

Chapter 3: Divorce, Divorce and Mahr, Proprietorship

Divorce

Fatma: Why has the authority for divorce been inherently willed to the husband in Islam?

Sayyid: Divorce in Islam is considered one of the most detestable actions in the sight of Allah. Imam Sadiq quoted the Prophet as saying, “Get married, but do not divorce, because a divorce would tremble the ‘Arsh [empyrean] of Allah.”¹

Unlike some religions, divorce in Islam is permissible, but its procedure is strictly observed. Finalizing a divorce in Islam is not as simple as some people may perceive. It is a long and extensive process.

The husband may have been automatically willed as the final executor of the divorce decree, but the process for divorce is difficult and conditional. The reason for this is that divorce has consequences and repercussions, not only upon the married couple, but also upon the children, and, unavoidably, the immediate relatives and society.

Scholars have a variety of justifications as to why divorce has been determined as the man’s right. Their reasons are not as some people may believe, such as that men are somehow superior to women or that men are the caretakers of women. Most scholars conclude that the main reasons are the result of a woman’s psychological structure and of the man’s obligation to provide her with financial sustenance.

Women, in general, are more apt to react emotionally to sensitive situations or tragedies. This is not to imply that men do not react to dramatic events. They certainly do. Nevertheless, in general, men are a bit calmer and cautiously attentive when handling uncertainties.

Fatma: Is Islam insinuating that women, in general, are psychologically weak and not up to par in handling uncertainties rationally?

Sayyid: If women were unable to handle uncertainties rationally then Allah would not have gifted women with becoming mothers, which entails the great psychological and physiological challenge of bearing and raising children.

In general, when scholars state that women are quicker to react emotionally to uncertainties, they are referring to the personal conflicts that arise within a marriage. When referring to the personal relationship of couples, the wife, in general, has a tendency to be more influenced by her emotions.²

A serious action, such as divorce should never be based on fluctuating emotions. Divorce in Islam is a very serious matter. It is not something to be approached lightly. The origin of divorce should, on no account, be swayed by one's temporary feelings.

Fatma: Emotion is a profound reason as to why some couples get divorced. Is Islam asserting that there is no room for emotional factors?

Sayyid: It depends on the type of emotions to which you are referring. If the reasons for divorce were based on temporary dissatisfaction with one's spouse, then that would not be suitable grounds for divorce.

"If you take a dislike to them it may be that you dislike a thing and Allah brings about through it a great deal of good." (4: 19)

Whether the divorce is from the husband or wife, especially if children are involved, the divorce initially would be refused. The case would be studied extensively before a judgment could be finalized. In most cases, divorces that are not based on fluctuating emotional circumstances may be resolved with time or through counseling.

Islam condemns men and women who exercise their right for divorce on any excuse except those based on legitimate grounds and in absolutely vulnerable conditions. The grounds for divorce cannot be frivolous; they must be based on genuine, rational, and logical justifications.

The Prophet once said, "Gabriel so much commended the cause of the woman and so counseled me as to give me the impression that except in the clear case of adultery, the wife does not deserve to be divorced."³

Fatma: Could you elucidate and expound upon the economic reasons scholars cite as to why the husband has been granted entitlement of divorce?

Sayyid: Generally, men must have the financial means to marry. Most men put a substantial amount of their savings toward marrying in order to provide a wedding, a home, and eventually sustaining a family. Hence, scholars determine that when husbands control divorce rights, they will cautiously weigh all the factors before deciding to divorce. Otherwise men may lose some provisions and remarrying can be costly.

Furthermore, a wife's financial loss might not be as great as a husband's. In Islam, the wife is never required to work or provide for herself financially. It is her husband's responsibility, and this in itself, beside the psychological make-up of a woman, is the reason the Islamic law (shar'i) recommends that divorce rights remain with the husband.

Fatma: Critics generally state that Ahlul Bayt jurists describe marriage contracts as binding and insoluble for women. Is there any accuracy to such a statement?

Sayyid: The statement is contradictory to the laws of Islam. Women in Islam are not considered as commodities or servants of any person —not to her father, husband, grandfather, uncle, or brother. She is an independent person, capable of maintaining her own identity, assets, and choices.

It is important to note that in the marriage contract the husband is commonly granted the divorce right; however, the husband may transfer his divorce right to be exercised by the wife as a stipulated clause in the marital agreement.

Fatma: Do you mean to state that entitlement of divorce can be a stipulated clause in the marital contract?

Sayyid: Undoubtedly, it may be a stipulated clause in the marital contract. There are four categories of divorce to consider. Couples have the deciding factor on which clause they wish to use in their marital contract, should an unavoidable divorce occur:

- 1) The right of divorce is inherently given to the husband, unless it is proven that the husband has become psychologically incompetent. In this case, the Islamic judge (al-hakim al-shar'i) would determine the divorce.
- 2) The husband relinquishes his inherited divorce right and grants his wife the right of divorce.
- 3) Couples relinquish divorce procedures to the Islamic courts or an Islamic scholar/leader (imam).
- 4) Right of divorce is equally given to both —the husband and wife.

Let us discuss the third clause. To be absolutely and entirely dependent upon an Islamic judge, who has no prior knowledge or is unfamiliar with the individuality of each couple, their lives, or affairs, and the fact that this individual is charged with the authority of issuing a decision that will ultimately alter one's life, is somewhat unthinkable. Divorce is a personal matter in which only the parties involved can make the rightful decision that best suits their lives.

Similarly, the fourth clause, the right of divorce to be equally controlled by both parties, can be difficult to settle. Presuming one partner is set on divorce, and the other is set against it, then the marriage or divorce is at a standstill because both are equal in the decision-making. Contracting this type of divorce is not advisable.

This leaves the two remaining clauses as options: either the inherited right remains with the husband, or the husband grants his divorce right to the wife. As mentioned and discussed earlier, Islamic law (shar'i) would not advocate that the divorce right is given solely to the wife. This leaves us with the last option, the right for divorce to remain with the husband (with mutual counseling and consultation with the wife). 4

Fatma: If Islamic laws do not favor entitling the wife with divorce rights, then how would Islam protect women from husbands that use religion as an excuse to justify their [husbands'] dubious conduct?

Sayyid: Islam does not mandate that the husband must take full custody of the divorce right. The wife, upon her marital contract, can be consulted and informed of her rights and choices. Then, the decision is left up to the couple to decide what is best for them.

One must remember that even though the husband has the inherit right of divorce it is still conditional, as mentioned before. Although the right for divorce may be in his control the wife still has the opportunity to divorce her husband.

Fatma: How would the wife have an opportunity to divorce her husband if the divorce right were within the husband's possession?

Sayyid: If the husband had the power of divorce, still there are ways in which a woman may petition for divorce. They are called khul'a, mubarat, and hakim shari divorces, and they all require assistance from an Islamic judge or Islamic leader (imam) for the divorce to be issued.

Khul'a (divestiture) divorce is a term applied to a wife who has developed an aversion toward her husband and despises him to the point of refusing him conjugal rights. For this particular divorce, the wife would have to forfeit her mahr, and perhaps pay an additional amount that may exceed her mahr, for her independence.

Mubarat divorce is when a wife and husband have developed a mutual aversion toward one another. Therefore, in order for the wife's autonomy, she would have to furnish the husband with some of her assets. The difference between this and a khul'a divorce is that the value does not exceed the mahr because it was a mutual dislike.

Al-hakim al-shar'i is a divorce conducted by an Islamic judge or imam with or without the consent of the husband. This particular divorce is exercised in cases where the wife, having no authority to divorce, requests and claims a legitimate reason to divorce but the husband refuses to grant the divorce.

When a husband refuses to grant a divorce, and the wife's claim for divorce is justified, then the Islamic courts or imam may intervene. The Islamic court or imam may summon the husband and order him to divorce her, or they may finalize the divorce with or without his consent. This type of divorce is termed hakim al-shar'i.

Assuming the wife does not have the power of divorce and that she wishes for separation then her claim

for a divorce must be warranted. Scholars have specific criteria for such cases. Additionally, there are certain cases in which a marriage may be automatically annulled without declaration or legal procedures. They are as follows:

1. Annulment: If the husband concealed his insanity before the marriage contract.
2. Annulment: If the husband concealed a communicable or a burdening disease before the marital contract.
3. Annulment: If the husband concealed castration before the marital contract.
4. Annulment: If the husband apostatizes (abandons his faith). The moment a husband apostatizes, the marriage dissolves instantaneously.
5. Divorce Procedures: If the husband becomes insane during the marriage.
6. Divorce Procedures: If the husband physically abuses or is violent toward his wife.
7. Divorce Procedures: If the husband no longer supports his wife financially.
8. Divorce Procedures: If the husband abandons his wife physically because of long-term imprisonment, he is missing, or he has deserted her.
9. Divorce Procedures: If the husband becomes physically contagious.
10. Divorce Procedures: If the husband becomes castrated during marriage, and the consequences become unbearable for the wife.

There is one criterion on which scholars differ —impotence. Some scholars state that if the husband knew of his impotence before marriage and purposely withheld this information from the bride then that would constitute

grounds for a justifiable divorce or annulment. Additionally, if the wife kept silent about the matter and years later voiced her complaint and based the grounds for divorce upon his impotence, then the husband must divorce her.

Other scholars argue that if the husband were capable of being intimate once with his wife and later became impotent then this alone would not be grounds for divorce. These scholars recommend that the couple try to seek medical and psychological care for the problem rather than resorting to a divorce. Yet, if it were completely unbearable (auser and harraj) for the wife then scholars would grant a divorce.

Fatma: What is the procedure for divorce?

Sayyid: The Qur'an expresses how divorce is to be respectably handled:

Either take them back on equitable terms or part with them on equitable terms. (65:2)

If you fear a breach between them twain, appoint two arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation. (4:35)

Every divorce is conditional and highly dependent upon the situation. The Qur'an details the procedures for common divorce cases:

And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality, and do not retain them for injury, so that you exceed the limits, and whoever does this, he indeed is unjust to his own soul. (2:231)

And when you have divorced women and they have ended their term then do not prevent them from marrying their husbands when they agree among themselves in a lawful manner. (2:232)

There is no blame on you if you divorce women when you have not touched them or appointed for them a portion, and make provisions for them. (2:236)

And for the divorced women provisions must be made according to usage. (2:241)

And the divorced women should keep themselves in waiting for three courses; and it is not lawful for them that they should conceal what Allah has created in their wombs. (2:228)

Regardless of which partner has the entitlement of divorce, when a divorce is initiated there are procedures that must be followed by both partners in order for the divorce to be religiously binding.

There are two classes of divorce, revocable (rej'ie) and irrevocable (ba'aen). Revocable (rej'ie) divorces can be likened to a three-month counseling period (iddah) in which the couple may reconcile within that time without renewing their marriage contract.

On the other hand, irrevocable divorces dissolve the marriage instantly. However, there still remains a three-month recuperation period (iddah) for the woman. If the couple decides to reconcile then they must contract a new marriage.

Fatma: Do revocable and irrevocable divorces vary in their procedures?

Sayyid: Absolutely. The procedure for most revocable divorces is as follows:

The wife must be post-childbirth bleeding (nifas), or clean of her menses, or waiting the end of her menses if a conjugal relation had taken place.

(This means that, if the wife were menstruating, or has post-childbirth bleeding, then the couple must wait until the wife's cycle ceases before pronouncing the divorce decree. Or, if the couple had a conjugal relation then they must wait until the passing of the wife's next menstrual cycle before divorce

procedures can begin.)

- 1) Intention to divorce must be announced or a representative (wakil) is sent on behalf of the initiator.
- 2) Two just witnesses (adil) are required as observers of the intended divorce or a congregational hearing is held.

There are no specific phrases vocalized during divorce procedures. However, it is preferred that the husband or wife enunciates the words in Arabic. If it were impossible then any other language would suffice. They may either utter the words “I divorce you” before witnesses, or the appointed representative may pronounce divorce on their behalf. Then a waiting period (iddah) of three menstrual cycles or three months (if the wife’s menses were abnormal) must be adhered to.

During the waiting period (iddah) in a revocable divorce, the husband is required to maintain his wife’s living expense. He is not to annoy her or restrict her provisions. The wife is to remain with the husband, in the same home, and she does not have to observe hijab before him at home. The husband has no right to send her out of the home.

“And turn them not out of their houses, nor shall they themselves leave.” (65: 1)

Once the wife has fully completed her third menstrual cycle, or the three-month duration has elapsed, she is divorced. If she is pregnant then the waiting period and financial sustenance continues until she delivers the child.

Fatma: How are irrevocable divorces handled?

Sayyid: Some of the most common examples of irrevocable divorces are khul’a, mubarat, and hakim al-shar’i (Islamic judge) divorces.⁵

Irrevocable divorces dissolve the marriage instantly upon its utterance; it is a final judgment. However, the wife is still required to observe the waiting period, but the husband is not required to sustain her during the waiting period.

Furthermore, the couple may no longer live together and she would have to observe hijab before him. If the couple wishes to return as husband and wife they would have to contract a new marriage.

Fatma: Regarding the waiting period, in cases where the marriage was not consummated then there would not be a waiting period for the wife, correct?

Sayyid: Some marriages dissolve before consummation and the Qur’an answers your question regarding the waiting period.

“When you marry believing women, and then divorce them before you have touched them, no period of Iddah [waiting] have you to count in respect of them: So give them a present and set

them free in a handsome manner.” (33:49)

Fatma: Why has the Qur’an given much attention to the three-month period of a woman’s menstruation for a divorce to be finalized?

Sayyid: There are two reasons, one in which a famous quote explains well, “Time mends a broken heart.” Second, a waiting period secures the welfare and lineage of the unborn child.

The three-month period (for revocable divorce) stands as an obstacle for the couple before the final sentencing; it acts as an opportunity for reflection and reconciliation. This allows couples to heavily contemplate their decision. It provides time for them to miss one another and to work out their differences.

The purpose for the woman’s waiting period in an irrevocable divorce is to give her time for psychological recuperation before engaging in a new relationship.

Islam goes to extraordinary care when it comes to safeguarding the rights of the innocent, namely, the unborn child. Islam mandates that while the wife is in the three-month waiting period of a revocable divorce, the husband is required to support her as he had previously.

If the wife is pregnant then the husband must continue to support her as before until she delivers the child. Likewise, in an irrevocable divorce if the wife is known to be pregnant then the ex-husband continues to sustain her until she delivers the child.

Lastly, if the couple divorce and they agree that the mother will nurse the child, then the ex-husband must continue to financially support his former wife and child up to the weaning age of two years old, or up to whichever age the parents decide upon.

Let the women live in the same style as you live, according to your means: annoy them not so as to restrict them. And if they carry life in their wombs, then spend on them until they deliver their burden: and if they suckle your offspring give them recompense: and take mutual counsel together, according to what is just and reasonable. (65:6)

Fatma: As far as husbands are concerned, if the right of divorce is in his control, then technically he would not be required to meet a list of criteria or require assistance from the courts to obtain a divorce, correct?

Sayyid: Technically, whoever has the right to divorce would not be required to meet a list of criteria as long as they claim a legitimate excuse for separation. Although, when divorce is sought, there are procedures that must be followed, regardless of which party has authority.

Fatma: Granting that the wife had the power of divorce, would she be limited to certain circumstances or reasons for initiating the divorce?

Sayyid: Granted that the wife had power of divorce, and assuming that her marriage was a typical contract with no changes or clauses (such as mentioned in the chapter “Matrimonial Rights”), then the wife would be limited to only those “marital rights,” and in addition, to the divorce/annulment criteria mentioned earlier, which, if they were violated, would provide legitimate reasons for a divorce proceeding.

However, the wife has means of securing her wishes. She does have options, as long as they do not transgress the laws of Islam. Let us assume that a wife does not have the divorce right, there are still ways she can ensure her needs.

She can stipulate in the marital contract, upon approval from the husband, certain criteria to which the husband must adhere, and, consequently, if the stipulations are broken then the wife will have the choice of continuing with the marriage or dissolving it.

Fatma: Could you give some examples?

Sayyid: For example, a woman may state in her marital contract that she does not want her husband to exercise his permissible right to marry another woman while he is married to her. If he does marry then she may act upon her right to divorce him, even though the husband has the divorce right. She may be entitled to be his executor (wakil) for initiating her own divorce through an Islamic judge.

There are a variety of stipulations; it all depends on the lifestyle and aspirations of the woman. It is up to each woman to decide what is best for her. Some women note in their marital contract that they want to remain living in their homeland or continue their education and work.

Islam has given her rights and options to live her life as she pleases, if it does not go against the injunctions of Islamic laws (shariah) and the husband agrees beforehand.

Fatma: Considering that the wife may safeguard her interests by including certain stipulations in the marital contract, then what would be the point in having or not having the divorce right to be placed in her control?

Sayyid: The difference would be expedience. If the wife has control of the divorce right then the divorce may be done promptly. She will not have to seek the courts or an imam to carry out the divorce provided that she has knowledge of divorce procedures and implementation.

On the other hand, if the wife does not have the power of divorce, she then requires the assistance of the Islamic courts or imam to process her divorce; this will entail a longer duration.

Fatma: When a woman petitions for a divorce, would it be considered as irrevocable even if the divorce right was hers?

Sayyid: No, it would not be considered irrevocable unless the divorce right was not hers, and she had

initiated the divorce, and the husband refused, then the divorce would be considered irrevocable because she would need hakim al-sharia to process the divorce.

Fatma: If the husband has the divorce right and the wife requests a divorce because she no longer cares for him, to the extent that she despises him emotionally and physically, but the husband adamantly refuses to grant a divorce, would it be possible for her to divorce him?

Sayyid: Based on the premise that the wife absolutely despises her husband emotionally and physically, and the situation becomes intolerable and unbearable (ause'r and haraj), then it would not be impossible. In this particular situation, the wife will need assistance from the courts or a qualified scholar to ratify the case.

In such cases the wife will most likely have to relinquish her mahr, in addition to paying a compensation for her independence. This form of divorce is called khul'a, and it is irrevocable.

It is for reasons like these that women should take extra precaution when contracting their marriage. Muslim women should be well informed of their rights and choices.

Fatma: There are some schools of thought that require the husband pronounce the formula of divorce at intervals, once every month during the waiting period. Does this ruling also apply to the Ahlul Bayt school of thought?

Sayyid: According to the Ahlul Bayt school of thought, this would not apply. (See Qur'an, 2:229)

Fatma: If a husband petitioned for a divorce that was revocable, and during the waiting period he cohabitated with his wife, would the divorce declaration be absolved automatically without any expression?

Sayyid: If it were within the waiting period of iddah, and it is considered a revocable divorce, then cohabitating would absolve the divorce declaration without any need for formal vocalizations.

Assuming that the husband initiates the divorce, he may prevent it from being finalized. Either the husband may verbally announce or gesture that he no longer wishes to continue with the divorce (this may be done publicly, or privately with the wife), or if the couple cohabitates, then this would automatically dissolve the divorce without a

verbal remark. However, in an irrevocable divorce the couple should not have any form of a conjugal relation until they contract a new marriage.

Fatma: Witnesses are not required if the husband or wife choose to stop divorce procedures, correct?

Sayyid: Correct. It may be done privately without any witnessing, although it would serve best for both partners that they make a public statement about their reconciliation.

Islam tries to prevent divorce by placing obstacles. When it comes to marriage, there are no impediments. Islam encourages marriage and tries to discourage divorce.

Fatma: What are the suggestive messages behind these powerful verses regarding marriage?

A divorce is only permissible twice: after that the parties should either hold together on equitable terms or separate with kindness. (2:229)

If a husband divorces his wife irrevocably he cannot after that remarry her until after she has married another husband and he has divorced her. (2:230)

Sayyid: These verses stand as a reminder to the husband that the wife is not a mere object to be toyed with. If he cannot appreciate her then perhaps another man may. It is also an opportunity for the woman to discover that the next husband may be better than her previous husband.

Fatma: The Qur'an states,

"How can you take it [mahr] back, when you have intimated with each other, and they [wives] have taken from you a strong pledge." (4:21)

What does the "strong pledge" denote?

Sayyid: The "strong pledge" is in reference not only to the mahr, but also, to the promise to ensure and secure the matrimonial rights and obligations in the marital contract. This verse is directed to the husband who refuses to pay the wife her promised mahr, or has neglected fulfilling the wife's matrimonial rights.

Fatma:

"If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves." (4:128)

Would this verse be in regards to mubarat (mutual dislike) divorces?

Sayyid: This verse is regarding divorce in general.

Fatma: According to some scholars, the time of probation (iddah) commences when the formula of divorce is pronounced, whether the wife knows of it or not. Does Islam allow the husband to divorce his wife without her being informed?

Sayyid: It is almost impossible to practically implement this ruling (fatwa). Divorce is considered a joint process. In almost all cases of divorce, the Islamic judge or imam would insist on meeting with the wife to obtain her consent. Besides, the Qur'an advises the person who has initiated divorce to leave the other spouse amicably.

Fatma: Is arbitration mandatory for divorce to be finalized or is it only a recommendation? (4:35)

Sayyid: Arbitration is extremely critical as a recommended precaution in an attempt to dissuade divorce proceedings. Even though arbitration is not an injunction, its recommended advice acts as a form of a religious obligation.

Fatma: Is it necessary that the two just witnesses (adils) be familiar with and involved in the divorce case?

Sayyid: The witnesses serve only as notarized spectators of the divorce. If needed they may be called upon as testifiers to attest to the order of the divorce. It is not necessary for the witnesses to be a party to the divorce case.

Fatma: Generally, when a man wants to divorce his wife, the imam (religious leader) is someone with whom he is familiar. How can a woman ensure that the imam is impartial, competent, and adhering to all the proceedings required for a rightful divorce?

Sayyid: The wife has the right to choose an imam or judge that she trusts to be competent and fair. The wife also has the right to reject an imam or judge if it is proven that he may be prejudicial or impartial in the divorce case.

In conventional divorces, the imam or an Islamic court would not pursue the divorce without consulting the wife. In addition, there are some Muslim countries that require the husband or wife to first petition the Islamic court for a divorce.

Also to note, if the wife has placed conditions or modified her marital contract and the husband is not adhering to the modifications, then it will be her responsibility to secure her rights by informing the imam or the Islamic court of her contract before the divorce is finalized. Otherwise, the imam or Islamic judge will presume the norm of a Muslim marriage and finalize the divorce accordingly.

Fatma: If a husband went missing would the wife be required to have a waiting period before seeking a divorce?

Sayyid: It depends on the circumstances and on the woman. Traditional scholars set a length of time, but contemporary scholars, based on technical advancements would not make such rulings.

Before the age of technology people had to physically travel the land in search of lost people. These days it is much easier to determine the fate of a person. With vast telecommunication systems, mechanical machines, and other resources available for investigators, it may not be necessary to delay, suspend, or prolong the wait for the response of a lost person.

However, if a husband abandons his wife with no provisions, no guardianship, and her life becomes disarrayed and completely intolerable (ause'r & haraj), and with no hope, then the Muslim judge or imam

may promptly render a divorce decree.

Fatma: Why would some scholars set a length of time before the wife could initiate divorce procedures when the husband is not permitted to leave his wife for more than four months without seeking her permission?

Sayyid: Traditional scholars that state lengths of time are referring to husbands who are missing, not husbands who have independently abandoned or deserted their wives. However, it all depends on the wife. Every woman is different. Some women may patiently wait for their husband's return while others cannot. It depends on the woman and her circumstances.

If the wife finds her life unbearable without a husband, then she would have to take her case before the Islamic court or imam and they would closely examine her case. They may make a variety of inquiries. Has the wife been left without provisions? Are her in-laws prepared to support her? They may summon and question witnesses on her behalf and on his.

They may advise her to wait patiently for some specific period of time or grant her an immediate divorce. It all depends on the circumstances and the woman. There is not just one direct form of solving these matters. They are personal and are dealt with accordingly, case by case.

There are two main factors that Muslim judges or an imam would greatly consider before granting a divorce. One issue is the sanctity of the family, in particular if there were children involved, and secondly, the well-

being of the woman; after all, she is a human being with needs. After all things have been considered, and if the judge or imam based his conclusion on legitimate reasons, then divorce may be rendered.

Divorce and Mahr

Fatma: If the wife bases her reason for divorce on one of the criteria in the afore-mentioned annulment or divorce proceedings, will she have to relinquish some or all of her mahr?

Sayyid: The wife is entitled to keep the full mahr unless the marriage was not consummated. If the marriage was not consummated, then she is entitled to half of the mahr and must return the other portion to the ex-husband.

It is important to note that if the marriage did not fit one of the criteria (such as unconsummated marriages) and the marriage had commenced, then the marriage would be considered a standard or typical marriage.

Then if the husband issued a divorce he cannot, under any circumstances, take back any part of the mahr. The mahr is a gift to the wife irrespective whether of the marriage continues or later dissolves. If

the husband has not paid the mahr in full, then he will still be held liable for the remaining balance, despite the reasons for divorce.

Fatma: Regarding the verse that states,

“It is not lawful for you that you should take women as heritage against their will and do not straiten them in order that you may take part of what you have given them, unless they are guilty of manifest indecency.” (4: 19)

Would this verse not give exceptions to the mahr?

Sayyid: Withholding payment of the mahr because the wife committed adultery may sometimes be highly contingent upon the severity of circumstances that led to the affair. Not to lessen or ignore the immoral action of adultery, but sometimes people are faced with extraordinary circumstances that require in-depth analyses of the situation before a final judgment may be rendered.

Islam states that in cases where adultery has been religiously judged then, as a reluctant means of reprisal, the husband, as a last resort, may withhold the remaining mahr; still it is not recommended.

Proprietorship

Fatma: What is Islam’s position regarding the division of matrimonial assets?

Sayyid: Generally, each person reclaims whatever he or she brought into the marriage. The division of assets, therefore, should be done according to what each partner contributed to the relationship. For instance, in some

Eastern countries, the wife traditionally furnishes the home. If she divorces, she has rights to all the furnishings she supplied.

Fatma: Could the wife claim remuneration in exchange for the years of service she provided for her husband, such as housecleaning, cooking, and rearing the children?

Sayyid: During the marriage the wife, at any time, may request to be compensated for the work she provides domestically, including rearing the children. However, to claim remuneration without prior agreement in the marital contract, and then to attempt to claim recompense during divorce would be difficult. However, Islam recommends

that the husband bestow a gift to the ex-wife in order to ease her living conditions after the divorce, even if he had paid her the full mahr. Upon divorce, Islam advises the husband to compensate the former wife in some manner.

Fatma: What transpires in instances when a wife, in a standard marriage, for years had completely

sacrificed her life, had saved and been conservative in expenditures, assisted and toiled in domestic duties, all for the sake of freeing her husband from the allotted task so that he may pursue his career and become financially successful? Does not Islam recognize or acknowledge that the wife played an important role in supporting her husband's success? In addition, would Islam not pay an indemnity for such sacrifices?

Sayyid: It would be premature to give one direct response to the scenario you described. Such cases require an extensive investigation into exactly what was brought, accomplished, or sacrificed from the start of the marriage until its dissolution. The Islamic judge would have to investigate a variety of issues, for instance who worked and for how long, what did each partner contribute or sacrifice, who physically labored, or how were the finances handled. It all varies and it is a case-by-case ruling.

Sometimes there are cases in which the wife assists her husband as an assistant or secretary at his office or business. The wife may request payment for such services either during or after the dissolution of the marriage.

If the wife has claimed compensation for the years she was his secretary or assistant, then she will be entitled to reimbursement according to what the husband would have paid for a hired secretary or assistant. However, if it is proven that the wife was a complete partner in the business, then, without a doubt, she will be entitled to her share of the company.

1. Makarin Al-Akhaq, .225.

2. Islamic scholars cite some emotional factors, such as childbirth & menstruation.

3. Irshad Al-Muhtaj & Huquq Al-Azway.

4. Qur'an, 2:33. *Although this verse pertains to weaning, it could be correspondent to other aspects of marital life.

5. For more information on irrevocable divorce refer to books on Islamic laws, chapters on divorce.

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