب	b	Mīm	م	m
Tā	ت	t	Nūn	ن	n
Tha’	ث	th	Wāw	و	w
Jīm	ج	j	Ha’	هـ	h
Ḥa’	ح	h	Ya’	ي	y
Kha’	خ	kh	Tā Marbutah	ة	ah/at
Dāl	د	d			
Dhāl	ذ	dh	Fatḥa	أ	a
Ra’	ر	r	Kasrah	إ	i
Za’	ز	z	Dammah	ُ	u
Sīn	س	s	Alif Maddah	آ	ā
Shīn	ش	sh	Ya Maddah	إي	ī
Sād	ص	ṣ	Waw Maddah	أو	ū
Dād	ض	ḍ			
Tā’	ط	ṭ			
Zā’	ظ	ẓ			
‘Ayn	ع	‘			
Ghayn	غ	gh			
Fā’	ف	f			
Qāf	ق	q			
Kāf	ك	k			

As for the Hamzah of continuity (hamzat al-wasl) it has been retained, e.g. as in ‘Abd al-Gaffār, ‘Abd al Ghani except in two cases:

- (a). Where the word ‘Abd precedes the divine name Allāh, i.e. ‘Abdullah, not ‘Abd Allāh.
- (b). Where it is preceded by Abū; in this case it is written as Abul-Ḥusayn, not Abū al-Ḥusayn

Some Arabic terms commonly used in this Thesis are as follows:

**SWT:** Ṣubḥānahu wa ta‘ālā’. i.e. His glorification and highness (Allāh Himself).

**SAWS:** Ṣall Allāhu ‘alaihi wa Sallam. i.e. May Allah (SWT) has mercy upon him and bless him (the Prophet Muḥammad saws).

A.S: ‘Alaihis Salām / ‘Alaihimus Salām (Peace and blessing of Allāh be upon him /them)

The name of the Companions of the Prophet Muḥammad (saws). should be read with (r.a.a.) Raḍiya Allāhu ‘Anhu / ‘Anhā/ ‘Anhumā/ ‘Anhum/ ‘Anhunna (May Allāh (SWT) be pleased with him /her them etc.).

# CHAPTER - ONE

*Three divorces at one instance with special reference to the Fatāwā of the Imām  
Aḥmad ibn Taymiyyah*

## Introduction:

The Imām Shaykh al-Islām Aḥmad ibn Taymiyyah, who lived in the 13th/14th century, was an eminent scholar, *Muḥaddith<sup>a</sup>*, jurist and historian of *Islām*.<sup>1</sup> He wrote voluminously on almost every aspect of *Islām*. He was very systematic and thorough but because of the colossal opposition from different groups of ‘*Ulamā*’ and constant political persecution of the then ruling esoteric, much of his writings, *fatāwās* and contributions were certainly lost.<sup>2</sup> Apart from his intellectual and religious pursuits involving scholastical issues of ‘*Aqīdah* (cult and creed) and theological deliberation between the *Ash‘arites* and *Hanbalites*, his deep devotion to the juristic problems and Islamic *Fiqh<sup>b</sup>* created a new horizon in the field of *Ijtihād<sup>c</sup>*.

For the purpose of this research work, it is envisaged to explain in detail the juristic opinion of the Imām ibn Taymiyyah. Alongside it opinions of other schools of thought have also been outlined. Now a days it is known to the many learned people that most of the work of the Imām ibn Taymiyyah has been preserved, compiled and published under the title of *Mujmū‘ Fatāwā of Shaykh al-Islām ibn Taymiyyah*. The works were systematized and compiled by Shaykh Abd al Rahman ibn Muḥammad ibn Qāsim al-‘Asīmī Al Najdī al Ḥanbalī. His son Muḥammad assisted him in this great task and the works were printed in 37 volumes under His Royal Highness King Fahd project of

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<sup>a</sup> Scholar of Prophet Muḥammad's(saws) traditions.

<sup>b</sup> The Subject which discuss about Jurisprudence in Islām.

<sup>c</sup> Independent judgement in a legal or theological question, based on the interpretation and application of the four Usūl.

publication, Saudi Arabia. The juristic opinion of the Imām ibn Taymiyyah regarding divorce has been edited in volume 33 of the series.<sup>3</sup>

As per the requirement of this research work "Three Divorces at one instance with special reference to the Fatāwā of ibn Taymiyyah", we are presenting **the English Translation of the legal verdict of ibn Taymiyyah on three divorces at one instance from his famous book *Fatāwā*** In the translation work I have written within the bracket to make the idea clear with an introduction on the legal implication of three divorces at one instance.

## SECTION ONE

### Introduction Of the Section One:

#### *DIVORCE: Definition, Differences Between Scholars and Their Analogy (in brief).*

In accordance with the aims of the *Sharī‘ah* the system of marriage has been established for a sound, peaceful and healthy family life. In order to make the mutual life lasting and harmonious, Allah (SWT) appointed the husband as a leader of the family. He mentions in the *Qur’ān*:

الرجال قوامون على النساء بما فضل الله بعضهم على بعض وبما أنفقوا من أموالهم.

*"Men are the Protectors And maintainers of women, Because Allah (SWT) has given The one more (strength) Than the other, and because They support them from their means".<sup>1</sup>*

The mankind descended according to the *Qur’ān*, from the same parents.

يا أيها الناس انا خلقتكم من ذكر وأنثى وجعلتكم شعوبا وقبائل لتعارفوا.

*"O mankind! We created you from a single (pair) of a male and a female, And made you into nations and tribes, that ye may know each other".<sup>2</sup>*

’ ومن آيته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها ‘

*"And among His signs is this, that he created for you mates from among yourselves, that ye may dwell in tranquillity with them."<sup>3</sup>*

*"It is Allah (SWT) who has put love and mercy between the hearts of each couple and joined one with the other in a harmonious relationship".<sup>4</sup>* The special kind of love and tenderness between man and woman is one of the mysterious creations of Allah (SWT). The mother that bears children deserves respect and reverence. The wife, through whom human beings achieve parentage, deserves reverence. Sex governs the physical life and

influences the emotions. It deserves full reverence in the highest sense of the term piety, fear and righteousness.<sup>5</sup>

Sex is not a thing to be ashamed of, but neither should it be treated lightly, or indulged to excess. It is a solemn fact in life. As mentioned in the Qur'ān:

ننساؤكم حرث لكم فأتوا حرثكم أنى شئتم وقدموا لأنفسكم واتقوا الله وأعلموا أنكم ملقوه.

*"Your wives are as a tilth unto you. So approach your tilth when or how you will. But do some good act for your souls beforehand and fear Allah (SWT) and know that you are to meet Him (in the hereafter)".<sup>6</sup>*

The wise and considerate husband knows that he sows the seed in order to reap the harvest in good time and with the correct intention of cultivation. He does not sow out of season nor cultivate in a manner which will injure or exhaust the soil. The spiritual aspect in the enjoyment of sexuality has to be preserved according to Islamic morality. The office of father and mother is held in the highest veneration in Islam. Surely, every child is born pure regardless of the acts of its parents, but its upbringing would be better if its parents had the proper harmonious relationship.

Men and women are each other's garments. They are for mutual support, comfort and protection, fitting into each other as a garment fits the body. The *Qurā'n* says:

"هن لباس لكم وأنتم لباس لهن"

*"They are your garments and you are their garments"<sup>7</sup>*

The mutual rights between husband and wife have been defined by Allah (SWT):

ولهن مثل الذي عليهن بالمعروف

*"And women shall have rights similar to the rights against them, according to what is equitable."<sup>8</sup>*

In order to stabilize family life Islam introduced various measures which ended unfavourable pre-Islamic customs that were very unfair to women in wedlock. Sometimes in a fit of anger or caprice, a husband would take an oath by Allah (SWT) not

to approach his wife, thus depriving her of conjugal rights but keeping her tied to him indefinitely. Islam disapproved of such thoughtless oaths which harmed wives, but insisted on proper solemn internal oaths being scrupulously observed. "*Allah (SWT) looks to intentions, not mere making up of minds to see if adjustments are possible*".<sup>9</sup>

The intention of divine law is to maintain the married state as far as possible but it does not unnecessarily restrict the liberty of spouses. Divorce is allowed in Islam. It checks hasty actions as far as possible, and leaves the door to reconciliation open at different stages. Even after divorce a suggestion of reconciliation is made but subject to certain precautions against thoughtless action.<sup>10</sup> A period of 'iddah (prescribed period) for three monthly course is prescribed to see if the marriage, conditionally dissolved, can be saved.

If for any reason whatsoever, a marriage is failing, the *Shari'ah* encourages reconciliation between the spouses. When a good relationship between the spouses becomes distinctly impossible, however, Islām does not keep them tied with a loathsome chain to a painful and agonising situation.

"As soon as differences between two spouses take a serious turn towards endangering their marriage contract, there is a prescribed solution to sorting out the differences and hopefully bringing about a reconciliation between them. The *Qur'ān* says:

فان خفتم شقاق بينهما فأبعثوا حكما من أهله وحكما من أهلها إن يريدوا إصلاحا يوفق الله بينهما إن الله كان عليما خبيراً.

*"If you fear a break between them two, appoint, (two) arbiters, one from his family, and the other from hers; if they wish for peace. Allah (SWT) will cause them reconciliation : for Allah (SWT) has full knowledge and is acquainted with all things"*.<sup>11</sup>

Bearing in mind the aforesaid divine command for mutual reconciliation, in the case of the wife being rebellious, the following four steps are recommended (applied in order until one is successful):

- (1) Verbal advice or admonition;
- (2) Suspension of sexual relations;
- (3) Administration of slight physical correction;

(4) Calling in a family council to attempt a reconciliation between the spouses.

The gist of these rules is contained within the following *Qu'ānic* verse:

والتي تخافون نشوزهن فعظوهن وأهجروهن في المضاجع وأضربوهن فان أطعنكم فلا تبغوا عليهن سبيلا ان الله كان عليا كبيرا.

*"And as to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and Last) beat them (lightly); but if they return to obedience. Seek not against them means (of annoyance); for Allah (SWT) is Most High, Great (above you all)."*<sup>12</sup>

There are times in human life when it becomes impossible to continue with a cordial relationship between spouses. It is part of human nature that, in spite of all the achievements and scientific progress, human frailties become apparent. At such times good preaching and wise counsel may also not work. It is in these circumstances, when a working marriage becomes impossible, that it is better to separate amicably rather than to drag the situation on indefinitely, such that the family-home becomes unbearable. It must be remembered that the immediate victims are the children of such a family unit. In Islam marriage is a contract and the contract should be made to work but not when it become humanly impossible. It is only in such unavoidable circumstances that divorce is permitted in the *Sharī'ah*. When such circumstances arise, one has to keep in mind that through marriage, the wife has taken a solemn covenant (*Mīthāq*) from the husband.

*Al-Qur'ān* says:

وأخذن منكم ميثاقا غليظا.

*"And they have taken from you a solemn covenant".*<sup>13</sup>

Emphasising the mutual responsibility, trust, love, affection and solidarity, Abul 'Alā Maudūdī said, "The bond of marriage should be strengthened as far as possible and every effort should be made to keep the marital union intact. However, when all hope of love and compassion between them is gone and the marriage becomes a danger to the objectives of the law, no insistence should be made on keeping the unwilling partners tied together, with their mutual hatred, dislike and distrust. In such a situation it is in their

interest, as well as in the interest of society, that their separation be permitted. In this matter, the Islamic law has maintained a balance between its concern for the demands of human nature and its regard for the preservation of the social good. This balance has no parallel in other laws of the world. Islam seeks to make the marriage tie strong, but it does not make it unbreakable when the married life of the spouses has degenerated into intolerable misery. So, the door of separation has been kept open".<sup>14</sup>

According to K.N. Aḥmad divorce is a controversial subject. The dissolution of marriage brings about the disintegration of family life with consequent uncertainty and unhappiness for children born of the marriage. It is obvious, however, that when the spouses can no longer live in harmony and have lost all mutual regard, the continuance of the unhappy marriage would breed hate and disgust, and is likely to ruin the lives of the parties involved, either one or both of them, and of the children.<sup>15</sup> On the basis of *Qur'ānic* injunctions and the guidance from the *Sunnah* of the Prophet (*s.a.w. s.*), the jurists of the four *Sunnī* schools of Islamic Jurisprudence have given classifications on divorce.<sup>16</sup> This classifications are as follows:

1. Divorce becomes *wājib* (الواجب) most essential in the case of *Ṭalāq al Ḥakamayn fī al Shiqāq* (Divorce implemented by arbitrators when husband and wife disputed themselves).
2. Divorce is *Makrūh* (مكروه) reprehensible, when it is not essential - if there is no harm anticipated either to one's self or one's wife, and there is still some hope of reconciliation. This is based on the *Ḥadīth* that, the "Most hated among things permitted by Allah (SWT) is divorce"
3. It is *Mubāḥ* (مباح) permissible, when there is a need for it, particularly when the wife's character is bad and thus some harm is expected through the continued marriage.
4. It is *Mandūb* (مندوب) recommended, when the wife is not fulfilling the essential duty of Allah (SWT) imposed upon her, or if she happens to be unchaste.
5. It *Maḥzūr* (محظور) forbidden, when it is given during the days of her monthly periods.<sup>17</sup>

***N.J. Coulson also mentioned in this regard:***

The ideal code of behaviour which is the *Sharī'ah* has in fact a much wider scope and purpose than a simple legal system in the Western sense of the term. It is also a composite science of law and morality, whose exponents (*fuqāhā* sing *faqīh*) are the guardians of the Islamic conscience.

Hence all acts and relationships are measured by a scale of moral evaluation. On the positive side of a central category of acts which are permissible or indifferent (*mubāḥ*) are firstly acts which are recommended (*mandūb*) where performance brings reward from Allah (SWT) but omission does not entail punishment. Secondly acts which are obligatory (*wājib*); On the negative side of the scale are firstly acts which are reprehensible (*makrūh*) where omission brings reward but commission does not entail punishment and secondly acts which are prohibited outright (*ḥarām*).<sup>17b</sup>

It appears that the procedures, rules and regulations adopted by the *Sharī'ah* are sympathetic and realistic and attach great importance to the happiness of both the spouses. Every attempt has been made to maintain a marriage tie, but once it is established that a marriage has proved a failure, the husband and wife being unable to live happily together and the very objectives of marriage are defeated so that it becomes a mere farce, then the continuation of such a marriage is no longer considered desirable.

This study is related with the "three divorces at one instance with special reference to the *Fatāwā* of Ibn Taymiyyah". The scope of this thesis is too limited to have a full academic discussion on the subject of divorce in Islam. The jurists are of different opinions on this legal issue. During the life time of the Prophet (*saws*), his Companions and their followers were unanimous on the procedural and behavioural aspect of divorce especially with regard to frequent and multiple utterances at one time. Several pronouncements of divorce close together were considered only one divorce in action and the same practice was followed during the time of the first Caliph and two or three years of the second Caliph, 'Umar ibn al-Khaṭṭāb.

Considering the frequent misuse of the privilege of divorce the second Caliph 'Umar promulgated the legislation as a chastisement to the person, who divorced his wife three

or more times at one instance, will be considered three divorces without further scope to take his wife back. The four famous *Sunnī* jurists namely (1) the Imām Abū Ḥanīfah (d. 150AH), (2) the Imām Mālik (d.149AH), (3) the Imām Moḥammad Idris al-Shāfi‘ī (d.179AH) and (4) the Imām Aḥmad ibn Ḥanbal (d.241AH) accepted and agreed with the decision of the Calip ‘Umar

The majority of jurists termed the triple utterance in one instance as an innovated divorce. In general the jurists appear to have expressed different opinions on particular points. The reasons for this difference of opinion among the jurists are two, which are as follows:

- (i) One group of Muslim jurists considers that a verse of the *Qur’ān* or a *Ḥadīth* (tradition of the Prophet Muḥammad saws) is to be interpreted literally, but the other group prefers to look into the underlying idea and to apply the basic principle according to the changed conditions and to meet the requirements of their own times. They consider that the spirit of a rule cannot be changed, but its application changes with time, environment, circumstances, conditions etc. It is obvious that these two modes of interpretation will result in a difference in the application of the rule though there is no difference in the basic rule applied by them.
- (ii) The other group differs in the application of a certain rule of law. Thus, some jurists hold that a rule should be followed and applied strictly so that people should not take undue advantage in any way and may not lightly ignore it and commit a breach of it.<sup>18</sup>

In reality there is no real difference in the basic rule applied by the jurists, but the difference arises out of the process of application of a rule. As the basic rule in each case is generally the same, it is open to adopt such interpretation of law as meets the needs and requirements of the times.

The Imām ibn al Qayyim has rightly explained that the *Sharī‘ah* is based on justice and wisdom. It is meant for the worldly and spiritual benefit of the people, and means for complete justice for all and absolute kindness and wisdom. Therefore, we cannot imagine a code of law of the *Sharī‘ah* in which there is cruelty instead of justice, hardship in place

of leniency, loss instead of advantage and foolishness in place of reason. He stresses that law changes with the change of environment, time, place, financial conditions and customs of the people and that misunderstanding arises among many people due to their ignorance of the relation between human society and the law, which has constricted the scope of Islamic *Sharī'ah*.<sup>19</sup>

The juristic difference of opinions of the four *Sunnī* Imāms will be taken up for discussion in the ensuing paragraphs. The main view point of the Imām ibn Taymiyyah will be discussed in the light of the translation of his *fatāwā* in the second chapter.

### ***DEFINITION OF DIVORCE:***

The literal meaning of the word *Ṭalāq* is to separate. Its root is *ṭalqun* from which the word *Itlāq* has been derived. The meaning of *Itlāq* is freedom.

In the *Sharī'ah* *ṭalāq* has been defined as terminating the bond of the marriage contract with explicit or implied words.<sup>20</sup>

***N.J. Culson in his book "A History of Islamic Law" has stated about divorce in Islam :-***

*Ṭalāq* is classified by the Sunnites, according to the circumstances in which it is pronounced, as either "approved" (*ṭalāq al-sunnah*) or "disapproved" (*ṭalāq al bid'ah*).

*Ṭalāq al Sunnah* may take the form either of a single pronouncement which is revocable by the husband until the expiry of the wife's *'Iddah*, or of one pronouncement of *ṭalāq* followed by two further confirmatory pronouncement in successive months. When divorce becomes irrevocable on the third pronouncement.

*Ṭalāq al bid'ah* (Innovation divorce) on the other hand, primarily designates forms of pronouncement which are immediately irrevocable, such as where a single

pronouncement is expressly declared to be final or where three divorces are pronounced at the same time. But in order to qualify as "approved divorce" a pronouncement should be made in a wife's period of "purity" (*ṭuhr*). So, when she is not menstruating during which he has no sexual relations with her, and failure to deserve these attendant conditions will render the pronouncement "disapproved".

In sunnite Islam the distinction between these two forms of *Ṭalāq* is a purely moral one, for both types are equally valid and effective in law.<sup>21</sup>

The famous Hanafī jurist - Kamāl al-Dīn ibn Ḥumām - has defined divorce in his book *Fath al-Qadīr* that divorce is an act of terminating the bond which begun by the marriage contract through expressing or implying words or with any other means, for example, a decree of a Qāḍī.<sup>22</sup>

*Al-Midani 'Abd al Ghani has defined divorce as:*

"Terminating instantly or consequently the bond of marital agreement with explicit words".<sup>23</sup>

*Shaykh 'alā al-Dīn al-Haskāfī has defined it, as:*

"Divorce, according to Islamic law, is terminating the tie of marriage instantaneously through irrevocable divorce or consequently through revocable divorce with explicit word".<sup>24</sup>

Maḥmūd al-Nasafī in his book *Kanz al-Daqā'iq*, Ibrahīm ibn Muḥammad al-Ḥalabī in his book *Multaqā al-Abḥur* and Aḥmad ibn 'Alī ibn al-Sa'atī author of *Majma' al- Baḥrayn* state that:

"Terminating the established bond of marriage is called divorce".<sup>25</sup>

### ***Other Schools of Law:***

The above definitions of divorce are those laid down in the Ḥanafī Fiqh books. Similarly, other schools of law also defined divorce. These definitions differ somewhat from those of the Ḥanafī school of law.

A Mālikī jurist Muḥammad ibn ‘Abd al Rahman al-Maghribī (d. 954 A.H.), wrote:  
in his book *Mawāhil al-Jalīl*:

"The divorce is a judicial procedure which prohibits the right of a husband's conjugal enjoyment with his wife".<sup>26</sup>

Al-Khatīb Muḥammad al- Sharbīnī a Shafī‘ī jurist has defined divorce in the following words:

"Terminating of marriage contract with the specific word Ṭalāq or similar to it."<sup>27</sup>

According to al-Maqdisī a Ḥanbalī jurist (d. 968 A.H.):

"The divorce is either the termination of the bond of the marriage or part of it".<sup>28</sup>

All the above mentioned definitions, though legally genuine are not so comprehensive to encompass all the elements which are included in the earlier definitions of divorce.

Furthermore, the definitions which are provided in the various celebrated books of Islamic jurisprudence most of those cannot be regarded as comprehensive. As these are brief and do not cover all legal aspect.

### ***Classification of Divorce:***

#### ***1. There are two forms of Divorce:***

(i) *Ṭalāq al-Sunnah* (Divorce according to the method indicated in the traditions of the prophet (*saws*)).

(ii) *Ṭalāq al- Bid‘ah* (Innovation divorce), which has not applied according to the method indicated in the traditions of the Prophet (*s.a. ws.*).

## *2. The Kinds and effects of divorce:*

- (i) Revocable divorce
- (ii) Irrevocable divorce
- (iii) Absolute irrevocable divorce.<sup>29</sup>

*According to Hanafi school of thought there are two modes of pronouncing Ṭalāq al-Sunnah.*

- (i). *Ṭalāq al-Aḥsan* (Most approved form of divorce)
- (ii). *Ṭalāq al-Ḥasan* (Proper form of divorce)<sup>30</sup>

(i). *Ṭalāq al-Aḥsan*: In the case of this divorce, one single revocable divorce is pronounced by a husband, who has already consummated the marriage, during the period in which the wife is free of menstruation and when she has not been cohabited with the husband, and left her to complete her *ʿiddah* (the prescribed waiting period). If she is pregnant, until delivery.<sup>31</sup>

*Ṭalāq al-Aḥsan* is based on the narrative of Ibrahim *Nakhʿī* stating that, the companions of the Prophet (*saws*) have been approved of the divorce which was pronounced once to the wife, and thereafter she left until she completed three monthly periods, if she menstruates, otherwise three months, if she is pregnant then until delivery.<sup>32</sup>

It has been narrated in the *Muwattāʿ* of Imām Muḥammad that *Ṭalāq al-Sunnah* is the *Ṭalāq* which the husband pronounces to his wife in the state of purity, keeping in mind her waiting period. Without having sexual intercourse during this period. This procedure has been accepted by the Imām Abū Ḥanīfah and his followers.<sup>33</sup>

(ii) *Ṭalāq al-Ḥasan* : Is the second approved form of divorce through which a husband, who has already consummated the marriage, pronounces one revocable divorce during each of three successive periods in which the wife, free from menstruation, and she has not been cohabited.<sup>34</sup> There is no disagreement about *Ṭalāq al-Aḥsan* being a divorce in

accordance with the method indicated in the traditions of the Prophet (*saws*). The Ḥanafī base their formulation of law on the verse of the *Qur'ān*, “فطلقوا هن لعنتهن” i.e., “that you divorce them at their term of probation”.<sup>35</sup> That is, three divorces are to be pronounced in three period of purity. The Ḥanafīs, in support of their interpretation of the verse, cite the incident of ‘Abdullah ibn ‘Umar. He divorced his wife in the state of her menstruation. ‘Umar consulted the Prophet (*saws*) about the action of his son. The Prophet expressing his anger said, “Abdullah has contravened the *Sunnah* which was ordained by Allah (SWT)” and added, “ask him to bring her back”. In other words, proper divorce is that which compressing of one pronouncement of *Ṭalāq* in each period of purity.<sup>36</sup>

#### ***View point of the Imām Mālik:***

According to the Imām Mālik, to pronounce one divorce in each of the period of purity, (the Ḥasan procedure), however, is also an innovation. Pronouncement of one divorce by the husband is the approved divorce, according to the Prophet's traditions. because divorce, as a matter of fact, is prohibited. It is permissible only in the case of necessity of getting rid of the wife, and that purpose is served by the pronouncement of one divorce only.<sup>37</sup> The Imām Mālik explained that the divorce, according to the traditions, is that which is pronounced revocably once by the husband to his wife during the period of her purity in which he has not cohabited with her. She is left alone during her ‘*iddah* (waiting period) of three menstruations, and during this period no further divorce is required to be pronounced. The basis of his assertion is that the divorce, according to the *Sunnah*, is that which is pronounced for the fulfilment of a specific purpose. This purpose is already attained by the pronouncement of one divorce. Hence, the pronouncements of the second and the third divorce in the second and the third periods of purity are not only unnecessary but abominable. The pronouncement of all the divorces at a same time, are detestable, as the first divorce has taken effect, the second and the third are unnecessary.<sup>38</sup>

#### ***View Points of the Imām al-Shafi‘ī:***

The pronouncement of three divorces at a time, according to the Imām al-Shafi‘ī is also in accordance with *Ṭalāq al-Sunnah*. Whereas the pronouncement of three divorces at a time, according to Ḥanafīs and Imām Mālik, cannot be said to be *Ṭalāq al-Sunnah*. The

Imām Shafī'ī argued on the basis of a tradition of *Mulā'anah* which took place in front of the Prophet (saws) as reported in the *Sunan* Abū Dāwūd (d. 275 A.H.):

عن ابن شهاب أن سهل بن سعد الساعدي أخبره أن عويمر بن أشقر العجلاني إلى آخر الحديث وفيه؛ فأقبل عويمر حتى أتى رسول الله صلى الله عليه وسلم وهو في وسط الناس فقال يا رسول الله أرايت رجلا وجد مع امرأته رجلا أيقنته الحديث<sup>a</sup>

"That 'Uwaymir ibn Ashqar al 'ajlanī after imprecating his wife pronounced three divorces to her in the presence of the Prophet (saws). If the three divorces were not *Sunnah*, the Prophet (saws) would not have maintained silence. He must have, then and there, told 'ajlanī that this was not the proper way of pronouncing divorce."

The Imām Mālik, in replying to the matter says that, 'ajlanī had pronounced three divorces after imprecating his wife. The imprecation itself had made the wife irrevocably divorced; therefore, the pronouncement of divorces thereafter were meaningless"<sup>39</sup>

A renowned Ḥanāfī jurist the Imām Kasānī construes this averment of the Imām Shafī'ī that, he neither called it *Ṭalāq al-Sunnah* nor *Ṭalāq al-Bid'ah* as stated by him (the Imām Shafī'ī):

"وقال الشافعي لا أعرف في عدد الطلاق سنة ولا بدعة بل مباح"

"I am not aware of the number of divorce, whether these are based on *Sunnah* or *bid'ah* (but to me) these are permissible".<sup>40</sup>

The innovated divorce is also called irregular divorce. The practice such a divorce is regarded as sinful. There are two kinds of irregular divorce:

- (a) As regard time
- (b) As regard number

#### (a) As regard of times:-

If during the period of menstruation of a woman a revocable divorce is pronounced, then it will be considered as an innovated divorce.

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(1) أخرجه البخاري في كتاب الطلاق\باب اللعان ومن طلق بعد اللعان رقم 5308  
وباب من جوز الطلاق الثلاث لقول الله تعالى الطلاق مرتان رقم 5259  
(2) ومسلم في كتاب اللعان رقم 1-2-3

It has been held incumbent in such matters upon the husband to have recourse to his wife. Burhān al Dīn Marghinānī has explained the reason for such cases in al-Hidayah, and said that the intrinsic meaning of the injunction regarding divorce, as contained therein, may be duly observed and avoided from committing any sin as far as possible. On the other hand the wife also, may not suffer from the agony of observing the term of probation longer than usual.<sup>41</sup> The event of divorce which has occurred in the menstruation, the necessity of having recourse to the wife is supported by the authentic ḥadith that when ‘abdullah ibn ‘Umar divorced his wife during menstruation and ‘Umar consulted the Prophet (saws) about it, he replied, "Ask him (‘Abdullah ibn ‘Umar) to have recourse to his wife".<sup>42</sup>

**(b) As regard of number:-**

It is based on the number of divorces, when the husband has pronounced three *Ṭalāq* either at the same time or on different occasions during the same *ṭuhr*, as when the husband says, "You are divorced thrice", or "You are divorced", "divorced", "divorced", it is *Ṭalāq al bid‘ah* it will be effective and considered irrevocable.<sup>43</sup>

***Revocable divorce:-***

*Ṭalāq al Raj‘ī* (revocable divorce) is a mode of pronouncement in which the separation occurs after the end of the term of probation and the husband without contracting marriage has the right of having recourse to his wife during her term of probation. When a person pronounced one or two divorces to his wife and he does not use the word *bā’* in (irrevocable) with the word *Ṭalāq* as he says to his wife, "I divorce you", it will be considered as a revocable divorce and the husband may have recourse to his wife within her period of probation, whether she is agree with it or not.

A renowned Ḥanafī Jurist Imām ‘Alā al Dīn al-Kasānī (d 587 A.H.) asserted:

"(And similarly) he (husband) has the authority to recourse with her either with or without her consent".

### ***Irrevocable divorce:***

*Irrevocable al-Bā'in is also sub-divided into al-Ṣughrā (Minor status) and al-Kubrā (Major status) :-*

**Irrevocable divorce of minor status** (*Ṭalāq al-Bā'in al-Ṣughrā*) is a divorce which take place after the completion of the probation and the marriage contract breaks. The husband cannot have recourse to his wife during her term of probation. But, after the completion of the term of probation, if the parties mutually agree, they may remarry with a new marriage contract. Thus, if a person pronounces one or two divorces to his wife along with the word *Bā'in* (irrevocable), for example if he says, "I divorce you one or two irrevocable divorces", then according to the three schools of jurisprudence, other than the Imām Shāfi'ī's school, the woman shall stand irrevocably divorced and the husband, during her term of probation (*'iddah*), have no privilege of recourse. But the husband may remarry with a new marriage contract with his wife by mutual consent either during or after her *'iddah*.

**Irrevocable divorce of major status** (*Ṭalāq al-Bā'in al-Kubrā*) is that in which the husband cannot re-enter into a marriage contract with his divorced wife unless she married and had intercourse with another person who then divorces her or she becomes a widow. Generally, according to jurists, an irrevocable divorce of major status takes place when the husband at one time or at different times pronounces three divorces by one or more words to his wife.<sup>44</sup>

### ***Divorce during menstruation is effective or not?***

The pronouncement of divorce during menstruation of a woman regard as an impious action. During this period, the *Qur'ān* forbids Muslims husband to establish conjugal relation with their wives. It has natural implications. During this period the husband would not be as close to his wife as he was during the period of purity he might be inclined to save the marital relationship. If it is pronounced during the menstruation period it would increase the *'iddah* (period of probation) unnecessarily for the wife. The term of probation by doing so becomes lengthened, as the menstruation period in which

the divorce is pronounced, is not taken into account. The woman faces unnecessary extra trouble in waiting. But according to all the four schools, namely the Ḥanafī, the Mālikī, the Shāfi‘ī and the Ḥanbalī however, the divorce which is pronounced during menstruation is legally effective.<sup>45</sup>

The pronouncement of three divorces at one time is not only detestable but undermines the *Qur’ānic* injunction, as Allah (SWT) says:

الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان"

*"The divorce is only permissible twice; after that the parties should either hold together on equitable terms or release her with kindness".<sup>46</sup>*

So, when the husband pronounces three divorces at a time then he forfeit the right of revocation.

#### ***How to recourse with the wife:***

The husband has the authority of recourse when he pronounces one or two revocable divorces to his wife, either by words or actions. For such recourse during the period of probation the husband is legally not required either to re-new marriage contract or fix dowry. In this case without her consent, and without fixing any fresh dower he could re-unite the marriage tie with her before the term of probation expires, but once it has expired this right cannot be implemented. Thus, if a husband divorces his wife before the consummation of marriage the wife is not legally required to observe *‘iddah*.<sup>47</sup>

#### ***The term "Ruj‘ah"***

The term *Ruj‘ah* is used for revocation of divorce. *Ruj‘ah* is defined in the *fatāwā ‘Alamgiryyah* as "the restoration of marital status which had been existed before divorce, during probation period (is called *Ruj‘ah*)."<sup>48</sup>

### **Approval of the *Qur'ān*:**

The *Qur'ān* approves the *ruj'ah*, whereupon prescribes the period of *'iddah* and grants a right to the husband for reconciliation:-

فإذا طلقتم النساء فبلغن أجلهن فأمسكوهن بمعروف أو سرحوهن بمعروف"

"When ye divorce women and they fulfil the term of their *'iddah*, either take them back on equitable terms or set them free on equitable terms".<sup>49</sup>

### **The *Qur'ān* mentions the limit of *'iddah*:**

"Divorced women shall wait concerning themselves for three monthly periods".<sup>50</sup>

The *Qur'ān* also sanctions for the husband the right of reconciliation:

"وبعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا"

"And their husbands have the better right to take them back in that period, if they wish for reconciliation".<sup>51</sup>

The word *imsāk* in the above mentioned verse means "restraining the marital tie" It is clearly indicates that the *Qur'ān* intends prolongation of marital life, seeking a lasting marriage proprietorship regarding the wife; it is not restored after it has been lost. The word *Bu'ūl* in the above mentioned verse is the plural of *Ba'l*, which means husband. It indicates the *ruj'ah* can only take place during the *'Iddah*, because the marriage contract end when the *'iddah* expires, the husband does not remain as a *ba'l* because the marriage relationship has ceases.

### ***Example in the Sunnah:-***

If the husband pronounces revocable divorce, he has a right to recourse with his wife during her *'iddah* whether she is in a state of purity or in menstruation or after sexual intercourse. This is supported by an action of the Prophet (saws) when he divorced his

wife Sawdah , by a single divorce, using the word *I'taddī* (اعتدى) i.e., count your 'Iddah. Thereafter, during her probation period he had revoke the divorce. Similarly, he had divorced his wife Hafsah revocably and by sexual intercourse he had recourse to her. In the *Sharī'ah* the existence of the marriage contract continues after divorce as long as the 'iddah has not been fulfilled.<sup>52</sup>

### ***Revocation right:***

The right of revocation exists as long as the wife remains in her period of probation, prescribed by the *Sharī'ah*. If the 'iddah expires, the husband loses his right of recourse. The marriage tie in between them terminates. The husband and wife can remarry with a new marriage contract.

### ***The method of Ruj'ah:***

If the husband desires to have recourse to his wife during her term of probation the popular method is that he should pronounce the word of revocation to his wife like "*Raja'tuki*" (I revoke you) in front of two witnesses, and then he may resume his conjugal relationship. The celebrated Companions ibn Mas'ūd also expressed the same opinion. "The virtuous method of having recourse to his wife is that the husband at the time of oral revocation of divorce must have two witnesses. When he (ibn Mas'ūd) was asked for his adjudication on the action of a person who had sexual intercourse with his divorced wife without oral declaration, he said that the person contravened the *Sunnah* both in pronouncing the divorce and in having recourse to his wife. The proper way was that he should first have made an oral declaration of recourse to the wife in presence of two witnesses and then should have sexual intercourse with her".<sup>53</sup>

In fact, it is the most virtuous method of having recourse to the wife that the husband makes an oral declaration about it, in presence of two witnesses, but the recourse by act is equally valid and effective. If the husband therefore, during the term of probation of his wife kisses her, touches her, or looks at her private parts these acts of having recourse to her shall establish *Ruj'ah* undoubtedly.

As the husband keeps the marriage contract intact by having sexual intercourse with the wife, similarly the aforesaid acts re-affirms that. If the husband looks at other than the private parts of the body of his divorced wife, the same shall not be considered amounting to *Ruj'ah*, for looking at other parts of the body is not exclusively confined to one's wife. The open parts of the body of other women also can be looked at. The same rule is applicable to the principle of the creating prohibition by affinity. The principle is that only such acts exciting corresponding feelings, are accepted as acts of *Ruj'ah* as are exclusively permitted between the husband and wife, the act and passion both being essential.<sup>54</sup>

*Ruj'ah* from the side of the wife : On the same principle Abū Ḥanīfah (d150A.H.) and his disciple Muhammad al Shaibanī (d 189 A.H.) hold that if within the *'iddh* the divorced wife resorts to such acts with corresponding passions as are exclusive between the husband and wife, *Ruj'ah* will be effected. Abū Yusuf (d182 A.H.) however, differs on the ground that it is the husband who has proprietorship of marriage contract. The other two Imams base their view on the matter on the fact that, lust and passion are common to both man and women. They support their opinion by citing the analogy of 'prohibition by affinity' when man and women acting in such lustful manner create the prohibition with equal certainty. In case of acts of intimacy proceeding from the side of the divorced wife, It would be incumbent that the husband accepted that she acted lustfully. If he does not admit so then, *Ruj'ah* will not be established. The admission as above on the husband is so obligatory that it cannot be replaced even by the testimony of two witnesses that the woman acted lustfully.

Consideration for revocation: There is no consideration for revocation of divorce, i.e. having recourse to the wife, during her period of probation, as the marriage tie subsists. For the same reason the consent of the wife, too, is not required for having recourse to her.<sup>55</sup>

The right of 'having recourse to' (the wife) belongs only to the husband, as Allah (SWT) (Allah (SWT)) says: "ويعولنهن أحق بردهن" Their husbands are more entitled to have recourse to them" (Al-Qur'ān ch, Al-Baqarah 2:228).

Revocable divorce and sexual intercourse: Al-Sarakhsi writes that the word "*bu'ūl*" in the above quoted verse means the "husbands". The use of the word "*ba't*", for husband, proves that marriage, after the pronouncement of revocable divorce, still continues. There is, in this verse, a hint also to the effect that the husband after having pronounced a revocable or two revocable divorces may validly have sexual intercourse with the wife during her period of *'iddah*. The rule followed by the Hanafī 'Ulamā' is the same viz. as laid down by Sarakhsi (d. 286 A.H.) that, "the husband after having pronounced a revocable divorce may lawfully have sexual intercourse with his wife during her term of probation" But the desirable method is that the husband should at first have recourse to the wife by oral declaration in the presence of two witnesses and then he may have sexual intercourse with her.

The view of Al-shāfi'ī: According to Al-Shāfi'ī the husband's may have sexual intercourse with his divorced wife lawfully, if he during her term of probation recourse to her by oral declaration first, in the presence of two witnesses. Al-Shafi'ī in support of his point of view, cites the verse, "If they (spouses) intend rectification (Al-Qur'ān Ch, al-Baqarah 2:228). And rectification is possible when there is some defect. He says that the defect arises because of the sexual intercourse being unlawful.<sup>56</sup>

### **Criticism on Shāfi'ī's view:**

The contention of Al-Shāfi'ī in this respect is that, without having recourse to the divorced wife by oral declaration, the sexual intercourse with her is not lawful, because the divorce has its own effect. The Ḥanafī's, however, on this point argue that Allah (SWT) (Allah (SWT)) has called "*Ruj'ah*" (having recourse to ones wife) as "*Imsāk*" (retaining or keeping back). It indicates that marriage contract still subsists unconditionally. When the marriage contract subsists, having sexual intercourse is lawful. As the very meaning of the continuance of marriage contract is that, the husband holds the right of sexual intercourse with his wife lawfully The subsistence of the marriage contract is further supported by the fact that after a revocable divorce, the husband can exercise several kinds of rights over such divorced wife during her term of probation, e.g.

*Zihār, ilā'* and *li'ān*, the last entitling the wife to sue for dissolution of marriage. Beside this, if during the wife's *'iddah* any one of the couple dies, the survivor shall inherit from the other. The husband can also agree to *Khul'a* with the wife. The right of agreeing with *Khul'a* and to exercise other forms of the termination of marriage, can only vest in the husband as long as the marriage contract subsists. This subsistence of the marriage contract is further established (even without oral declaration of *Ruj'ah*). It is quite lawful for the husband to have sexual intercourse with her by itself, recourse is not the reason for the lawfulness of the sexual act. It is apparent that, in recourse it is not necessary either to fix fresh dower or obtain the wife's consent. This confirms the subsistence of the marriage-tie.<sup>57</sup>

A further argument supporting the existence or continuance of *Nikāh* (marriage) after a revocable divorce, is the pronouncement of a second divorce which can also be lawfully made. As the marriage contract continues to remain intact after the second divorce, So, it is bound to be held intact after the first divorce. Indeed, in case of pronouncement of one or two revocable divorces the termination of the marriage contract depends on the fact that, if the husband abstained from the recouring his wife till the expiry of her term of probation (then the marriage contract terminates to a breach).<sup>58</sup>

**Conditional Revocation:** Revocation of divorce cannot be made contingent on some condition nor expression of intention to do so would be of any effect. If the man says that he would have recourse to the wife next day or by a certain time it will have no legal effect.<sup>59</sup>

**Admission of Revocation:** If the husband tells his wife within the period of her *'iddah* that he had revoked the divorce, the words of husband, in the circumstances, shall be believed, because he informs of such an act of his i.e. revocation, at the time when the right of revocation subsists. If the husband tells her after the expiry of the period of probation it shall not be believed, because he speaks of it at the time when he has no subsisting right of revocation. The reason is that such admission can be either true or false. If it is within the period of probation when he has the right of revocation he cannot be presumed to speak falsehood. His statement, therefore, shall be believed. If he makes

the admission after the lapse of the period of probation when he has no right of revocation he may not be speaking the truth. His statement, therefore, shall not be believed. This is on the analogy of the admission made by an agent which binds the principle only when made during a subsisting agency. If, however, the husband after the lapse of the period of probation of his wife says that he had recourse to the wife who supports his statement it shall be believed, because one of the two must be speaking the truth. So when both of them admit the fact of having recourse to, it shall be established, particularly because both agree.<sup>60</sup>

Al-Sarakhsi (d 286 A.H.) says in *Al-Mabsūṭ* that after the lapse of the period of probation of the divorced wife if the husband produces two witnesses to prove the fact that he had revoked the divorce within the period of her probation, then, too, the fact of revocation shall be established, because a fact testified by two witnesses establishes the fact in the same manner as if it has been seen by one's own eye. This is a peculiar situation. Here is a fact which is not accepted on the husband's admission is declared to be proved through witnesses. If the husband's admission of *Ruj'ah* is made after the expiry of *'iddah*, can he or can he not compel the wife to take an oath that *Ruj'ah* took place. According to Abū Ḥanīfah (d 150 A.H.) he cannot but according to his two disciples (Abū yūsuf (d 182 A.H.) Muḥammad al Shaibanī (d 189 A.H.) he can compel the wife, for the oath is in respect of *Ruj'ah*<sup>61</sup>

Revocation and menses : The period of probation of a women having her menses is three successive monthly courses. The man may revoke the divorce in such a case upto the end of her third menstruation. When the divorced wife is free of her third menstruation but has not yet bathed, the husband in that condition may revoke the divorce, provided that her third menstruation be of less than ten days. If the third menstruation be of ten days, the husband in that condition of his wife cannot revoke the divorce as the longest period of menses is ten days. In menstruation of less than ten days it cannot be said of certain that it has ended. There is possibility of its re-starting. Hence, the remaining period of the ten days shall be counted as the period of probation and revocation of divorce therein shall be valid. The Companions of the Holy Prophet say that the husband has the right of revocation of divorce till she has not bathed or is not able to say her prayers and it is

obvious that she can say her prayers only when she has bathed. If the wife, however, delays in her bathing to such an extent that the nearest prayer time passes away, according to Ḥanafīs, the husband, then, has no right of revocation. According to Zufar (d 158 A.H.), another illustrious pupil of Abū Ḥanīfah, however, the husband, in such an event, too, has the right of revocation. He acts on prophet's Companions' saying, (ما لم تحل لها الصلاة) i.e. the husband can have recourse to his wife, "Till she will not lawfully be able to perform of the prayer". According to Zufar, (d. 158 A.H.) the husband's right of revocation, in such event, remains intact because prior to her bathing there still can be assumed the possibility of her menstruation re-starting. But the Hanafīs, in general, argue that if the time of offering prayers due passes away, her probation ends. If the matter examined deeply it would appear that the question of menses not re-starting after bathing is as speculative as its continuance before bathing. Consequently bathing itself is of no account and the end of probation will depend upon the passing of the time of prayer due at the end of the (longest possible) period of menses of the lady. To the present writer, the opinion of the Prophet's Companions points to the time when the offering of prayers becomes incumbent upon the women. Let it be supposed that the wife in the hope of her husband having recourse to her does not bathe for a month. Shall the husband then have the right to having recourse to her till that time? Certainly the answer would be 'No'<sup>62</sup>

Revocation of divorce without knowledge of the wife: If divorce as well as revocation be without informing the wife of the same, the marriage remains intact, though the husband, transgressing the practice of ibn 'Umar in not having two witnesses for revocation, will contravene Prophet's *sunnah*.<sup>63</sup>

Revocable divorce and inheritance: If a person revocably divorces his wife and during her term of probation one of the spouses dies, the one surviving shall inherit the other, as the marriage relationship exists till the termination of the period of probation. In this circumstance, there is no difference between the pronouncement of one or two divorces, but they must be necessarily revocable.<sup>64</sup>

Retraction of irrevocable divorce : If a person pronounces an irrevocable divorce to his wife or gives *Khul'a* to his wife as desired by her, or effects divorce by *Ilā* or a wife,

authorised to divorce herself irrevocably, pronounces an irrevocable divorce to herself as her husband's delegate and observes her term of probation, in such case the husband cannot have recourse to his wife, as the same would contravene the manifest directive of the Holy Qur'ān and would as well be against the principles of Qiyās. Revocation on the basis of Qur'ānic injunction is proved in the case of a revocable divorce, not in case of irrevocable divorce. The argument is that if the husband pronounces revocable divorce to his wife, the marriage proprietorship continues and the husband can have recourse to his wife within her term of probation; whereas when the husband pronounces irrevocable divorce, the marriage proprietorship ends and the relationship of husband and wife under the marriage contract terminates and the husband cannot have recourse to the wife. Similarly, in case of *Khul'a* too, as the wife obtains divorce on payment of consideration and proprietorship under marriage contract terminates forthwith, the husband cannot have recourse to the wife.<sup>65</sup>

Revocation of divorce by option: Regarding the nature of separation by the exercise of the option of divorce by the wife, under the delegated authority, it is quite plain that the wife shall like to effect separation irrevocably. It is also reasonable that the exercise of the power is to be linked with the condition of revocability or irrevocability at the time of its delegation. Yet, in the absence of any such specific mention, the wife shall be entitled to effect separation either revocably or irrevocably. The modern trends in Islamic law are in favour of the revocability of divorce. The present writer is also inclined to hold the view that the divorce pronounced by the wife or under her delegated authority, is deemed to be in the nature of a revocable divorce but its revocation shall be with her consent and her will. The pronouncement of divorce by the wife under option of divorce, as agreed by the husband, is in the exercise of her own right and she alone has the right to revoke the divorce pronounced by her, if she has not exercised the option irrevocably.<sup>66</sup>

***The Jurists fall into two groups regarding the presence of witness to the Ruj'ah:***

*The first group from the Shafī'ī school of thought they necessitate witnesses for Ruj'ah - it is based on one of the two opinions of the Imām Shafī'ī, which is supported by the Qur'ān:*

فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف وأشهدوا ذوي عدل منكم"

*"Thus when they fulfil their term appointed either take them back on equitable terms or part with them on equitable terms, And take for witness two persons from among you".<sup>67</sup>*

They argued that, the clear commandment of Allah (SWT) *"take for witness"* is a command which necessitates keeping of the witnesses. The offer (الإيجاب) and acceptance (القبول) of a marriage contract legally requires two witnesses and this procedure grants satisfaction to a husband for a marital relationship. Similarly, in the *ruj'ah* two witnesses consolidate the act of *ruj'ah*.

The second group supported by Abū Bakr, the Imām Mālik and the Imām Abū Ḥanīfa who opined that in the case of *ruj'ah* the presence of two witnesses are not essential. As the husband does not require any acceptance from the wife in the case of *ruj'ah* as he was required it in the case of marriage.

Here is a notable point which I have accross with that, according to al Hidāyah "(Fiqh al Ḥanafī, the author, Burhan al Dīn al Murghinānī d. 593 A.H.) the presence of witnesses is an essential condition of *ruj'ah* under the Mālikī law. But this view does not seem to be correct, as Ibn Qudāmah al Maqdisī (d. 620 A.H.), (the author of al Mughnī) states that under the Malikī law the presence of witnesses at the time of *ruj'ah* by speech is not an essential condition."<sup>68</sup>

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## SECTION TWO

### *Contemporary Opinions On the subject of three Divorces in one instance*

In this section, two famous contemporary opinions of the ‘Ulamā will be discussed. First of all we will discuss the verdict of, the renowned Islamic Organisation of Saudi Arabia "Dār-al-iftā", after an evidential and comprehensive debate of eminent scholars on the subject "Three divorces in one instance", they have issued their *fatāwā* in "*Mujallatu al Buḥūth al Islāmiyyah*" the popular quarterly Arabic magazine which has been published in 1397 AH 1977 AD. Vol-1, Issue-3. It is very long and informative, but because the scope of this dissertation is limited I have translated their verdict as a quotation.

Secondly, the very recent views of leading Ḥanafī scholars of India will be examined. A group of Ahl-e-Ḥadīth scholars in India attempted to re-interpret the triple pronouncement of divorce in the light of ibn Taymiyyah's view. Considering the consequential juridical problems, the majority of Ḥanafī scholars assembled under the auspices of Jamiat-i-‘Ulamā’-i-Hind, Delhi, and after a very lengthy discussion pronounced their unanimous opinions on the issue of triple pronouncement. We are rendering the aforesaid views from Urdu to English as contained in the monthly Dīn Mobīn (published from Bhopal, India, No.8, August 93.)

### ISSUE:-

*The legal implications of three Ṭalāq (divorces) in one instance.*

*(Translated from the Arabic text)*

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## ***The Verdict***

**"The legal implications of three divorces in one instance" of Dār-al-Iftā, Riyadh, K.S.A.**

This verdict was issued after consulting the study (al baḥṭh) presented by the general secretariat of "Hai'at Kibār al ‘ulamā (Committee of Eminent Islamic Scholars) which has been prepared by the "Permanent Board of Research and Iftā" on the subject of "three divorces in one instance".

After a comprehensive debate on the subject, taking into account all opinions expressed therein, the Committee by a majority of votes, has decided that such a divorce is effective i.e. the declaration of three divorces in one instance will be established as three. This is justified by the following arguments:-

*(i). The command of Allah (SWT):- يا أيها النبي إذا طلقتم النساء فطلقوهن لعدتهن- "O Prophet when you divorce women, divorce them at their prescribed periods"<sup>1</sup> it continues up to تلك حدود الله ومن يتعدى حدود الله فقد ظلم نفسه لا تدري لعل الله يحدث بعد ذلك أمرا' "Those are the limits set by Allah (SWT), and any one who transgresses the limits of Allah (SWT) does verily wrong his (own) soul : You don't know if perchance Allah (SWT) will bring about thereafter some new situation".<sup>2</sup>*

The divorce which Allah (SWT) has decreed is the one that is followed by an "iddah", then the husband has the choice between keeping his wife out of equity or

releasing her out of kindness. This rule rejects the implementation of three divorces in the 'iddah (prescribed period) before ruj'ah takes place.

If three divorces have been implemented before ruj'ah took place then it would not be divorce due to 'iddah. But the significance of this verse is in pointing out the effectiveness of the divorce even without observing the 'iddah. If it does not come into effect then the husband should not become an oppressor by implementing the divorce without allowing the time of 'iddah. The possibility for atonement is not closed to him when he needs a way out, as indicated in the above mentioned verse. *"And for those who fear Allah (SWT), He (ever) prepares a way out"*. and this refers to the "ruj'ah" as it was interpreted by ibn 'Abbās

حسبما تأوله ابن عباس رضى الله عنه حين قال للسانل الذي سأله وقد طلق امرأته ثلاثا أن الله تعالى يقول: ( ومن يتق الله يجعل له مخرجا ) وإنك لم تتق الله فلم أجد لك مخرجا عصيت ربك وبانت منك إمرأتك<sup>a</sup>.

when he replied to the enquirer, who had divorced his wife thrice in one instance. Verily Allah (SWT) says: *"And for those who fear Allah (SWT), He (ever) prepares a way out for him"*. It is evident that you didn't fear Allah (SWT), therefore, I couldn't find any way out for you, you disobeyed your Lord, consequently your wife stands separated from you.

There is no disagreement among scholars that, in the case of one who divorces his wife thrice in one instance, has wronged himself, because he has not provided an opportunity to observe the "waiting period".

If it is argued that the legal effect of executing three *ṭalāq* in one instance would be treated only one in its legal effect then, where is the fearfulness referred to by the command of Allah (SWT), through which Allah (SWT) grants the way out and bestows ease. Moreover what is the punishment of this oppressor who has wronged himself and transgressed the limits of Allah (SWT) when he divorced his wife without providing for the opportunity of reconciliation? Allah (SWT) has prescribed punishment for someone who utters wrongly, although such utterance may not by human reasoning call for punishment, such as the expiation prescribed

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<sup>a</sup> أخرجه أبو داود في كتاب الطلاق \ باب نسخ المراجعة بعد النطليقات الثلاث رقم 2197

as a punishment for one who divorced his wife by *Zihār*. Similarly Allah (SWT) punishes one who divorces his wife three times in one instance by closing the way out for him, because he has no fear of Allah (SWT) while committing such an injustice to himself and had transgressed the limits of Allah (SWT)(*SWT*).

ان ما فى الصحيحين عن عائشة رضى الله عنها أن رجلا طلق امرأته ثلاثا فتزوجت فطلقت فسنل النبي صلى الله عليه (ii) وسلم: أتحل للأول؟ قال: لا حتى يدوق عسيلتها كما داق الأول<sup>a</sup>.

It is mentioned in the Bukhari and in the Muslim that, ‘Ā’isha reports, that a man divorced his wife thrice in one instance. His wife remarried, then she was divorced. The Prophet (saws) was asked if it was lawful for the first husband to remarry her. He replied, "Not until the second marriage has been consummated as did the previous marriage with the first husband".

The Imām Bukhārī mentioned this tradition in the section of "Who was permitted three divorces" but he refused to considering it as evidential quotation as it report to a brief story of Rufa‘ah ibn Wahab, which Imām Muslim mentioned in some of his narrations, whereby her husband divorced her the last three divorces. Hāfiẓ ibn Ḥajar refuted this view on the ground that this Ḥadīth is a short story of Rufa‘ah ibn Wahab, saying that someone else other than Rufa‘h had faced his wife with the incident of that of Rufa‘ah. So, there is no dispute that these are different cases. Both Rufa‘ah Qaraẓī and Rufa‘ah Naḍarī happened to divorce their respective wives. Then ‘Abd al Raḥmān ibn Zubair married both of them and divorced them before consummation. Hāfiẓ ibn Ḥajar said, after giving this explanation, that considering Rufa‘ah ibn Sama‘ūl as Rufa‘ah ibn Wahab and treating both of them as one person is a mistake.

Considering the above mentioned Ḥadīth which was reported by ‘Ā’isha and the statement of ibn Abbās, as reported by Ṭawūs, that at the time of the Prophet (saws), during the Khilāfah of Abū Bakr and during the early period of the Khilāfah of ‘Ūmar three divorces in one instance was regarded as one in it's legal effect, we

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أخرجه بلفظه: (1) البخاري في كتاب الطلاق \ باب من جوز الطلاق الثلاث لقول الله تعالى: الطلاق مرتان رقم 5261 وأخرجه بالفاظ متقاربة<sup>a</sup>  
(1) البخاري في كتاب الطلاق \ باب منة جوز الطلاق الثلاث<sup>٥</sup> لقوله تعالى: الطلاق مرتان رقم 5260 5265  
- وفي كتاب الشهادات \ باب شهادة المختبني رقم 2639 ٥ \ باب اذا طلقها ثلاثا ثم تزوجت بعد العدة زوجها غيره فلم يمسه رقم 5317  
- وفي كتاب اللباس \ باب الإزار المهذب رقم 5792 - وفي كتاب الأدب \ باب التبتيم والضحك رقم 6084

find that there are two possibilities: what was reported by ‘Ā’isha and by Ṭāwūs meant that the three divorces in one instance are either implemented together or separately. If these (three divorces) are implemented together, then the Ḥadīth reported by ‘Ā’isha, which was narrated by both the Imām Bukhārī and Muslim takes priority. Moreover it is clearly described that the three divorces made her unlawful to her husband and she remained divorced until second marriage. If they meant three distinct divorces, then what was reported by Ṭāwūs that the "three divorces in one instance would be one in effect" would not decide the matter. However, the Ḥadīth which was reported by ‘Ā’isha takes it as evidence for distinct divorces, and Ṭāwūs's ḥadīth is for at a time implementing divorces there is no reason for it nor any evidence which specifies it.

(iii). Scholars of the status of ibn Qudāmah (d.744 A.H./ 1343A.D.) (may Allah (SWT) bless his soul) argued that, marriage is like a property, one may dispose of it either in parts or as a whole like all property. Al-Qurṭubī (may Allah (SWT) bless his soul) argues that the argument of the majority of scholars in considering the effectiveness of a divorce, which itself carries the weight of proof, is that a woman who has been divorced thrice in one instance will not be able to remarry her ex-husband till she marries someone else; and that there is no difference between multiple and singular separate implementation of a divorce from both the linguistic and legal (juristic) point of view. Furthermore, the conceptual differences between marriage, the freeing of slaves and the acceptance of gifts etc. are (certainly) annulled by the Law Giver (Allah (SWT)). So, if the master says in a single word that he puts three (women) in your matrimonial tie, the marriage relation has been thus established. Similarly if he is pointing to each of the brides separately, marriage ties are also established, it applies to in the freeing of slaves and the acceptance of gifts etc. The point is that who ever divorces thrice, hence exceeding the limit of *Shari’ah*, his punishment shall remain confined to the implementation of what he has pronounced.

(iv). This justification is based on the consensus of scholars, although they disagree in the case of the implementation of a Joker's divorce which the ‘*Ummah*

has accepted as being effective whenever pronounced, their evidential proof being the tradition of the Prophet (saws)

حديث أبي هريرة وغيره ( مما تلقته الأمة بالقبول ) "من أن ثلاثا جدهن جد وهزلهن جد: الطلاق والنكاح والرجعة"<sup>a</sup>

Reported by Abū Hurayrah and others that, "There are three things which should be taken seriously, whether spoken about lightly (as in a joke) or seriously: Divorce, marriage and *ruj'ah*". This is so, because the person who pronounces divorce even when not being serious must have thought of it in the first instance, and thus has meant it. As Shaykh al-Islam ibn Taymiyyah (may Allah (SWT) shower His mercy on his soul), explains if a man makes haste to pronounce divorce without consciously meaning it, he should not be held responsible for his words; but if he means it, even if he delivers it in a joking manner, he should be taken upon his words. Moreover, if divorce is pronounced more than once, it would carry the full meaning of divorce. And counting three divorces as one, or the implementation of some number of it without the rest, is valid, the proof being the *Ḥadīth* of the Prophet (saws) which was narrated by ibn ‘Abbās.

(v). The opinion that divorce pronounced thrice in one instance shall be considered as three divorces in effect was reported by a great number of scholars, and amongst those who had administered it were ‘Umar, ‘Uthmān, ‘Alī, ibn ‘Abbās, ibn ‘Umar, ibn Mas‘ūd and some Companions of the Prophet (saws), and this was confirmed by the Imāms of the four prominent schools of jurisprudence (*fiqh*): the Imām Abū Ḥanīfa, the Imām Mālik, the Imām Shafī‘ī and the Imām Aḥmad (May Allah (SWT) be pleased with them). It is also the opinion of ibn Abī Layla and Awzā‘ī. Moreover, ibn ‘Abd al-Hādī reported ibn Rajab as saying: "I know that it was neither confirmed by the practice of the Prophet's (saws) Companions nor that of their followers, and the clear legal decisions in *ḥalāl* (permissibles) and *ḥarām* (forbidden) of early scholars, that three divorces in one instance, after the consummation of marriage, counted as only one".

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(1) أخرجه أبو داود في كتاب الطلاق \ باب في الطلاق على الهزال رقم 2194 (2) والترمذي في كتاب الطلاق اللعان \ باب ما جاء في الجدّ والهزل في <sup>a</sup> الطلاق رقم 1184 وقال الترمذي: حسن غريب (3) وابن ماجه في كتاب الطلاق \ باب من طلق أو نكح أو راجع لآعبا رقم 2039

Imām ibn Taymiyyah had reported in this regard in his famous *Fatāwā* several opinions of scholars, one of which was:- it is a forbidden divorce but nevertheless effective. This is the opinion of the Imām Mālik, the Imām Abū Ḥanīfa and the Imām Aḥmad in his latest view. Most of his followers have chosen this opinion, and this opinion is reported to be accepted by many early scholars, including the Companions of the Prophet (saws) and their followers.

Imām ibn al Qayyim had stated: Scholars are divided into four groups in the matter of the "Implementation of three divorces in a single instance"

According to One group: it is effective, which is the opinion of the Imāms of the four schools of *fiqh*, many Companions of the Prophet (saws) and the majority of their followers.

Imām Qurṭubī said, "Our scholars and *Muftīs* unanimously necessitated the implementation of three divorces in a single instance. It is also the opinion of the majority of early scholars.

Ibn Al-‘Arabī stated in his book "al-Nāsikh wa-l Mansūkh", which was reported by ibn al Qayyim (may Allah (SWT) grant His mercy on him) in his book called Tahdhīb al-Sunan that Allah (SWT) Almighty commanded: "*Divorce is twice*".<sup>1</sup>

There were certain groups of Muslims in the later period who claimed that a divorce pronounced thrice in one instance is not enforceable as three ṭalāq. They consider it as one in effect, referring to the opinion of early scholars and asserted that ‘Alī, Zubair, ‘Abd al-Rahman ibn ‘Awf, ibn Mas‘ūd and ibn ‘Abbās agreed on this report. However, a *Ḥadīth* in this matter reported by Ḥajjāj ibn Arṭāt considered to be weak in status cannot be used as an authority at all. "And what they are referring to as the opinions are the Companions of the Prophet (saws) ibn Al-‘Arabī said that to establish their argument is a glaring lie and it has no relationship whatsoever with the

Qur'ān nor any authentic reported *Ḥadīth* from any traditionist. Ibn Al-'Arabī continued to say that the *Ḥadīth* which Ḥajjāj ibn Artāt reported was not acceptable to the Muslim 'Ummah nor to any scholars of *Ḥadīth*.

(vi). Numerous references have been made to the narration of ibn 'Abbās which relates the following, "At the time of the Prophet (saws), during the Khilāfah of 'Abū Bakr and during the early period of 'Umar, three divorces in one instance were deemed to be one in effect", continued to the end of the report. And they have considered it a weak *Ḥadīth*. One can defend this opinion by the following arguments:

(a). It has been claimed that the above mentioned *Ḥadīth* is confused both in its Sanad (chain of narration) and Matan. The weakness of the Sanad was said to be that it was once reported by Ṭāwūs who heard it from ibn 'Abbās and at another time by Abū al-Sahbā who heard it from Ṭāwūs who reported it from ibn 'Abbās, and yet at another time by Abū-al Jawzā' who heard it from ibn 'Abbās.

Pertaining to its weakness in the *matan* this is due to the fact that Abū al-Sahbā' once says, "Do you know that if a man pronounced three divorces in one instance before consummation of the marriage, then they are considering it as only one", and at others says, "Do you know that the three divorces at the time of the Prophet (saws), during the time of 'Abū Bakr and the early period of the Khilāfah of 'Umar were treated as one".

(b). This *Ḥadīth* was reported by Ṭāwūs alone from ibn 'Abbās. The scholars of *Ḥadīth* had cast doubts on him (Ṭāwūs) due to his narrating of unauthorised aḥādith from ibn 'Abbās. Qaḍī Ismā'īl mentioned in his book "*Aḥkām al Qur'ān*", that Ṭāwūs inspite of with his honour and prestige had narrated unacceptable things, among which was this *Ḥadīth*. Shaykh Ayyūb was very amazed as he discovered various inconsistencies in Ṭāwūs's reports. Ibn 'Abd al-Barr said, "Ṭāwūs alone narrated this *Ḥadīth*".

Ibn Rajab said that the scholars of Makkah did not accept from Ṭāwūs what he had narrated alone from among the rare sayings.

Imām Qurṭubī reported that ibn ‘Abd al-Barr had said, "Ṭāwūs's reports are based on imagination and wrong information. None of the scholars of *Ḥadīths* from Hijāz, Syria and Morocco have argued with it".

(c). Scholars of *Ḥadīth* also mentioned that this *Ḥadīth* is an exception in two ways:

(i) Shaykh Ṭāwūs alone narrated this *Ḥadīth* and no one carried it over from him.

The Imām Aḥmad, as reported by ibn Mansūr said that the companions of ibn ‘Abbās reported different things from Ṭāwūs

\* Al-Jurjānī said it is an isolated (*Shādh*) *Ḥadīth*.

\* Ibn ‘Abd al-Hādī reported that ibn Rajab who examined this *Ḥadīth* could not authenticate it.

(ii) The Imām Al-Baihaqī reported that ibn al-Mundhir did not think that ibn ‘Abbās established the three divorces as one. Then he narrated from ibn ‘Abbās that the latter had not learned the matter (three divorces) from the Prophet (saws) at all, as his legal decision was opposite to that of the Prophet's.

Ibn al-Turkamanī and Ṭāwūs said that Abū al-Sahbā’ (the freed slave of ibn ‘Abbās) obtained from ibn ‘Abbās that fatāwā, but that had not been proved from ibn ‘Abbās because trustworthy narrators had reported from him otherwise. Even if it was established from him (ibn ‘Abbās), his opinion could not be considered as stronger than that of those who were elder in their companionship with the Prophet and more knowledgeable, such as ‘Umar, ‘Uthmān, ‘Alī, Ibn Mas‘ūd, Ibn ‘Umar and others.

As there is isolation (*shudhūdh*) in this *Ḥadīth*, two famous Imāms had contradicted it Abū Abdullah Aḥmad ibn Ḥanbal had said to Athrām and ibn Maṣūrah that he rejected the *Ḥadīth* of ibn ‘Abbās intentionally as he did not consider it as evidential proof in establishing that, "the three divorces in one instance are deemed as one"; as the narrations of the Ḥuffāz from ibn ‘Abbās contradicted what has been narrated by Ṭāwūs.

The Imām al-Baihaqī mentioned that Imām Muḥammad ibn Ismā‘īl al-Bukhārī had rejected this *Ḥadīth* intentionally for the same reasons which Imām Aḥmadh. And there is no doubt that both these Imāms would not have made their decision but for a reason which required them to do so.

(d). The *Ḥadīth* of ibn ‘Abbās describes the common customs of that society which need to be well known to the majority of its inhabitants, and this fulfills the requirements of the various ways to publicise the matter such that it should not be a matter of dispute. Although the *Ḥadīth* was not transmitted as it was but was only reported by a single narrator from ibn ‘Abbās and that other than Ṭāwūs who has been already discussed that he narrated the unauthorised *Ḥadīth*, none of the traditionists reported this *Ḥadīth*. According to the majority of the scholars of *Uṣūl*, the requirements of conveyance are ample for the "*Khabar wāḥid*" (the *Ḥadīth* which is reported by a single traditionist) and it was only conveyed by one person and so on. That indicates its unsound nature. The author of *Jāmi‘ al Jawāmi‘* explained how to decide the unsound nature of *al-Khabar* (the *Ḥadīth*): The *Ḥadīth* reported by a single narrator in which the requirement of conveyance is ample, and which is only conveyed by one person is considered as an unsound tradition, however the Rawāfiḍ differed from this view.

Ibn al-Ḥājjib opined in his book *Mukhtaṣar al Uṣūl* when a *Ḥadīth* is narrated by a single traditionist, in which the requirement of conveyance is ample and is known by a large group but reported by one narrator it is known as *Khabar Wāḥid*. This (type of *Ḥadīth*) is not accepted as authentic. Similarly, if in a

city the *Khaṭīb* is killed in the pulpit, and this incident known by hundreds of people but if it is narrated by only one person, who is not believable rather he will be considered to be an extreme liar. The Shi'aite differs from this opinion.

There is no doubt that the condition which permits change to the viewpoint held by the Prophet (saws), and after him the Muslims at the time of Abū Bakr and the early period of 'Umar, that three divorces in one instance were effectively one in practice, is extremely difficult to deny. The silence of all the Companions clearly suggests that not a single word had been reported from them which indicates one of the two things below:-

- (i) The meaning of the *Hadīth* of ibn 'Abbās is that the divorces were not pronounced in one word, but in three different words at one time.
- (ii) The *Hadīth* is not authentic because it was reported by only one narrator although the requirements of its reporting were satisfactory.

(e). The piety, righteousness, sincerity, devotion and integrity of ibn 'Abbās, and coming out openly with the realised words of truth, prevented him from accepting the opinion of 'Umar which had ordered that three divorces be established as three in effect. ibn 'Abbās had known that the legal verdict of the pronouncement of three divorces at the time of the Prophet (saws), Abū Bakr and the early period of 'Umar's rule was one in effect.

He had differed with 'Umar in the case of *Tamattu' Ḥajj*, selling one Dīnār for two Dīnārs, and in the matter of selling the mothers of the children, among other disputed matters. He had never ever agreed in this case with 'Umar and contradicted the *Hadīth* of the Prophet (saws). And the strength of ibn 'Abbās in coming out openly with the realised truth was affirmed by his famous words when he said to 'Umar in the case of *Ḥajj al-Tamattu'* that "it was more likely to have stones thrown on you from the sky, as I am quoting evidence to you of the saying of the Prophet (saws) and you are arguing that : "Abū Bakr and 'Umar said".

(f). If hypothetically the authenticity of the *Hadīth* which was reported by ibn ‘Abbās is accepted. Moreover the Companions of the Prophet (saws) were well known for their piety and righteousness. Their sincerity and full devotion to what they believed, as well as their knowledge of the Shari‘ah especially the legal decision regarding divorce at the time of the Prophet (saws), Abū Bakr and the early period of Khilāfah ‘Umar; all combined to prevent them from accepting ‘Umar's judgement which had considered the pronouncement of three divorces as three in effect. Despite this, none of them was reported, with authentic *sanad*, as having judged the matter according to the established legal decision on three divorces practised at that time of the Prophet (saws) as well as at the time of Abū Bakr and the early period of ‘Umar's rule as what mentioned by ibn ‘Abbās in his reported *Hadīth*.

(g). The content of the *Hadīth* reported by ibn ‘Abbās considers ‘Umar's action in imposing three divorces at one instance, as a punishment for those who used to hasten into divorce where they are required to exercise patience. This is the crux of the whole affair. The personality of ‘Umar being most Allah (SWT)-fearing and sincere as well as very knowledgeable, as he was also a great jurist, could not allow him to enforce the kind of punishment which not only affected the guilty person, but extended to another person who had been innocent. By the "innocent" person is meant "the wife" as this decision legitimised a forbidden sexual relation, if she re-married a third person and forbade legal sexual relations with her husband with whom she had a legal marriage contract. This decision also forbade the right of *ruj‘ah* (the reestablishing of marriage during the period of *‘iddah*). All these indicate that the *Hadīth* which was narrated by Ṭāwūs from ibn ‘Abbās needs further examination. Peace and blessing of Allah (SWT) be upon Muḥammad and his family and his Companions.

*("Three divorces at one instance" are legally counted as one in effect)*

***Viewpoints of those who Contradict the Previous Opinion.***

Our opinion is that three divorces in one pronouncement will be legally constituted as only one divorce. This view is correct due to the authentic and established narration of ibn ‘Abbās. It was used as a basis of Fatwa by the Companions of the Prophet (saws) and their followers, such as Zubair ibn Al-‘Awwām ‘Abd al-Raḥmān ibn ‘Awf, ‘Alī ibn Abū Ṭālib and ‘Abdullah ibn Mas‘ūd. Moreover ‘Ikramah, Ṭāwūs and others among the Tabi‘ūn had judged accordingly, so did those who came after them such as Muḥammad ibn Ishāq, Khallās ibn ‘Amr, Al-Ḥārith al-‘Aklī al-Mājid ibn Taymiyyah, Shaykh al-Islam Aḥmad ibn ‘Abd al-Ḥalīm ibn Taymiyyah and his pupil Shams al-Dīn ibn al-Qayyim al-Jawziyyah and others beside them. They based their judgement on the following:

***First Justification:***

*Allah (SWT) says, "الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان "*

*"Divorce is only permissible twice: after that , the parties should either hold together on equitable terms, or separate with kindness"<sup>2</sup>*

This verse explains that the divorce is legalised by Allah (SWT) and where the husband is offered the choice between reconciliation with his wife or an irrevocable separation. When she has fulfilled her waiting period, then she will be separated from him. The word "*Marratān*" means two different times, one after another. This would be the result of a divorce following two preceding ones, taking place one after the other, no matter whether divorce was pronounced three times or just once in one sitting, as Allah (SWT) says: "Twice" He did not say "*Two divorces*" Then Allah (SWT) says in the verse that follows: *فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره* "*So if a husband divorces his wife (irrevocably), he cannot after that re-marry her until after she has married with another husband*".<sup>3</sup>

Thus Allah (SWT) makes it unlawful for a man to re-marry his wife after he has divorced her the third time till she marries someone else. It makes no difference whether on the third time he pronounced one or three divorces together. So it is clearly demonstrated that the divorce as legislated by Allah (SWT) is the one pronounced separately on three different occasions. When (a man) pronounces three divorces at one instance it will be legally counted as one divorce.

### ***Second Justification:***

This is the *Ḥadīth* which Imām Muslim reported in his *Ṣaḥīḥ* from Ṭāwūs who reported it from ibn ‘Abbās. He said: The three divorces at the time of the Prophet (saws), Abū Bakr and two years of ‘Umar's rule were one in effect.

‘Umar had reminded people of this (matter of divorce) by saying: "People have been hasty in deciding about a matter which requires patience and careful consideration. It can be stopped by treating the pronouncement of three or more divorces at a time, as three divorces, enabling me to stop people practicing it."

Ṣaḥīḥ Muslim also reported from Ṭāwūs who reported from Ibn ‘Abbās, that Abū Saḥbā’ asked ibn ‘Abbās please inform us your opinion regarding this matter, "was it not a fact that the three divorces during the Prophet's period and the time of Abū Bakr were treated as one"? He replied: "Indeed, so it was, but when ‘Umar took up the *Khilāfah*, people started to pronounce divorce excessively and he enforced absolutely irrevocable divorce in case they pronounced three or more divorces".

This *Ḥadīth* is clear evidence for the decision that three divorces in one instance were considered as one divorce. This *Ḥadīth* was not abrogated as it had been applying continuously during the time of Abū Bakr and up to two years of ‘Umar's *Khilāfah*. ‘Umar then justified the change in the legal decision by introducing the new rule, saying: "Verily people have hastened in a matter in which they should be patient and careful consideration was required in this matter"

As for the argument used against the *Ḥadīth* which was reported by ibn ‘Abbās it is either based on a formal interpretation and misunderstanding of the *Ḥadīth* by its apparent meaning without justification, or treating it as a rare event surrounded with confusion and accuses Ṭāwūs as an unreliable reporter. This argument is unacceptable as Imām Muslim narrated this *Ḥadīth* in his *Ṣaḥīḥ* (book of authentic *Ḥadīth's* collection), in which he made it clear that he would not include any *Ḥadīth* in his book but an authentic one. Furthermore, the last part of the saying of ‘Umar, "people make haste in deciding a matter

which requires careful consideration, it can be stopped by treating the pronouncement of three or more divorces at a time as three divorces, is a clear proof to support this opinion.

It can be raised how the last part of the *Ḥadīth* be used as an evidential proof to support the argument, while its first part has been rejected because of confusion and unreliable (weak) reporter. Most unbelievable than this, as claimed by someone, this practice was taking place at the time of the Prophet (saws), when three divorces were considered as one, but the Prophet (saws) did not know that. This argument is far from the truth since he was still receiving the Qur'ānic revelations constantly. It is unthinkable that the Ummah would have continued with a wrong practice at the time of the Prophet (saws), and of Abū Bakr and during the two or three years in the *Khilāfah* of 'Umar. 'Umar had expressed his excuse why he opted to enforce them the pronouncement of three divorces in one instance as three, as mentioned above in the *Ḥadīth*. What is more serious is using 'Umar's judgement to reject the *Ḥadīth* as (reported by) ibn 'Abbās because the *Fatwā* (legal decision) of ibn 'Abbās was contrary to this *Ḥadīth*.

It is known to the scholars of *Ḥadīth* and to the majority of the jurists that the lesson here is the acceptance of a *Ḥadīth* as long as it has been authenticated, and not otherwise including the opinion and *Fatwā* of the narrator contradicts it. The majority of jurists who opined that the three divorces in a single instance are considered as three based their opinion on this argument. Many minor juristical matters are also based on the same point. The above mentioned *Ḥadīth* is invalidated by the argument that consensus had been established after two years of the *Khilāfah* of 'Umar regarding three divorces in a single instance being considered as three, while these (three divorces) were considered as one by a large group of ancestors and successors scholars as well as by scholars over the ages till today.

Furthermore, it will not be correct to argue by using the *Ḥadīth* of 'Ā'isha to support the claim that three divorces in one instance will be considered three. She reported that the Prophet (saws) forbade Rifā'ah al-Qarazī to reunite with his divorced wife until she remarried with another first, as he had divorced her three times. This was so, because it was confirmed that he had divorced her by the last three divorces. This was reported by

Imām Muslim in his book (Ṣaḥīḥ Muslim). It is clear that the divorce was implemented separately. It was not confirmed that the incident of Rifā‘ah ibn Wahab al-Naḍarī and his wife was similar to that of Rifā‘ah al-Qaraḏī, so that the multiplicity in the story had been claimed, and that one of them implemented three divorces in one instance. Moreover, Ibn Ḥajar did not just say multiplicity of the story, but he also said: "if the *Ḥadīth* of Rifā‘ah al-Naḍarī is accepted, then the multiplicity of the story is established". Ibn Ḥajar had mentioned in his book "al-Iṣābah" the similarity of the story, saying: "but the problem is in unifying the name of the second husband who was ‘Abd al-Raḥmān ibn al-Zubair".

### ***Third Justification:***

This is based on what has been reported by Imām Aḥmad in his Musnad. He says, "it was narrated to us by Sa‘ad ibn Ibrāhīm who said that his father had it reported to him by Muḥammad ibn Ishāq, who said that was reported to him by Dāud ibn al-Huṣain (who had narrated) from ‘Ikramah, (the freed slave of ibn ‘Abbās), who reported it from ibn ‘Abbās, who said: "Rukāna ibn ‘Abd Yazīd brother of Banū al-Muṭṭalib, divorced his wife three times in one sitting, thereafter he became very sorry". ibn ‘Abbās said, "the Prophet (saws) then asked him: "How did you divorce her"? He replied : "I divorced her three times". The Prophet (saws) then asked him : "In one sitting"? He replied,"Yes". Then the Prophet (saws) said,"That counts but as one, take her back to you if you wish". Ibn ‘Abbās said: "then he (Rukāna) took her back". ‘Ikramah reported that ibn ‘Abbās was understood from this event to have required anyone who wanted to divorce his wife to do so at every purity. Ibn al-Qayyim al-Jawziyya mentioned in his book "A‘lām al-Muqī‘īn" that, the "Imām Aḥmad has authenticated the isnād and said the *Ḥadīth* is ḥasan. Moreover, Imām Aḥmad, Abū ‘Ubayd and Al-Bukhārī expressed the weakness of the report that Rukāna divorced his wife with the word al-Battatah (final)."

### ***Fourth Justification:***

This is by consensus and of the evidence provided by ibn Taymiyyah, ibn al-Qayyim and others which hold that, the command has always been that, "three divorces in a single pronouncement were considered as one divorce" during the time of Abū Bakr, and two or three years of ‘Umar's *Khilāfah*, but whatever disagreement arose in the *fatwā* (legal decision) amongst the Companions it was apparent after ‘Umar's implementation of three

divorces on anyone, who pronounces three divorces in a single instance, as a chastisement and punishment, when people became hasty in a matter which required patience and careful consideration. The aim of 'Umar was not to generally legislate it or to make it permanent, but to discourage people from pronouncing a divorce in haste. Such a legislation remained as long as people's actions remain unchanged about divorce, as it is usually so in the case of a *fatāwā*, that changes with the time and situation.

The Imām (judge) must chastise his people when they misbehave with respect to general rules in which they have a right of choice whether to take part or abstain. In such a situation the Imām (judge) could allow a few things for some people and forbid them for others.

As for those three Companions of the Prophet (saws) who were left behind in the battle of Tabūk the Prophet (saws) ordered a temporary punishment for them, requiring them to keep away from their wives for some time, although their wives were still young. This is analogous to the extra punishment for a wine drinker in order to keep them away from drinking, and Second example as the fixing of the prices of goods at a time of economic exploitation by businessmen. This kind of legislation has been implemented in addition to the legal justification for establishing justice. The system of traffic control is an example of the above. Similarly, the public can be prevented from walking or riding across a road which is normally allowed, but temporarily prevented in order to protect life, wealth and to ensure a safe and peaceful journey.

### ***Fifth Justification:***

This is the analogy between the case of three divorces and the witnesses of the oath of mutual imprecation (*al-Li'ān*). As in the oath of mutual imprecation the pronouncement of the husband will not be fully considered as pronounced, for example he (husband) said, "By Allah (SWT) I bear witness with a total of four witnesses that verily I saw her (wife) committing adultery"; the number of countable witnesses is one not four. So, similarly if a husband said to his wife: "You are divorced three times," it will not be considered three but only one divorce. Therefore if he said, "I confirm the adultery", four times mentioning repeatedly the required number of times, it is only considered to be one

witness, as it is according to one opinion. Therefore, if someone says to his wife, "You are divorced", repeating it three times, it shall only be considered one divorce. Similarly where the repetition of a word is concerned, mentioning the number alone will not be sufficient, such as *al-Tasbīh* (Saying *Subhān Allāh*; glory be to Allah (SWT)) , *al-Taḥmīd* (Saying *Alḥamdu Lill Allāh*; Praise be to Allah (SWT)) and *al-Takbīr* (Saying *Allāhu Akber*; Allah (SWT) the great) after obligatory prayers. Allah (SWT) has the authority for granting success. May Allah (SWT) shower His mercy and blessing on our Prophet Muḥammad, his family and grant them peace.

***The recent views of leading Hanafī schools of India:***

***THREE DIVORCES***

The real objective of Islamic education is that, through marriage two different and distant families should become closer and united. An intention and agreement of marriage should be for the whole life and there should be no intention to break up the relationship and bring it to an end. If, unfortunately, an unpleasant situation arises between the married couple, people from both families will try to create understanding and harmony between them. The sincerity of such an effort will bring love and affection between the couple. But sometimes, it so happens that minds and attitudes are quite different and it becomes a crucial and difficult matter to create harmony between the contradictory minded couple. Both parties, instead of offering pleasure, start creating trouble and difficulty for each other.

It is obvious, that in such unpleasant circumstances, no one will think about the continuity of the marriage. When the couple's life instead of pleasure becomes one of trouble and punishment, then it is ultimately better for them to separate. For this Islam has given a Divorce System. Divorce is strongly disliked by Allah (SWT) and is a reason for His anger. But if divorce is inevitable, then one divorce could be implemented in the first ṭuhr, second divorce in the second ṭuhr and third divorce in the third ṭuhr. In this way when divorce is implemented at intervals, it will make it clear that the divorce

was not the outcome of any timely revenge or anger, rather it was due to some very pressing need. The Sharī‘ah has established three consecutive steps for divorce, and the fulfilment of these steps is called Ahsan divorce (considered appreciable), this means an action which is disliked but done in the way allowed by Islam. But if someone implements these steps suddenly i.e., (*Ṭalāq Mughallazah*) by pronouncing three divorces at the same time, separation will occur. Though this action is strongly disliked by Allah (SWT) and is a cause for His anger, but still divorce will be established. The man (husband) has the right to implement divorce. He acquires this right at the time of accepting the marriage. The marriage takes place in one sitting and it does not need different sessions. Similarly, the creation of divorce does not need different sessions or meetings.

The Qur’ān has explained the issue of divorce in a very clear way. Different incidents took place during the life of Prophet Muḥammad (saws) and his decisions about those incidents have been described in detail. The jurist scholars have unanimously agreed on three divorces. The Imāms of four *Sunni* schools of jurisprudence also unanimously agreed that three divorces implemented at one instance will be considered as three, and the same is known as *Ṭalāq Mughallazah* (the final divorce). Since the best period of the Prophet (saws) (*Khair al Qurūn*) till now, the whole Muslim ‘Ummah has practised this unanimously. Moreover, the Islamic Judicial Court of Saudi Arabia has been judging cases according to this view point. Recently, the National Press in India has been lamenting in the name of sadness and grievances of Muslim women.

Only Islamic scholars can understand such an important issue of Islam, and not ordinary people, as they are not competent in this field. When restlessness is created among the Muslims and ordinary people begin to express their opinion, it is the duty of scholars to make things clear for people and make them aware of the reality of a situation.

Therefore, keeping in mind the significance and delicacy of the issue of three divorces, **Amir-al-Hind Shaykh Mawlana Syyid As‘ad Madanī**, explained this issue in a press conference with scholars and Mufties from Dar al ‘Ulūm Deoband. The Muslims of India have great respect for Dar al ‘Ulūm Deoband. Therefore, after the declaration from Dar

al ‘Ulūm Deoband, restlessness among the Muslims came to an end which created a peaceful environment among them.

But the people who were opponents of Mawlana Syyid As‘ad Madanī could not accept even this pure religious explanation and they started to make a hue and cry. This attitude has at least made it clear the extent to which opposing people could go, and even a good thing looks bad to them.

Although, to reach the stage of three divorces in one instance ignoring the favours provided by Islām, and is disliked by the Prophet (saws) and is a reason for the anger of Allah (SWT), but despite all these things divorce will be established.

**Declaration of the renowned Islamic jurists in the conference convinced by *Jami‘at-i-‘Ulamā’ -i-Hind*, is that, "three divorces in one instance will be three in action".**

Now-a-days, Allah (SWT) knows best the reason why the Ghair-al-Muqallidūn ‘Ulamā’ (non-conformist scholars) are raising the issue of implementing three divorces given at one instance. Through Urdu, Hindi and English news papers and other official as well as private means of communication, they are trying to mislead the common Muslims by saying that the view of accepting three divorces pronounced at one instance is invalid and playing with the Sharī‘ah.

Three divorces given at one instance either by a single or multiple words are considered as three. In the Sharī‘ah this is an issue on which there is consensus from all the four Imām i.e., the Imām Abū Ḥanīfah (d.150 A.H.), the Imām Mālīk (d. 149 A.H.), the Imām Shafī‘ī (d. 179 A.H.) and the Imām Aḥmad (d.241 A.H.). In addition, other scholars of Jurisprudence and Ḥadīth like Imām Awzā‘ī, Imām Nakh‘ī, Imām Thawrī Imām Ishāq, Imām ibn Ḥazm Zāhirī, Imām Bukhārī and others have the same opinion. The majority of the Companions and their followers, and the majority of the Imāms among the ancestors and successors have also the same opinion.

Imām Nawawī writes in Sharḥ Muslim:

وإختلف العلماء فيمن قال لإمراته أنت طالق ثلاثاً: فقال الشافعي ومالك وأبو حنيفة وأحمد وجماهير العلماء من السلف والخلف يقع الثلاث.

"If a person says to his wife, "I divorce you thrice", then according to the Imām Abū Ḥanīfah, the Imām Mālik, the Imām Shafī'ī, the Imām Aḥmad ibn Ḥanbal and the opinions of the majority scholars among the ancestors and successors that will establish three divorces". See *Mahnama Dīn Mubīn, Bhupal, India, Aug'93 P8*

Hāfīz ibn Rajab Ḥanbalī writes in his book *Mashkil Ahādith al Wāridah fī Anna al Ṭalāq al Thalāth Wāḥidah*:

إعلم أنه لم يثبت عن أحد من الصحابة ولا من التابعين ولا من أئمة السلف المعتمد بقولهم في الفتوى في الحلال والحرام شبي صريح في أن الطلاق الثلاث بعد الدخول يحسب واحدة إذا سبق بلفظ واحد"

"It should be known that, there is no reference from Ṣaḥābah, Tabi'ūn and ancestor scholars, whose opinions are believable for Ḥalāl and Ḥarām, that three divorces after sexual intercourse pronounced with one word would be considered as one". *Ibid, Din Mubin P9*

Imām Abū al Walīd al-Bājī writes in his book *al Muntaqā'*:

فمن أوقع الثلاث بلفظة واحدة لزمه ما أوقعه من الثلاث وبه قال جماعة الفقهاء والدليل على ما نقوله إجماع الصحابة لأن هذا روى عن ابن عمر وعمران بن حصين وعبدالله بن مسعود وابن عباس وأبي هريرة وعائشة ولا مخالف لهم.

"Whoever, implements three divorces in one word, in this case three divorces will be established. This statement is supported by a group of jurists, the evidence of our argument is based on the Consensus of the Ṣaḥābah, moreover, 'Abdullah ibn 'Umar, 'Imrān ibn Ḥuṣain, Abdullah ibn Mas'ūd, ibn 'Abbās, Abū Hurayrah, 'Ā'isha Ṣiddīqah (may Allah (SWT) be pleased with them all) had the same opinion. There is no opponent in this regard". *Ibid, Dīn Mubīn P9*

In addition to the above, Imām Abū al Walid al-Bājī has mentioned the names of 'Umar, 'Uthmān, 'Alī, Zaid ibn Thābit, 'Abdullāh ibn Zubair, 'Abdullāh ibn 'Amr ibn al 'Āṣ, Abū Sa'īd al khudrī, 'Anas ibn Mālik, Husain ibn 'Alī ibn Abī Ṭalīb, Mughīrah ibn Shu'bah and others have expressed the same view, (as that) which has been quoted in the books of Ḥadīth.

The same view is also established by the tradition of the Prophet (saws) that three divorces in one instance will be considered as three. To keep this discussion short and brief, only three Hadīth (traditions) are mentioned, these are as follows:

عن عائشة رضي الله عنها قالت: إن رجلا طلق امرأته ثلاثا فتزوجت فطلق فسنل النبي صلى الله عليه وسلم أتحد لأول قال: لا حتى يذوق عسيتها كما ذاق الأول." (رواه البخاري ومسلم)

‘Ā’isha Siddīqah has reported that which has been mentioned in the Bukhārī and the Muslim: A man has implemented three divorces to his wife. Then the woman married with a second man. When the second husband had divorced her, then Prophet (saws) was asked, whether the lady became Ḥalāl for the first man. Prophet (saws) replied: No, until the second man (husband) consummated the marriage as the first husband did.

Here, in the text of the Hadīth, the words "*Tallaqa Imra'atahu thalathan*" clearly indicates that it was three divorces at one instance. As Ḥāfiẓ ibn Ḥajar explained in *Fatḥ al Bārī* V9 P295, and ‘Allama ‘Ainī also stated the same in ‘*Umdat al-qārī* V9 P575. The Imām Bukhārī also argued based on the words "*Tallaqaha Thalathan*" it indicates that, three divorces have been implemented at one instance.\*

So, without any reason it will be unfair to take the uncommon meaning of the said wording. Ibn Abī Shaibah, Baihaqī and Dar Quṭnī reported the well known incident of ibn ‘Umar who divorced his wife, at the end of the event ibn ‘Umar asked Prophet:

عن ابن عمر : " فقلت يا رسول الله أفرأيت لو أنى طلقته ثلاثا كان يحل لى أن أراجعها؟ قال: لا كانت تبين منك وتكون معصية"<sup>a</sup>  
(ابن أبي شيبه والبيهقي والدار قطني)

"Oh Prophet (saws) if I would divorce her thrice, then was it legal for me to return her back?  
Prophet (saws) replied : No, (if you had divorced her three times then, you would not be permitted to return her) she became separated from you, and it would be a sinful action".

It became clear according to this Ḥadīth that, taking one's wife back after implementing three divorces is not legal. A renowned Muḥaddith Ḥabībūr Raḥmān ‘Azamī in his book "*al-‘Alām al-Marfū‘ah Fī Ḥukm al-Talāq al-Majmū‘ah*" has laid a scholarly explanation of a minor accusation which has been raised against the reporters of this Ḥadīth.

(1) أخرجه البيهقي في سنن الكبرى في كتاب الخلع والطلاق \ باب الإختيار للزوج أن لا يطلق إلا واحدة \ 7/ 540 رقم 14939 من طريق مطى بن منصور ثنا شعيب بن رزيق أن عطاء الخراساني حدثه عن الحسن a قال حدثنا شعيب بن رزيق أن عطاء الخراساني حدثه عن الحسن قال: حدثنا عبد الله بن عمر فذكر الحديث مطولا ثم عقب قائلا: هذه الزيادات التي أتى بها عن عطاء الخراساني ليست في رواية غيره، وقد تكلموا فيه، (2) وابن شيبه في كتاب الطلاق \ باب من كره أن يطلق الرجل امرأته ثلاثا في مقعد واحد وأجاز ذلك عليه 62/4 رقم 17786 من طريق نافع قال: قال ابن عمر : من طلق امرأته ثلاثا فقد عصى ربّه وبانت منه امرأته، – وأخرجه أيضا رقم 17787 من قول الزهري في رجل طلق امرأته ثلاثا جميعا قال: إن من فعل فقد عصى ربّه وبانت منه امرأته،

Dār Qutnī narrated that Ḥasan ibn ‘Alī divorced his wife ‘Ā’isha Khath‘iyah by saying, *إذهبى فأننت طالق ثلاثا* You go! three divorces to you". ‘Ā’isha went away later on, Ḥasan came to know that ‘Ā’isha became very sad because of the separation. Then he wept and said:

إن حسن بن علي طلق امرأته عائشة الخثعمية، فقال: إذهبى فأننت طالق ثلاثا، ثم قال (وقد حزننا شديدا) لولا أنني سمعت جدي أو حدثني أبي أنه سمع جدي يقول: أيما رجل طلق امرأته ثلاثا مبهمه أو ثلاثا عند الأقراء لم تحل له حتى تنكح زوجا غيره" (لراجعتها) (دار قطنى)<sup>a</sup>

If I did not hear it, from my grandfather or he said (Narrator's doubt), if my father did not narrate to me that, he heard my grandfather (Prophet saws) saying, "Any person who has implemented three divorces to his wife, either by a single word (at one instance) or in three successive state of purities, then she would not be lawful for him (the person who divorced her) until she marries a second person." (If it was not fact) I must get her (‘Ā’isha al- Khath‘amiyyah) back to me."

This *Hadīth* is not inferior to *Ḥasan Lidhatihi* in status so, it is also stands as an evidential proof, and the minor objection which had raised against the two narrators of this Ḥadīth, a scholarly explanation had made in the book, "*al-‘Alām al-Marfū‘ah Fī Ḥukm al-Talāq al-Majmū‘ah*". Moreover, apart from these Ḥadīthes there are many distinct aḥādīth are available in the subject, among them the following two, one narrated by Muḥammad ibn Labīd and the other is the story of ‘Uwaimir al ‘Ajlānī has mentioned for discussion.

### The Evidential basis of Nonconformist (Ghair Muqallidūn) Jurists:

In support of their judicial opinion nonconformist jurists have quoted a part of the Ḥadīth which is related to Rukāna.

عن ركانه بن عبد يزيد... أنه طلق امرأته سهيمة البتة فأخبر بذلك النبي صلى الله عليه وسلم وقال: والله ما أردت إلا واحدة؟ فقال رسول الله صلى الله عليه وسلم: والله ما أردت إلا واحدة؟ فقال ركانه والله ما أردت إلا واحدة فردها إليه رسول الله صلى الله عليه وسلم؛ فطلقها الثانية في زمان عمر والثالثة في زمان عثمان (رواه أبو داود والترمذي وابن ماجه والدارمي إلا أنهم لم يذكروا الثانية والثالثة (مشكوة)<sup>b</sup>)

Rukāna ibn ‘Abd Yazīd narrated that, he divorced his wife *Suhaimah* by using the word *al-battata* and informed the Prophet (saws) and he said, By Allah (SWT) (Allah (SWT))! I had the intention of one divorce.? Then the Prophet (saws) asked him: "By Allah

(1) أخرجه الدار قطنى فى السنن؛ كتاب الطلاق 20\4 رقم 3927 (2) والبيهقى فى السنن الكبرى؛ كتاب الخلع والطلاق\ باب ماجاء فى إمضاء <sup>a</sup> الطلاق الثلاث 549\7 ‘ 550 رقم 14971 كلاهما من طريق سلمة بن الفضل؛ عن عمرو بن أبى قيس؛ عن إبراهيم بن عبد الأعلى؛ عن سويد بن غفلة- وسلمة بن الفضل وعمرو بن أبى قيس تكلموا فيهما

<sup>b</sup> (1) أخرجه أبو داود فى كتاب الطلاق إباب فى البتة رقم 2207-2206

(SWT)! did you really intend one divorce? Rukana solemnly declared and said By Allah (SWT)! I had the intention of one divorce. Then the Prophet (saws) returned his wife to him. After that he implemented a second divorce in the time of ‘Umar and a third divorce in the time of ‘Uthmān.

Transmitted by Abū dā’ud, Tirmidhī, Ibn Majah and Dārimī, but they did not mention about the second and third (divorce).

According to Imām Sufiyān Thawrī and inhabitants of Kūfā, and the Imām Abū Ḥanīfah, the word *battata* can be used both for single as well as three divorces. The opinion of Imām Shafi’ī is that the intention for two divorces could also be made. Therefore, the translation of *battata* by the nonconformist jurists as Ṭalāq Mughallaḏah is wrong. This type of attitude is even against scholastic honesty. If the word *battata* meant 'Ṭalāq Mughallaḏah,' then, why did the prophet (saws) ask Rukana about his intention?. This question is possible only with the flexibility of intention. If he intends one divorce the result is one divorce, whereas the intention for three results three divorces instantaneously. If both the two modes result in one divorce in action then the question of the Prophet (saws) to Rukana about his intention to confine the divorce, whether one or three, will remain meaningless. Moreover, this Hadīth proved that three instantaneous divorces could be possible by using the word *battata*, otherwise why did the Prophet (saws) ask Rukāna to solemnly declare his intention?

Therefore, this Ḥadīth supports the opinion of the majority of scholars rather than what the nonconformist jurists thought. Moreover, this Ḥadīth has been narrated by some other sources where they have quoted the word "*thalathan*" instead of the word "*al battatah*", but according to the scholars of Ḥadīth the source of narration which contains the word "*thalathan*" in the above-mentioned incidence is very weak and unacceptable. (Imām Nawawī, in the commentary of the Muslim V. I p.278/ Muḥyī al Dīn Ḥajm V10 P168). Similarly the nonconformist jurists also quoted the Ḥadīth of Muḥammad ibn Labīd in support of their opinion. They have tried unsuccessfully to explain the view points of the Ḥadīth in the foot -notes to establish this Ḥadīth as an evidential proof for their opinion, but it was their imagination only.

This Hadīth proves that, the Prophet (saws) expressed his anger for implementing three divorces at a single instance. Keeping in view of the Prophet's anger, Ḥanafī scholars consider this type of divorce as *Bid'ī* (Innovative) and *Makrūh* (Abominable). Although Prophet (saws) expressed his extreme anger, Imām ibn al Qayyim has quoted the opinion of Qāḍī Abū Bakr ibn al-'Arabī without looking into it. The Prophet (saws) established these three divorces as three in action, as he had established the three divorces of 'Uaimir al 'Ajlānī three in action. (Tahdhīb Sunan Abū Dawud, vol. 3, p. 129).

Apart from the Hadīth, Qur'anic verses also prove that, three divorces at one instance will be considered as three in action. The divorced wife in such a way, will be unlawful for the husband who divorced her. (Imām al-Shafī'ī, Kitāb al 'Umm, vol. 5, p. 165).

As Qur'ānic Verse:- **فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره**

*"So if a husband divorce his wife (irrevocably) he cannot, after that re-marry her until after she has married another husband". Al Qur'ān, Ch.2, V230*

In relation to this verse Imām Shafī'ī asserted:

**فالقرآن والله أعلم يدل على من طلق زوجة له دخل بها أو لم يدخل بها ثلاثا لم تحل له حتى تنكح زوجا غيره**

The command of the Qur'ān in the verse mentioned above (Allah (SWT) knows the best) states that, whoever divorces his wife three times, whether she is consummated or non-consummated, she will not be ḥalāl for him until she marries another person.

It is interesting to note that Imām Shafī'ī made the judgement for a non-consummated wife like the consummated one. How will this be applicable to non-consummated wife for the second and third divorces upto three successive *tuhr*? As she became separate from her husband in the first divorce. For this the general implication of this verse emphasizes this point that the three divorces which are implemented in a single instance will be counted three in action. Generally, the divorce which is implemented in every successive purity is also within the common understanding of the verse.

This is why Ibn Ḥazm Ṣāhirī wrote under the explanation of the verse:

فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره

"If a husband divorces his wife third time, then she is not lawful unto him thereafter until she has married another husband" Al Qur'ān Ch. 2, V.230

فهذا يقع على الثلاثة مجوعة و مفرقة ولا يجوز أن يخصص بهذه الآية بعض ذلك دون بعض بغير نص.

So, the above mentioned Qur'ānic verse "If a husband divorced his wife" describes as a whole, the three divorces implemented together or separately. Without having any authentic evidence it will be wrong to specify the implication of this verse for only one type of divorce. Muḥallā, Ibn Ḥajr Ṣāhirī V10 P23

Those who depend on a report of Abū Ṣahbā', state that the implementation of three divorces in one instance will be three in action, this decision began in the period of 'Umar, and before that it was considered as one divorce. This reflects their self-deception. The reason being that the evidence is not reliable but is only a result of imagination and wrong inference. 'Allāma ibn 'Abdullah has explained the matter. Moreover, this evidence is very rare and isolated one, and is unacceptable, and because of other reasons it cannot be used as an evidential proof. This is explained in more detail in 'A'lām al-Marfū'ah. Moreover, Abū Za'far Abū al Walīd Bājī, Qāḍī Abū Muḥammad 'Abd al Wahhāb, Ibn al 'Arabī and 'Allamah ibn Qudāmah have explained that, during the period of the Prophet (saws), Abū Bakr Siddīq and the early time of 'Umar, people did not habitually implement three divorces, rather they used to leave their wives just by implementing one divorce. After completion of the 'iddah the lady became (*Bā'inh*) separated from her husband. Then people started to make the women *Bā'inah* by implementing three divorces instantaneously.

Then keeping in mind the new circumstances, 'Umar discussed the matter with other Ṣahābah and it was unanimously decided that, previously as implementation of one divorce was being effective after completion of 'iddah, if someone in ignorance implements three divorces at one instance, then all of the three will be established too. So, the *Hadīth* which describes the matter is informative not legislative. (For details please look at, Mujallatu al- Buḥuth al- Islamiyyah, V,1. 3rd issue,1397 K.S.A.)

None the less, if it is accepted that this decision began in the period of ‘Umar, then it has been extracted from the Qur’ān and Ḥadīth, not invented by man, as the famous nonconformist scholar Moulana Ibrahīm Sialkoti (d. 1378 A.H.) had accepted the truth by saying that, the decision of ‘Umar to consider instantaneously implemented three divorces as three in action, is extracted from the Qur’ān and the Ḥadīth. (vide: Akhbār, Ahl-e-Ḥadīth 1929, p.1-15).

The strength of evidences and proofs compelled Shaykh Muḥammad ibn ‘Abd al Wahhāb Najdī leader of "Ghair-i-Muqallidūn" (nonconformist) to follow the four Imāms instead of his own leaders Ḥāfiẓ ibn al Qayyim and ‘Allāma ibn Taymiyyah. (vide: Al Hidāyah al Sunniyah, by Manẓūr Nu‘mānī).

After detailed investigation and discussion, the Committee of distinguished scholars of the two most sacred Mosques in Makka and Madīnah Munawwarah (Saudi Arabia) has reached the juristic conclusion that the opinion of the majority of scholars is right and they adhere to this viewpoint.

Now the question is that, are this large number of people from Muslim ‘Ummah have been playing with Sharī‘ah? or those handful of people who by ignoring the authentic Aḥādīth, Consensus of Ṣaḥābah, ideology of our ancestors and Successors, they are acting as a spokesman of the Khawārij and Rawāfiḍ and devoting their energy for this purpose in such a crucial time when the Muslim Community in India have been facing a clear threat about their life, wealth, prestige and Sharī‘ah. In the meantime in raising this issue by so called ignorant friend of Muslim, what unknown service they are providing? As a matter of fact these people by their activities are strengthening the enemies of Islām and Muslims. So, our complain to Allah (SWT) O, Allah (SWT)! show us the truth as truth and bestow us the ability to follow it, and show us the falsehood as falsely, and help us to avoid it, Amān.

*The above mentioned legal decision (Fatwā) has been judged and signed by the following scholars:*

1. Mawlana Marghub al Raḥmān, Principal, Dār-al ‘Ulūm Deoband.
2. Mawlana Nasīr Aḥmad Khan, Head Mudarris Dār-al ‘Ulūm Deoband.
3. Mawlana Qamar al Dīn, Education organizer Dār-al ‘Ulūm Deoband.
4. Mawlana Muftī Zafīr al Dīn Muftī Dār-al ‘Ulūm Deoband.
5. Mawlana Muftī Nizām al Dīn Muftī Dār-al ‘Ulūm Deoband.
6. Mawlana Muftī Sa‘īd Aḥmad Palanpuri, Professor of Ḥadīth Dār-al ‘Ulūm Deoband.
7. Mawlana Riyāsāt ‘Alī Professor of Ḥadīth Dār-al ‘Ulūm Deoband.
8. Mawlana Ḥabīb al Raḥmān Qāsimī Professor of Ḥadīth Dār-al ‘Ulūm Deoband.
9. Mawlana Ni‘matullah Professor of Hadīth, Dār-al ‘Ulūm Deoband.
10. Mawlana Amīn Professor of Hadīth, Dār-al ‘Ulūm Deoband.
11. Mawlana Muḥammad ‘Uthmān Professor Dār-al ‘Ulūm Deoband.
12. Mawlana Muftī ‘Abd al Raḥmān Muftī, Madrasah Aminiyah, Dehli.
13. Mawlana Arshad Madanī Professor Dār-al ‘Ulūm Deoband.
14. Mawlana Muftī Abul Qāsim Nu‘mānī Muftī Islamic University Rewari, Talat, Benaras.
15. Mawlana Muftī Mujaddid al Quddūs Rūmī, Muftī Muẓāhir ‘Ulūm and Awqāf, Saharanpur.
16. Mawlana Abd al Ḥasib Muẓāhir ‘Ulūm and Awqāf, Saharanpur.
17. Mawlana Ishtiyāq Muftī and education organizer Jāmi‘a Raḥmāniya, Tanda, Rampur.
18. Mawlana Riyāsāt ‘Alī Muftī of Jāmi‘ah ‘Arabiyah Khādīm al Islam. Hāpur.
19. Mawlana Maqṣūd Aḥmad Muftī Muẓāhir ‘Ulūm, Saharanpur.
20. Mawlana ‘Abd al Raḥmān Assitt Muftī Muẓāhir ‘Ulūm, Saharanpur.
21. Mawlana Muḥammad Kāmil, Principal of Madrasah Badr al Islam Garhi Daulat, Muzaffor Nagar.
22. Mawlana Muftī Salmān Mansurpuri, Madrasah Shāhī Muradabad.
23. Mawlana Abdul Basit Ibrahīmī, Muftī and Khatīb Shāhī Jāmi‘ Masjid, Giyan wapishahar Banaras.
24. Mawlana Muftī Manzur Aḥmad Muẓāhirī, Muftī and Qādī Shahar Kanpur.
25. Mawlana Muftī Maḥmūd Ḥasan, Grand Muftī Dār-al ‘Ulūm Deoband.
26. Mawlana Talha Muẓāhir ‘Ulūm, Saharanpur.
27. Mawlana Muftī ‘Abd al Razzāq Grand Muftī Madhiya prodesh.
28. Mawlana Shams al Dīn Āfrīdī, Qādī of Sharī‘ah, Madhiya Prodesh.
29. Mawlana Ibrāhīm Professor of Ḥadīth Jāmi‘ah Islāmiyah, Bhupal.
30. Mawlana Muftī ‘Abd al Laṭīf Muftī of Bhupal city.
31. Mawlana Muftī Muḥammad Abdul Kamal Qāsimī Muftī of Markazī Dār al iftā Jāmi‘ah Islāmiyah, Bhupal.
32. Mawlana Muḥammad Nūr al Hudā Qāsimī, Professor of Fiqh, Jāmi‘a ‘Arabiyah, Bhupal.

## **CHAPTER - TWO**

(Prior to start the translation of the Majmu‘ Fatāwā a brief note of the date of birth, death and family name of the Imām Ibn Taymiyyah has placed to keep the reader aware about his time of living. He is Taqī al Dīn Abu’l ‘Abbās Aḥmad ibn ‘Abd al Ḥalīm ibn ‘Abd al Salām ibn ‘Abdullāh ibn al Khiḍr ibn Muḥammad ibn al Khiḍr ibn ‘Alī ibn ‘Abdullāh ibn Taymiyyah, briefly famous as "The Imām Aḥmad ibn Taymiyyah " was born near Damascus a city called Harran on Monday, the 10th of Rabī‘ al awwal 661 A.H./ January 22, 1263 A.D. He died in the prison on Monday, the 29th of dhu’l Qa‘dah, 728A.H./ 27th September.1328 A.D.<sup>a</sup> He was an eminent scholar, Muḥaddith , jurist and historian of Islam. He wrote voluminously on almost every aspect of Islam)<sup>b</sup>

### **The English Translation of the legal verdict of the Imām Aḥmad ibn Taymiyyah on three divorces at one instance from his famous book *Fatāwā*.**

*In the name of Allah (SWT), most beneficent, most merciful.*

Praise be to Allah (SWT) alone and the benediction and salutation be upon one after whom there is no Prophet.

*Shaykh al Islām Aḥmad ibn Taymiyyah*, may Allah (SWT) sanctify his soul, said : In the name of Allāh the Merciful, the Mercy Giving. Praise be to Allah (SWT) we seek assistance and guidance and forgiveness from Him. We seek refuge in Allah (SWT) from the evil (acts) of ourselves and our bad deeds. One whom Allāh guides has no

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<sup>a</sup> A dictionary of the geography, Ethnography and biography of the Muhammadan peoples. Edited by - M. TH. Houtsma, A. J. Wensinck, Volume II (E-K) p421-2. Published by - Luzac & Co. London 1927.

<sup>b</sup> ImÉm Ibn TaimÉya and his projects of reform - Dr. Serajul Haque. Islamic Foundation, Dhaka, Bangladesh, 1982, p5-15.

misguidance. And one whom Allah (SWT) rejects from His guidance, there can be no guide for him. We testify that there is no Allah (SWT) except Allāh alone and there is no partner for Him, and we do testify that Muḥammad (*saws*) is His servant and His Messenger. May Allah (SWT) put His Mercy and a great number of blessings on him.

## The chapter of the *Ṭalāq al-Sunnah* and the *Ṭalāq al-Bid‘ah*.

### *Section - 1 :*

#### "The legal and illegal divorces" in brief:

##### 1. Will the illegal (*al-Muḥarram*) divorce be effective or not?

(So we say) For the enforcement of divorce, there are some illegal ways according to the *Kitāb (Qur’ān), Sunnah* and *Ijmā‘*; and some are not illegal. A "legal divorce" according to the unanimous opinion of the Muslim Scholars is that the husband divorces his wife with one revocable divorce, when she is in a state of purity (*tuhr*), after she had her bath and before there has been any connubial intercourse with her, then he must abstain (from the conjugal relations) without implementing any further divorce until the completion of the *‘iddah* (waiting period). This divorce is called *Ṭalāq al Sunnah* (traditional divorce). If he (husband) intends to take her back during the *‘iddah*, he has the freedom to do so, even without his wife and her guardians consent and he is not required to pay [any dowry]. If he (the husband) leaves her (the wife) until completion of the *‘iddah* then, he should release her with kindness and she will be considered as being separated from him.

It is permissible for the husband to re-marry her after the completion of the *‘iddah*. This will be possible with a new marriage contract, as if he is marrying her for the first time, or when someone else has married her (and divorced her) then he can take her back during the *‘iddah*. He may marry her after the *‘iddah* and want to divorce her, so he can divorce her as mentioned above. (i.e., when she has had her bath after purity and before any connubial intercourse has taken place then he must neither accomplish conjugal relations nor pronounce any further divorce until the completion of *‘iddah*). After this if he takes her back, or marries her for second time, and again wishes to divorce her, he can divorce

her as mentioned above. If the third divorce has become binding she becomes forbidden for him (he must abstain the fulfilment of conjugal relations) until she marries someone else. As Allah (SWT) and His Messenger have forbidden that, in that case she should marry someone else in the proper way, in which way people do. When this husband separates from her, then the first husband could marry her after completion of *'iddah*.

If the (divorced) wife is married with the intention of making her permissible (to reunite the marriage contract with the previous husband), then this is forbidden according to the majority of scholars, as it was so reported from the Companions of the Prophet (*saws*) and their followers (*Tabi'ūn*) in their good actions, and others, as it is evident in the text of the Prophet (*saws*), and proved by the juristic evidences. But there are some among the scholars who have permitted it.

If the woman is not in the state of menstruation owing to her under-age or over-age a man can divorce her whenever he wishes to do, whether he has had a sexual relationship with her or not. The period of her *'iddah* is three months, counted from the time she was divorced, because she neither menstruates<sup>1</sup> nor would be pregnant. Some of the scholars specify such a divorce as *Ṭalāq al-Sunnah* and some call it neither '*Ṭalāq al Sunnah*<sup>2</sup>.nor Bid'ah<sup>3</sup>

If the husband divorces his wife during menstruation or after sexual intercourse before disclosure of her pregnancy, this is *Muḥarram* (Forbidden) divorce. It is also known as "innovative divorce" which is an unlawful action according to the *Qur'ān*, the *Sunnah* and *Ijmā'* (consensus). If after disclosure of her pregnancy he wishes to divorce her, he can divorce her. Literal controversy exists here as to whether the divorce can be called traditional, non-traditional, or innovation.

Regarding this "forbidden divorce", (which has implemented in the time of menstruation, and after having sexual intercourse and before disclosure of the pregnancy) there are two notable opinions among the ancestors and successors of the scholars, as to whether the said divorce is effective or not and whether the same can be considered as one or three.

If the husband divorces his wife thrice with one word or words, during the same state of purity, saying, "you are divorced thrice", "you are divorced and divorced and divorced", "you are divorced, again divorced, then divorced", "you are divorced", then says: "you are divorced", then says: "you are divorced", he says: you are divorced thrice, ten, or a hundred, or a thousand times and any sentences like that, so in all these cases there are three opinions among the scholars. It remains same, whether the husband has consummated the marriage with his wife or not. Among the ancestors some of them have had differentiate between consummated and non consummated wife. There is also a latest fourth opinion which is called innovative.

\* The first opinion is that, "it is a legal divorce and is effective." This is the opinion of the Imām Shafi'ī, and the Imām Aḥmad as per his old opinion. The same view was chosen by al Karakhī.

\* The second opinion is that, "it is a forbidden divorce but effective." This is the opinion of the Imām Mālik, the Imām Abū Ḥanīfah and the Imām Aḥmad in his latest view. Most of his Companions have chosen this opinion, and this opinion is reported from many prominent early Islamic scholars such as the Companions of the Prophet (*saws*) and their followers. The previous opinion also reported by some of them.

\* The third opinion is that, "the divorce is forbidden, and only one is effective." This opinion is reported from a group of ancestors and successors among the Companions of the Prophet (*saws*) such as Zubayir ibn Al-'Awwām, and 'Abd al Raḥmān ibn 'Awf. Two views were reported from 'Alī and ibn Mas'ūd and ibn 'Abbās. This is the opinion of many followers and their followers. Such as Ṭāwūs, Khallās ibn 'Amr and Muḥammad ibn Ishāq. It is the opinion of Dawud and most of his followers and the said opinion is reported by Abū Ja'far Muḥammad ibn 'Alī ibn Al-Ḥussain and his son Ja'far ibn Muḥammad. Therefore, some Shi'ait scholars have accepted this opinion, which is also the opinion of some of the followers of the Imām Abū Ḥanīfah, the Imām Mālik and the Imām Aḥmad ibn Ḥanbal.

\* The "fourth opinion" is that no divorce at all will take effect : Some of the *Mu'tazilais* and *Shi'its* adopted this view. But none of the ancestors scholars agreed with this opinion.

The aforesaid third opinion is closer to the *Qur'ān* and the *Sunnah*. Every divorce which Allah (SWT) approves as per the Holy *Qur'ān* concerns the wife with whom the husband has had sexual intercourse and is properly known as *Ṭalāq al-raj'ī* (revocable divorce). Allah (SWT) has neither permitted anybody to utter three divorces at a time, nor implementing irrevocable divorce to the consummated wife. But if the wife is divorced before having sexual relations, she will be deemed as separated from him after completion of the prescribed period ( *'iddah* )

The Muslim jurists are of unanimous opinion that divorce is of "three kinds" :

- (1). "Revocable divorce" (الطلاق الرجعي), is a divorce wherein the husband will be able to take his wife back without her consent. If one of them dies during the *'iddah*, whosoever will survive, will be treated as inheritor of the other.
- (2). "The Minor irrevocable divorce (الطلاق البائن), wherein the provision is available for a proposer to propose. In this case she (the divorced wife) will not be lawful for him without a new marriage contract.
- (3). "The forbidden divorce" (الطلاق المحرم لها), is a divorce wherein the wife will not be lawful for her husband until she marries another husband. This is when the husband divorces her thrice as permitted by Allah (SWT) and His Messenger, that is, he divorces her first and takes her back during the *'iddah* or re-marries her (because the *'iddah* has completed), then divorces her and takes her back or re-marries her, then divorces her for the third time. According to the unanimous opinion of Muslim jurists this is the forbidden divorce for her until she gets married to another husband. There is no *Bā'in* divorce in the *Qur'ān* and the *Sunnah* for the consummated wife, which will be considered as the three divorces.

The school of Jurisprudence of *Ḥadīth*, the Imām *Aḥmad* in his opinion, the Imām *Shafī'ī* in one of his two opinions, *Ishāq ibn Rahwaih*, *Abū Thowr*, *ibn al Mundhir*, *Dawūd*, *ibn Khuzaimah* and others all held that the *Khul'a* is a dismissal of marriage and final

separation between the husband and wife, they don't consider it as three divorces. This opinion has been confirmed by the Companions of the Prophet (saws) such as ibn 'Abbās, 'Uthmān ibn 'Affān and others, holding that if the wife has been separated by *Khul'a*, it is not necessary for her to wait three *qurūs*, rather she will have to wait for one menstruation. This is also the opinion of Ishāq ibn Rahwaih, ibn al Mundhir and others and one of the two opinions of the Imām Aḥmad. In this matter many authentic traditions (*Aḥādīth*) are reported from the Prophet (saws) which corroborate each other as in the *Sunan*.<sup>4</sup> Thus it is established from the Prophet (saws), A group of Companions reported that they consider the *Khul'a* as divorce. But the scholars of *Hadīth* like the *Imām Aḥmad ibn Ḥanbal, ibn Khuzimah, ibn Al-Mundhir, Al Baihāqī and others* considered it as weak evidence.

The *Khul'a* is known as that when a woman spends something for her husband to get a separation from the marriage tie, Allah (SWT) says:

والمطلقت يتربصن بأنفسهن ثلاثة قروء؛ ولا يحل لهن أن يكتمن ما خلق الله في أرحامهن إن كن يؤمن بالله واليوم الآخر؛ ويعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا؛ ولهن مثل الذي عليهن بالمعروف؛ وللرجال عليهن درجة؛ والله عزيز حكيم .

*"Divorced women shall wait concerning themselves for three monthly periods. And it is not lawful for them to hide what Allah (SWT) Hath created in their womb, if they have faith in Allah (SWT) and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have right similar to the right against them, according to what is equitable; but men have a degree over them and Allah (SWT) is Exalted in Power , Wise".<sup>5</sup>*

الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان؛ ولا يحل لكم أن تأخذوا مما آتيتموهن شيئا إلا أن يخافا ألا يقيما حدود الله؛ فإن خفتم ألا يقيما حدود الله فلا جناح عليهما فيما افتدت به؛ تلك حدود الله فلا تعتدوها؛ ومن يتعدى حدود الله فأولئك هم الظالمون'

*"A divorce is only permissible twice : after that, the parties should either hold together on equitable terms, or separate with kindness. It is not lawful for you, (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah (SWT) if ye (Judge) do indeed fear that they would be unable to keep the limits ordained by Allah (SWT). There is no blame on either*

*of them if she gives something for her freedom these are the limits ordained by Allah (SWT); so do not transgress them if any do transgress the limits ordained by Allah (SWT), such person wrong (themselves as well as others)".<sup>6</sup>*

فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره؛ فإن طلقها فلا جناح عليهما أن يتراجعا إن ظنا أن يقيما حدود الله؛ وتلك حدود الله يبينها لقوم يعلمون.

*"So if a husband divorces his wife (irrevocably), he cannot, after that, re-marry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by Allah (SWT), which He makes plain to those who understand".<sup>7</sup>*

فإذا طلقتم النساء فبلغن أجلهن فأسكوهن بمعروف أو سرحوهن بمعروف؛ ولا تمسكوهن ضرارا لتعتدوا؛ ومن يفعل ذلك فقد ظلم نفسه؛ ولا تتخذوا آيات الله هزوا؛ وأذكروا نعمت الله عليكم وما أنزل عليكم من الكتاب والحكمة يعظكم به؛ واتقوا الله واعلموا أن الله بكل شيء عليم.

*"When ye divorce women, and they (are about to) fulfil the term of their 'iddah), either take them back on equitable terms or set them free on equitable terms: But do not take them back to injure them, (or) to take undue advantage; if any one does that, he wrongs his own soul. Do not treat Allah (SWT)'s Signs as a jest, but solemnly rehearse Allah (SWT)'s favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah (SWT), and know that Allah (SWT) is well acquainted with all things".<sup>8</sup>*

Allah (SWT) has clearly explained that divorced wives who have had sexual intercourse have to wait three *qurū* According to most of the Companions, like 'Uthmān, 'Alī, ibn Mas'ūd, Abū Mūsā and others, *qurū* means menstruation. So, she will have to count the 'iddah till the third menstruation. This is the opinion of the Ḥanafī school of thought, and the Imām Aḥmad's well known opinion among his two opinions. Ibn 'Umar, 'Ā'isha and others opine that the 'iddah will be completed in the beginning of the third menstruation; this is also the opinion of the Imām Mālik and the Imām Shāfi'ī.

But about the divorced wife before consummation, Allāh (swt) asserted:

يأيها الذين آمنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من عدة تعتدونها؛ فمتعهن وسرحوهن سراحاً جميلاً.

*"O you who believe! When you marry believing women, and then divorce them before you have touched them, no period of 'iddah have you to count in respect to them; So give them a present and set them free in a handsome manner"*<sup>9</sup>

Then asserted: *وبعولتهن أحق بردهن في ذلك* "and their husbands have the better right to take them back in that period". This means in that waiting period. Then he asserted : "الطلاق مرتان" The divorce is of two kinds," so, it is clear that the aforesaid divorce is *Ṭalāq al raj'ī* (revocable divorce) in which he will be more entitled to bring her back; That is (twice), one after another. As if it is said to a man:

” سبح مرتين ، أو سبح ثلاث مرات أو مائة مرة. فلا بد أن يقول سبحان الله ؛ سبحان الله؛ حتى يستوفي العدد.

Glorify (Allāh) two times: or Glorify (Allāh) three times or hundred times, so, certainly (to fulfil the requirement) he should say: *Subḥāna Allāh* (Glory be to Allah (SWT)), *Subḥāna Allāh* (Glory be to Allah (SWT)), till the number is fulfilled." So, if he wants to do that, and says *Subḥāna Allāh* (Glory be to Allah (SWT)), twice or hundred times. (In reality) He didn't Glorify (*Allāh*) but only one time. Allāh (SWT) didn't say : the divorce is two divorces. But He says: (Twice) so when the husband says to his wife: You are divorced, twice or thrice at a time, or ten at a time, or thousand at a time, in all these cases he didn't divorce her (according to law) but one time.

And the sayings of the Prophet (*saws*) to his wife (mother of the believers) Juwayriyah "Certainly I read after you four sentences if you weigh what I said till today verily you could weigh it "*Subḥāna Allāh* " as per the number of His creation "*Subḥāna Allāh* as per His pleasure, "*Subhana Allah (SWT)*" as per weight of His Throne, "*Subḥāna Allāh* as per ink of His Words.<sup>10</sup> So, it means Allāh is entitled to be glorified in that number.

" رينا ولك الحمد ملاً السموات وملاً الأرض وملاً ما بينهما ملاً ما شئت : (*saws*) of the Prophet (*saws*) : "*O, our Lord praise be to you, full of the heavens and full of the earth, and whatever contains in between them, and then fill up the things that you wish afterwards.*"

This doesn't mean he (Prophet) glorified Allāh up to that number. Sometimes the number becomes an adjective for the action of the servant, and his action is limited. Sometimes

the number is commensurate to the status of the Lord which signifies His exalt, otherwise, if the worshipper says in his Prayer: Glory be to Allāh as per the number of His creation, it means he didn't glorify Allāh but one time. The Prophet (*saws*) prescribed *Subhāna Allāh*, 33 times, *Al Ḥamdu lill Allāh* 33 times and *Allāhu Akber* 34 times after every Prayer. If the worshipper says: Glory be to Allāh, Praise be to Allāh and Allāh is Great, in the number of His creation, he only glorified Allāh once.

We do not know of anyone who divorced his wife three times in a single word during the Prophet's (*saws*) time and the Prophet (*saws*) established three divorces to him (irrevocably). There is no authentic or *ḥasan* Ḥadīth reported in support of that, nor any author of reliable (Shar‘ī) books reported anything in that matter. . All Aḥadīth reported in this issue were weak and concocted according to the unanimous opinions of *Ḥadīth's Scholars*.<sup>11</sup> What has reported in the *Ṣaḥīḥ Muslim* and in the other *Sunan* (Books of authentic *Hadīths* collections)

عن طاووس عن ابن عباس أنه قال: كان الطلاق على عهد رسول الله صلى الله عليه وسلم وأبي بكر وسنتين من خلافة عمر: طلاق الثلاث واحدة؛ فقال عمر: إن الناس قد استعجلوا في أمر كانت لهم فيه أناة؛ فلو أمضيناه عليهم فأمضاه عليهم<sup>a</sup>. (صحيح مسلم وغيره)

As narrated from Ṭāwūs, who had reported from Ibn ‘Abbās: During the time of the Messenger of Allāh, Abū Bakr, and up to two years of ‘Umar's Khilāfah, three divorces (at one instance) were counted as one. Thereafter, ‘Umar spoke to other Companions of the Prophet (*saws*), that, people have started taking hasty action in a matter which requires a great deal of thought and in which they should remain patient. (It would be better) if we enforced them (the three divorces as they have pronounced). Consequently ‘Umar enforced the effectiveness of the three divorces.

In another narration of the Imām Muslim and other scholars

عن طاووس أن أبا الصهباء قال لابن عباس: أتعلم إنما كانت الثلاث تجعل واحدة على عهد رسول الله صلى الله عليه وسلم وأبي بكر وثلاثاً من أمانة عمر؟ فقال ابن عباس: نعم<sup>b</sup>. (مسلم وغيره)

a (1) أخرجه مسلم في كتاب الطلاق\باب طلاق الثلاث رقم 15 (2) وأحمد 1\314

b (1) أخرجه مسلم في كتاب الطلاق\باب طلاق الثلاث رقم 16 (2) أبوداود في كتاب الطلاق\باب نسخ المراجعة بعد التلقيات الثلاث رقم 2200

It is narrated from Ṭāwūs that, Abū Suhbā' asked ibn 'Abbās: "Do you know that at the time of the Prophet (*saws*), Abū Bakr and three years of 'Umar's government, the three divorces were considered as one?" Ibn 'Abbās replied: Yes.

In another narration: Abū Suhbā' asked ibn 'Abbās: Tell me your opinion. Didn't the three divorces (at one instance) at the time of the Prophet (*saws*) and Abū Bakr considered as one? He affirmed it, that was so. (But) when at the time of 'Umar people were practicing divorce in succession, so he enforced them (what they have pronounced).

The Imām Aḥmad reported a ḥadīth in his Musnad:

حدثنا سعيد بن ابراهيم حدثنا أبي عن محمد بن إسحاق حدثني داود بن الحصين عن عكرمة مولى ابن عباس؛ عن ابن عباس أنه قال طلق ركائة بن عبد يزيد أخو بني المطلب إمراً ثلاثاً في مجلس واحد؛ فحزن عليها حزناً شديداً؛ قال: فسأله رسول الله صلى الله عليه وسلم: كيف طلقتها؟ قال: طلقتها ثلاثاً. قال فقال: في مجلس واحدة؟ قال: نعم قال: فإنما تلك واحدة فأرجعها إن شئت؛ قال: فراجعها. فكان ابن عباس يرى أن الطلاق عند كل طهر؛ (وقد أخرجه أبو عبد الله المقدسي في كتابه المختارة)

Sa'īd ibn Ibrāhīm narrated, my father reported from Muḥammad ibn Ishāq that, Dāwd ibn al-Ḥuṣain narrated from 'kramah the freed slave of Ibn 'Abbās, that Ibn 'Abbās said: Rukāna ibn 'Abd Yazīd brother of Banu Muṭṭalib, divorced his wife three times in the same sitting, and he became very sad about it. He said (Ibn 'Abbās) then the Messenger of Allāh (*saws*) asked him (Rukāna)" how did you divorce her?" he replied I divorced her three times. Ibn 'Abbās said, the Prophet (*saws*) asked : In one sitting? He replied Yes. Then the Prophet (*saws*) said : hence the (countable) divorce is only one.. If you wish, you can bring her back, he (Ibn 'Abbās) said: Then he (Rukana) had returned her. After that event Ibn 'Abbās used to consider that, the divorce is allowed at every term of purity. Abū 'Abdullah al-Maqdisī quoted this ḥadīth in his book : "*Al Makhtarah*" which is more authentic than the "*Ṣaḥīḥ al Ḥākim*" (a book of the *Hadīth* collections). Abū Dāwūd and other Scholars narrated the ḥadīth in the same manner

The saying of the Prophet (*saws*) concerning: "In one (same) sitting" means that, if it had not happened in one sitting, the legal verdict would not have been like that; because if that (pronouncement of divorce) happens in several sittings it could be possible for him to take her back, as she is living with him. The divorce normally is established after ruj'ah. The literal sense beside the tacit (Maskūt 'Anha) matter does not have any general meaning, but sometimes it calls for explanation. It is like the saying of the Prophet (*saws*): "When the water reaches up to the measure of two *Qullah* that doesn't bear scum

(*Lam yahmal al-khubuth*), then "nothing made it unclean". When the water reaches up to two *Qullah* and sometimes bears scum and sometimes does not, the saying of the Prophet (specifying a group of Camels for *Zakāt*): "The *Zakāt* will be applicable for the *Sā'imah* Camel" and when it is not in the state of *Sā'imah*, sometimes the *Zakāt* will be applicable to it. (Likewise) the *Zakāt* will be applicable for the business (goods) but sometimes it is not applicable to it. Similarly, saying of the Prophet (*saws*): "Whoever worships Allah (SWT) in the Night of Power (*Qadr*) with full faith and computation, his previous sins will be forgiven". One who does not worship Allāh in that night, Allah (SWT) may forgive him for another reason. There is also the saying of the Prophet (*saws*): "Who fasts in the Ramadhan with faith and computation, his previous sins will be forgiven", and the saying of Allāh (swt): "Those who believed and those who migrate and strive in the path of Allāh, they would hope for the mercy of Allāh".<sup>12</sup>

And who would not be the same as mentioned, may he will do another action with *Īmān* seeking the mercy of Allāh. Sometimes it does not happen like that. From the study of all this evidence it is noted that if the divorce took place in several sittings then sometimes *Ruj'ah* may be possible for him, and sometimes may not. Apart from the divorce which has been implemented in the same sitting, it was the habit of the one who divorces not to return his wife, whereas he should return her. As the Prophet (*saws*) said: "you should take her back if you wish". The Prophet (*saws*) didn't say as hesaid in the *Ḥadīth* reported by ibn 'Umar: Asking him, " ('Umar) Order him ( 'Abdullah ) to return her". So 'Umar ordered him to recourse with her. The *Ruj'ah* absolutely depends on the husband. It is distinct from al *Murāja'ah* (reiteration)

وقد روى أبو داود وغيره أن ركاة طلق امرأته البتة فقال له النبي صلى الله عليه وسلم: ما أردت بها إلا واحدة؟ فقال: ما أردت بها إلا واحدة؛ فردها إليه رسول الله صلى الله عليه وسلم<sup>a</sup>  
(أبو داود)

Abū Dawūd and others narrated that Rukāna certainly divorced his wife and the Prophet (*saws*) said to him, "Fear Allāh you intended only one divorce?" He replied, "I intended

(1) أخرجه الترمذي في كتاب الطلاق واللعان \ باب ماجاء في الرجل يطلق امرأته البتة<sup>6</sup> رقم 1177 ولفظه : أتيت النبي صلى الله وسلم فقلت يا رسول الله إنى طلقت امرأتي البتة؟ فقال ما أردت بها؟ قلت واحدة؛ قال والله؟ قلت: والله؛ قال فهو ما أردت؛ وقال الترمذي هذا حديث لا نعرفه إلا من هذا الوجه وسألت محمدا عن هذا الحديث فقال : فيه اضطراب ويروي عن عكرمة عن ابن عباس أن ركاة طلق امرأته ثلاثا – وابن ماجه – واللفظ له في كتاب الطلاق \ باب طلاق البتة رقم 2051

only one divorce”. Then the Messenger of Allah (SWT) returned her back to him. Abū Dawūd didn’t narrate in his *Sunan* the *Hadīth* which the Imām Aīmad narrated in his Musnad where he said: *Hadīth Al Battatah* (the final divorce) is more authentic than the *Hadīth* of ibn Juraij. “Rukāna divorced his wife thrice”, as his family members know best. But the eminent jurists and experts of the weaknesses and defects of the *Hadīth* and jurisprudence, such as the Imām Aīmad ibn Ḥanbal, al Bukhārī, Abū Uba‘id, Muḥammad ibn Ḥazm and others, weakened the *Hadīth* of *Al Battatah*.<sup>13</sup> They said that the narrators of the said *Hadīth* were a group of unknown people, and their trustworthiness and memory were insignificant. The Imām Aḥmad confirmed the *Hadīth al Thālāth*<sup>14</sup>, as being correct, what he said : The Ḥadīth which bears the discussion of Rukana does not establish that he divorced his wife finally and he also said that, in finalization of divorce, the ḥadīth Rukāna establishes nothing. Ibn Ishāq narrated from Dawūd ibn Al Ḥuṣain, ‘Ikramah from Ibn ‘Abbās: "That Rukana divorced his wife thrice". The people of Medina used to call the person who divorces thrice *Tallaqa Al Battatah* (divorced finally). And the Imām Aḥmad turned away from the *Hadīth* of ibn ‘Abbās he thought that pronouncing three divorces at a time is legal, supporting the view of the Imām Shafī‘ī. So it is possible to say: the Ḥadīth of Rukāna has been abrogated. Thereafter he changed his opinion and found that there is no lawful divorce in the *Qur’ān* and *Sunnah* except Al Raj‘ī (revocable divorce), he turned away from the *Hadīth* of ibn ‘Abbās, as he (ibn ‘Abbās) had passed his formal legal opinion against it. This is a reason for having two opinions from Aḥmad. But as for another opinion which the followers of ibn ‘Abbās acted upon, (they followed the formal legal opinion of ibn ‘Abbās) that is not any reason. So it requires that his view is to act upon the *Hadīth* which was narrated by ibn ‘Abbās.

The jurists who opined in favour of three divorces to be implemented, they have their excuses. ‘Umar saw that the people were committing what Allāh had forbidden them to do in accumulating three divorces together. They would not restrain from such a practice except of threatened with punishment. Considering the situation, ‘Umar adjudicated to act upon three divorces as final to restrain the people.

***The action of ‘Umar may be for various reasons, such as:***

(1) A kind of temporary punishment which is applied while needed, as he used to punish the wine drinker with 80 lashes, shaving of the head and exile; and like the action of the Prophet (*saws*) with three persons who stayed behind (from the battle of Tabūk) restraining them from meeting with their wives.

(2) ‘Umar thought that when the Prophet (*saws*) made three divorces as one it was conditional, and that was subsequently gone. It is similar to the privilege of *Hajj tamattu‘* in general and invalidating ‘Umrah privilege during the month of Hajj.

***In the following cases Ijtihād is allowable:***

For a man who is not able to maintain his wife, the order for separation must apply. sometimes, the right of separation belongs to the women, as in the case of an impotent husband, and someone who commits *ilā* (an oath to abstain from connubial act with one's wife) it is according to the majority of ‘*Ulamā*. The person who is unable to maintain the expenses of his wife, this opinion belongs to those who opined it. (Some scholars) sometimes opined that it is the right of Allāh, as in the case of the separation between husband and wife, made by the order of two judges, when they (husband and wife) didn't select any representative, (it is) according to the majorities opinion. An another example for establishing divorce to the person who pronounced *ilā*, if he did not fulfil the connubial needs with his wife within the limit of the waiting period, this opinion is belongs to those who support this view, among the ancestors and successors (scholars). The jurists of the companions of the Imām Aḥmad and others said : If husband and wife agree to have sex through the rump (backside), the order of separation did apply between them. If the virtuous father commands his son to divorce his wife, considering his well-being, the son must obey his father.

As the Imām Aḥmad and others said: As the Prophet (*saws*) ordered ‘Abdullah ibn ‘Umar to obey his father (‘Umar) who ordered him to divorce his wife. Therefore, the obligation of the separation will be implemented, either from the Shāri‘ (the Prophet (*saws*)) or from the judge (of an Islamic State ) 'when the husband does not fulfil the needs of his wife. This is a matter concerning the resources of *Ijtihād*.

As the people didn't take necessary care to pronounce the three divorces and they were practicing an unlawful action, 'Umar decided to establish three divorces for them, because they were not obeying Allāh and His Messenger to continue the bond of marriage. But a large number of Companions and their followers disagreed with this view. Either they didn't agree with the chastisement or they thought that *Sharī'ah* didn't apply the punishment, and this punishment could be for any one, to whom it is applicable. On the other hand, for someone who is not deserving of punishment because of ignorance or for any explanation, there is no reason to compel three divorces for him. This is a law, and the Prophet (*saws*) prescribed it like other similar matters without specification. Considering this, a group of predecessors and successors (of scholars) said that the decision of the Prophet (*saws*) in dissolving the *Hajj* to 'Umrah - that is *Al-Tamattu'* as his Companions were ordered to perform it in the last Pilgrimage, that was general law. As Prophet (*saws*) informed them when it was asked to him, is this our 'Umrah for this year? or forever? He replied: No, "but forever and ever". The 'Umrah combined with the Hajj till the Day of Judgement". Those who opined it was specially legitimized for old people, like the general permission of 'Umrah in the month of Hajj, is a false opinion.

Allah (SWT) said : يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولى الأمر منكم؛ فإن تنازعتم في شئ فمن فردوه إلى الله والرسول إن كنتم تؤمنون بالله واليوم الآخر؛ ذلك خير وأحسن تأويلاً"

*"O you who believe! Obey Allah (SWT) and obey the Messenger [Muḥammad (saws)], and those of you (Muslims) who are in authority. (And) if you differ in anything among yourselves, refer it to Allah (SWT) and His Messenger (saws) if you believe in Allah (SWT) and in the Last Day. That is better and more suitable for final determination".<sup>15</sup>*

Allāh (SWT) ordered the believers to bring their disputed matters to Allāh and His Messenger at the time of their difference. It was essential to refer any matter about which the ancestors and successors disputed, to the *Qur'ān* and the *Sunnah*. There is nothing in the *Qur'ān* and the *Hadīth* confirming three divorces being uttered with one word or words without *Ruj'ah* or a new contract, but the *Qur'ān* and *Sunnah* necessitate that type of divorce who had implemented the divorce in a way which Allāh and His

Messenger permitted. The general analogy with all principles of *Shari'ah* is based on this inference. Every contract some time will be lawful and some time will be unlawful such as selling, buying and marriage, when it is done in a forbidden way, is never implemented, unlike lawful contracts which Allah (SWT) and His Messenger have permitted.

Therefore, the Muslims are united in agreement that what Allah (SWT) has forbidden such as marriage with a forbidden female and marriage in the period of *'iddah* and as such, is invalid does not established. Similarly, Allah (SWT) has forbidden the buying and selling of forbidden things, such as wine, pigs, and dead animals. These are unlike the things which are naturally forbidden such as *Zihār*, *Qadhaf*, lying and false testimony etc. According to Divine rule, whoever commits such unlawful things will be liable to be punished. these things cannot be considered sometimes as *halāl* and sometimes as *harām* sometimes correct and sometimes wrong. On the other hand the matters which are usually forbidden in one side are allowable in the other side, such as payment of ransom money for prisoners, buying slaves whose freedom has been denied, bribery to the oppressor to check injustice or receiving the necessary dues; and likewise to buying the man who indulges in continuous sins, and to buy a thing in which a fault has been deceived, and presenting gifts for pleasing some new converts for doing the obligatory action or give up forbidden things, and likewise selling the motivated things for whom he receives from, and so on. Therefore, the oppressed is allowed to do this, and allowed to dissolve the contact as well as continue it. This is unlike the situation with regard to oppressor in that, what he has done that is not binding and necessary.

Allah (SWT) has allowed divorce sometimes and forbidden it sometimes. When it is done in a way that Allah (SWT) and His Messenger had forbidden, it is not established; it is only established when it is applied in the way of Allah (SWT) and His Messenger.

As the Imām Bukhārī and Muslim (mentioned in their authentic collections):

عن عائشة رضى الله عنها عن النبي صلى الله عليه وسلم أنه قال: من عمل عملاً ليس عليه أمرنا فهو رده<sup>a</sup> " متفق عليه

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(1) ذكره البخاري في ترجمة الباب<sup>4</sup> كتاب الاعتصام إباب إذا اجتهد العامل أو الحاكم فأخطأ - ومعلقاً في كتاب البيوع \ باب النجش<sup>a</sup>

تخريج: وأخرجه مسلم في كتاب الأفضية| باب نقض الأحكام الباطلة ورد محدثات الأمور رقم 18 ، وأخرجه بلفظ مختلف : (1) البخاري في كتاب الصلح| باب إذا اصطلحوا على صلح جور فالصلح مردود رقم 2697 بلفظ من أحدث في أمرنا هذا ما ليس فيه فهو رد؛ (2) ومسلم في كتاب الأفضية| باب نقض الأحكام الباطلة ورد محدثات الأمور رقم 17 بلفظ البخاري إلا أنه قال: ما ليس منه؛

Narrated from Ā'isha that the Prophet (*saws*) said : "Whoever does any action which is against our command (faith), is rejected". Allah (SWT) said : "*The divorce is only permissible twice, after that, the parties should either hold together on equitable terms, or separate with kindness*".<sup>16</sup> It is clear that the divorce which Allah (SWT) has approved of for the consummated wife is a revocable divorce (twice). After two times, either (hold together on equitable terms) he will return her and she will remain his wife and will stay with him on option of one divorce, or (release her with kindness) that he will send her away after the *'iddah* is expired. Allāh (SWT) said : "*O you who believe! When you marry believing women, and then divorce them before you have touched them, no period of 'iddah have you to count in respect of them. So give them a present, and set them free (i.e. divorce them irrevocably) in a handsome manner*".<sup>17</sup>

There after Allāh (swt) said: "*And it is not lawful for you to take back any of your Mahar (Bridal money given by the husband to his wife at the time of marriage) from your wives which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (SWT) (e.g., to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah (SWT), then there is no sin on either of them if she gives back (the Mahar or a part of it) for her Khul' (divorce)*".<sup>18</sup>

This is the *Khul'* which has been as named "*ransom*", the woman provides ransom to release herself from the bond of her husband, like the prisoner, and slaves provide ransom to release themselves from their master. Almighty Allāh said: (If he divorced her) which means the third divorce, "then she is not lawful unto him until she has married another husband". If he divorced her, (means the second husband) "it is no sin for both of them" (on her and on the first husband), "that they reunite, provided they feel that they can keep the limits ordained by Allāh".

Similarly, Allah (SWT) said: "*O Prophet! When you divorce a woman, divorce them at their 'iddah (prescribed periods), and count (accurately) their 'iddah. And fear Allāh*

*your Lord (O Muslims) and turn them not out of their (husband's) homes, nor shall they (themselves) leave, except in the case where they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah (SWT). And whosoever transgress the set limits of Allah (SWT), then indeed he has wronged himself. You (the one who divorced his wife) know not, it may be that Allāh will afterward bring some new thing to pass (i.e., return her back to you if that was the first or second divorce). Then when they are about to fulfil their appointed term, either take them back in a good manner. or part with them on equitable terms. And take for witness two just persons from among you (Muslims). And establish the whiteness for Allah (SWT), that will be admonition given to him who believes in Allah (SWT) and the Last Day. And whoever fears Allah (SWT) and keeps his duty to Him, He will make a way from him to get out (from) every difficulty. And He will provide him from (sources) he could never imagine. And whosoever puts his trust in Allah (SWT), then He will suffice him. Verily, Allah (SWT) will accomplish His purpose. Verily, for all things has Allah (SWT) appointed a due proportion".<sup>19</sup>*

An authentic *Ḥadīth* was reported by ‘Abdullah ibn ‘Umar that he divorced his wife during her period of menstruation in the lifetime of Allah (SWT)'s Messenger (*saws*). ‘Umar ibn Al Khattāb asked the Prophet (*saws*) who showed his anger and asserted, "order your son to take her back and keep her till she witnesses the period of purity and then wait till she get her next period and becomes clean again, whereupon, if he wishes to keep her he can do so, and if he wishes to divorce her he can divorce her before having sexual intercourse with her, and that is the *‘iddah* which Allah (SWT) has fixed for divorcing women therein".

In another narration which has transmitted by Imām al Bukhārī, the Prophet (*saws*) ordered ibn ‘Umar that he could divorce her in purity or pregnancy. In another narration in the *Ṣaḥīḥ* Al Bukhārī, the Prophet (*saws*) recited the verse : "*When you divorce women, divorce them at their ‘iddah*". ibn ‘Abbās and other Companions of the Prophet (*saws*) said: "The divorce is effected on four grounds". Two are lawful and two are unlawful.

***The two lawful grounds for divorce are as follows:***

- (i) If a man divorces his wife in a state of purity without sexual intercourse, and
- (ii) Divorces her after exposure of her pregnancy.

***The two unlawful grounds for divorce are as follows:***

- (i) If he divorces her in the menstruation, and
- (ii) Divorces her after having sexual intercourse while he doesn't know whether the womb contains any child or not.<sup>20</sup>

It is clear that the Prophet (*saws*) explained that it is not lawful to divorce a woman except when she becomes clear from menstruation before having sexual intercourse. This is the divorce for *'iddah*, i.e., facing the *'iddah*. So, it is either *tuhr* or *'iddah*. If he divorces her before *'iddah* it means it is a divorce before the time which Allāh permitted for divorce. This may lengthen her waiting period and he can then divorce his wife without any necessity for the divorce.

Divorce basically is an action which does not please Allāh, but most hated lawful thing to Allāh (SWT) is *ṭalāq*. However, according to the need of the people the permission is accorded as forbidden things are allowed in certain circumstances. This is why, after pronouncing of three divorces a wife becomes forbidden for her first husband until she gets married to another husband. This is a punishment to restrain people from misusing divorce. When the wife is divorced she waits in *'iddah* (prescribed period) for three *tuhr* (purity). The husband is the owner of the woman as he will inherit her and she inherits him. He will not be benefited in hurrying to get a divorce before its time, as there is no benefit to do any action before the Imām of the congregation. Whatever one does before the action of the Imām, will not be considered, rather it will invalidate his Prayer, if it is done intentionally, according to one opinion of the scholars. And he will have to continue the Prayer with the Imām till the Imām says Salam to terminate the Prayer.

Accordingly, the majority of scholars legalised *Al-Khul'* (الخلع) during the period of menstruation. But, any divorce pronounced during the period of menstruation is not valid

according to Jurists of *Ḥadīth*, rather it is a complete separation. According to one opinion of scholars, a woman meets her clearance (of womb) in one menstruation, without observing any *‘iddah*. This is one of the opinions of the Imām Aḥmad, she is free because of Khul‘ and there is benefit for both of them virtually without any problem between them. It is unlike *Ṭalāq Raj‘ī* (*revocable* divorce) as there is no advantage if it takes place before its time, rather there is evil without goodness. It has been said that this is a divorce an unexpected time in which is uncalled for. It is unlike a divorce in the time of attraction which is only implemented when needed desperately.

The scholars have different views regarding the interpretation of the Prophet's (saws) saying to ‘Abdullah ibn ‘Umar, when the Prophet (saws) told ‘Umar to tell his son ‘Abdullah "Let him bring back his wife". One group of scholars understood that in the instant case the divorce has taken place. So, the Prophet (saws) ordered ‘Abdullah to bring back his wife, thereafter, if he likes he can divorce her during the time of *ṭuhr*. They disputed whether revoking her is compulsory or recommended? whether he will bring her back in the first *ṭuhr* or in the second one. What is the wisdom behind this order of forbidding? The scholars have different opinions about this.

The other group of scholars said: The divorce has not taken place in the instant case. The husband separated himself physically from his wife, as per the prevalent custom, when someone who divorces his wife stays isolated physically from her she remains isolated from him. The Prophet (saws) told ‘Umar to ask ‘Abdullah to bring his wife back. Here the Prophet (saws) didn't say, "Let her come back" the word *Murāj‘ah* (both return to each other) involves both sides. It means she will come back to ‘Abdullah physically so that both husband and wife can meet together as they were before. Because the divorce didn't take effect, when the real time comes, in which Allah (SWT) has permitted the divorce to take place, he could divorce his wife if he likes to.

The second group of scholars substantiated their opinion on the following arguments : If the divorce had already taken place, there would be no benefit in the Prophetic order of return to divorce her a second time. Rather it would be problematic for both of them. For he has to divorce her after taking her back, according to the Qur’ān, *Ḥadīth* and

consensus. In that case the divorce would involve a multiplication of divorces, lengthening of the *'iddah* and punishment of both husband and wife. The Prophet (*saws*) didn't compel the husband to have intercourse with his wife before *ṭalāq*, but when he has intercourse with her, he can't divorce her legally until her pregnancy is disclosed or she has become clean for the second time. Sometimes he may dislike meeting her sexually, so how can he be bound to have intercourse with her?

Considering this position, all the four jurists and other scholars did not prescribe intercourse, instead the divorce has been delayed until the second *ṭuhr*. If the husband did not divorce his wife (in menstruation) for the first time, he has to divorce her in the first *ṭuhr*. For example, if divorce is allowed for him in the first *ṭuhr*, there would be no substantial benefit of marriage, in confining her only for the purpose of divorce. If he intends to divorce her in the first *ṭuhr*, it would cause additional suffering for both of them. The Prophet (*saws*) did not mean this by his order. The divorce has been prohibited in the first *ṭuhr* to enable the husband to have intercourse which will not be followed with any divorce. If he did not have intercourse with her, or he did have intercourse with her and she started menstruation after that, then, he can divorce her. It is not the case that when the husband restrains from having intercourse with his wife in that *ṭuhr* and divorces her in the second *ṭuhr*, it means he is required to divorce her, as he has no attraction to his wife. For example, if he maintains love and attraction for his wife, he would, of course, meet her sexually in the first *ṭuhr*, (as per human biological desire).

They argued that 'Abdullah was not commanded to bring witness over revoking (*Ruja'h*) as Allāh and His Prophet (*saws*) order. If the divorce has already taken place, and he wants to get his wife back, it would, of course be necessary for witnesses to be taken. Allāh (SWT) mentioned divorce in many verses of the *Qur'ān* and didn't ask any one to return after divorce. But He said, *"Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms"*.<sup>21</sup> The choice was given to the husband at the end of the *'iddah* either to confine her nicely - which is *Ruj'ah*, or leave her after the *'iddah* has ended, when she will not be confined after fulfilling the *'iddah*. Allāh the Exalted said : *"Turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness"*.<sup>22</sup>

They further argued that in the case where the forbidden divorce has taken place, it could bring evil because of the displeasure of Allāh and His Prophet (saws) and that evil will not be removed by the process of revoking, which allows him to divorce afterwards.

In that case there would no benefit in the order of *ruj'ah*, from which Allāh and His Prophet (saws) are pure. Because if a man has an attraction for his wife he has to take her back. If he has no love for his wife then, he has no reason to take her back. So, there is no legal benefit and goodness for 'Abdullah, in the command of the Prophet (*saws*), from revoking his wife with the necessary implication of divorce. Instead, it would create more evil. It is obligatory to believe that the Prophet (saws) is pure from making such an order or command that would implicate additional evil. Allah (SWT) and His Prophet (saws) prohibited innovated divorce to stop evil, how can they order that which would involve additional evils?

On the other hand, the opinions of the scholars of the second group are closer to the rules, laid down in the *Qur'an* and the *Sunnah*. This opinion is contradictory because the prominent early Islamic scholars and jurists held that if the acts of worship and forbidden contracts are performed in an unlawful manner, it can neither be established nor correct. This is the truth, although it had been disputed by a group of *Mutakallimūn* (Theologians). The legality rests with prominent early Islamic scholars and leaders of jurisprudence, as the Companions and their followers used to draw inference to invalidate the acts of worship and criminal punishment which was prohibited by the Prophet (saws). This was their common practice.

They argued further: if that could not be a valid proof of its evilness, the criteria to distinguish right from wrong would not come from the Prophet (saws), who said that prohibition does not cause evil. They argue that the validity of worship and contracts as well as their invalidations, come from the legislative command of the Prophet (*saws*) either conditionally or negatively and so on.

His statement that "it is correct" and practically that is not correct, in the commands of Allah (SWT) and His Prophet (saws). And it is obviously known that there are no statements in the Qur'ān and in the authentic Ḥadīth which are known to be incorrect. And these statements such as "ritual purity is a prerequisite condition for Prayer, and infidelity (*kufī*) renders the Prayers invalid, and these kind of contracts and this kind of worship are not valid and so on. The Prophetic commands consist of orders, prohibitions and declarations of lawful and unlawful matters. In the cases of negation of acceptance and goodness, such as the statements of the Prophet (saws): "Allah (SWT) does neither accept Prayer without ablution nor any donation out of unlawful wealth" and his statement "This is not valid" and his saying, "Allah (SWT) dislikes this" and that the promises appeared in his sayings, all of these are statements from which we cannot draw inferences about truth or evil unless he has mentioned this clearly. This is not tantamount to saying that the Prophet (saws) did not explain the matter clearly. This attitude is absolutely wrong and its evil is obviously known.

They argued further: The Prophet (*saws*) prohibits something which contains clear evil or is mostly evil. The object of prohibition is to stop the evil, so that the evil becomes non-existent. If the prohibition established such laws which are established on *ḥalāl*, making it compulsory to enforce them like *ḥalāl*, it would of course, implicate the evil which was deemed to be non-existent. This would mean the evil was deemed to be non-existent though the people have agreed to undertake it. (The people cannot practice the evil which the Prophet (*saws*) wanted to eradicate from the beginning), If the case is so, it would be a contradiction and the Prophet of Allāh is pure from such kind of contradiction.

Some of the scholars said: The Prophet (*saws*) prohibited three divorces so that the one (the husband) who divorces he may not repent later. This means that the repentance is bound to happen when he acts accordingly. It requires that (the *ṭalāq al thalāth*) to be true.

The answer to the above stated arguments is that, whenever Allāh prohibits any matter, that will be permissible (if it is the case? then it will lead) the joining in a marriage contract, a woman and her aunt with a same person will be lawful, so that it will not lead

to the break-up of the blood relationship. It can be said : If that argument is correct, it will be evidence that the contract was valid, because, if that is invalid, the question of the break-up of the relationship does not arise, this is ignorance, for that , Prophet (*saws*) explained clearly the wisdom behind his prohibition of forbidden things. Since if he allows them (the forbidden things) , it would involve implication of evil.

***The statement of Allah (SWT): "You do not know if perchance Allah (SWT) will bring about thereafter some new situation",<sup>23</sup>*** and the saying of the Prophet (*saws*): "No women can be combined in marriage with her maternal and paternal aunt. If you did so in marrying both aunts, you had broken your blood relationship ", and so on show that if any kind of action is allowed, which may lead to evil, it is forbidden, to eradicate that evil. Then, evil generates from it's licence as well as from it's action. When the doer considers that his action is valid or correct. But keeping in faith that, what is forbidden and prohibited is false, and following the compulsory practice of the command of Allah (SWT) and His Prophet (*saws*) is not called evil. The evil comes from disobedience of the command of Allah (SWT) and His Prophet (*saws*). The evils bring real *Fitnah* (afflictions) and punishment of Allah (SWT). Allah (SWT) said in the *Qur'ān*: "*Let those beware who withstand the Apostles order, Lest some trial befall them, or a grievous penalty be inflicted on them*".<sup>24</sup>

The argument that if no divorce at all has taken place then it cannot be called evil, is a really sound argument and that is the object of the Prophet (*saws*). That is why the Prophet (*saws*) prohibited such divorce and declared its falsity to bring down the evil. If that was not the intention of the Prophet (*saws*), the people would have continued to commit the same evil and would believe the lawfulness of the evil, thereby encouraging more evil.

There is a similar inference in the following rule : the command of prohibition of anything that leads to the determined objective is lawful. There are some transactions which are named as sale, marriage and fasting. It is like those who argue in the prohibition of Al Shighar marriage (as prevalent in the days of ignorance), cursing of the Prophet (*saws*) on the act of Ḥalālah- for both and his prohibition of selling fruits before these are ripen and the prohibition of fasting in both Eid days and so on.

Some prohibitions may be possible to imagine without any doubt, for example, the prohibition of the marriage of mothers and daughters, selling alcohol, dead animals, pork and idols. Both the Imām al Bukhārī and the Imām Muslim reported from Jābir, who narrated that the Prophet (*saws*) said: "Verily Allah (SWT) prohibited the sale of alcohol, dead animals, pork and idols". The Companions inquired : O Prophet (*saws*), what do you think about the fat of dead animals which is used in polishing boats and re-processing skins and the people use it for candles. The Prophet (*saws*) answered : No, that is forbidden. He further said: May Allāh curse the Jews, the fat was forbidden for them, they re-processed it, sold it and enjoyed its prices". Therefore, it is clear that the mere naming of such things as marriage and sale, does not protect them from becoming evil and false. Rather it leads towards its possibility through sense and feeling.

The argument of the speaker, "it is according to the *Sharī'ah*," if he intended to name it as the Shāri' (the Prophet (*saws*)) had been named it, then it is correct. If it is intended that Allāh Himself permitted so, that is absolutely against the *Qur'ān*, the *Hadīth* and Consensus. If he is intended that, it is such an object on which the law has been placed and made it a criterion to fulfil the desire and the people must follow its command, as witnessed in the permissible matters, It is false according to Consensus in almost all cases which create conflict. It is not possible to consider it as an agreed upon matter, because they draw inference in the majority of cases from the prohibition of the Prophet (*saws*) about divorce in the menstruation, and so on, which is a conflicting issue. So there is no way in which they could establish their desire from the *Qur'ān*, the *Hadīth* and Consensus. This is exactly similar to the *Ḥalāl*, the cursed one, wherein the intention of his marriage contract is to make the divorced wife lawful for the first husband. It is not the case that he makes the divorced wife lawful in same action. For example, if he marries her with love and attraction, it would be lawful for him without curse, according to Consensus.

It becomes clear from the aforesaid discussion that the curse is meant for the person who intended the *Ḥalāl* for somebody else, and it further becomes clear that the cursed

person did not legalise the woman by that action. The curse is related prohibition of his action, but the disputing group considers the action as allowable.

It appears from the aforesaid circumstances that there is no clear proof with the disputing group, rather the real truth lies with prominent early Islamic scholars and jurists. Anyone who differs in principle with the prominent early Islamic jurists on some issues, and is not contradictory answer, would suffer from contradiction. Whereas the rules, which are established from the *Qur'ān*, *Ḥadīth* and Consensus, are free from dispute and confusion. All other things contain dispute and are not binding on people to follow them. The correct analogy which does not contradict, is based on sources of the *Qur'ān*, *Ḥadīth* and Consensus. The rule must follow the proof. This is the meaning of Divine inviolable immunity, there is no contradiction in the sayings of an infallible person. All Muslims believe unanimously that the Prophet (*saws*) is absolutely innocent in his Divine Missions and he is also innocent in whatever he has prescribed for the '*Ummah* and in the same way the '*Ummah*, is protected from being united on the wrong path or from going astray.

This is the opinion of the religious scholars: that for everyone in mankind, some of their opinions will be accepted and some will be rejected, but the Prophet (*saws*) is the one who has to be accepted unconditionally by the whole '*Ummah* (Muslim Nation). Allah (SWT) has made it compulsory for all creation to believe in the Prophet (*saws*) and obey him, consider lawful what he declared lawful, and consider unlawful what he declared unlawful. This is the Divine criterion between a believer and a non-believer, People of Paradise and People of Hellfire, Guided and astray, and right and wrong. The believers are the people of Paradise. The followers of truth are the real followers of the Prophet (*saws*). On the other hand, the non-believers are the people of Hellfire, the followers of misguidance and falsity and those who do not follow the Prophet (*saws*).

Whoever believes in the Prophet (*saws*), openly and secretly, and tries to follow him, he is among the fortunate believers although he commits mistakes and does wrong in some of the Prophet's teaching and actions. It may be that the command of the Prophet (*saws*) has not reached him or he does not understand it. This is forgivable. Addressing the believers, Allah (SWT) says: "*Oh our Lord! Condemn us not if we forget or fall into*

*error*".<sup>25</sup> And the Prophet (saws) said, as reported in authentic *Ḥadīth*: Wherein Allah (SWT) said, "You did", another *Ḥadīth*

عن النبي صلى الله عليه وسلم أنه قال: " العلماء ورثة الأنبياء إن الأنبياء لم يورثوا دينارا ولا درهما وإنما ورثوا العلم فمن أخذ به  
"أخذ بحظ وافر (السنن)"

Reported in the *Sunan*, the Prophet (saws) said:

The scholars are the descendants of the Prophets (saws). The Prophets (saws) did not leave inheritance of any *dinār* or *dirham*. They inherited the knowledge. Whoever received this, he received a great portion".

There is a saying of Allah (SWT):

"وداود وسليمان إذ يحرثان إذ نفثت فيه غم القوم وكنا لحكمهم شاهدين ففهمناها سليمان وكلا آتينا حكما وعلما"

*"And remember David and Solomon, when they gave judgement in the matter of the field into which the sheep of certain people had strayed by night. We did witness their judgement. To Solomon we inspired the (right) understanding of the matter to each of them we gave judgement and knowledge"*.<sup>26</sup>

In the above verse, one of the two Prophets has been distinguished with proper understanding and was praised that He gave both of them wisdom and knowledge. Similarly if someone from among the scholars specialised in knowledge of Allāh with certain wisdom and understanding, it does not necessitate criticism of someone among the scholars who could not reach an equal level. The fundamental criteria is that whoever fears Allāh according to his ability, would be regarded as being among the pious friends of Allāh, although a (little) portion of the religion remains unknown to him which has been understood by others.

وفد قال واتلة بن الأسقع وبعضهم يرفعه الى النبي صلى الله عليه وسلم: من طلب علما فأدرکه فله أجران؛ ومن طلب علما فلم يدركه فله أجر؛

It is reported by Wāthilah ibn Asqa‘ and some of them pointed it to the Prophet (*saws*) who said: "Whoever acquires knowledge and understands it, he will receive double reward and whoever acquires knowledge but could not understand it will receive a single reward".

The aforesaid statement has been corroborated by another authentic *Hadīth*:

عن عمرو بن العاص وعن أبي هريرة: عن النبي صلى الله عليه وسلم " إذا اجتهد الحاكم فأصاب فله أجران؛ وإذا اجتهد الحاكم فأخطأ فله أجر " ( تخریج:- أما حدیث عمرو بن العاص فأخرجه (1) البخاري في كتاب الاعتصام بالكتاب والسنة \ باب أجر الحاكم إذا اجتهد فأصاب أو أخطأ، رقم 7352 ولفظه: إذا حكم الحاكم فاجتهد ثم أصاب فله أجران، وإذا حكم فاجتهد ثم أخطأ فله أجر، قال: فحدث بهذا الحديث أبابكر بن عمرو بن حزم فقال: هكذا حدثني أبو سلمة بن عبد الرحمن عن أبي هريرة، (2) ومسلم في كتاب الأفضية، باب بيان أجر الحاكم إذا اجتهد فأصاب أو أخطأ رقم 15 بلفظ البخاري، وأما حدیث أبي هريرة فأخرجه: الترمذي في كتاب الأحكام، باب ما جاء في القاضي يُصيب ويخطئ رقم 1326 بلفظ البخاري، وقال الترمذي: وفي الباب عن عمرو بن العاص وعقبة بن عامر )

Reported by ‘Amr ibn ‘Āṣ and Abū Hurayrah from the Prophet (*saws*) who said: "when a judge adjudicates and reaches the correct judgement, he will achieve two rewards, and when a ruler adjudicates and commits a mistake, he will get one reward".

The objective of the aforesaid discussion is to draw attention to the issue of prohibited divorce. Many scholars agreed with and said that (the forbidden divorce is effective). The prominent early Islamic scholars and jurists, and the majority of scholars agreed with that prohibition involves invalidity, whereas they didn't find, in their excuses regarding this issue, any appropriate distinction. In this matter a group of scholars disputed with them, holding that the order of prohibition involves evil, and they drew their inference and based their arguments on the sources acceptable to them.

This is a conflicting inference which does not lead to proper knowledge, rather the disputing group committed the mistake, either in the form of contradiction or in the issue of dispute. Their mistake in one of the two coalitions does not necessitate that the mistake would be in the matter of dispute. This is the paramount principle on which a number of Islamic rules are based and founded. It is, therefore, not possible to contradict the rule, because of some of the scholar's views who do not have with them any proof from the *Qur'ān*, *Hadīth* and Consensus. The rules and the primary sources are not compatible with their arguments, but rather contradict their opinions.

Whoever studies the *Qur'ān* and *Ḥadīth* carefully will understand that Allāh (SWT) did not prescribe the forbidden divorce at all. However, the **bā'in** divorce (separation) has been prescribed before the consummation and after the end of *'iddah*.

A group of scholars accused those who consider three divorces as one (divorce) saying that, "you differed with 'Umar ibn Khaṭṭāb". The issue of divorce was finally settled during the time of 'Umar. Another group said that the general consensus has been established, saying that you are differing with 'Umar ibn Khaṭṭāb in a matter regarding which the consensus of the Companions was established, and the matter was in accordance with the *Qur'ān* and the *Ḥadīth*. Among you, there are people who approve the *ḥalālah*. This is reported from 'Umar ibn Al-Khaṭṭāb who said: "I would, of course stone and punish the person who does the *ḥalālah* and the person for whom the *ḥalālah* has been done". The Companions were unanimous about the prohibition of *ḥalālah*, such as 'Uthmān, 'Alī, 'Abullah ibn Mas'ūd 'Abdullah ibn 'Abbās, 'Abdullah ibn 'Umar and others. Not a single Companion had been brought back a divorced wife to her husband through the act of *ḥalālah*. 'Umar and all other Companions acted according to the *Qur'ān* and the *Ḥadīth*.

This is like "the curse of the Prophet (*saws*) for the person who does the *ḥalālah* and the person for whom the *ḥalālah* has been done". Those who differed with them, acted according to their analogical reasoning and judgement. May Allah (SWT) be pleased with all scholars of Muslims.

Moreover, it is reported from 'Umar ibn al-Khaṭṭāb that he used to say the words *Al-khaliyyah wa - l Bariyyah* (one kind of indirect expression which implies separation between husband and wife), in this indirect expression "the divorce is meant to be revocable". The majority of Companions were against the decision of 'Umar. It is reported from 'Umar that he gave a person whose whereabouts were not known, and who came back to his home after a long absence and found that his wife had already been married to another in his absence. 'Umar ibn al-Khaṭṭāb approved the choice for him between his wife and the dowry. This is also supported by other Companions such as

‘Uthmān and ‘Alī. The Imām Aḥmad mentioned this connections with eight Companions and said : They used to differ with ‘Umar in everything. In spite of his position, their majority used to differ with ‘Umar and the whole Companions in that matter. Among them there were some persons who used to contradict and differ with those who judged so. ‘Umar and other Companions brought various liberated lands forcibly, such as Shām (present Syria), Egypt, Irāq, Khorasān and Morocco, as booties for the Muslims. ‘Umar and even ‘Uthmān did not distribute such lands which were liberated forcibly. ‘Umar did not look at the blessedness of mind of the **Mujāhidūn** (Muslim fighters) in these countries. Although some ‘*Ulamā*’ thought that they (‘Umar and ‘Uthmān) pleased the fighters with the distribution of the land of *al-sawād* (the rural area of Irāq). Rather Bilāl, Jubayr and some others demanded their share of booty from the liberated land, but he (‘Umar) did not fulfil their demands.

This is one example where a group of Companions differed with ‘Umar in such important settled matters in his time. They also violated the judgement of those who judged matters in the same way as they did. Abū Bakar, ‘Umar, ‘Uthmān and ‘Alī, (the four *Khulafā’ al Rāshidūn*), did not divide and distribute *Al Fa’i* the war booties into five portions at any time. The Prophet (*saws*) did not divide the booty into five portions. They did not divide one fifth of the booty into five equal portions, yet in spite of that, many of them (Companions and their followers) differed in the matter. There are many examples of this nature.

The established rule on which the Muslim scholars are united is that: whenever they dispute with each other in any matter, they have to refer to Allah (SWT) and His Prophet (*saws*). Allah (SWT) said in the *Qur’ān*:

يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولى الأمر منكم؛ فإن تنازعتم في شئٍ فردوه إلى الله والرسول؛ إن كنتم تؤمنون بالله واليوم الآخر ذلك خير وأحسن تأويلاً"

*"O you who believe! Obey Allah (SWT), and obey the Apostle, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah (SWT) and His Apostle, if you do believe in Allah (SWT) and the last day; that is best, and suitable for final determination"*<sup>27</sup>

It is not allowed for anyone to think that the Companions were united against any issue of the *Sharī'ah* after the death of the Prophet (saws). If it is the case then, this is the opinion of misguided people. It is not valid for anybody to claim that the *Sharī'ah* which was brought by the Prophet (saws) has been abrogated by consensus after him, as has been claimed by a group of wrongdoers. Any consensus of Muslims should be compatible with the *Sharī'ah* which the Prophet (saws) brought, and not oppose it.

Every *Naṣṣ* (text) has been abrogated by consensus of the ' *Ummah*. There will be a *Naṣṣ* with the ' *Ummah* which will really be abrogator for it. The ' *Ummah* protects the delator *naṣṣ* (abrogator *naṣṣ*) as well as the abrogated one. The protection of the abrogator *naṣṣ* is more important to the ' *Ummah* than the protection of abrogated *naṣṣ*. It does not allow 'Umar and the Companions with him to be united against a *naṣṣ* of the Prophet (saws). It is possible that one person may act as per the analogy and others dispute with him. This variation in opinions is found in many issues. This matter is one of those issues on which many scholars disagreed and disputed with each other.

Considering the same rule, 'Umar ibn Khaṭṭāb decreed that the divorced woman will get an apartment and maintenance until the end of her prescribed period. He thought that the Qur'ān has demonstrated same view in this point. A vast majority of Companions disputed his decision in the matter. Some of them said, She is entitled to have an apartment only, some others said, she is neither entitled to an apartment nor maintenance. 'Abduallah ibn 'Abbās, Jābīr and Fāṭimah bint Qays were among the latter group. Fatima reported from the Prophet (saws) who said, "you are neither entitled to maintenance nor an apartment". They justified their view from the decision of 'Umar. His decision is supported by the saying of Allah (SWT):

"لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفحشة مبينة"

*"Don't turn them out of the apartment and they should not take themselves out of the houses, except when they indulged in open lewdness".*

Faṭīma (bint Qays) and other Companions like ibn ‘Abbās and Jābir and others said : This verse is related with *revocable* divorce. As Allah (SWT) says: "*You do not know if perhaps Allah (SWT) will bring about some new situation thereafter*".<sup>28</sup>

The question is what new situation can be brought about after three divorces? The Imām Aḥmad and other *Ḥadīth* jurists joined in their opinion with Fāṭima in this matter.

Similarly, in the matter of "divorce" Allāh (SWT) said: If perchance Allāh will bring about thereafter some new situation. Many Companions, their followers and scholars held that the divorce, as Allāh (SWT) mentioned in the matter of divorce in the *Qur’ān* meant *al raj’ī* (divorce); if it is legalised to implement three divorces in one instance then he who divorces will definitely be sad . It will not lead him to repent when he does so. There is no way-out for him to take his wife back and it will cause loss to him. Allah (SWT) commands the servants in such ways which benefit them and prohibits them from such acts which cause loss to them. That is why Allah (SWT) continued after the aforesaid verse of the chapter of divorce, the second verse of Sura *Ṭalāq* says:

*"Thus when they fulfil their appointed term, either take them back on equitable terms, or part with them on equitable terms".*

"The order of taking back or parting with" is concerned with the *raj’ī* divorce, not with three divorces and the final separation. As Allāh (SWT) said: *And take for witness two persons from among you, endued with justice, and establish the evidence (as before Allāh (SWT))*".<sup>29</sup> ordered witnesses to be taken in case of *revocable* divorce. This is agreed upon by general consensus. In the opinion of some scholars it is a compulsory command, while others say it is a recommended command. (However, the *Qur’anic* command concerning the witnesses is related to *revocable* divorce, not to three divorces).

Some scholars thought that there should be witnesses to a divorce and they argued that the divorce that has not been witnessed will not take place. This view is against consensus, the *Qu’ān* and the *Ḥadīth*. And none of the famous scholar has given this view. The divorce has been allowed first without any order to have a witness. The

sequence of witness begins when Allāh (SWT) said: "*Thus when they fulfil their appointed term, either take them back on equitable terms or part with them on equitable terms*".<sup>30</sup>

The main point to note here from the separation is for the husband to leave his wife alone after the end of the period (*'iddah*). It can neither be in divorce, nor in *ruj'ah* nor in marriage. To keep witness in this matter agreed upon by general consensus. It becomes clear that the taking of witnesses is related, particularly at the time of taking the wife back. The wisdom behind this command is that, the husband may divorce her and thereafter he will take her back. The devil may misguide him to conceal the fact until he divorces her unlawfully, when nobody is aware of it and later on she will be forbidden to him. Therefore, Allāh (SWT) has ordered witnesses to be taken on her return to disclose the fact that one divorce has really been effected. The aforesaid incident is similar to the case wherein the Prophet (*saws*) ordered witnesses to be taken (in the *Luqtah*) if anybody finds a lost item, so that the devil cannot mislead him into concealment of the lost things. This is unlike the divorce, for when a wife is divorced and not taken back but left abandoned, it must be known among the people in the community that she is no more his wife as she was divorced. If she is living with her husband, nobody knows whether the husband has really divorced his wife or not. This is confusing only a witness can remove it.

In the case of marriage, it is necessary to distinguish between marriage, fornication and keeping friends, as Allāh (SWT) commanded the facts of marriage to be disclosed. Accordingly, it has become the tradition to openly announce a marriage in the community. It is not allowed to keep the marriage secret like the fornication. The facts of fornication and adultery are concealed because they are immoral. In this case the scholars have different views as to whether witnesses are compulsory or an announcement alone is sufficient. Is either of the two enough?

(According to some scholars, a mere witness regarding the facts of marriage is enough for its validity. Other scholars said that it has to be disclosed and announced by post-marriage *wlīmah* function along with *daff*.)

Allāh (SWT) said:

*"Whoever fear Allāh (SWT), He will prepare for him a way out and He provides for him from sources he never could imagine. And if anyone puts his trust in Allāh (SWT), Allāh (SWT) is sufficient for him. For Allāh (SWT) will surely accomplish His purpose. Verily for all things Allāh (SWT) has appointed a due portion".<sup>31</sup>*

This verse in general includes everyone who fears Allāh (SWT). The sequence of the verse deals in general with everyone. Whoever fears Allāh (SWT) in the matter of divorce and then divorces in the manner Allāh (SWT) has commanded, Allāh (SWT) will bring a way out for him from the situation where others may stagnate.

Whoever exceeds the limits of Allāh (SWT) and commits the acts which have been forbidden, he does injustice to Him. When a person is ignorant about the prohibition of the innovated divorce, he does not know whether the divorce in the menstruation is forbidden or announcing three divorces at once is forbidden. When he understand the prohibition and restrains himself he becomes one among the pious people, and as such, he has become entitled to the divine way-out and favour.

When someone knows that three divorces at one instance is forbidden and he believes that the woman will be forbidden for him, he has no proof other than someone giving a juridical verdict that the woman will be forbidden for him. Therefore, he will be punished to the limit of his sin and injustice. It is like punishment of the people of the *Sabt* [who were asked not to catch fish on Saturday during the time of Prophet Dā'ūd (a.s.) ], they didn't fear Allāh (SWT) and they were punished with hardship.

If Allāh (SWT) guides someone and he finds the truth, Allāh (SWT) enables him to repent in the case of committing sins. The one who repents sin becomes like the one who has no sin. Hence, he is admitted among the pious people, and therefore, he is entitled to get divine concession and way-out as per the promise of Allāh (SWT).

The Prophet Muḥammad (*saws*) is the Prophet of *Raḥmah* (mercy), as well as the Prophet of *Jihād* (battle). Whoever repents his sins will get a divine concession in his religion,

unlike the people of previous religions. Those who repent among them used to suffer various harsh punishments. The laws were very hard. The penalty was very grave, such as killing themselves and so on. (The Islamic penalties are soft. The penal laws in Islam are much easier than those of the previous nations).

‘Abdullah ibn ‘Abbās was asked about his opinion regarding someone who divorced his wife thrice. He answered : if you fear Allāh (SWT), He will bring a way-out for you. Sometimes, ibn ‘Abbās used to agree with ‘Umar in the matter of innovated forbidden divorce, to establish the consequence for someone who committed it with the knowledge of its prohibition. Sometime he used to declare three divorces as one. It was the practice of ‘Abdullah ibn Mas‘ūd who used to express his anger with the people of this innovation (who practices innovative divorce), Ibn Mas‘ūd used to say "O people! Whoever does the thing in the right manner, it will be clearly open for him, otherwise, by Allah (SWT), we do not have any power to resist everything you innovate".

The *Halālah* practice was not prevalent during the time of the Prophet (saws), Abū Bakar, ‘Umar, ‘Uthmān and ‘Alī would have been recognized by witnesses, the woman herself and relatives of the parties. Nobody reported from the Prophet (saws), and his Rightly Guided Companions any incident where they brought back any woman to her husband through the marriage of *Halālah*. They almost always practised the divorce of *Sunnah*. They were not used to swearing in the matter of divorce. Therefore, no single case of swearing was reported from the Companions. What was reported from them was the debate in the matter of the implementation of divorce, not in the matter of swearing. The difference between divorce and swearing is clear as the difference between vows and vows with swearing is clear. Whenever a person begs Allāh (SWT) for anything, and supplicates: "If Allāh (SWT) helps me to recover from my illness, or helps me to pay off my debts, or gets rid of this hardship for me, so for Allāh (SWT) I will spend in charity one thousand dirham, or I shall fast for one month or I shall free one slave". These kinds of vows or pledges are required to be fulfilled according to the *Qur’ān*, the *Hadīth* and the Consensus.

When the vows are conditional with oaths and someone says: "If I travel with you, if I marry so and so, if I hit someone, if I don't travel from you, then I have to perform a pilgrimage, or my wealth is in charity, or I have to free a slave", he will relate the swearer with the vows, not the vowers. When he does not get what he wished, the expiation of the oath is sufficient for him. In the same notion, the Companions expressed their verdict : "If someone says: If I do such and such, all my slaves will be free". This is an oath, and the expiation of oaths will be enough for him.

Similarly, many *Tabi'ūn* said: *Ḥajjāj ibn Yūsuf* innovated swearing (*Taḥlīf*) in the matter of divorce and freeing the slave, swearing in the name of Allāh, spending in charity. It is said: swearing by *Ḥajj* also includes the former. The *Tābi'ūn* and the people thereafter spoke regarding those oaths. Their views were different, some of them said: If someone breaks his oaths, he has to expiate, what he promised. Some others said : he has to expiate only in the case of divorce and freeing slave. Some of them said : these are oaths of infidels, the person has nothing to expiate this kind of oath.

Other groups said : These are oaths of the Muslims, the expiation of which is compulsory like all other oaths of the Muslims. This opinion is closer to the views of the Companions, and the *Qur'ān* and the *Sunnah* support it.

The object here is that not a single woman was brought back to her husband openly by virtue of *Ḥalālāh* during the time of the Prophet (saws) and the *Khulafā' Rāshidūn*. Whatever happened in that direction was entirely secret. Considering the circumstances the Prophet (saws) declared :

قال النبي صلى الله عليه وسلم: " لعن الله أكل الربا؛ وموكله؛ وشاهديه وكتابه ولعن المحلل والمحلل له" (وقال الترمذى حديث صحيح).  
 تخريج: هذا حديث مركب من حديثين ، أما الحديث الأول "لعن الله أكل الربا وموكله وشاهديه وكتابه" فقد رواه كل من أبي جحيفة  
 وجابر وابن مسعود والحارث ولكنهم رووا بإسناد اللعن إلى النبي صلى الله عليه وسلم ، أما حديث أبي جحيفة فقد أخرجه مختصراً: (1)  
 البخاري في كتاب الطلاق\ باب مهر البغي والنكاح الفاسد رقم 5347 بلفظ "لعن النبي صلى الله عليه وسلم والواشمة والمستوشمة وأكل الربا  
 ومؤكله" • وأما جابر فقد أخرجه بتقديم كتابه ، على 'شاهديه' (1) مسلم في كتاب المساقاة\ باب لعن أكل الربا ومؤكله رقم 106 وزاد في  
 آخره ' قال: هم سواء' • وأما ابن مسعود فقد أخرجه الترمذى في كتاب البيوع\ باب ماجاء في أكل الربا رقم 1206 قال الترمذى حسن  
 صحيح' • وابن ماجه في التجارات\ باب التغليظ في الربا رقم 2277 • وأما حديث الحارث فقد أخرجه مطولاً (1) النسائي في كتاب  
 الزينة\ باب المتشتمات رقم 5107 بلفظ ' لعن رسول الله صلى الله عليه وسلم أكل الربا ومؤكله وشاهده وكتابه والواشمة والمستوشمة' قال:  
 إلا من داء، فقال: نعم، والحال والمحلل له ومانع الصدقة، وكان ينهي عن النوح، ولم يقل لعن، • أما الحديث الثانى "ولعن المحلل والمحلل  
 له"، فقد رواه كل من علي وجابر وابن مسعود وابن عباس وعقبة بن عامر بإسناد اللعن إلى النبي صلى الله عليه وسلم إلا عقبة" • أما حديث

على فقد أخرجه : (1) أبو داود في كتاب النكاح \ باب في التحليل رقم 2076 بلفظ ' أن النبي صلى الله عليه وسلم قال: لعن المُحلّ والمحلّ له' • (2) والترمذي في كتاب النكاح \ باب ما جاء في المحلّ والمحلّ له رقم 1119 بلفظ " إن رسول الله صلى الله عليه وسلم لعن المحلّ والمحلّ له" • (3) وابن ماجه في كتاب النكاح \ باب للمحلّ والمحلّ له رقم 1935 وأما حديث جابر فقد أخرجه: • (1) الترمذي في كتاب النكاح \ باب ما جاء في المحلّ والمحلّ له رقم 1119 • وأما حديث ابن مسعود فقد أخرجه : (1) الترمذي في كتاب النكاح \ باب ما جاء في المحلّ والمحلّ له رقم 1120 وقال : حسن صحيح • وأما حديث ابن عباس فقد أخرجه: • (1) ابن ماجه في كتاب النكاح \ باب المحللّ والمحللّ له رقم 1934 • وأما حديث عقبة بن عامر فقد أخرجه مطولا: (1) ابن ماجه في كتاب النكاح \ باب المحللّ والمحللّ له رقم 1936 بلفظ 'ألا أخبركم بالتييس المستعارة؟ قالوا: بلى يا رسول الله' قال: هو المحللّ ، لعن الله المحللّ والمحللّ له'

"May Allāh (SWT) curse those who enjoyed usury, who provided it, who witnessed it and who writes it. May Allāh (SWT) curse the one who commits *Ḥalālāh* and the one to whom *Ḥalālāh* is done". (the *Imām Tirmidhī* confirmed the *Ḥadīth* as authentic).

The Prophet (*saws*) cursed four persons in the matter of usury, the receiver and provider, two witnesses, and the writer, for this is a loan transaction which is liable to be written and witnessed. The Prophet (*saws*) cursed in the case of *Ḥalālāh* only two persons, the person who does the *Ḥalālāh* and the one for whom the *Ḥalālāh* is done. The Prophet (*saws*) didn't curse the two witnesses and the writer, because it was not the convention during his time to write the dowries of marriages in any register. They used to fix and prescribe and pay the dowry before formal consummation according to general custom. And not a single *dīnār* was left unpaid by the husband. Therefore, there was no need to write the amount of dowry and the names of two witnesses.

It was customary that the doer of *Ḥalālāh* and the husband (who divorces) both used to conceal the fact, the woman, relatives and witnesses used to know nothing. "The Prophet (*saws*) cursed the doer of *Ḥalālāh* and to whom it was done, as they both did the forbidden thing, not the others". They were not required to do *Ḥalālāh* mostly. If someone divorced his wife after revoking it or after the marriage contract, then three divorces would take place accordingly and the man is not required to repent or be ashamed of for his action except in very rare cases. That could be owing to his disobedience and exceeding the divine limits of Allāh (SWT), which renders him liable to punishment. Anyone who intends *Ḥalālāh* would be cursed, as well as those who do that; because both of them helped each other in sin and transgression.

In the course of time, the practice of "swearing with divorce" came into being and many jurists believe that the breaker of an oath is liable to expiation with that which he promised for himself. The expiation of an oath cannot be sufficient for him. Many others believe that the forbidden divorce will take place. Some others believe utterance of three divorces at a time is not forbidden. Many of them believe that the divorce of the drunk will take place. Many of them believe that the divorce of the compelling person is valid. These were the disputing opinions prevalent among the Companions. Some of the opinions came later on. The people were mostly divided in the matter of divorce, in spite of the fact that the separation of the husband from his wife involves great loss and evil in religion and worldly matters. The people have been divided into two groups in this disputed matter.

One group of scholars followed what has been reported from the Prophet (saws) and the Companions with regard to the prohibition of *Ḥalālah*. They prohibited it along with their prohibition of the matter which has not been prohibited by the Prophet (saws) in those conditions. Various factors emerged from their opinions which involve serious burdens, yokes and great evil in religion and in worldly matters, such as apostasy of a group from Islam, shedding of innocent blood, loss of the common conscience, the enmity between the people, degrading the Islamic *Shari'ah*, and various crimes and other major problematic issues.

The other group thought to eradicate great problems through various excuses and pleas which would help to bring back the woman to her husband after the forbidden divorce. In this way "the marriage of *ḥalālah* was innovated for the first time. A group of scholars argued that he who does the *Ḥalālah* will be rewarded, as it will remove various evils by bringing back the woman to her husband. This was a *Ḥilah* (excuse/plea) in all these cases to stop execution of the divorce. Thereafter another *Ḥilah* was innovated in the "oaths" on various pleas. They first introduced *Ḥilah* in the words of the oath. Thereafter they introduced the same excuse to have a way-out from the oath.

In the same way, the excuse was innovated in the matter of divorce, and then they introduced an excuse to invalidate the marriage. The majority of prominent early Islamic

scholars and jurists disapprove of all these and similar excuses. They argued that the aforesaid excuses will falsify and dismiss the wisdom of the *Sharī‘ah* and the realities of the oaths mentioned in the verse of the *Qur’ān* and this is deception and jesting with the commands of Allah (SWT). Ayyūb Sukhtiyānī said: "They are deceiving Allāh as they deceive the children. If they could practise the matter in its correct form, it could be easier on me".

Thereafter the infidels and the hypocrites exaggerated in these issues, they even resorted to blaming the Prophet (*saws*) and they considered it a great support to blame those who believe in the Prophet (*saws*) and helped him and respected him. In this way, they used to create obstacles in the path of Allāh (SWT), hindered the believers and opposed them in their faith. Preventing someone from holding the Islamic belief is a great sin.

It is reported that a group of them accepted Islam and mentioned that the beauty of Islam is clear to them except for this *Hīlah*, because this kind of *Hīlah* does not bring any ointment to the ill. It has not cured the illness, rather it has opened various problematic doors in Islam. Whereas Allāh (SWT) made clear in the following verses:

ورحمتى وسعت كل شئى فسأكتبها للذين يتقون ويؤتون الزكاة والذين هم بآياتنا يؤمنون الذين يتبعون الرسول النبي الأمي الذي يجدونه مكتوبا عندهم في التوراة والإنجيل يأمرهم بالمعروف وينهاهم عن المنكر ويحل لهم الطيبات ويحرم عليهم الخبائث ويضع عنهم إصرهم والأغلال التي كانت عليهم فالذين آمنوا به وعزروه ونصروه وإتبوعوا النور الذي أنزل معه أولئك هم المفلحون.

*"But My mercy extended to all things. That (mercy) I shall ordain for those who do right, and practise regular charity and those who believe in our signs. Those who follow the apostle the unlettered Prophet whom they find mentioned in their own (scriptures) in the law and the Gospel. For he commands them what is just and forbids them what is evil; he allows them as lawful what is good (pure) and prohibits them from what is bad (impure). He releases them from heavy burdens and from the yokes, that are upon them. so, it is those who believe in him, honour him, help him and follow the right which is sent down with him. It is they who will prosper".<sup>32</sup>*

In the aforesaid verse, Allah (SWT) described His Prophet (saws) as saying that He commands every good and prohibits every bad, declares every thing pure as *ḥalāl* and prohibits every thing impure and removes all the burdens and the yokes of the previous Nations.

All the opinions which differ from the *Qur'ān* and wisdom are inferior views and innovated conceptions, the best of which are concerned with abrogated laws of the previous *Sharī'ah* which has been repealed and removed by the *Sharī'ah* of the Prophet Muḥammad (*saws*).

If anyone of the best scholars of this 'Ummah agrees with the aforesaid opinions, he would be treated as a *Mujtahid* who fears Allāh to the best of his ability. He will be rewarded for his juridical efforts and piety and his mistakes will be forgiven. The opinion of jurists is not binding upon the Prophet (saws). A *Ḥadīth* of the Prophet (saws) has been reported in the two authentic Ḥadīth collections:

وقد ثبت في الصحيحين أنه صلى الله عليه وسلم قال: إذا اجتهد الحاكم فأصاب فله أجران وإذا اجتهد الحاكم فأخطأ فله أجر

"When the judge makes his *ijtihād* in a matter and reaches the correct judgement, he will get double rewards. And when the judge makes his *ijtihād* and commits any mistake, he will get a single reward".

Another authentic Ḥadīth is reported from the Prophet (saws) advising someone whom he sent as leader of a group and commander of a force : "If you attack the people of a garrison, and they ask you to determine their position and put them under the command of Allāh, in this case do not put them under the command of Allāh, as You are not aware of the command of Allāh about them. Better, put them directly under your command and the command of your companions".

One authentic Ḥadīth of the Prophet (*saws*) supported the aforesaid view.

" أن سعد بن معاذ لما حكمه النبي صلى الله عليه وسلم في بني قريظة وكان النبي صلى الله عليه وسلم قد حاصرهم؛ ففزّلوا على حكمه. فأنزلهم على حكم سعد بن معاذ لما طلب منهم حلفا وهم من الأنصار أن يحسن إليهم وكان سعد بن معاذ خلاف ما يظن به بعض قومه؛ كان مقدما لرضى الله ورسوله على رضى قومه؛ ولهذا لما مات إهتزله عرش الرحمن فرحا بقدم روحه؛ فحكم فيهم أن تقتل مقاتلتهم؛ وتسبى

حریمهم؛ وتقسم أموالهم؛ فقال النبي صلى الله عليه وسلم: " لقد حكمت فيهم بحكم الملك" وفي رواية " لقد حكمت فيهم بحكم الله من فوق سبع سموات " ثبت في الصحيح:

التخريج : (1) • أخرجه البخاري في كتاب المغازي \ باب مرجع النبي صلى الله عليه وسلم من الأحزاب ومخرجه إلى بنى قريظة ومحاصرته إياهم رقم 4121 عن أبي سعيد الخدري، • (2) ومسلم في كتاب الجهاد والسير \باب جواز قتال من نقض العهد وجواز إنزال أهل الحصن على حكم حاكم عدل لأهل للحكم رقم 64 عن أبي سعيد الخدري، • وأخرجه مسلم أيضا رقم 65 عن عائشة رضي الله عنها

When the Prophet (*saws*) appointed Sa‘ad ibn Mu‘ādh as a judge in the case of Banū Quraizah. The Prophet (*saws*) surrounded them (Banu Qurizah) and put them under his command. Later on, they were placed under the command of Sa‘ad ibn Mu‘ādh after their formal oath and allegiance, as they were from (his own tribe) the Anṣār group so, they deserved good treatment (from him), but Sa‘ad ibn Mu‘adh differentiated with their imagination, he was very upright and preferred the pleasure of Allāh and His Apostle over the pleasure of his tribe against the wishes of the people. That is why, after Sa‘ad's death, the throne of Allāh jerked and moved with extreme pleasure on arrival of his soul (to the throne of Allāh). He decreed "The fighters of Bani Quraizah will be killed, their women will be imprisoned, their properties will be distributed".

The Prophet (*saws*) appreciated his judgement and said: "You have given Judgement in their affairs with the command of the Lord". In another Hadīth, the Prophet (*saws*) said: "You have decreed about them with command of Allāh from seven heavens".

The scholars are the real descendants of the Messengers. (They inherit knowledge and wisdom from the Messenger.)

**Allāh (SWT) said in the case of Prophets Dawūd and Sulaimān (a.s.):**

وداود وسليمان إذ يحكمان في الحرث إذ نفشت فيه غنم القوم وكنا لحكمهم شاهدين ففهمناها سليمان وكلا آتينا حكما وعلما"

"And remember David and Solomon, when they gave judgement in the matter of the field into which the sheep of certain people had strayed by night. We did witness their judgement. To Solomon we inspired the (right) understanding of the matter and to each (of them) we gave judgement and knowledge".<sup>33</sup>

Both the two respectable Prophets exercised their judgements in one matter. One of them, by the grace of Allāh, understood it properly. Whereas Allāh praised both of them. Both were bestowed with wisdom and knowledge. Similarly the jurist scholars, may Allāh be pleased with them, who arrived at correct decisions, will get double rewards and those who commit mistakes will get a single reward. All of them are obedient to Allāh according to their ability. Allāh does not pressurise anyone more than his knowledge. The Prophet (*saws*) is not under obligation of the judgement of others and his *Sharī'ah* as well is not under obligation to agree or accept anything from an innovated concept, especially when it is objectionable.

Considering the difference of degrees in knowledge and wisdom, the Companions, whenever they gave their judgement from their own analogy, they used to keep the immunity and purity of the *Sharī'ah* separate from their own and others juristic inference. For example, 'Abdullah ibn Mas'ūd said, in the case of a woman delegated with divorce : "I would pass my personal verdict in this case : If it is correct, it would be from Allāh, if there would be any mistake in my judgement, it would be from me and from *Satān*. Allāh and His Prophet (*saws*) are free from it.

The same practice has been reported from Abū Bakr Siddīq in the matter of *Kalālah*. The same was reported from 'Umar for different issues. In spite of this fact, they gave correct decisions in their own judgements in the same way, until they found the *Qur'ān* and *Ḥadīth* compatible with their own analytical reasonings. The juristic verdicts of 'Abdullah ibn Mas'ūd and other prominent early Islamic scholars Companions were found to be compatible with the spirit of divine law.

The Companions of the Prophet (*saws*) were more knowledgeable about Allāh and His Prophet (*saws*). They were aware of the dignity and prestige of the Prophet's *Sharī'ah* according to their awareness and experience. Although they were Mujtahid, they used to admit their mistakes saying: "Verily Allāh and His Prophet (*saws*) are free from our mistakes".

Allāh (SWT) said :

وما على الرسول إلا البلاغ المبين

*"The responsibility of the Prophet is nothing but to deliver the message in clear terms."*<sup>34</sup>

In another verse Allah (SWT) said :

...فإنما عليه ما حمل وعليكم ما حملتم"

*"(But if you turn away). He is only responsible for the duty placed on him and for that placed on you".*<sup>35</sup>

Allāh (SWT.) also said :

"فلنساءن الذين أرسل إليهم ولنساءن المرسلين"

*"Then shall we question those to whom our message was sent and those by whom we sent it".*<sup>36</sup>

In the above facts and circumstances, one will find different reasons and views about all the issues in which the 'Ummah have disputed and disagreed. The concept with which the Prophet (saws) was sent is only one. The rest of the concepts belong to the people of knowledge, wisdom and jurisprudence. All of them are obedient to Allah (SWT) and His Prophet (saws), they will be rewarded for their work and they will not be convicted. It is like the direction of *Qiblah* during a journey; if it becomes unknown, the people of every group make *Ijtihād* and they pray towards one of the four directions only. All the people who thus prayed, will be rewarded, as they fear Allah (SWT) according to their ability and knowledge.

There are many guidelines and signs with which the Prophet (saws) was sent. When they are discussed along with others, clearly and expressly, the light and guidance appear distinctly. The second view, other than the Prophetic one, is negligible and minor.

It is the fact that the Word of Allāh is the best of all words and the path of Muḥammad (saws) is the best of all paths. Allāh (SWT) said:

"قل لنن إجتمع الانس والجن على أن يأتوا بمثل هذا القرآن لا يأتون بمثله ؛ ولو كان بعضهم لبعض ظهيرا"

*"Say! If the whole of mankind and Jinns were together to produce the like of this Qur'ān, They could not produce the like thereof, even if they backed up each other with help and support".<sup>37</sup>*

This divine challenge and description of human weakness are confirmed in Allah (SWT)'s Words in respect of worship, couplets and method. Out of the entire network of juristic differences, the Muslims hold different opinion in the question of divorce. You will find different views in this matter. There are three opinions:

- (i) One of the views involves burdens and yokes,
- (ii) One of the views is mixed with deception and excuses, and
- (iii) One of the views is full of knowledge and balance.

One opinion involves of a kind of injustice and conjecture and confusion. The second view consists of a kind of injustice, indecency and immorality, while the third opinion is in the path of *Muhajirīn* and *Anṣār*.

All of the aforesaid views will be found in the issues of oaths, with the question vows, divorce and freeing slaves being divided into three opinions:

(1). One view abolishes the oaths of Muslims, and considers them like the oaths of infidels.

(2). The second view establishes oaths, irrevocably, and undertakes no expiation and no way-out like the people of other faiths.

(3). The third view establishes the dignity of the oaths of the people of Tawḥīd and Īmān. They differentiated and distinguished between the oaths of Muslims and the oaths of infidels and idols. They prescribed an expiation and way-out for the oaths, as recommended by the *Qur'ān* and the *Ḥadīth*. In this matter the people of the *Qur'ān* are more specialised than the people of the *Tawrāh* and the *Injīl*. This is the *Sharī'ah* which was brought by the last of the Prophets, leader of the pious and best of the whole creation i.e., the *Sharī'ah* of the Prophet Muḥammad is the best of all available legal systems in the earth. It has been proved beyond all shadow of doubt that such a dynamic complete

code of human life can be sustained until the day of resurrection with the sophisticated weapons of *ijtihād* and the analytical method. The scholars, as dependable descendants of the Prophets, can carry out the message. Their differences work as mercy for the 'Ummah to wipe out the dirt.

May Allāh (SWT) put His mercy on the Prophet Muḥammad (*saws*), and his family and his pure and clean Companions and their followers in the best ways till the Day of Judgement.

\*\_\*\_\*\_\*\_\*\_\*\_\*

## CONCLUSION

During the period of *Jāhiliyyah* a husband was allowed to pronounce divorce as often as he used to be pleased. Whenever his relations were strained with his wife, he would pronounce divorce and then reunite with her as and when it suited him. As there was no restriction on him for this act, it was repeated over and over again. Thus the wife could neither have conjugal relations with him nor was free to marry anyone else. This social evil was commonly practised by the Arabs before the advent of Islām.<sup>1</sup>

The Qur'ān clearly restricts this social abominable behaviour.

"الطلق مرتان فإمساك بمعروف أو تسريح بإحسان"

*A divorce is only permissible twice; after that, the parties should either hold together on equitable terms, or separate with kindness.*<sup>2</sup>

The Qur'ān reforms the system of divorce, during the whole married life, a husband may use the right of divorce and reunion with a wife only twice. After that whenever he pronounces divorce for the third time, the wife will be separated from him permanently.

It is however, considered to be better to wait and reconsider the matter after the first and second pronouncement in the case of one or two divorces, the husband retains the right to take her back as his wife even after expiry of the prescribed period. But if he pronounces the divorce for the third time, the husband forfeits the right to have recourse with her nor can the couple remarry. Those heedless people who pronounce three divorces at one instance they commit a sin. "The Prophet (saws) had severely denounced this practice and the Caliph 'Umar used to whip the husband who used to pronounce three divorces in a single instance.<sup>3</sup>

All along 1400 years the legal issue of three divorces in one instance and one sitting has remained controversial. Now a days the controversy has become worse among *Sunnī* Muslims. One group regards that absolutely irrevocable divorces will take place upon a triple *ṭalāq* whereas one revocable divorce has been considered by other group. As a

result, this controversy has developed into a form of public debate promulgated by media. It is common every where even in Britain.<sup>4</sup>

In view of this controversy it is absolutely necessary to comprehend of its development in the three phases.

(1) During the time of the Prophet (saws) till the second year of the Caliph *'Umar's* *Khilāfah*:

This phase in Islamic law is extremely important because the two authoratative sources the *Qur'ān* and *Sunnah* emerged during this period which provided foundations for the Islamic law. Whatever the Prophet Muḥammad (saws) sanctioned, ordered or did, should be followed and what he has forbidden, must be avoided.

As the *Qur'ān* says:

"وما أتاكم الرسول فخذوه وما نهاكم عنه فانتهوا"

"So accept what the Messenger gives you, and refrain from what he prohibits you".<sup>5</sup>

The Prophet (saws) has clarified the *Sharī'ah* as a whole with his wording:

"عن أبي الدرداء قال خرج علينا رسول الله صلى الله عليه وسلم..... فقال وأيم الله لقد تركتكم على مثل البيضاء ليلها ونهارها سواء" التخریج: هذا الحديث مروى عن أبي الدرداء والعرياض بن سارية رضى الله عنهما ، أما حديث أبي الدرداء فقد أخرجه مطولا: (1) ابن ماجه فى المقدمة \باب اتباع سنة رسول الله صلى الله عليه وسلم رقم 5 وفيه ' على مثل البيضاء' بزيادة لفظ "مثل" . وأما حديث العرباض بن سارية فقد أخرجه مطولا: (1) ابن ماجه فى المقدمة \باب اتباع سنة الخلفاء الراشدين المهديين رقم 43 بلفظ ' قد تركتم على البيضاء ليلها كنهارها لا يزيغ عنها بعدي إلا هالك '

Reported from *Abū al-Dardā'* who said, "The Messenger of Allah (SWT) (saws) came out before us ." then he asserted, "By Allāh I have left you (i.e. the *'Ummah* as a whole) on an enlightened example (of the *sharī'ah*) it's night and day are alike .....<sup>5a</sup>

This *Hadīth* is a clear proof of the fact that the Prophet (saws) didn't leave any important aspect of the *Sharī'ah* for which he did not provided a broad principle.

During this period the legal implication of three divorces at one instance was generally considered as one revocable divorce. The Imām *Ibn Taymiyyah* mentioned in his *Fatāwā* "we do not know of

anyone who divorced his wife three times at one instance during the Prophet's time and the Prophet irrevocably established three divorces. There is no authentic and even *Ḥasan ḥadīth* reported in support of the above. All *aḥadīth* reported in this matter were weak and concocted according to the unanimous opinion of scholars of *Ḥadīth literature*."

He also mentioned in his *Fatāwā* "what is in the *Ṣaḥīḥ Muslim* and other *Sunan* (Books of *Ḥadīth Literature*) as narrated from *Ṭāwūs*, from *Ibn ‘Abbās*: that during the time of the Messenger of Allāh, *Abū Bakr* and up to two years of *‘Umar's Khilāfah*, three divorces were considered as one". Later *‘Umar* spoke with other Companions of the Prophet saying that, "People have started taking hasty action in a matter which requires great deal of thought and should exercise patience. It would be better if we enforce these three divorces as three on them. Consequently *‘Umar* enforced the effectiveness of three divorces."

Similarly he mentioned in the same context that, "the *Imām Aḥmad* reported in his *Musnad* that:

حدثنا سعيد بن ابراهيم حدثنا أبي عن محمد بن إسحاق حدثني داود بن الحصين عن عكرمة مولى ابن عباس؛ عن ابن عباس أنه قال طلق ركانة بن عبد يزيد أخو بني المطلب إمراً ثلاثاً في مجلس واحد؛ فحزن عليها حزناً شديداً؛ قال: فسأله رسول الله صلى الله عليه وسلم: كيف طلقناها؟ قال: طلقناها ثلاثاً. قال فقال: في مجلس واحدة؟ قال: نعم قال: فإنما تلك واحدة فأرجعها إن شئت؛ قال: فراجعها. فكان ابن عباس يرى أن الطلاق عند كل طهر؛ (وقد أخرجه أبو عبد الله المقدسي في كتابه المختارة)

"*Sa‘īd ibn Ibrāhīm* narrated, my father reported from *Muḥammad ibn Ishāq* that, *Dāwūd ibn al-Ḥuṣayn* narrated from *‘Ikramah* the freed slave of *Ibn ‘Abbās*, that *Ibn ‘Abbās* said: *Rukāna ibn ‘Abd Yazīd* brother of Banu *Muṭṭalib*, divorced his wife three times in the same sitting, and he became very sad about it. He said (*Ibn ‘Abbās*) then the Messenger of Allāh (*SWT*) asked him (*Rukāna*) "How did you divorce her?" he replied I divorced her three times. *Ibn ‘Abbās* said, the Prophet (*saws*) asked: In one sitting? He replied Yes. Then the Prophet (*saws*) said: hence the (countable) divorce is only one.. If you wish, you can bring her back, he (*Ibn ‘Abbās*) said: Then he (*Rukāna*) had returned her. After that event *Ibn ‘Abbās* used to consider that, the divorce is allowed at every term of purity"

(*Abū ‘Abdullāh al Maqḍīsī* has quoted this *Ḥadīth* in his book *al-Makhtara*)<sup>6</sup>.

(2) During the period of rightly guided caliph *‘Umar* to the time of *Imām Ibn Taymiyyah* (1263-1328 AD 661-728 A.H)

In this period there was no notable controversy among the *‘Ummah* in the legal decision of the matter. Although there was a great number of Companions who differed with the

opinion of the Caliph 'Umar. After 'Umar the majority of *Sunnī* Muslims have been following this verdict of 'Umar *ibn al Khaṭṭāb* as well as his other legal verdicts. Three divorces pronounced in one sitting as one revocable divorce always remained confined to the individual jurists and the society as a whole never accepted it.

(3) From the *Imām Ibn Taymiyyah* (1328AD/728AH) to the present.

On this legal issue there exist differences of opinions among a few jurists. In view of the nature of the study I have deliberately avoided such views.

The Jurists who consider "three divorces in one instance" as absolutely irrevocable and the jurists who supports it as a revocable divorce, both in order to prove their own case cite evidences from the principal sources. It is therefore necessary to present systematically their evidences in brief.

These are evident from the translation of the legal verdict, pronounced by the supporters of the both views.. The hard core of the controversy can be summed up with the following evidences:-

### ***The first opinion:***

In case of three divorces pronounced at one instance it is considered as a detestable divorce but three divorces will be legally effective.

This opinion belongs to:- the *Imām Mālik* (d. 149A.H.), the *Imām Abū Ḥanīfah* (d.150 A.H.), the latest opinion of the *Imām Aḥmad* (d. 241 A.H.) and most of his followers, Many Companions of the Prophet such as 'Umar, 'Uthmān, 'Alī in his one opinion, 'Abdullah *ibn 'Umar*, 'Abdullah *ibn 'Amr*, 'Abdullah *ibn 'Abbās*, 'Abdullah *ibn Mas'ūd* and *Abū Hurayrah* and others and their followers.<sup>7</sup>

Their evidences are as follows:-

(1) Allāh (SWT) says in the Qur'ān:

"الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان"

"A divorce is only permissible twice, after that, the parties should either hold together on equitable terms, or separate with kindness."<sup>8</sup>

Interpretation:- The *Qur'anic* verse uses the word *Imsāk*, which literally means "keeping back". This corresponds to seeking or maintaining the perpetuity of the marriage proprietorship (in respect of the wife ),it does not refer to its restoration after it has been lost. The word *bu'ūl* occurring in the second verse is the plural of *ba'ī*, which means "husband". It points to the fact that raj'at can only take place during the 'Iddah.. On the expiry of 'Iddah the person does not remain *ba'ī* as the marital relationship ceases. Thus a person during his marriage relationship after pronouncing revocable divorce to his wife at best twice may have recourse to his wife but after his third pronouncement the number of divorces is completed and the wife shall be separated from him altogether.<sup>9</sup>

On the other hand the above mentioned verse points to the meaning of the effectiveness of three divorces. They argue on this point with the following verse:-

"فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره"

"So, if a husband divorces his wife (irrevocably), He cannot, after that re-marry her until after she has married another husband."<sup>10</sup>

The above mentioned verse enjoins that the husband cannot take his wife back after the third pronouncement but it does not clarify the period for the implementation of the divorces whether in one state of purity or within the three successive purities. Therefore the command of effectiveness of all three divorces became essential, no matter which way it was implemented, either based on the *Sunnah* or *bid'ah*.<sup>11</sup>

## 2. The Traditions of the Prophet (saws):-

There is quite a large number of *aḥādīth* available in support of their opinion but because of limited space only a few will be quoted:-

i). It is reported from *Mujāhid*, he said that, I was with *Ibn 'Abbās* when a man came to him (*Ibn 'Abbās*) and stated that he had divorced his wife three times (what would the legal verdict of this action?) He (*Mujāhid*) said, then (after hearing this) he (*Ibn 'Abbās*) kept a long silence so we thought that *Ibn 'Abbās* may return her (divorced wife) to him

(the husband). Then he (*Ibn ‘Abbās*) said, "He among you is a fool (who pronounced three divorces to his wife and comes to me running) calling out *Ibn ‘Abbās, Ibn ‘Abbās!* Though Allāh (SWT) has said:

*"For those who fear Allah (SWT), He (ever) prepares a way out"<sup>12</sup>*

You did not fear Allāh (SWT), (in pronouncing three divorces at a time) therefore, I do not find a way out for you. You have disobeyed your Lord and your wife became separated (i.e. irrevocably divorced) from you.<sup>13</sup> "

ii) It is narrated by *‘Ubādah ibn Ṣāmit*, who transmitted from his father and he heard from his grandfather he (*‘Ubādah*) said that some one of my forefathers pronounced one thousand divorces to his wife. Then his sons went to the Prophet and exclaimed O! Messenger of Allāh our father divorced our mother one thousand times, so is there any way out for him? Then Prophet (saw) replied, "Your father did not fear Allāh (SWT) (when he pronounced one thousand divorces), if he feared Allah (SWT) he could have way out (but I do not find any way out for him) consequently she became separated from him (irrevocably divorced) innovatively with the three and remaining 997 will remain as sins on his neck.<sup>14</sup>"

iii) It is reported from *Mujāhid*, from *ibn ‘Abbās* that he was asked by a person who had pronounced one hundred divorces to his wife. He (*Ibn ‘Abbās*) replied: "You have disobeyed your Lord and she (Your wife) has become separated from you. You did not fear Allāh so that He would not have to prepare a way out for you. Thereafter *Ibn ‘Abbās* recited the verse of the *Qur’ān*. "O! Prophet when you do divorce women, divorce them at their prescribed periods."<sup>15</sup>

IV). It is reported that *‘Abdullah ibn ‘Umar* pronounced one divorce to his wife during her monthly period with the intention of pronouncing the other two divorces during the rest of the periods. The Prophet heard of it. He said, "O, *Ibn ‘Umar!* Allāh (SWT) did not permit this way to divorce her during her menses. You have acted against the *Sunnah*. And the traditional way of divorce is that, you should follow the term of her purity thereafter divorce her in every term of her purity. He (*Ibn ‘Umar*) said, then Prophet

(saws) asked me to recourse to her. So, I did the same. Thereafter Prophet (saws) told me, "when she became pure of her monthly period then you can divorce her or keep her with you as your wife. Then I (*Ibn 'Umar*) inquired O! Messenger of Allāh tell me if I would divorce her (at that time) three times, was it lawful for me to have recourse to her? The Prophet (saws) replied: "No! she would be separated from you, and this action become a sin (for you)."16

V). It is reported from Anas that *Mu'ādh ibn Jabal* who said, he heard the Prophet (saws) saying, "O *Mu'ādh!* whoever pronounced one or two or three divorces innovatively I would bind him with his innovation (to be effective.)"17

He also added that, the command of Allāh (SWT):- "*O Prophet When you divorce women, divorce them at their prescribed periods*" it continues up to "*Those are the limits set by Allāh (SWT), and any one who transgresses the limits of Allāh (SWT) does verily wrong his (own) soul: You don't know if perchance Allāh (SWT) will bring about thereafter some new situation*"18

The divorce which Allāh (SWT) has decreed is the one that is followed by an *'iddah*, then the husband has the choice between keeping his wife out of generosity or releasing her out of kindness. This rule rejects the implementation of three divorces in the *'iddah* (prescribed period) before *ruj'ah* takes place.

If three divorces have been implemented before *ruj'ah* takes place then it would not be regarded as divorce due to *'iddah*. But the significance of this verse is in pointing out the effectiveness of the divorce even without observing the *'iddah*, if the divorce remains in effective then the husband should not become an oppressor himself by implementing the divorce without allowing the time of *'iddah*. The possibility for reconciliation is not closed to him when he needs a way out, as indicated in the above mentioned verse. "*And for those who fear Allāh, He (ever) prepares a way out*". And this is the *ruj'ah* as it was interpreted by *Ibn 'Abbās* when he replied to the questioner, who had divorced his wife thrice in one instance. Verily Allāh (SWT) says: "*And for those who fear Allāh (SWT), He (ever) prepares a way out for him*". You didnot fear Allāh (SWT), thus I couldnot

find any way out for you, you disobeyed your Lord, consequently your wife stands separated from you.<sup>19</sup>

There is no disagreement among scholars that in the case of one who divorces his wife thrice in one instance, he has wronged himself because he has not provided opportunity to observe the waiting period.

If it is argued that the effect of executing three *ṭalāq* in one instance would be only one in its effect then what about the *taqwā* referred to by the command of Allāh (SWT), through which Allāh (SWT) grants the way out and bestows comfort. Moreover, what is the punishment of this oppressor who has wronged himself and transgressed the limits of Allāh (SWT) when he divorced without providing the opportunity of reconciliation?<sup>20</sup>

Another point which supports their opinion is that, the divorce which is pronounced thrice in one instance shall be considered as three effective divorces in action. Because this was reported by a great number of scholars, and amongst those who had administered it were *‘Umar*, *‘Uthmān*, *‘Alī Ibn ‘Abbās*, *Ibn ‘Umar*, *Ibn Mas‘ūd* and some other Companions of the Prophet (saws), which was supported and promoted by the *Imām Abū Ḥanīfah*, the *Imām Mālik*, the *Imām Shāfi‘ī* and the *Imām Aḥmad*. It is also the opinion of *Ibn Abū Laylā* and *Awzā‘ī*. Moreover, *Ibn ‘Abd al-Hādī* reported that, *Ibn Rajab* was saying: "I know that it was neither confirmed by the practice of the Prophet's Companions nor that of their followers, and the clear legal decisions which distinguish between a *ḥalāl* (permissible) and *ḥarām* (forbidden pronouncement), of early scholars, i.e. that three divorces in one instance, after the consummation of marriage, counted only one".

Even if the authenticity of the *Ḥadīth* which was reported by *Ibn ‘Abbās* is accepted, more over the Companions of the Prophet (saws) were well known of their piety and righteousness. Their sincerity, full devotion to the fact they believe, as well as their knowledge of the *Sharī‘a*, especially the legal decision regarding divorce at the time of the Prophet (saws), *Abū Bakr* and the early period of *Khilāfah ‘Umar*. Considering all these positions, which prevented them to accept *‘Umar's* judgement i.e. pronouncement of three divorces at one instance as three in effect. Despite this, none of them was reported with an authentic *sanad* (chain of narration) as having judged according to the established

legal decision on three divorces practised at the time of the Prophet (saws) as well as at the time of *Abū Bakr* and the early period of *‘Umar’s* rule (was one in effect) as what mentioned by *Ibn ‘Abbās* in his reported *Ḥadīth*.

The content of the *Ḥadīth* reported by *Ibn ‘Abbās* considers *‘Umar’s* action in imposing three divorces at one instance, as a punishment to those who used to hasten into divorce whereas they must exercise patience. This is the hard core of this legal issue. The personality of *‘Umar* being most God fearing and sincere as well as very knowledgeable as he was also a great jurist could not allow him to enforce such kind of punishment which not only affected the guilty person, but extended to another person who had been innocent. By the innocent person, it is meant the wife as this decision legalises a forbidden sexual relation, if she re-marries a third person and forbids legal sexual relation with her husband with whom she had a legal marriage contract. This decision also forbids the right of *ruj‘ah* (i.e. marriage during the period of *‘iddah*). All these facts mentioned above indicate that the *Ḥadīth* which was narrated by *Ṭāwūs* from *Ibn ‘Abbās* needs further examination. Therefore three divorces at one instance should be treated as three effective divorces.

### ***The Second opinion:***

The group of scholars who considered that, ***three divorces at one instance though detestable but must be treated as one revocable divorce.***

This is the opinion of a group of ancestors and successors among the Companions of the Prophet (saws) such as *Zubayr ibn al-‘Awwām* and *‘Abd al Raḥmān ibn ‘Awf*. Two opinions have been reported from *‘Alī*, *Ibn Mas‘ūd* and *Ibn ‘Abbās*. This is the opinion of some *Ṭabi‘ūn* and their followers such as *Khallās ibn ‘Amr* and *Muḥammad ibn Ishāq*. It is the opinion of *Dā’wūd al-Zāhirī* and most of his followers. And the said opinion is reported by *Abū Ja‘far Muḥammad ibn ‘Alī ibn Al Ḥussain* and his son *Ja‘far ibn Muḥammad*. Therefore, some *Shi‘ī* Scholars accepted this opinion, which is also the opinion of some of the followers of the *Imām Abū Ḥanīfah*, the *Imām Mālik* and the *Imām Aḥmad ibn Hanbal*.<sup>21</sup>

The arguments concerning this legal opinion can summarised as follows:-

First from the *Qur'ān*:

والمطلقت يتربصن بأنفسهن ثلاثة قروء ؛ ولا يحل لهن أن يكتمن ما خلق الله في أرحامهن إن كن يؤمن بالله واليوم الآخر؛ وبعولتهن أحق بردهن في ذلك إن أرادوا إصلاحا؛ ولهن مثل الذي عليهن بالمعروف؛ وللرجال عليهن درجة؛ والله عزيز حكيم"

*"Divorced women shall wait concerning themselves for three monthly periods. And it is not lawful for them to hide what Allah (SWT) has created in their wombs, if they have faith in Allah (SWT) and the last day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage ) over them. And Allah (SWT) is Exalted in Power, Wise."*<sup>22</sup>

**In another verse:**

الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان؛ ولا يحل لكم أن تأخذوا مما آتيتموهن شيئا إلا أن يخافا ألا يقيما حدود الله؛ فإن خفتم ألا يقيما حدود الله فلا جناح عليهما فيما افتدت به؛ تلك حدود الله فلا تعتدوها؛ ومن يتعدى حدود الله فأولئك هم الظالمون'

*"A divorce is only permissible twice ; after that, The partiers should either hold together on equitable terms, or separate with kindness. It is not lawful for you, (Men ), to take back any of your gifts ( from your wives ), except when both parties fear that they would be unable to keep the limits ordained by Allah (SWT). If you (judges ) do indeed fear that they would be unable to keep the limits ordained by Allah (SWT). There is no blame on either on them if she gives something for her freedom. These are the limits ordained by Allah (SWT) ; so do not transgress them, if any do transgress the limits ordained by Allah (SWT), such persons wrong ( themselves as well as others )"*<sup>23</sup>

**In another verse:**

"فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره"

*"So if a husband divorces his wife ( irrevocably ), he cannot , after that, re-marry her until after she has married another husband".*<sup>24</sup>

### Reasons:

*Ibn ‘Abd al Hādī* said: *Shaykh Jamāl al-Dīn al Imām* asserted that, "Allāh (SWT) commanded three rules about this matter in these verses. Whoever understood it (the theme of these verses) with it's real teaching, Allāh (SWT) bestowed him His guidance to accept the truth. When the truth becomes clear to him, then his argumentation accordingly would be correct.<sup>25</sup>

It is known by every Muslims that the book of Allāh is a *Ṣarīḥ Naṣṣ* (clear text) that three divorces would be legally considered as one, there is no possibility for any valid controversy. This is the *Naṣṣ* according to the *Sharī‘ah*. As every speech which has specific meaning and for which there is no possibility for different meaning then it became *Nass*. If there is no possibility for another meaning literally, then it is literal *Naṣṣ*. . If there is no possibility for other meaning according to legislative point of view then it is *Shar‘ī Naṣṣ*. The Book of Allāh in these verses leave no possibility of any other meaning except that, the three divorces are considered as one.

And the *Alīf* and *Lām* in (الطلاق مرتان)<sup>26</sup> should be for the *‘Ahd* (العهد) assignment and the *Ma‘hūd* (المعهود) assigned here is understood *ṭalāq* (only permissible option is twice) from the word of Allāh (SWT).

In another verse Allāh (SWT) Says: *والمطلقات يتربصن بأفسهن ثلاثة قروء*

"*Divorced women shall wait concerning themselves for three monthly periods*". And that is *Raj‘ī* (revocable) divorce. With this saying continuing to *وبعولتهن أحق بردهن في ذلك* "And their husbands have the better right to take them back in that period. "

So the meaning becomes: The divorce in which the husband got the better right of revoking, that is times only. So, the revoking which was general in every instance of divorce that had confined for only two times so did not specify (the number of divorce pronounced each time). And in the verse there is no difference between husband's

pronouncement every time: I divorce you twice, or thrice, or ten or thousand or thirty thousand times (the effect will be same as one in action)<sup>26a</sup>

They further argue that the pronoun in the verse "فإن طلقها فلا تحل له" *so if a husband divorces her (his wife, irrevocably), he cannot re-marry her*, it means, if he divorces her for the third time then she will not be legal for him to re-marry until she marries somebody else.

The understood meaning from the saying of Allah (SWT): "الطلق مرتان" "A divorce *is only permissible twice*" according to *Sharī'ah* it will not be legal except with this provision. And this Qur'ānic verdict establishes it legally, that the divorced wife becomes forbidden to him after divorcing her third time. In this case she will not be permissible for him until she marries someone else. And it necessitates that the prohibition will be established after the first two instances, as in every instance of the first two instances he has a choice between keeping her on equitable terms, or leaving her with kindness considering the sanction of the Qur'ānic verse. So the explanation will be that, "if he divorced her the third time then she will not be permissible for him to continue the relationship of a married life". This interpretation does not leave any possibility for controversy.<sup>27</sup>

### **The second evidence:-**

Allah (SWT) says:

يا أيها النبي إذا طلقتم النساء فطلقوهن لعدتهن وأحصوا العدة؛ واتقوا الله ربكم؛ لا تخرجوهن من بيوتهن ولا يخرجن إلا أن يأتين بفاحشة مبينة؛ تلك حدود الله ومن يتعدى حدود الله فقد ظلم نفسه؛ لا تدرى لعل الله يحدث بعد ذلك أمراً"

"O Prophet ! when you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods : And fear Allah (SWT) your Lord, and turn them not out of their houses, nor shall They (themselves) leave, except in case they are guilty of some open Lewdness, those are limits set by Allah (SWT) : and any who transgresses the limits of Allah (SWT), does verily wrong his (own) soul: Thou Knowest not if perchance Allah (SWT) will bring about thereafter some new situation".<sup>28</sup>

**In another Verse:**

فإذا بلغن أجلهن فأمسكوهن بمعروف أو فارقوهن بمعروف"

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<sup>26a</sup> Majmu‘ al Fatāwā, Imām Aḥmad Ibn Taymiyyah V33 P12

*"Thus when they fulfil their term appointed, either take them back on equitable terms or part with them on equitable terms".<sup>29</sup>*

*Ibn al-Qayyim al Jawziyyah* says, "The first significance is that Allāh (SWT) legalises the implementation of divorce for her during the *'iddah*, it means in approach of her *'iddah*. So one divorce should be implement on her just before starting her *'iddah*. This is why the Prophet (saws) enjoined *'Abdullāh ibn 'Umar* to revoke the divorce of his wife as he divorced her in her menstruation and the Prophet (saws) recited this verse explaining that the verse is stating the same meaning. That the divorce should be implemented in accordance with *'iddah* and similarly recited by *'Abdullāh ibn 'Umar*. All jurists who approve the unlawfulness of joining three divorces together they have mentioned the unlawfulness of the divorce which follows one after the another in the same purity, as that would be divorce in an improper time (*'iddah*) because the pronouncement of the first divorce occurred before *'iddah* then the second one should not be before approaching *'iddah* period.

In this context the *Imām Aḥmad* in his general view and those jurists who agreed with his view stated that, the second the divorce is only possible after having new marriage contract or after the husband has revoked the *ṭalāq* if he so wishes as the prescribed period ends with that (revocation or new marriage contract). When he wishes to divorce her third time it is only possible before the commencement of *'iddah*.

The *Imām Aḥmad* expressed in another report on the same matter that the husband should divorce his wife second time in the second period of purity and the third time in the third period of purity. This is the opinion of the *Imām Abū Ḥanīfah*. This type of divorce is also considered as divorce for *'iddah*. This is based on the evidence discussed previously, but the first opinion is more authentic, because that is a type of divorce which is not followed by another divorce before *ruj'ah* or new contract.<sup>30</sup>

**Secondly**, Allāh (SWT) said : " تلك حدود الله ومن يتعدى حدود الله فقد ظلم نفسه "

*"Those are limits set by Allāh (SWT), and one who transgresses the limits of Allāh (SWT), does verily wrong his (own) soul!"<sup>31</sup>*

So, when three divorces are pronounced together in the light of the above mentioned verse this is transgression of the limits of Allāh. It clearly means that he has committed a sin.

**Thirdly**, the saying of Allāh (SWT):

لا تدري لعل الله يحدث بعد ذلك أمرا

*"Thou Knowest not if perchance Allāh (SWT) will bring about thereafter some new situation".* Undoubtedly the most knowledgeable people on the *Qur'ān* are the Companions of the Prophet (saws). According to their interpretation the 'Amr here is the revocation of marriage. They asserted if three divorces are resolved as three then which matter will be created after this?

**Fourthly**, they presented the following verse in favour of their argument:

لا تخرجوهن من بيوتهن ولا يخرجن

*"Turn them not out of their houses nor shall they (themselves) leave"<sup>33</sup>*

This will be possible in the revocable (*raj'ī*) divorce. According to the authentic tradition of the Prophet (saws) the divorced wife is entitled to an accommodation and maintenance in the case of revocable divorce. If the divorce is in the state of *bā'in* then she will be entitled to neither maintenance nor residence. So, it became clear that, the divorce which is permitted by Allāh (SWT) that must not follow any previous divorces (that is *raj'ī* divorce).

Evidences based on the saying of the Prophet (swas):-

؛ وفي صحيح مسلم أيضا عن طاوس : أن أبا الصهباء قال لابن عباس رضي الله عنهما " هات من هناتك ألم يكن الطلاق الثلاث على عهد رسول الله صلى الله عليه وسلم وأبي بكر واحدة ؟ فقال : قد كان ذلك ؛ فلما كان في عهد عمر تتابع الناس في الطلاق فأجازاه عليهم "a

<sup>a</sup> (1) أخرجه مسلم في كتاب الطلاق \ باب طلاق الثلاث رقم 17

In the *Ṣaḥīḥ Muslim* there is another narration also from *Ṭāwūs*:that, 'Abū Ṣaḥbā' asked *Ibn 'Abbās* "please inform me your opinion", Was not it fact that, the three divorces at the time of the Prophet (saws) and *Abū Bakr* were considered as one? Then he replied: yes, that was so, but when during the time of 'Umar the people were pronouncing three divorces at a time then he enforced the effectiveness of the three divorces.<sup>34</sup>

ذكر في مستدرک الحاكم من حديث عبد الله بن المؤمل ؛ عن ابن أبي مليكة أن أبا الجوزاء أتى ابن عباس فقال: أتعلم أن الثلاث كن يرددن على عهد رسول الله صلى الله عليه وسلم إلى واحدة؟ قال: نعم " رواه الحاكم في المستدرک : وقال هذا الحديث صحيح الإسناد .  
تخريج : (1) أخرجه الحاكم في المستدرک في كتاب الطلاق \ رقم 2792 بلفظ ' ثلاثا ' مكان " الطلاق الثلاث " وقال الحاكم : صحيح الإسناد ولم يخرجاه ' وقال الذهبي في تلخيص المستدرک: ابن المؤمل ضعّفوه ' هذا ما عندي بالإختصار والله سبحانه وتعالى أعلم بالصواب'

Secondly:- It has mentioned in *Mustadrak al-Ḥākim* from *Ḥadīth* of 'Abdullah ibn al-Mu'ammal, who has narrated from *Ibn Abī Malīkah*, that *Abū al-Jawzā'* came to *Ibn 'Abbās* and asked: "Do you know that, the three (divorces) during the time of the Prophet (saws) was regarded as one in effect? He (*Ibn 'Abbās*) replied: yes." (*Ḥākim* said that, this *Ḥadīth* considered as an authentic)

Those scholars including *Imām Shafī'ī*, *Abū Dāwūd* and *Ṭaḥāwī* who disagree with the above mentioned view point they argued that this *Ḥadīth* was abrogated.

They also argued that the *Ḥadīth* of *Ibn 'Abbās* is not accepted because his *Fatāwā* contradicts to the theme of the *Ḥadīth* which was narrated by him.

These *Aḥādīth* which has mentioned above are a clear evidence for the view that, three divorces at one instance was considered as one divorce. Again these *aḥādīth* were not abrogated as it had been continuously adopted by the people during the time of *Abū Bakr* and up to two years of 'Umar's *Khilāfah*. 'Umar then justified the change in his legal verdict by introducing the new rule, arguing: "Verily people have hastened in a matter in which patience and careful consideration is required"

As for the argument presented against the *Ḥadīth* which was reported by *Ibn 'Abbās* it is based on the interpretation and it ignores its obvious meaning without giving any justification. They regarded it, as a rare event, full of confusion and they accuse *Ṭāwūs* as unreliable reporter. This argument is unacceptable as the *Imām Muslim* narrated this

*Ḥadīth* in his *Ṣaḥīḥ* in which he made clear that he would not include in his collection any *Ḥadīth* which is inauthentic. Furthermore, those who disagree provided the concluding words of *‘Umar* in their statement as an evidence, "people have started taking hasty action in a matter (divorce) which requires a great deal of thought and deliberation. It should be better if we enforced them (the three divorces as such)". Consequently *‘Umar* enforced the effectiveness of three divorces. It is a clear proof to support this opinion.

How can the concluding words of the *Ḥadīth* can be used as an evidential proof to support the argument, while its first part has been rejected because of confusion and unreliable reporter?

They further argue of that this practice was taking place at the time of the Prophet (saws), "the three divorces were considered as one" but the Prophet (saws) did not know that. How can this argument be considered as true at a period when the *Qur’ān* was being revealing (to him) and the revelation never ceased?. It is unthinkable that the *‘Ummah* would have continued with a wrong practice during the time of the Prophet (saws), and *Abū Bakr* and during the two or three years of *‘Umar’s* *Khilāfah*. What are the motivating factors for the expression of *‘Umar’s* excuse? Why did he opt to enforce them the pronouncement of three divorce in one instance as three? What is more serious is that, they are using *‘Umar’s* judgement to reject the *Ḥadīth* (reported by) Ibn *‘Abbās* because the *Fatwā* of Ibn *‘Abbās* was contrary to this *Ḥadīth*.

It is known to the scholars of *Ḥadīth* and to the majority of jurists that, the lesson here is the acceptance of a *Ḥadīth* as long as it is authentic. No consideration will be given to narrator whether he has followed that narrations or not. The majority of jurists who supported that the "three divorces in a single instance are considered as three" based on this argument. Many minor juristical matters are also based on the same point. The above mentioned *Ḥadīth* is rejected by the argument that consensus had been established after two years of the *Khilāfah* of *‘Umar* regarding "three divorces at a single instance" being considered as three, while they were considered as one by a large group of scholars of the early Islamic period as well as by the subsequent scholars to date.

Furthermore, it will not be correct to argue by using the *Ḥadīth* of ‘A’isha to support the claim that three divorces in one instance will be considered as three. She reported that the Prophet (saws) forbade for *Rifā‘ah al-Qarazī* to reunite with his divorced wife until she re-married with another first, as he divorced her three times. This was so, because it was confirmed that he had divorced her the last three divorces. This was reported by *Imām Muslim* in his book (*Ṣaḥīḥ Muslim*). It is clear that the divorce was implemented separately. It was not confirmed that the incident of *Rifā‘ah ibn Wahab al-Naḍarī* and his wife was similar to that of *Rifā‘ah al-Qarazī*, so that the multiplicity in the story had been claimed, and that one of them implemented three divorces in one instance. Moreover, *Ibn Ḥajar* did not just say multiplicity of the story, but he said: "if the *Ḥadīth* of *Rifā‘ah al-Naḍarī* was ensured, then multiplicity of the story is established". *Ibn Ḥajar* had mentioned in his book "*al-Iṣābah*" the similarity of the story, saying: "but the problem is in unifying the name of the second husband who was, ‘*Abd al-Raḥmān ibn al-Zubair*’".

The *Imām Aḥmad* reported a *ḥadīth* in his *Musnad*:

حدثنا سعيد بن ابراهيم حدثنا ابي عن محمد بن إسحاق حدثني داود بن الحصين عن عكرمة مولى ابن عباس؛ عن ابن عباس أنه قال طلق ركانة بن عبد يزيد أخو بني المطلب امرأته ثلاثا في مجلس واحد؛ فحزن عليها حزنا شديدا؛ قال: فسأله رسول الله صلى الله عليه وسلم: كيف طلقتها؟ قال: طلقتها ثلاثا. قال فقال: في مجلس واحد؟ قال: نعم قال: فإنما تلك واحدة فأرجعها إن شئت؛ قال: فراجعها. فكان ابن عباس يرى أن الطلاق عند كل طهر؛

(وقد أخرجه أبو عبد الله المقدسي في كتابه المختارة ورواه أحمد في سننه 265\1)

*Sa‘īd ibn Ibrāhīm* narrated, my father reported from *Muḥammad ibn Ishāq* that, *Dāwūd ibn al-Ḥuṣain* narrated from *‘Ikramah* the freed slave of *Ibn ‘Abbās*, that *Ibn ‘Abbās* said: *Rukāna ibn ‘Abd Yazīd* brother of *Banu Muṭṭalib*, divorced his wife three times in the same sitting, and he became very sad about it. he said (*Ibn ‘Abbās*) then the Messenger of Allāh (*SWT*) asked him (*Rukāna*) "How did you divorce her?" he replied I divorced her three times. *Ibn ‘Abbās* said, the Prophet (*saws*) asked: In one sitting? He replied yes. Then the Prophet (*saws*) said: hence the (countable) divorce is only one.. If you wish, you can bring her back, he (*Ibn ‘Abbās*) said: Then he (*Rukāna*) had returned her. *Abū ‘Abdullah al-Maqdisī* quoted this *ḥadīth* in his book: "*Al Makhtārah*" which is more authentic than the "*Ṣaḥīḥ al Ḥākim*" (a book of the *Hadīth* literature). *Abū Dāwūd* and other Scholars narrated the *ḥadīth* in the same manner

The saying of the Prophet (saws) concerning: "In one (same) sitting" means that, if it had not happened in one sitting, the legal verdict would not have been the same; because if

that (pronouncement of divorce) happens in several sittings it could be possible for him to take her back, as she is living with him.

*Ibn al-Qayyim al-Jawziyyah* mentioned in his book *A'lām al-Muqī'in* that, the "Imām Aḥmad has authenticated the *Isnād* and said, the *Ḥadīth* is *ḥasan*. Moreover, the Imām Aḥmad, Abū 'Ubayd and *Al-Bukhārī* expressed the weakness of the *Ḥadīth* that *Rukāna* divorced his wife with the word *al-Battatah* (final)."

It is by consensus and with the evidences provided by the *Imām ibn Taymiyyah*, *Ibn al-Qayyim* and others which hold that the command has always been that, three divorces in a single pronouncement were considered as one divorce during the time of *Abū Bakr*, and two or three years of 'Umar's *Khilāfah*, but whatever disagreement existed in the *fatwā* (legal decision) amongst the Companions was apparent after 'Umar's enforcement of three divorces as three as a chastisement, when people became hasty in a matter which required patience and careful consideration. The aim of 'Umar according to *Ibn Taymiyyah* and *Ibn al-Qayyim* was not generally to introduce new legislation or make it binding on people, but he wanted to enforce it as long as there remains the need to discourage people from pronouncing divorce in haste. Such legislation shall remain as long as people's actions are not changed concerning divorce, It is based on the principle that the legal verdict changes with the time and situation.

The Imām (judge) must chastise his people when they misbehave with respect to general rules in which they have a right of choice whether to take part or abstain. In such a situation for general welfare the Imām can permit a few things for some people, and restrict them from others. It is the duty of the *Imām* to guide his people.

The Imām Ibn Taymiyyah said in his *Fatāwā*:-

الذين ألزموا من أوقع جملة الثلاث بها مثل عمر رضي الله عنه ؛  
فإنه لما رأى الناس قد أكثروا مما حرمه الله عليهم من جمع الثلاث ولا ينتهون عن ذلك إلا بعقوبة رأى عقوبتهم  
بالزامها ؛ لئلا يفعلوها ؛ إما من نوع التعزير العارض الذى يفعل عند الحاجة ؛ كما كان يضرب في الخمر ثمانين  
ويحلق الرأس وينفي

The jurists who opined in favour of three divorces to be implemented, they have their excuses. The Caliph 'Umar saw that the people were committing what Allāh (SWT) had forbidden them to do in accumulating three divorces together. They would not restrain from such a practice except of threatened with punishment. Considering the situation, 'Umar adjudicated to act upon three divorces as final to restrain the people

*The decision of 'Umar may be for various reasons, such as a* kind of temporary punishment which is applied while needed, as he used to punish the wine drinker with 80 lashes, shaving of the head and exile.

There is a clear precedent in the following action of the Prophet (saws) concerning three Companions of the Prophet (saws) who stayed behind from the battle of Tabūk as that mentioned in the Majmū' al Fatawā:

كما منع النبي صلى الله عليه وسلم الثلاثة الذين تخلفوا (من غزوة تبوك) عن الإجتماع بنسائهم"

As the Prophet (saws) ordered (those three of his Companions who were stayed behind in the battle of Tabūk, as a temporary punishment for them ) to keep away from their wives for some time (Although their wives were not old)<sup>11a</sup>. This is similar to the extra punishment for wine drinker in order to keep them away from drinking, and the fixation of the prices of goods at the time of exploitation of the businessmen and warning them not to increase the prices). This kind of legislation has been enforced other than the legal justification for establishing justice. The traffic controlling regulation also support the above views. For example, the public can be prevented from walking or riding across a road which was normally permissible for them to do so, but temporarily prevented in order to protect life and restore peace and safety. Moreover 'Umar thought that when the Prophet (saws) made three divorces as one it was conditional, and that was subsequently gone. In reality any analogy cannot be justified when authentic Aḥādīth are available on that aspect.

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<sup>11a</sup> Majmu" Fatawa, Imam Ibn Taymiyyah V33 P15/16.

Another *Ḥadīth* has been quoted in the *Majmū‘ al Fatāwā*:-

عن النبي صلى الله عليه وسلم أنه قال: " العلماء ورثة الأنبياء إن الأنبياء لم يورثوا دينارا ولا درهما وإنما ورثوا العلم فمن أخذ به أخذ بحظ وافر (السنن)" تخريج: (1) ذكره البخاري تعليقا في كتاب العلم| باب العلم قبل القول والعمل (2) وأخرجه أبو داود في كتاب العلم| باب في فضل العلم رقم 3641 (3) والترمذي في كتاب العلم| باب ما جاء في فضل الفقه على العبادة رقم 2682 وقال الترمذي: وليس إسناده بمتصل عندي هكذا حدثنا محمود بن خدّاش هذا الحديث، وإنما يروي هذا الحديث عن عاصم بن رجاء بن حيوة عن داود بن جميل عن كثير بن قيس عن أبي الدرداء عن النبي صلى الله عليه وسلم، (4) وابن ماجّة في المقدمة| باب فضل العلماء والحث على طلب العلم رقم 223 من طريق عاصم بن رجاء بن رجاء بن حيوة عن داود بن جميل عن كثير بن قيس عن أبي الدرداء عن النبي صلى الله عليه وسلم ثلاثتهم ضمن حديث طويل،

Reported in the *Sunan*, the Prophet (*saws*) said :

The scholars are the descendants of the Prophets (A.S.). The Prophets (A.S.) did not leave inheritance of any *dinār* or *dirham*. They inherited the knowledge. Whoever received this, he received a great portion".

Human analogy and understanding may differ, but as long as they fear Allāh (SWT) that will be praised As Allāh (SWT) said in the Qur’ān:

"وداود وسليمان إذ يحكمان إذ نفثت فيه غم القوم وكنا لحكمهم شاهدين ففهمناها سليمان وكلا آتينا حكما وعلما"

"And remember David and Solomon, when they gave judgement in the matter of the field into which the sheep of certain people had strayed by night. We did witness their judgment. To Solomon we inspired the (right) understanding of the matter to each of them we gave judgement and knowledge".<sup>11b</sup>

In the above verse, one of the two Prophets has been distinguished with proper understanding and was praised that, He (SWT) gave both of them wisdom and knowledge. Similarly if someone, from among the scholars became specialised in certain knowledge and wisdom bestowed by Allāh (SWT), it does not necessitate criticism of someone among the scholars who could not reach an equal level. The fundamental criteria is that whoever fears Allāh (SWT) according to his ability, would be regarded as being among the pious friends of Allāh (SWT), although a (little) portion of the religion remains unknown to him which has been understood by others.

A *Ḥadīth* has been quoted in the *Majmū‘ al Fatāwā* in the same context:

وقد قال عن وائلة بن الأسقع وبعضهم يرفعه الى النبي صلى الله عليه وسلم: من طلب علما فأدرکه . فله أجران؛ ومن طلب علما فلم يدركه فله أجر؛<sup>a</sup>

It is reported by *Wāthilah ibn Asqa‘* and some of them pointed it (this *Ḥadīth*) to the Prophet (*saws*) who said: "Whoever acquires knowledge and understands it, he will receive double reward and whoever acquires knowledge but could not understand it will receive a single reward..<sup>11c</sup>

Furthermore it could be said, the formal legal opinion of the matter *ṭalāq* had been depending on *Ijtihād* (independent judgment) of Scholars of the *Sharī‘ah* from the beginning till to the present. As it was permitted by the Prophet (*saws*) in his word:

عن عمرو بن العاص وعن أبي هريرة رضي الله عنه: عن النبي صلى الله عليه وسلم قال : إذا اجتهد الحاكم فأصاب فله أجران ؛ وإذا اجتهد الحاكم فأخطأ فله أجر "

Reported by *‘Amr ibn ‘Āṣ* and *Abū Hurayrah* from the Prophet (*saws*) who said:"when a judge adjudicates and reaches the correct judgement, he will achieve two rewards, and when a ruler adjudicates and commits a mistake, he will receive one reward".<sup>1a</sup>

Similarly the jurist scholars, may Allāh be pleased with them, who will reach to a correct Judgement, will get double rewards and those who commits a mistake will get a single reward. All of them are obedient to Allāh (SWT) according to their ability. Allāh (SWT) does not pressurise anyone more than his knowledge. The Prophet (*saws*) is not under obligation of the judgement of others and his *Sharī‘ah* also not under obligation to agree or accept anything from an innovated concept, especially when it is objectionable.

Apart from these evidences *Imām ibn Taymiyyah* argued in support of his view with analogical reasonings that " three divorces at one instance will be considered as one"

كما إذا قيل للرجل: سبح مرتين؛ أو سبح ثلاث مرات؛ أو مائة مرة. فلا بد أن يقول: سبحان الله؛ سبحان الله حتى يستوفى العدد؛ فلو أراد أن يجعل ذلك فيقول: سبحان الله مرتين أو مائة مرة. لم يكن قد سبح إلا مرة واحدة. والله تعالى لم يقل: الطلاق طلقتان؛ بل قال: (مرتان) فإذا قال لإمرأته: أنت طالق إثنين؛ أو ثلاثا؛ أو عشرة أو ألفا. لم يكن قد طلقها إلا مرة واحدة.

أخرجه بلفظ متقارب: البيهقي في السنن الكبرى 203\10 رقم 20369 'كان له كفلان من الأجر' <sup>a</sup>

<sup>1a</sup> Majmu' Fatawa P29 V.33.

As if it is said to a man: Glorify (Allāh SWT.) two times: or Glorify (Allāh SWT,) three times or hundred times, so, certainly (to fulfil the required number) he should say: ["*Subhān Allāh*" (Glory be to Allāh)," *SubhānAllāh*" till the number is fulfilled. So, if he wants to do that, and says "*Subhān Allāh*" twice or hundred times. In reality he only Glorified (Allāh) once. Allāh (SWT) didn't say:" the divorce is two divorces." But He said: (Twice) so when the husband says to his wife: You are divorced, twice or thrice, or ten , or thousand times (at one instance) in all these cases he only divorce her once (according to the Law it will not be counted but only one divorce.)

The *Imām Ibn Taymiyyah* also mentioned in his argument:

ولا نعرف أن أحدا طلق على عهد النبي صلى الله عليه وسلم إمراً ثلاثاً بكلمة واحدة فألزمه النبي صلى الله عليه وسلم بالثلاث؛ ولا روي في ذلك حديث صحيح ولا حسن؛ ولا نقل أهل الكتب المعتمدة عليها في ذلك شيئاً؛ بل رويت في ذلك أحاديث كلها ضعيفة بإتفاق علماء الحديث بل  
موضوعة

We do not know of anyone who divorced his wife three times in a single word during the Prophet's (*saws*) time and the Prophet (*saws*) established three divorces to him (irrevocably). There is no authentic or *ḥasan Ḥadīth* reported in support of that, nor any author of reliable (*Shar‘ī*) books reported anything in that matter. . But, all *Aḥādīth* reported in this issue were weak and concocted according to the unanimous opinions of Scholars of *Ḥadīth Literature*

He (*Ibn Taymiyyah*) also mentioned in that context " what has reported in the *Ṣaḥīḥ Muslim* and in the other *Sunan*

عن طاووس عن ابن عباس أنه قال: كان الطلاق على عهد رسول الله صلى الله عليه وسلم وأبي بكر وسنتين من خلافة عمر: طلاق الثلاث واحدة؛ فقال عمر: إن الناس قد استعجلوا في أمر كانت لهم فيه أناة؛ فلو أمضيها عليهم فأمضاه عليهم. (صحيح مسلم وغيره)

Narrated from *Ṭāwūs*, who had reported from *Ibn ‘Abbās*: During the time of the Messenger of Allāh, *Abū Bakr*, and up to two years of *‘Umar's Khilāfah*," three divorces at one instance were counted as one. Thereafter, *‘Umar* spoke to other Companions of the Prophet (*saws*), that, people have started taking hasty action in a matter which requires a great deal of thought and in which they should remain patient. (It would be better) if we enforced them (the three divorces as they have pronounced). Consequently *‘Umar* enforced the effectiveness of the three divorces.

In another narration of the *Imām Muslim* and other scholars:

عن طاووس أن أبا الصهباء قال لابن عباس: أتعلم إنما كانت الثلاث تجعل واحدة على عهد رسول الله صلى الله عليه وسلم وأبي بكر وثلاثاً من امارة عمر؟ فقال ابن عباس: نعم. (مسلم وغيره)

It is narrated from *Tāwūs* that, *Abū Ṣuhbā* asked Ibn ‘Abbās: "Do you know that, at the time of the Prophet (*saws*), *Abū Bakr* and three years of ‘*Umar*’s government, the three divorces were considered as one?" *Ibn ‘Abbās* replied: Yes.

In another narration: *Abū Ṣuhbā* asked Ibn ‘Abbās: Tell me your opinion. Didn't the three divorces (at one instance) at the time of the Prophet (*saws*) and *Abū Bakr* considered as one? He affirmed it, that was so. (But) when at the time of ‘*Umar*’ people were practicing divorce in succession, so he enforced them (what they have pronounced). Now a days the *Imām Ibn Taymiyyah* ( born 661/1263 died 728/1328) became famous reformer among the learned people. No doubt he was most knowledgeable in his time, we can justify him with a remark made by al Dhahabī (about him) :-

كل حديث لا يعرفه ابن تيمية فليس بحديث"

"Every tradition that is not known to *Ibn Taymiyyah* is not a tradition (*Ḥadīth*)<sup>11b</sup>

The legal views of the supporters of both groups have been mentioned together with their major evidences. Both groups bring their evidences from the *Qur’ān* and the *Sunnah* but they disagree with each other in the interpretation of the evidences and exercised their own *Ijtihād*.

It is evident that both group have made sincere meticulous and painstaking affords in order to prove their own legal views. The Muslim Jurists in the world to day have studied very carefully both views and evidences provided by both groups. Majority of Muslim Jurists have preferred the legal views of the *Imām Ibn Taymiyyah*. In a number of the most prominent Muslim Countries including Egypt , therefore , the legislation has been enacted to this effect and the Judges and the *Sharī’ah Courts* of Law are officially instructed to adjudicate such cases according to reformed legislation. The Impact of this

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<sup>11b</sup> See Imam Ibn Taimiya And His Projects of reform, P37 By Dr. Serajul Haque, Islamic Foundation Dhaka,1982

legislation can be witnessed even such independent *Shari'ah* Institution, which do not come under the direct jurisdiction of the Muslim countries, for example two *Shari'ah* Councils here in Britain have adjudicated a number of cases accordingly.

Note:- It is my humble work in which I have gathered evidences for both opinions (Three divorces in one instance consider three and final (ii) On the other hand it will count only one revocable divorce). My opinion is that, the both groups evidential proof is correct. So, all those who will face their family conflict as a result they divorce their wives three times in a single instance. In this circumstances their 'Ulamā' is free to take their verdict considering their creed and faith about these evidences which mentioned in this thesis . Allah (SWT) knows the best.

أقول قولي هذا وأستغفر الله لي ولسانر المؤمنين من كل ذنب وصى الله على نبي الكريم وعلى آله وصحبه ومن إهتدى بهديه الى يوم الدين أمين.

# APPENDIX

## Footnotes For Chapter One:

1. The Encyclopaedia of Islām new addition Vol.3 P951-55  
Al-Haque, Serāj, Ibn Taimiyyah and his project of reform, Vol.1, P2-15, Published:  
Dhaka, Islamic Foundation, 1982.  
Ibn Hajar, Durar, Vol.1 P145.  
Al-Zaraklī Khair al-Dīn, Vol.1 P43, Matba‘ah al-‘Arabiyyah, Egypt, 1927/1345AH.  
Shadharāt al-dhahab, Vol.1 P80 Cairo, Published by Muḥib al-Dīn al-Khaṭīb,  
Salafiya Press 1341 AH.
2. Ibid also, Nielsen J.S., Secular justice in an Islamic state, Mazālim under the Bahri Mamlūk, 1264 - 1387. See page 39, 103-4 & 150. Published, Nederlands Historisch  
Archaeologist Institute, Istanbul 1985.
3. Ibn Taymiyyah, Aḥmad (Shaykh al-Islam) Majmū‘ Fatāwā 37 vols, supervised by  
the general Presidency of al-Ḥramyn al-Sharifyn affairs. Cairo, Idārah al-Masāḥah  
al-‘Askariyyah 1404 A.H.

## Section one

1. Al Qur’ān, Ch. al-Nisa 4:34.
2. Al Qur’ān, Ch. al-Ḥujurāt 49:13.
3. Al Qur’ān, Ch. al-Rūm 30:21.
4. Al Qur’ān, (Lesson of the verse)
5. Al Qur’ān, Ch. al-Nisā’ 4:1. (gist of this verse).
6. Al Qur’ān, Ch. al-Baqarah 2:223.
7. Al Qur’ān, Ch. al-Baqarah 2:187.
8. Al Qur’ān, Ch. al-Baqarah 2:228.
9. Al Qur’ān, Ch. al-Baqarah 2:226.
10. The theme of the verse, Ch. al-Baqarah 2:228.
11. Al Qur’ān, Ch. al-Nisā’ 4: 35.
12. Al Qur’ān, Ch. al-Nisā’ 4:34.
13. Al Qur’ān, Ch. al-Nisā’ 4:21.

14. Moulana Abu -l A'la Maudūdi, The law of Marriage and Divorce in Islām, by Fazl Aḥmad, Published, Islamic book publishers, Kuwait, 1983, p.28.
15. K.N. Aḥmad, Muslim Law of Divorce, P1, Kitāb Bhovan, Delhi, 1978.
16. Dr. Raḥmān I. Doi, Sharī'ah the Islamic Law, Ṭa Ha publishers, London, U.K. 1984/1404 A.H., p.170.
17. Sharḥ al Kabīr vol. VIII, p.234; also cf. al-Ṣabūnī 'Abd al-Raḥmān, Hurriyat - Zawjayn fī al Talāq, Cairo, 1968, pp.85-86.
- 17b A History of Islamic Law by- N.J. Coulson. P 83 Edinburg University Press 1971.
18. Ibid. K.N. Aḥmad, Op. cit.
19. Al the Imām 'Abd al Waḥīd Moḥammad ibn Aḥmad ibn Muḥammad ibn Aḥmad ibn Rushd al Qurṭubī, Bidayah al-Mujtahid wa Nihayah al Muqtasid vol. II, Published by Dār al-Ma'rifah, Beirut, Lebanon, 1978 AD/1398 AH, p.61.
20. Express words: mean that the words explicit for divorce e.g., "I divorce thee..." Implied words: mean that, the word are not explicit for divorced but circumstance be such that the words may imply divorce, provided divorce has been intended by those words, e.g., "you are prohibited to me" or "count thy period"
21. Ibid, A History of Islamic Law by- N.J. Coulson. Page 112-113.
22. Ibn Humām: Kamāl al-Dīn, Fath al-Qadīr vol. III, Cairo, 1356 AH. p.21. Also in Dr. Tanzīl al Raḥmān's A code of Muslim Personal Law, Islamic Publishers, Karachi, Pakistan First ed.1980 V 1 p. 309.
23. *Ibid*, also in al-Lubāb, commentry of al-Mukhtasar al-Qudurī by al Midānī 'Abd al Ghanī, Published in Cairo, vol. III, 1383 AH, p.37; and Ibn Nujaym's al-Baḥr al-Rā'iq vol. III, published from Cairo, 1311 AH, p.252.
24. 'Alā al-Dīn al Ḥaskafī, al-durr al-Mukhtār, O.M.O. Radd al-Muḥtār, vol. II, P426 printed in Cairo, 1252 AH N.P..
25. .Ibid Tanzīl al Raḥmān A code of Muslim personal Law P 309.
26. Muḥammad ibn 'Abd al Raḥmān al-Maghribī, Muwahil al-Jalīl, vol. IV, P18 printed in Cairo, 1329 AH,
27. Al Khaṭīb Muḥammad al-Sharbīnī, Mughnī al Muhtāj, Vol. III, P279 published from Cairo ND NP.
28. Al-Maqdisī, al-Iqna', Vol. IV, p.2 N.P. N.D.
29. Ibid, A code of muslim law , by Dr. Tanzil al Raḥmān, P312-313.

30. Al-Kasānī, the Imām ‘Ala al Dīn, Badai‘ al-Sanāi‘, Vol. III, P88-89, Cairo, 1328 AH,
31. *Ibid* P90
32. *Ibid*, p.91.
33. Al-Shaybānī, the Imām Muḥammad, Muwatta, Karachi, Kitāb al Ṭalāq, pp.250.
34. Ibn Nujaym, Op. cit., p.256; al-Kasānī, Op. cit, p.91; al-Sarakhsī op. cit, p.3; Damad Afandi, Majma‘ al-Anhur, Vol.I, Cairo, 1328 AH, pp.381-82.
35. The Holy Qur’ān, Surah al-Ṭalāq ch. 65:1
36. Al-Kasānī, Op. cit, p.89. al-Sarakhsī, Shams al-Dīn, al-Nukāt, commentary on al-Shaybani's al-Ziyadāt, Hyderabad Deccan, 1328 AH, pp.2-4; Baiyhaqī, Kitab al Sunnan al Kubrā’, Vol, III, Hyderabad Deccan, P.334. This tradition has been described in Ṣaḥīḥ al-Bukhārī and Muslim in the following words (vide Mishkāt al-Maṣābiḥ, Karachi, p.283):
37. *Ibid*, A Code of Muslim Personal Law P315.
38. *Ibid* Al Kasānī, Op. cit., p.89.  
*Also* Ibn Rushd, Bidayat al Mujtahid wa Nihayat al Muqtasid, Vol.II, Egypt, 1379 AH, p.63.
39. Abū Dāwūd, al-Sunan, Karachi, 1329 Ah., p. 305, ibn Rushd, Op. cit., Vol. II, p.64.
40. *Ibid*, A Code of Muslim Personal Law Op. cit., P316.
41. *Ibid*, Al-Kasānī, Op. cit., vol.III, p.93.
42. Ftāwā Ibn Taymiyyah Kitāb al-Ṭalāq.V33 P21 22 Printed in accordance with the permission of Khādīm al-Ḥaramayn al-Sharifayn King Fahad ibn ‘Abdul Azīz (KSA). Supervised by - General presidency of the Ḥaramayn al-Sharifayn affairs. N.D.
43. *Ibid* Al-Kasānī P92.
44. *Ibid*, A code of Muslim Personal Law, p. 318.
45. *Ibid*, p.317.
46. Al Qur’ān, Ch. al-Baqarah 2:229.
47. Sarakhsī, Kitāb al Mabsūt Published from Cairo, 1324 AH, Vol.VI, p.19.
48. Shaykh Nizām, Fatwa ‘Alamgiriyyah, published in Kanpur, 1349 A.H., vol.II, p.109.
49. Al Qur’ān, Ch. al-Baqarah 2: 231.
50. Al Qur’ān, Ch. al-Baqarah 2: 228.

51. Al Qur'ān, Ch. al-Baqarah 2:228.
52. Al-Qurṭubī Abū Abdullah Muḥammad ibn Aḥmad al-Anṣārī, al-Jāmi' Li Ahkām al-Qur'ān, vol.3 p126.
53. Ibid, A code of Muslim personal law, Op. cit.,p. 403.
54. Ibn Rushd al-Qurṭubī, Bidayat al-Mujtahid wa Nihayat al-Muqtasid, 2<sup>nd</sup> Vols. P85, Beirut, Dār-al-Ma'rifah, 1978.
55. Al-Qurṭubī, Abū 'Abdullah Muḥammad al-Anṣārī, Al-Jāmi' Li Ahkām al-Qur'ān, Vol.3 P121.
56. Ibid, al-Qurṭubī, Al-Jāmi' Li Ahkām al-Qur'ān, Vol.3 P121.
57. Ibid, al-Qurṭubī Vol.3 P120.
58. Ibid, Rahman, Tanzil, A code of Muslim Personal Law Vol.2, P406
59. Al-Murghinānī Burhān al-Dīn Al-Hidāyah 1<sup>st</sup> Vol. P375 Maktabah Imdādiyah, Multān , Pakistan, N. D.
- 60., Ibn Qudāmah, Abū Muḥammad 'Abdullah ibn Aḥmad ibn Muḥammad, Al-Mughnī, 7<sup>th</sup> Vols. P289, Makataba al- Riyāḍ al-Ḥadīthah, Riyāḍ, K.S.A.
- 61.. Ibid Ibn Qudamah, Al-Mughnī 7<sup>th</sup> Vols. P285,
62. Ibid, al-Hidāyah, 1<sup>st</sup> Vol. P376-77  
Also ibn Qudamah, Al-Mughni, Vol.7 P280-81.
63. Ibid, Al-Mughnī, Vol.7 P282
64. Ibid, Al-Murghinānī, Burhān al-Dīn, Al-Hidāyah, Vol.1 P374.
65. Ibn Rushd al-Qurṭubī Bidayat al-Mujtahid wa Nihāyat al-Muqtasid, 2<sup>nd</sup> Vol. P86-87, Dar al-Ma'rifah, Beirut, 1978.
66. Ibid, A code of Muslim Personal Law P407-9.
67. Al Qur'ān, Ch. al-Ṭalāq 65: 2, and Al-Murghinānī, Buhān al Dīn, Al-Hidāyah Vol. II, P375, Multan, Pakistan, N.D.
68. Ibn Qudāmah Abū Muḥammad 'Abdullah ibn Aḥmad ibn Muḥammad al-Mughnī, vol. VII, published by Maktaba al Riyadh al Ḥadīthah, Riyadh, pp. 282-83.

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## *Section two*

1. Al-Qur'ān, Ch2. Al-Baqara, v. 229.
2. Al Qur'ān Ch.2 Al-Baqara v. 229.
3. Al-qur'ān Ch.2 Al-Baqarah, v.230.

## **Footnotes For Chapter Two:**

1. Qurū': Menstruation, menses, (women's monthly period)
2. *Ṭalāq al Sunnah*: "May take the form either of a single pronouncement, which is revocable by the husband until the expiry of the wife's 'iddah (prescribed waiting period), or of one pronouncement followed by two further confirmatory pronouncement in successive months. When divorce becomes irrevocable on the third pronouncement".
3. *Ṭalāq al Bid'ah* : Implementing three divorces at a single instance without considering the approved way of divorce.
4. *Sunan* : Authentic books of the collection of *Ḥadīth Literatures*.

*The English meaning has taken from interpretation of the Holy Qur'ān by:- A. Yusuf Ali.*

*Also, by Dr. Muḥammad Taqī al Dīn al-Hilālī Ph.D (Berlin),*

*Professor of Islamic Faith and teachings.*

*Islamic University Al-Madina Al-Munawara.*

*Dr. Muḥammad Muḥsin Khan.*

*Also, The Holy Qur'ān English translation of the meaning and commentry, King Fahd Holy Qur'ān Printing Cmplx, Al-Madīnah Al-Munawwarah*

5. Al Qur'ān, Ch. al-Baqarah, 2:228
6. Al Qur'ān, Ch. al-Baqarah, 2:229
7. Al Qur'ān, Ch. al-Baqarah, 2:230
8. Al Qur'ān, Ch. al-Baqarah, 2:231
9. Al Qur'ān, Ch. al-Aḥzāb, 33:49
10. Reported by the Imām Muslim
11. Ḍa'īf: Weak, here the Ḥadīth which has been narrated by a weak repoter is called *Ḥadīth Ḍa'īf*.



Also, Al-Qurtubī Abū ‘Abdullah Muḥammad ibn Aḥmad al-Anṣārī, al-Jāmi‘ Li Ahkām Al-Qur’ān, Vol.3, P126.

Al-Baghawī, Abū Muḥammad al-Ḥusain ibn Mas‘ūd Al-Farrā’, Tafsīr al-Qur’ān Vol.1 P206.

Also, Qur’ānum Majīd Fī Lawhim Mahfūz, P45, Mutarjam wa Muḥashsha (Urdu), Dār al Taṣnīf Limited Shah Rāhī, Liyāqat, Sadar, Karachi, Pakistan 1975 AD/1395 AH.

Also, Ibn Kathīr, ‘Imād al-Dīn Abū al-Fidā Ismā‘īl, Tafsīr al-Qur’ān al-Azīm Vol.1 P482 Dar al-Arqam, al-Kuwait, 1985/1405.

2. Al Qur’ān, Ch. al-Baqara 2:229
3. Ibn Qudāmah, al-Mughnī Vol.7 P.102 Maktaba al-Riyaḍ al-Ḥadīthah
4. Daily Awāz (Urdu U.K.) 6<sup>th</sup> June, 1993 "The present system of Ḥalālāh the way it has followed like a cursed mark in the surface of the Islamic Law" - Mawlana A Hadi.  
Also, Awāz 3<sup>rd</sup> June 1993 "If the word divorce pronounced three times in one instance it will be effective".  
Daily Jang (Urdu U.K.) 16<sup>th</sup> September, 1993 "The issue of divorce for Muslim ladies in India".
5. Al Qur’ān, Ch. al-Ḥashr 59:7
- 5a. Sunnan ibn Mājah, verified by Muḥammad Fu’ād ‘Abd al Bāqī, Lebanon, Beirut, Dār al-Kutub al-‘Ilmiyyah, N.D.
6. Shaykh al-Islām Aḥmad ibn Taymiyyah - Majmū‘ Fatāwā Vol. 33 P.12-13. Printed by the donation of His Royal Highness King Fahad K.S.A.
7. Ibid Majmū‘ Fatāwā Vol 33 P8  
Also, Bidayat al-Mujtahid wa Nihayat al-Muqtasid, Muḥammad ibn Aḥmad ibn Rushd al-Qurtūbī, Vol.2 P64, Dar al-Ma‘rifah Beirut, 1978/1398.  
Also, Al-Jami‘ Li Ahkām al-Qur’ān, Abū ‘Abdullah Muḥammad Al-Anṣārī al-Qurtubī, Vol.3 P128-129.  
Also, Muwatta al-Imām Mālik Vol.2 P16, Tanwīr-al-Ḥawālik, Al-Azhar, 1349 AH.  
Also, Burhan al-Dīn Al-Murghinānī Al-Hidāyah, Vol.1 P335, Imdadiya Library, Multan, Pakistan, N.D.  
Also, Wahābah al-Zuhailī Al-Fiqh al-Islam wa Adiāllatuhu Vol.7 P406-7, Dar al-Fikr Diban Beirut, N.D.

Also, Al-Imām Muḥammad ibn ‘Alī ibn Muḥammad al-Shawkānī, Nail al-Awtār Sharhu Muntaqā al-Akhbār Vol.6 P231 Maktabah al-da‘wah Islāmiyyah Shabāb al-Azhar (N.D.)

Also, Al-Sayyid sābiq, Fiqh al-Sunnah Vol.2 P230, Dar al-Fikr Libanon Beirut, 4<sup>th</sup> edition, 1983/1403 A.H.

8. Al Qur’ān, Ch. al-Baqara 2:229
- 8a. A Code of Muslim Personal law, Tanzilur Rahman, P321-22 & 402.
9. Al Qur’ān, Ch. al-Baqara 2:230
10. Islamic Research Magazine(1977AD/1397AH) - Dar al-Ifta, Riyadh, KSA. Vol.1 3<sup>rd</sup> issue, P.56
11. Al-Bayhaqī: Al Sunan al-kubrā, Hyderabad Deccan, 1353 AH vol 7 P331.
- 11b Al Qur’ān, Ch. al Anbiyā’ 21:78-79
- 11c Ibid Majmu‘ Fatāwā Ibn Taymiyyah V33 P29
12. Al Qur’ān, Ch. al-Talāq 65:2
13. Al-Dār Quṭnī: Sunan, Dheli 1310 AH Vol.2 P343.
14. Ibid Al Baihaqī Vol. 7 P.334
15. Al Qur’ān, Ch. al Ṭalāq 65:1
16. Ibid, Al Baihaqī P334
17. Dār Qutni: Al-Sunan, Dehli, 1310 AH. V.2 P444
18. Al Qur’ān, Ch. alṬalāq 65:1
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22. Al Qur’ān, Ch. Al-Baqara 2:228

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\* \* \* \* \*

## *Glossary of Legal Terms used in the work*

### **\*\*A\*\***

<i>‘Ahd</i>	pledge, vow, promise, oath.
<i>‘Aqd</i>	To knit, knot, tie (O. S.th) to fasten with a knot, to put together, legal contract.
<i>Asīr Pl Usāra‘</i>	Prisoner, captive, prisoner of war.
<i>Al-athām Pl. of ithm</i>	Sin, offence, misdeed, crime.
<i>Awthān Pl. of wathaān</i>	Idols.
<i>Aymān Pl of yamīn</i>	Oaths.
<i>‘Azr</i>	Censure, rebuke, chastise.

### **\*\*B\*\***

<i>Bāṭin Pl. bawāṭin</i>	Inner, interior, hidden, secret.
<i>Bān</i>	Clear, final, irrevocable.
<i>Bid‘ah</i>	(innovation) an introduction of new things into religion either good or bad. Mostly it is applied to such items as relate to Islamic beliefs, prayers etc.
<i>Bu‘ūlah Pl of Ba‘ul</i>	Lord; husband.

## **\*\*D\*\***

<i>Dalāl</i>	Astraying from the right path or from truth; error.
<i>Dam Pl. Dimā</i>	Blood.
<i>Ḍarar Pl. Aḍarār</i> أضرار جمعه ضرار	Harm, detriment, loss.
<i>Dhanb Pl. Dhunb</i> ذنوب جمعه ذنب	Offence, sin, crime, misdeed.
<i>Dhimmah Pl. Dhimam</i>	Protection, care, custody; responsibility, liability.
<i>Dīnār Pl. danānīr</i>	A Monetary unit, a gold coin.
<i>Dubr, dubur Pl. adbār</i>	Rump, backside of a person.

## **\*\*F\*\***

<i>Fāḥishah Pl. Fawāḥish</i>	Phrostitute, abomination, crime, adultery, fornication.
<i>Faiy</i>	It is an Islamic terminology which denotes such a wealth that has captured from enemies without any physical combat or fight.
<i>Fiskh</i>	Cancellation (in jurisprudence) abolishment, abolition, , dissolving, voiding.
<i>Fatwa Pl. Fatāwā</i>	Formal legal opinion, stating the decision of the law.
<i>Fidyah Pl. Fidīyāt</i>	Ransom, redemption from the omission of certain religious duties, by a material donation or a ritual act.
<i>Fuqahā' Pl. of Faqīh</i>	Legists, Jurisprudent and theologian, expert of Fiqh. An Islamic learned man who by virtue of his knowledge can give a legal judgement.

## **\*\*G\*\***

<i>Ghairu Madkh ūli Biha</i>	It is a term, used for a wife with whom marriage has not been consummated.
<i>Ghanam Pl. Aghnām</i>	Sheep and goats, small cattle.
<i>Ghanimah Pl. Ghanā'im</i>	Booty. According to Islamic terminology the wealth which would have received after victory in the Islamic battle.
<i>Ghayy</i>	Trespassing, transgression, offence.
<i>Ghulūw</i>	To exceed the proper bounds, be excessive, exaggerate.
<i>Qiyās Pl. āt, Aqyās</i>	Comparison, analogy.

## **\*\*H\*\***

<i>Ḥalālāh</i>	Which means legalising or making a thing lawful, was also a pre-Islamic practice. When the wife was divorced irrevocably, and the husband wanted to take her back, she had first to marry a third person on condition that he would divorce her after having sexual connection with her. *
<i>Ḥadd Pl. ḥudūd</i>	Lit. The limits, The boundary or limits prescribed by Allāh (SWT) for ḥalāl and ḥarām. The ḥadd, punishment or fixed penalties laid down by Sharī'ah for the specified crimes.
<i>Ḥadīth Pl. ḥidāth, ḥudathā'</i>	New, novel, recent, modern;
<i>Ḥadīth Pl. Aḥādīth</i>	The verbalized form of a tradition of the Prophet Muḥammad (saws) constitutive of his <i>Sunnah</i> .
<i>Ḥā'id (f) Ḥā'idah</i>	Menstruating (Woman)
<i>Ḥa'id &amp; ḥiyāḍ</i>	Menstruation, monthly period.
<i>Ḥalāl</i>	A Lawful, legal, legitimate.

<i>Ḥaraj</i>	Restriction, difficulty, prohibition, s.th. forbidden.
<i>Hijrah</i>	(Migration) To migrate from one place to another for the sake of religion and its protection. The Prophet Muḥammad (saws) migrated from Makkah to Madina, this is marked as the introduction of the <i>Hijrah</i> calendar.
<i>Ḥikmah Pl. Ḥikam</i>	Wisdom; sagacity, philosophy.
<i>Ḥilah Pl. Ḥiyal</i> <i>Ḥizb Pl. aḥzāb</i>	Artifice, a means to accomplish an end expedient, way-out. Group, troop, gang, party.
<i>Ḥujjah Pl. ḥujaj</i>	Argument, proof, evidence, document, authoritative source.

### **\*\*I\*\***

<i>‘Iddah</i>	Number, numerous, many; legally prescribed period of waiting during which a woman may not remarry after being widowed or divorced.
<i>Iḥsān</i>	Beneficence, charity, alms-giving, performance of good deeds.
<i>Ījāb</i>	Obligation; liability, commitment, affirmation.
<i>Ijma‘</i>	It literally means "collecting", or "assembling", agreement, unanimity. Consensus (of the authorities in a legal question, which one of the four Uṣūl of Islamic law). It express the unanimous consent of the Mujthidūn There are three foundations of Ijma‘: <i>(i)</i> Ittifāq-i-Qauli, unanimous consent expressed in declaration of opinion; <i>(ii)</i> Ittifāq-i-Fi‘lī expressed in unanimity of practice; <i>(iii)</i> Ittifāq-i-Sukūtī when the majority of the Mujtahidūn signified their tacit assent to the opinions of the minority by "silence" or non-interference.
<i>Ijtihād</i>	Effort, exertion, independent judgement in a legal or theological question based on the interpretation and application of the four uṣūl.

<i>Ilā'</i>	The oath taken by a husband that he would not approach his wife for a certain time.`
<i>Imān</i>	"Faith" which according to the Islām believing in only one Allāh (SWT) and all the Prophet especially Prophet Moḥammad (saws) is the last Prophet and infact acting on the five basic pillars of Islām. Briefly it can be describe as a formal declaration of faith in the six articles of the Muslim creed: <ol style="list-style-type: none"> <li>1. In Allāh (SWT);</li> <li>2. The Angels of Allāh (SWT);</li> <li>3. The books of Allāh (SWT);</li> <li>4. The Prophet of Allāh (SWT);</li> <li>5. The Day of Judgement, and the luck whether good or bad comes from Allāh (SWT)</li> <li>6. The life of hereafter (predestination to good and evil).</li> </ol>
<i>Inqīdā'</i>	Passing, termination, expiry, expiration (end of a period of time)
<i>'Itq</i>	Liberty (as opposed to slavery) emancipation.

### **\*\*J\*\***

<i>Al-Jannah</i>	Garden, Paradise, haven
<i>Jimā'</i>	Sexual intercourse; s.th comprising or involving another thing.

### **\*\*K\*\***

<i>Al-Ka'bah</i>	The Holy Ka'bah in Makkah (The Sacred House of Allāh (SWT)).
<i>Kaffārah</i>	Atonement from a sin, expiation, expiatory.
<i>Kāfir pl .ūn Kuffār _ Kafārah</i>	Irreligious, unbeliever,Infidel, atheist ungrateful.

<i>Kalālah</i>	Who dies and leaving no descendants or ascendants as heirs.
<i>Khabā'ith Pl. of Khubth</i>	Badnesses, wickednesses, malignancies.
<i>Khala'a (khal')</i> <i>Khidā'</i>	Slipping off, taking off (of clothes) deposition (e.g., of a ruler). Deception, deceit, swindle, imposture.
<i>Khul' - Khul'a</i>	Divorce at the instance of the wife. Derived from <i>Khul'al-Thaub</i> releasing or removing the dress from the body, because a woman is a dress of a man, and vice-versa as declared in the <i>Qur'ān</i> . "The women are your dress and you are their dress." <sup>1</sup> In the law it is the demission or laying down by the husband of his right and authority over his wife at her instance on acceptance of consideration by means of the word <i>Khul'</i> <sup>2</sup> It is stated in <i>Fatwā Qādī Khan that</i> , it signifies a conditional agreement on the part of husband entered into for the purpose of dissolving the marital relationship at the desire of the wife in lieu of a compensation paid by her to the husband out of her property. <sup>3</sup>
	<ol style="list-style-type: none"> <li>1. Al-Qur'ān Ch 2:182.</li> <li>2. Al-Fatāwā al Hindiyah, Kanpur, 1349 A.H. Vol. 11 p118, Ibn 'Ābidīn, Radd al-Muhtār, Cairo 1318 AH vol. 11, p571-72.</li> <li>3. Qādī Khan, <i>Fatāwā Qādī Khan</i>, Kanpur 1310 A.H. Vol. 11, p256, ibn 'Abidīn, Radd al-Muhtār, Cairo 1318 AH Vol.11 p571-72.</li> </ol>
<i>Kitāb Pl. Kutub</i>	Piece of writing, record, letter, book, deed, <i>al-Kitāb</i> the glorious Qur'ān.

### \*\*L\*\*

<i>La'nah Pl. la'nāt</i>	Curse; imprecation.
<i>Li'ān</i>	Mutual cursing, an oath taken by both the wife and the husband, when the husband accuses his wife of committing adultery. He makes three oaths that the curse of Allāh (SWT) will be on him

if he is lying. The wife can free herself of guilt and this punishment by avowing herself to be innocent three times and making a fourth vow that the curse of Allāh (SWT) will be on her if she is lying. A couple who makes *li'ān* automatically they will be separated and irrevocably divorced.

## \*\*M\*\*

<i>Madhhab Pl. Madhāhib Madkhūl bihā</i>	Ideology, teaching, doctrine, school of orthodox rite of fiqh, This is a Jurisprudential term used for a wife with whom marriage has been consummated.
<i>Maḥram Pl. Maḥārim</i>	Some thing forbidden, inviolable, also holy, sacred, unmarriageable, being in a degree of consanguinity precluding marriage in Islamic law.
<i>Makrūh</i>	Detested, abhorred, hated, hateful, loathsome, unpleasant.
<i>Malḥama Pl. Malāḥim</i>	Bloody fight, slaughter, massacre, battle.
<i>Malḥūn Pl. Malā'in</i>	Cursed, confounded, damned, detested, abhorred, abominable.
<i>Mansūkh</i>	Abrogated (Qur'ānic verse).
<i>Ma'sūm</i>	Inviolable, sacrosanct, protected by the laws of vendetta (Islamic law). sinless.
<i>Ma'rūf</i>	Known, well-known, generally recognized, that which is good.
<i>Mu'allafāt al Qulūb</i>	To make intimacy in between hearts, to make harmonious relation between hearts. In Islamic point of view helping the new Muslims or poor relatives to unite their hearts each others.
<i>Mubāḥ</i>	Lit. allowed, a term used in the Islam for an action which a person may do or let alone, being attended with neither praise nor blame.
<i>Muftī</i>	Juristconsult who notifies the decisions of the law (Islamic Law).

<i>Muhājir</i>	Immigrant, those Makkan's Muslims who emigrated to Medina or else where to escape from harassment of the non-belivers and to save their faith. It is especially applies to the companions of the Prophet (saws) in the early period of Islam.
<i>Muḥarram</i>	Forbidden, interdicted; also the name of the first Islamic month.
<i>Mu'min</i>	Believing, faithful; believer.
<i>Mulḥid</i>	One who denies the very existence of Allāh (SWT) (God).
<i>Musabaqā Pl.āt</i>	Race (esp. of horses), contest, competition.
<i>Mut'ah</i>	Enjoyment, pleasure, gratification; also, compensation paid to a divorced woman. Also <i>Nikāḥ al-Mut'ah</i> or temporary marriage, usufruct marriage, contracted for a specified time and exclusively for the purpose of sexual pleasure.
<i>Muṭallaqah</i>	Divorced (Woman).
<i>Mu'tazilah</i>	Name of a theological school which introduced speculative dogmatism into Islam.

### \*\*N\*\*

<i>Nabiy Pl .ūn, anbiyā'</i>	This word derived from " <i>naba</i> " Pl. is <i>anbā'</i> - News, information, announcement, report. So, the word <i>Nabiy</i> mean who inform, here is Prophets of Allāh (SWT) who informs revelation of Allāh (SWT) to the people.
<i>Nafaqa Pl āt</i>	Expense, cost, , expenditure, cost of living, maintenance.
<i>Nāsikh Pl. Nussākh</i>	Abrogative abolishing, copyist, Qur'ānic verse which abrogates and supersedes another verse.
<i>Naṣṣ Pl. Nuṣūṣ</i>	Text, wording, version, passage, sentence, clause etc.
<i>Nazāir Pl. of Nazīr</i>	Similar, comparable, an equivalent, parallel.
<i>Nikāḥ</i>	Marriage, marriage contract, matrimony.

*Nizā'* Fight, struggle, strife, controversy, dispute.

### **\*\*Q\*\***

*Qiblah* The direction towards the *Ka'bah* to which Muslims turn while praying, recess in a Mosque indicating the direction of the *Ka'bah*.

*Qiyās Pl.āt, aqyisah* Measurement, comparison, analogy, deduction by analogy.

*Qurū' Pl. of Qur'* Menses, menstruation (women's monthly period). A woman becoming pure after menses, used particularly in reference to 'iddah of divorce.

### **\*\*R\*\***

*Rajama (rajm)* To stone (o.s.o.) to curse, damn, abuse, revile (o.s.o.).

*Raj'ī* Reactionary; revocable.

*Ribā* Interest, usurious; usury.

*Riddah* Apostasy from Islām.

*Rishwah* Bribery, the Prophet (saws) has cursed both the provider and the receiver of bribery.

*Rushd* Integrity of (one's) actions, sensible conduct good sense, maturity (of the mind).

### **\*\*S\*\***

*Şadaq, Şidāq pl. of Şadq* Bridal money, dowry.

<i>Al-Shar‘</i>	The revelation, the canonical law of Islām Including Islām's whole religious and liturgical, ethical and Jurisprudential systems.
<i>Shāri‘</i>	Legislator, law-giver; (the Allāh (SWT) Himself) also street.
<i>Shī‘ah Pl Shiya‘</i>	Followers, adherents, disciples, party, sect. One group of <i>Shī‘ites, so called Muslim</i> . One who condemns the first three righteous caliphs and recognize ‘Alī ibn Abī Ṭālib (r.a.a.) the Prophet's son-in-law, as his rightful successor.
<i>Sharī‘ah pl Sharā‘i‘</i>	Lit, a road, it is the social modality of a people based on the revelation of their Prophet. The last Sharī‘ah in history has proved to be that of Islam. It abrogates all previous Sharā‘i‘.
<i>Shirk</i>	Polytheism, idolatory.
<i>Sakran (f) sakra, Pl. sukārā,</i>	Drunk, intoxicated, a drunk.
<i>Suknā</i>	Living, dwelling, stay, sojourn.
<i>Sunnah Pl. Sunan</i>	Habitual practice, customary procedure or action, norm, usage sanctioned by tradition.
<i>Al-Sunnah</i>	The Sunnah of the Prophet, i.e., his sayings, action and recommendations, later established as legally binding precedents.

### **\*\*T\*\***

<i>Tābi‘ī Pl Tābi‘ūn</i>	Followers, companions, adherent. Those who conversed with the associates or companions of Prophet Muhammad (saws).
<i>Ṭahara, Ṭahura (Ṭuhr, Ṭahārah)</i>	To be clean, pure; taharat, tahirat (of a woman) to be clean (as opposed to menstruating).
<i>Tā‘ib</i>	The person who does repentance.
<i>Ṭā‘ifah Pl. Ṭawā‘if</i>	Troop, group party.

<i>Ṭalāq</i>	Divorce, get a divorce (said of a woman) also to set loose, release, set free etc.
<i>Tamattu‘</i>	Lit. enjoyment, "reaping advantage", the act of performing the ‘ <i>Umrah</i> until it's completion, and then performing the <i>Hajj</i> as a separate ceremony, thus reaping the advantages of both ( <i>Hajj</i> & ‘ <i>Umrah</i> ).
<i>Tanāzu‘</i>	Fight, struggle, controversy.
<i>Tanzīl</i>	Sending down, bringing down, revelation, inspiration; reduction, ( <i>Naqđi</i> ) currency devaluation.
<i>Taqiy Pl. atqiyā‘</i>	Who fears Allāh (SWT). fearing of Allāh (SWT), devout, pious.
<i>Tarabbuṣ</i>	To wait for s.th., probationary term.
<i>Tasba (from Sabā)</i> <i>Tasbīḥ Pl.āt tasābīḥ</i>	To take prisoner, capture; to lead into captivity (esp. in war). Glorification (of Allāh (SWT)).
<i>Tawbah from Tāba</i>	To repent, be penitent repentance. Imām Nawawi said, "Turning the heart from sin". (Comentry Sahih Muslim Vol-2, P354).
<i>Tawḥīd</i>	Unification, combination, consolidation, belief in the unity of Allāh (SWT), Monotheism. A term used to express the unity of the Allāh (SWT), which is the great fundamental basis of Islā`m.
<i>Tawrah</i>	Torah, old Testament. It is the Hebrew Torah, "the Law" The author of the <i>Kashf al-Zunūn</i> (the bibliographical dictionary of Hājī Khalīfah) says: The Tawrat is the inspired book which Allāh (SWT) gave to Moses, and of which there are three well-known editions <p style="margin-left: 40px;">(1) The Tawrat al-Sab‘īn the Torah of the seventy, which was translated from the Hebrew into Greek by seventy-two learned Jews. (It is admitted by Christian writers that the law, i.e. the Pentateuch, alone was translated first). It has since been translated into Syriac and Arabic.</p> <p style="margin-left: 40px;">(2) The Tawrat al-Qurrā’īn wa Rabbaniyyīn, the Taurat</p>

of the learned doctors and rabbans.

(3) The Tawrah al-Samīrah, "The Samaritan Pentateuch".

<i>Ṭayyib</i>	Good, pleasant, delicious, well-disposed, in good health.
<i>Ta'zīr</i>	Censure, blame; chastisement, castigation.
<i>Thulth Pl. Athlāth</i>	One third; Thuluth - a sprawling, decorative calligraphic style.

### **\*\*U\*\***

<i>'Umrah</i>	Pilgrimage to Makkah, it can be named as a "minor Ḥajj" which, unlike the proper Ḥajj, need not to be performed at a particular time of the year and whose performance involves fewer ceremonies <i>Ihrām</i> , <i>Ṭawāf</i> and <i>Sa'ī</i> is the main <i>Arkān</i> of it.
<i>'Uqūbah Pl āt</i> <i>Uṣūl Pl. of aṣl</i>	Punishment, penalty. Root, trunk (of a tree); origin, source, the original (of a book etc.) rules; basic rule, principles.

### **\*\*W\*\***

<i>Waṭiya, Yaṭiu (waṭ')</i>	To tread underfoot, to have sexual intercourse.
<i>Wirāthah</i>	Inheritance

### **\*\*Z\*\***

<i>Zawāj</i>	To contract a marriage, wedding, matrimony.
<i>Zihār</i>	The word <i>Zihār</i> is derived from " <i>Zahr</i> " (back), <i>Zihār</i> means "to oppose back to back". It is explained that when there is discord between the husband and the wife, they instead of remaining face to face towards each other turn their backs against each

other. In the language of law it signifies a man comparing his wife to any of his female relations within such prohibited degrees of relationship, whether by blood, fosterage or by marriage, as renders marriage with her invariably unlawful (until the husband pays an expiation for it.)\*

*Zulm*

Wrong; injustice, inequity, unfairness, oppression, tyranny.

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