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## The Rights of Women In Islam

### 16. What Rights does Islam offer to Women?

With the onset of Islam and its special teachings, the life of women entered into a new phase – a phase which differed vastly from the previous one and became one in which women availed of all kinds of individual, social and human rights. The basis of Islamic teachings with respect to women is exactly what we read in the Noble Qur`an:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

“...and they have rights similar to those against them in a just manner...”

i.e. the women possess rights and privileges in the same measure as the responsibilities which they shoulder within the society.

Islam considers a woman, just like a man, to possess a human soul, will and choice, and perceives her to be on the path of spiritual perfection, which is actually the purpose of human creation. It is for this reason that it has placed man and woman alongside each other, addressed them together:

يَا أَيُّهَا النَّاسُ

and:

## يَا أَيُّهَا الَّذِينَ آمَنُوا

and imposed moral, educative and scientific curriculum upon both of them.

By means of verses such as:

وَمَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ

***“...and whoever does good, whether male or female, and he is a believer, these shall enter the garden.”***<sup>1</sup>

Islam has promised the benefits of complete prosperity to both the sexes.

By verses such as:

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

***“Whoever does good whether male or female and he is a believer, We will most certainly make him live a happy life, and We will most certainly give them their reward for the best of what they did.”***<sup>2</sup>

it has elucidated that every man and woman, by adhering to and implementing the Islamic curriculum, can achieve material and spiritual perfection, and possess a pure, good life that is replete with ease and comfort.

Islam considers a woman, like man, to be completely free and independent, and the Noble Qur`an, by way of verses like:

كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ

***“Every soul is held in pledge for what it earns.”***<sup>3</sup>

Or

مَنْ عَمِلَ صَالِحًا فَلِنَفْسِهِ وَمَنْ أَسَاءَ فَعَلَيْهَا

***“Whoever does good, it is for his own soul, and whoever does evil, it is against himself.”***<sup>4</sup>

It declares this freedom to be for all people – men and women.

We observe that the Islamic penal code sentences both genders with the same kind of retribution, as can be seen in the following verse and other similar verses:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ

***“The woman and the man guilty of adultery or fornication – flog each of them with a hundred whippings.”***<sup>5</sup>

On the other hand, since independence is an inevitable consequence of (free) will and choice, Islam has also extended this independence to all monetary privileges, permitting women to enter into various kinds of monetary transactions and regarding her as the rightful owner of her income and investment. In Suratul Nisa we read:

لِلرِّجَالِ نَصِيبٌ مِمَّا كَتَسَبُوا وَ لِلنِّسَاءِ نَصِيبٌ مِمَّا كَتَسَبْنَ

***“Men shall have the benefit of what they earn and women shall have the benefit of what they earn.”***<sup>6</sup>

In view of the fact that the word اكتساب (used in the verse) – unlike the word كسب – is used to denote acquisition of wealth, the use of this word conveys the meaning that the wealth which is acquired becomes associated with the person acquiring it<sup>7</sup>, and also taking into consideration the general rule:

النَّاسُ مُسَلِّطُونَ عَلَىٰ أَمْوَالِهِمْ.

“All the people have authority over their own wealth”,

we can easily infer that Islam holds the fiscal independence of women in great esteem and does not differentiate between a man and a woman in this regard.

In short, Islam regards a woman as a fundamental element of the society and thus, she should not be treated as an entity that is lacking in will, and dependant upon or in need of a guardian.

## **One Should not Err With Respect to the Meaning Of 'Equality'**

The only thing that needs be taken into consideration – to which Islam has paid special attention but which some individuals reject out of excessive and imprudent sentimentality – is the issue of physical and psychological difference between man and woman, and the difference in their responsibilities.

We just cannot refute the reality that there exist vast physical and psychological differences between the two sexes, and since these are mentioned in various books it is not necessary that we repeat them here. However, a summary of all of them is as follows:

A woman is the base for man's existence since the development of the children take place within her arms; hence just as she has been created physically to handle the tasks of bearing, developing and educating the coming generations, psychologically too she is in possession of a greater share of feelings and sentiments.

With the existence of these vast differences, can it be said that men and women must be in step with each other in all matters and should be absolutely equal in all affairs and issues?

Should we not champion the cause of justice in the society? But is justice other than that every person should adhere to his own responsibility and enjoy the benefits of the existential distinctions present within him?

Thus, is it not contrary to justice to involve and engage a woman in tasks that do not match and harmonize with her physical and psychological setup?

Here we observe that Islam, even as it voices support for justice and equality, grants precedence to man in some of the social tasks which demand asperity or meticulousness – such as guardianship of the house – and has allowed the woman to function as an assistant.

Both a 'house' and a 'society' are in need of an administrator, and the reins of administration should eventually end up in the hands of one person or else it would result in contest, chaos and confusion.

Under these circumstances, who is better suited for the task – a man or a woman? Impartial and unbiased computations reveal that the structural state of man demands that the administration and management of the family should be placed upon the man while the woman should act as his assistant.

Even though there are some who insist on ignoring these realities, the state of life prevalent in the present-day world and even within communities that have granted women complete freedom and equality, reveal that in practice the issue is exactly as has been stated above, although in speech the issue may be made to appear differently.<sup>8</sup>

## The Spiritual Worth of Man and Woman

The Noble Qur`an perceives man and woman – with regards to their presence before Allah and with respect to achieving spiritual ranks under similar conditions – to be equal. It refuses to consider the dissimilarity in their sexes and the difference in the structure of their bodies, (which consequently manifest in the variation in their social responsibilities), as being indicative of a difference in them with regards to the achievement of human perfection; rather, in this regard, it considers them to be on par with one another and hence mentions them together.

Numerous verses of the Noble Qur`an were revealed at a time when a great number of the communities of the world had been reluctant to recognize the female species as a human being, regarding her as an accursed entity and a source of sin, deviation and death!

Many of the ancient communities even held the belief that a woman's worship was not acceptable in the eyes of Allah. Many of the Greeks considered a woman to be a defiled entity and an evil handiwork of Satan. The Romans and some of the Greeks believed that basically females did not possess a human soul and as such, the human soul was specifically confined to the males!

Interestingly, till recently, Christian scholars in Spain engaged themselves in discussing whether women, like men, possessed human souls or not, and whether or not their souls would continue to live eternally after their deaths. After their discussions they eventually concluded that since a woman's soul is an isthmus between an animal and a human soul, it cannot be eternal, save for the soul of Maryam J.9

Here it becomes apparent how far from reality the allegation is, which some ignorant individuals level against Islam that it is a religion of males and not females. Generally speaking, if, due to physical and sentimental differences which exist within males and females, some differences in respect of social responsibilities are observed in the Islamic Laws, it does not by any means, diminish the spiritual worth of a woman. There exists no difference between a man and a woman in this regard; the doors of success and prosperity lay equally open for both of them, just as we read in the Qur`an:

بَعْضُكُمْ مِنْ بَعْضٍ

*“All are from one species and one society.”*<sup>10</sup>

## 17. What is the Philosophy of Hijab?

Undoubtedly, in this age of ours – which some have named as the 'age of nudity and sexual freedom' and in which, West-stricken individuals regard wantonness of women as being part of this freedom – the mention of Hijab is very disconcerting for this group of people and at times is even looked upon as a

myth associated with the ancient times!

However, the innumerable evils and the ever-increasing problems arising out of this unconditioned freedom have gradually resulted in the concept of Hijab being viewed with a greater interest.

Of course, in the Islamic and religious environments – especially in Iran after the revolution – a great number of issues have been clarified and satisfactory answers to most of these questions have been provided. Nevertheless, the significance of the topic demands this issue to be discussed more comprehensively.

The issue under discussion is: Should women (with due apologies) be placed at the disposal of all men for the purpose of being exploited by them by way of sight, hearing and touch (excepting sexual intercourse), or should these benefits be the sole prerogative of their respective husbands?

The point of debate is about whether women should continue to remain entangled in a never-ending competition in flaunting their bodies and stirring up the physical and carnal desires of men, or whether these issues should be uprooted from the social environment and restricted to the familial and matrimonial milieu. Islam advocates the latter plan and Hijab can be looked upon as a part of this agenda, whereas the Westerners support the former plan!

Islam avers that all such physical pleasures – sexual intercourse as well as those derived by means of sight, hearing and touch – are specific to the husbands, and anything beyond this is a sin which leads to pollution and impurity within the society.

The philosophy behind Hijab is indeed evident since:

1. Nudity of women, which is quite naturally accompanied by adornment and coquettishness puts men, especially the youths, in a state of perpetual stimulation – a stimulation which affects their nerves, generates within them pathological nervous excitement and at times even brings about psychological disorders. There is a limit to the burden of excitement which the human nerves can endure. Don't all the psychologists caution that perpetual excitement leads to disorders and diseases?

This is especially in view of the fact that the sexual impulse is the strongest and the most profound of all impulses within man and, all through the ages, has been the cause of destructive events and horrendous offences, to the extent that people have gone on to say: You shall not come across any important event (in history), except that a woman has played a part in it!

Is the continuous provocation of this impulse by means of nudity, and intensifying it, not tantamount to playing with fire? Is this act wise and prudent?

Islam desires that Muslim men and women should possess a soul that is calm, nerves that are composed, and eyes and ears that are pure, and this is one of the philosophies of Hijab.

2. Substantiated and conclusive statistics reveal that with the rise in nudity, the world has correspondingly witnessed a continuous rise in divorces and matrimonial separations. This is because “whatever the eyes see, the heart covets”; and whatever the heart (which here means the errant and wild desires) covets, it seeks to obtain it at any cost. Therefore, every new day the heart gets attracted to one and bids farewell to another.

In an environment where Hijab is prevalent (together with adherence to the other Islamic conditions), the husband and wife belong to each other and their sentiments, love and feelings are exclusively for one another.

But in the 'free market of nudity' wherein women have been practically transformed into a commodity of mutual use – (at least in issues other than sexual intercourse) – the sanctity of a matrimonial alliance becomes meaningless, and families, similar to a spider's web, swiftly break apart and the children are left without guardians.

3. The increase in indecency and obscenity, and the escalation in the number of illegitimate children are the most painful consequences of non-observance of Hijab – a fact which, in our opinion, does not require any figures and statistics; and the reasons for this, especially in the Western society, are so very apparent so as to eliminate the need for any mention.

We do not say that non-observance of Hijab is the sole and fundamental cause of obscenities and illegitimate children, nor do we say that colonialism and destructive political issues have not had any contribution to it; rather, what we wish to state is that the issue of nudity and non-observance of Hijab is as one of the instrumental and effective factors for those evils.

In view of the fact that 'indecency', and worse than this, 'illegitimate children' were and are amongst the sources of various crimes in human societies, the dangerous dimension of this issue becomes all the more clear.

We perceive the gravity of the matter when we hear that, according to statistics,<sup>11</sup> in the United Kingdom five hundred thousand illegitimate children are born every year and then when we hear that a group of British intellectuals has issued a warning to those in the echelons of power with respect to this ongoing trend. The warning is not motivated out of ethical or religious concerns but rather out of concern for the dangers these illegitimate children pose to the safety of the society, to the extent that their involvement is observed in numerous criminal dossiers.

We (also) come to realize that even those who possess scant respect for religion or ethical issues consider the issue of the spread of indecency to be catastrophic. Thus, everything that serves to increase the sphere of physical immorality in human societies is a threat for their security, and the consequences – in whatever manner we may compute them – shall always be to their detriment.

Studies by educated scholars reveal that reduction of work, backwardness and lack of responsibility are

most noticeably perceived in schools, which are co-educational in nature and in centres where males and females work together in an ambience of licentiousness and complete freedom.

4. The issue of 'obscenity of women' and 'humiliation of their personalities' also holds great importance and requires no statistics to prove it. When a society desires a woman with a bare body, it is quite obvious that day by day, it would demand increased beautification and augmented ostentation from her. In a society wherein a woman, due to her physical attraction, is utilized for promotion and publicity of products, as a decoration for the reception rooms, or as a tool for attracting tourists, her personality is reduced to that of a doll or a trivial and insignificant item, and her lofty human values are totally thrust into oblivion; ultimately, her only distinction and glory lies in her youth, beauty and self-exhibition.

Thus, she is transformed into a device for satisfying the carnal desires of a handful of individuals, who are polluted, deceptive and possess satanic attributes!

In such a society, how is it possible for a woman to manifest herself in the light of her knowledge, awareness, sagacity and moral traits, and to occupy a lofty rank and status?

It is indeed painful that in the Western and West-stricken countries, and in our country (too) before the Islamic Revolution, the maximum prominence, fame, repute, money, income and standing had been for the polluted and promiscuous women, who had come to acquire renown as 'artists and performers'. Wherever they went, the management of this polluted environment would scramble after them to welcome their presence!

Praise be to Allah that the entire apparatus was annihilated and the female sex emerged from her previous triteness or her erstwhile standing as a cultural doll and an insignificant item, and salvaged her personality. She took for herself the veil without being secluded and isolated, presenting herself in every expedient and constructive arena of the society – even the battlefield – with the same veil and Hijab.

### **Criticisms Levelled by the Opponents of Hijab**

At this point we come to the objections which are levelled by those opposing the veil and which need to be discussed, albeit concisely:

1. The most important thing which all of them support in unanimity and which they propound as the fundamental objection with respect to the issue of Hijab is that women constitute one half of the society but the Hijab pushes this multitude into seclusion thereby causing them to lag behind culturally and intellectually. Especially during the period of economic thriving, when there is a greater need for active human participation, this large female force would remain totally unutilized in the path of economic progress, not to speak of their lack of presence in social and cultural centres. Thus, they are transformed into a mere consumer that is a burden for the society.

But those who have resorted to this logic have either been totally oblivious of certain points, or have



probably feigned lack of knowledge about them:

Firstly: Who says that the Islamic Hijab isolates a woman and distances her from the social arena? If, in the past, it had been necessary for us to exhaust ourselves in order to present proofs and arguments in defence of this issue, now, after the Islamic Revolution, there does not exist the slightest need for them, for with our own eyes we observe groups of women, in the Islamic Hijab, presenting themselves in all places – in offices, workstations, political rallies and demonstrations, on the radio and television, in cultural and educational institutes, in hospitals and medical centres, especially for nursing those injured in war, and even in the battlefield against the enemies.

In short, the present state (of the Islamic society) is a fitting riposte to all these objections; if previously we spoke of the 'possibility' of such a state, today we find ourselves facing the 'occurrence' of it and philosophers have stated that the best proof for the 'possibility (of occurrence)' of a thing is the (actual) 'occurrence' of that thing, and this is something, which is too evident and manifest to require any explanation.

Secondly: Is managing the house, training and educating the youthful children and transforming them into individuals not a task? After all, through their strength and ability, the youths are able to set the gigantic wheels of the society into motion.

People who do not view this great mission of women positively are ill-informed of the role played by family and training in constructing a healthy, prosperous and dynamic society. They imagine that the (correct) manner is that our men and women, like those of the West should, at the first sign of daybreak, leave their houses for their places of work, either leaving their children in nurseries or locking them up in a room thereby making them taste the bitterness of imprisonment at a time when they are blooming buds.

They are totally oblivious of the fact that this approach not only shatters their personalities but also moulds them into soulless children, who are found to be lacking in human sentiments and affections, and who will eventually jeopardize the future of society.

Secondly: Another of their objections is that the Hijab is a cumbersome dress, which is not well suited for social activities, especially in the modern automobile age. What should a veiled woman look after – herself, her chador, her children or her work?

But these critics do not realise the fact that the Hijab does not always mean a chador, but rather it refers to a woman's covering. If the Hijab is possible by means of the chador, so much the better, but if not, then a covering is quite sufficient.

The womenfolk of our country, who engage in farming and live in villages – especially those who work in the rice-fields and perform the most important and difficult work of cultivating and harvesting the crop, have answered this objection, practically. They have shown that in numerous places a village-woman, while observing the Islamic Hijab, can work more than a man and better too – without the Hijab

hampering or obstructing her work in the slightest.

Thirdly: Another objection which they level is that since Hijab establishes separation between men and women, it amplifies the greedy nature of man and instead of extinguishing it, only serves to inflame his covetousness, since:

الْإِنْسَانُ حَرِيصٌ عَلَى مَا مُنِعَ.

“People covet that which is forbidden for them.”

A comparison of our present society in which the Hijab is prevalent in all places – without exception – with the one that prevailed during the period of the satanic regime, which used to force the women to take off their Hijab will provide the answer to this objection, or more correctly, this sophism and fallacy.

Those days, every alley and neighbourhood was a centre of wickedness and depravity, and an ambience of incredible immorality prevailed within the households. Divorces were rampant, the number of illegitimate children was staggering and there were a thousand other curses.

We do not claim that all of these have been eradicated, but they have undoubtedly been greatly reduced and our society, in this regard, has regained its well-being. And if, Allah Willing, the state of affairs continues its course and all the other tangles come to order, our society, with respect to pureness of the households, and preservation of the merit and worth of women, shall come to achieve a desired and ideal state.<sup>12</sup>

## 18. Why is the Inheritance of Men twice that of Women?

Although it appears that the inheritance of men is twice that of women, a closer look reveals that from one viewpoint, the inheritance of women is twice that of men! This is due to Islam's support for the rights of women.

### Explanation

Islam has placed certain responsibilities upon men, as a result of which, virtually one half of their earnings is spent upon women whereas no such responsibilities have been placed upon women.

The male has to bear the expenses for all of his wife's needs such as housing, clothing, food and other necessities; apart from this, the expenses of his minor children are also to be provided by him, whereas the wife is exempt from every kind of payment, even if it is for her own self. Thus, a woman can stockpile her entire share of inheritance, whereas a man is bound to spend his share upon himself, his wife and children. Consequently, half of his earnings are effectively spent upon his wife and the other half is for

him, whereas the entire share of the wife remains unused and intact.

For a better understanding, consider the following example: Suppose that the entire wealth existing globally is 30 billion tumans,<sup>13</sup> which will be gradually distributed as inheritance amongst men and women (sons and daughters). When we compute the earnings of all men and women of the world by way of inheritance, we find that of this amount, the share of the men is 20 billion tumans while that of the women is 10 billion.

However, as is customary, the women will marry, after which the responsibility of providing for their expenses will fall upon the shoulders of men and so, the women can conveniently put their 10 billion tumans aside while, at the same time, be a partner to the men in their share of 20 billion, since this amount would be utilized by the men to provide for the expenses of their wives and their children.

Thus, in reality, half of the share of the men – totalling 10 billion tumans – would be spent on the women. This, in addition to the 10 billion tumans, which the women had placed aside, would collectively amount to 20 billion tumans – two-thirds of the (supposed) global wealth – whereas the men, effectively, do not use up more than 10 billion tumans for themselves.

In conclusion, the actual share of women, with respect to 'consumption and use', is twice the actual share of men, and this distinction is influenced by the fact that, generally, their ability and strength for generating earnings is less than that of men. This is a kind of just and logical support, which Islam has offered to the women, allotting a greater actual share for them although, ostensibly, their share appears to be one half (that of the males).

Incidentally, upon referring the Islamic sources we come to infer that the above query had plagued the minds of the people from the very onset of Islam.

Time and again they would question the Imams in this regard and their answers predominantly pointed to one meaning, which is: Allah has placed upon the males the onus of bearing the wife's expenses and paying them the dower, and so, He has allotted them a greater share (from the inheritance).

In the book Ma'aniul Akhbar it has been reported that Imam 'Ali b. Musa al-Ridha (a.s) in reply to this query, said: "The share of the females, in the inheritance, is half that of the males because when a female enters into marriage she receives something, while the male is obliged to give something. In addition, it is the responsibility of the males to shoulder the expenses of the females whereas the females are neither responsible for their own expenses nor that of the males."<sup>14</sup>

## **19. Why is Blood Money for Women half that for Men?**

Some individuals might possibly object that in the verses of qisas (retaliation) it has been ordered that a man should not be subjected to retaliation for the murder of a woman; but is a man superior to a woman? Why should a criminal, having killed a woman and shed unwarranted blood of a gender

constituting more than half the global population, not be subjected to retaliation for his crime?

In answer to this it must be stated that the verse does not intend that a man should not face retaliation for killing a woman, rather – as has been explicitly explained in the Islamic jurisprudence – the guardians of the murdered woman can seek retaliation from the male murderer, but upon the condition that they pay half the blood money (to the heirs of the murder).

In other words, when it is said that a man cannot be subjected to retaliation for the murder of a woman, what is intended is 'unconditional retaliation'. However, if half of the blood money is paid, then it is permissible to have him killed in retaliation (for the crime committed by him).

There is no need to explain that the payment of the abovementioned sum for seeking retaliation is not because the woman is any less human than man or inferior to him. This is a perception which is totally misplaced and illogical, and perhaps the expression 'blood money' is the basis for this misleading notion. The payment of half the “blood money” is only to compensate the loss, which is suffered by his family, after the retaliation has been extracted.

## **Explanation**

Predominantly, it is the men who are the instrumental members of households monetarily and who, by means of their activities, shoulder the expenses of their families. Thus, the difference between the death of a man and that of a woman, in financial terms, is something which is not concealed from anyone, and which, if not taken into account, would cause unjustified damage to be inflicted upon the survivors of the dead man and his innocent children.

Hence, Islam, by stipulating the payment of half the blood money in the case of retaliation against a man, has taken into consideration the rights of all the individuals and has prevented this economic vacuum and irreparable blow to fall upon a family. Islam never permits that the rights of other individuals – like the children of the person facing retaliation – to be trampled under the pretext of the term 'equality'.

Of course, it is possible that some women may be higher earners for their families than men, but as we do know, rules and regulations are not determined by (a few) individuals but rather, the entire category of men is compared with the entire category of women (take note).<sup>15</sup>

## **20. What is the philosophy behind the dower for women?**

In the Age of Ignorance, since the people did not attach any significance to the women, they would essentially place the dower of the women, which was their incontrovertible right, in the hands of their guardians and it was looked upon as the rightful property of the guardians. At times, they would even stipulate the dower of a woman to be the marriage of another woman; for example, a brother would give

his sister in marriage to a person, who, in reciprocation, would marry his sister to him and this itself would be the dower of the two women.

Islam abrogated all these unjust customs and, allocating the dower as a categorical right of the women, has repeatedly counselled the men, in the verses of the Qur`an, to strictly and completely respect this right of the women.

In Islam, no fixed amount has been ascertained for the dower and it is reliant upon the understanding reached between the two spouses. However, in numerous traditions it has been greatly emphasized to refrain from stipulating a weighty dower, but this is a ruling which is recommended, not obligatory.

At this point the question which arises is that both man and woman benefit equally from the matrimonial alliance – an alliance that is based on mutual benefits. This being the case, what is the need for man to pay a sum, large or small, as dower to the woman? Also, does this issue not deal a blow to the personality of the woman and impart an appearance of trade and transaction to marriage?

It is in the light of the above points that some individuals vehemently oppose the issue of dower, especially West-stricken ones, who derive their inspiration from the fact that dower is a custom, unconventional in the West. Whereas (the reality is that) not only does the excision of the dower not elevate the personality of a woman, rather, it serves to jeopardize her position.

## **Explanation**

Admittedly, both man and woman derive equal benefits out of a matrimonial alliance. Nevertheless there is no denying the fact that in the event of a divorce, the woman has to sustain a greater loss, since:

Firstly: Man, due to his special physical ability, generally possesses a greater control and yields greater influence in the society. However much people may seek to deny this outright reality in the course of their discussions, the state of human social life which we observe with our own eyes – even in the European societies, wherein women enjoy the so-called total freedom – reveals that high earning jobs are principally held by men.

In addition, men possess greater options when embarking upon another spouse-selection, but this is not so in the case of widows – especially after witnessing some aging and being deprived of their assets of youth and beauty – since the options that lie before them, in selecting a new spouse, are greatly diminished.

Considering these aspects, it becomes evident that the conveniences and resources which a woman loses after marriage is much more than what a man loses and so, in actuality, the dower is something which serves to indemnify a woman's losses and a means for securing her future. Apart from this, the dower is also looked upon as a deterrent for man to seek separation and divorce.

Admittedly, the dower, according to the laws of Islam, becomes obligatory upon the husband as soon as the matrimonial alliance is entered into, and the wife is entitled to claim it from him immediately, but since it generally remains as an obligation upon the man, not only is it regarded as savings for her future but also a backing, which safeguards her rights and prevents the disintegration of her marriage alliance (of course exceptions do exist, but what we have stated holds true for the majority of the cases).

If there are people who have wrongly interpreted the dower as being a kind of 'price-tag' for the women, this meaning has no connection with Islam, for Islam has never looked upon the dower as a 'cost' or a 'price' of a commodity. The most excellent proof for this is the formula of marriage in which the 'man' and the 'woman' are officially looked upon as two fundamental parties of the marriage alliance whereas the dower is regarded as a surplus issue and is placed on the side-lines.

It is for this reason that if, in the formula of marriage, the dower is not mentioned, the formula does not become void whereas if, in a transaction, the amount is not stipulated, it would definitely become null and void (of course, it should be noted that if the dower has not been stated in the formula of marriage, the husband, after the consummation of marriage, is obliged to pay the wife mahr al-mithl (suitable dower), i.e. the dower, which is usually paid to women of similar and equal stature.)

From the above we conclude that the dower is a kind of 'compensation of loss' and 'backing to safeguard the rights of a woman' and not a 'rate' or a 'price-tag'; probably, the use of the word nihlah – meaning largesse – in verse 4 of Suratul Nisa is an allusion to this very fact.<sup>16</sup>

## 21. How does Islam permit the physical punishment of women?

In verse 34 of Suratul Nisa, we read:

وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ

***“And (as to) those on whose part you fear desertion, admonish them, and (if ineffective) leave them alone in the sleeping-places and (if even this proves futile with no way of compelling them into fulfilling their responsibilities, except the use of force, then) beat them.”***

The question that arises here is: How can Islam permit the physical punishment of a woman?

The answer to this objection, in light of this meaning of the verse, the traditions which discuss it, the explanations which have been presented in the books of jurisprudence and also the explanations which the psychologists offer today, is not very difficult, for:

**Firstly:** The verse sanctions physical discipline for those disobedient and irresponsible individuals for whom no other means have proved effective. Incidentally this is not an issue that is new and confined to

Islam, rather, in all the laws of the world, when all peaceful and non-violent means to compel a person into fulfilling his obligations prove unproductive, there exist provisions to eventually resort to force. This resort to force is not restricted to mere beatings, but at times even extends to severe punishments and on occasions going all the way up to the death penalty!

**Secondly:** The 'physical punishment' in this case – as has been mentioned in books of jurisprudence – should be mild and moderate so as not to cause breakage of bones, injuries or (for that matter, even) bruises.

**Thirdly:** Modern psychoanalysts are of the belief that a segment of the female populace possesses masochistic tendencies and when this state intensifies within them, the only way to calm them down is by means of mild physical punishment. Therefore, it is possible that the physical punishment has been prescribed taking (the state of) such individuals into consideration, for in their case, this mild physical penalty would be lenitive in nature and serve as a kind of psychological remedy for them.

Without any doubt, if any one of these steps (mentioned in the verse) proves effective and the woman embarks upon performing her duties, the man has no right to inconvenience her and it is for this reason that the latter portion of the verse states:

فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا

***“Then if they obey you, do not seek a way against them.”***

If it is asked: Such rebelliousness, violation and recalcitrance are also likely to be displayed by the men; would the males then be subjected to such punishments too? The answer to this is in the affirmative. In the event of their shirking their responsibilities, men too, like the women, face retribution and even physical punishment; the only difference being that, since this is something beyond the ability of women, it is the duty of the Islamic judge to utilize various means – even ta'zir (physical punishment) – to make such violators become aware and heedful of their responsibilities.

The incident of the man, who had victimized his spouse and who, under no circumstances, had been willing to submit before the truth whereupon 'Ali (a.s) with harshness and threat of the sword, forced him into submission, is well-known.

إِنَّ اللَّهَ كَانَ عَلِيًّا كَبِيرًا

***“Surely Allah is High, Great.”***

Finally the verse again cautions the men from abusing their positions as guardians of their respective households, and exhorts them to reflect upon Allah's Power, which is above all powers, for surely Allah is High, Great.<sup>17</sup>

## **22. Why are men permitted to have more than one spouse whereas the women are not?**

The Noble Qur`an has permitted polygamy (but, with strict conditions and within prescribed limits) and here we have to face up to a barrage of objections and assaults of the opponents, who, armed with a cursory study and influenced by imprudent sentiments, have set out to oppose this Islamic ruling.

The Westerners, in particular, tend to criticize us by saying that Islam has permitted the males to create a harem and take for themselves an unlimited number of spouses. As a matter of fact, Islam has neither permitted the construction of harems – as they take it to mean – nor has it permitted unconditional and unqualified polygamy.

**Explanation:** Studying the conditions that prevailed in different regions before the onset of Islam, we infer that unreserved polygamy was a routine affair in those days even to the extent that on some occasions, when the polytheists would convert into Muslims they would have in their possession around ten spouses. Thus, multiplicity of wives is not an invention of Islam; on the contrary, Islam has confined it within the framework of the necessities of human life and qualified it by means of strict conditions.

Islamic laws are determined on the basis of the actual needs of humans and not on the basis of external propaganda and ill-considered sentiments. The issue of polygamy too has been given consideration from this angle. This is because none can deny the fact that men, in the various goings-on of life, are more exposed to peril than the women, and they are the ones, who predominantly bear the brunt of actual casualties in battles and other catastrophes.

It cannot also be denied that the sexual life-span of men is more than that of women since women, at a certain age lose their sexual strength whereas men do not.

In addition, during menstruation and certain phases of pregnancy the women are obliged to observe a restriction of sexual activity whereas the men have no such restrictions.

Apart from all the above there are women who, due to various reasons, lose their husbands and are usually not sought by the men as a first-wife, and in the absence of polygamy, they would always have to remain without a spouse; we read in numerous newspapers that this group of widowed women, due to the restrictions placed upon the issue of polygamy, complain of the tangles of life and regard this curb as a kind of sentimental oppression which they are subjected to.

Taking these realities into consideration, in such instances wherein the balance between men and



women is disrupted due to certain factors, we are left with no option except to select one of the following three alternatives:

1. Men should, at all times, content themselves with just one spouse, while the extra women should remain without a spouse for the rest of their lives, suppressing and killing all their innate needs and internal desires.
2. Men should have only one official and legal spouse, but are permitted to establish illicit physical relationships with women, who are without spouses, and keep them as mistresses and paramours.
3. Those, who possess the means, should be permitted to govern more than one spouse. Individuals, who would not be inconvenienced physically, economically and ethically, and who possess the ability to maintain equity and even handedness amongst all their spouses and children, should be permitted to take more than one spouse for themselves.

Undoubtedly, there exists no other alternative than these three.

If we were to choose the first alternative, we would have to wage a battle against human innate instincts and spiritual requirements, and disregard these sentiments and feelings of the women – a battle which we would never win. On the assumption that this scheme is actually put into practice, the inhumane aspect associated with it is something which is clear for everyone to see.

In other words, when necessary, this issue should not always be scrutinized from the viewpoint of the first wife but should also be analyzed from the standpoint of the second wife. Those who consider polygamy to be the cause of the sufferings of the first wife, view this issue from only one perspective. It ought to be studied from three perspectives – from the standpoint of the male, the first spouse and the second spouse, and the issue should be judged after taking into regard the interests and well-being of all three of them.

As for the second alternative, if we were to select it, we would have to legalize and formalize prostitution. In addition, the women, who are kept as mistresses and used for sexual gratification, would neither have any security nor a future for themselves, and their status would be ruined, and these are things that no rational person should ever accept.

Thus, the only alternative that remains is the third one, which not only responds positively to the innate desires and the inherent needs of the women, but it also keeps women away from the evil consequences of prostitution. It prevents disruption of the lives of this group of women and thus serves to protect society from a multitude of sins.

It must be noted that although polygamy is a social necessity in certain instances and is one of the incontestable rulings of Islam, fulfilling the conditions necessary for it in the present times differs vastly from that of the past. In the simple and Spartan life of the past, it was easy for everyone to maintain equity amongst the spouses but in the present times, those who wish to make use of this ruling must

ensure that comprehensive equity is observed. Basically, polygamy should not be pursued for the sake of carnal and physical desires.

Interestingly, the very opponents of polygamy (such as the Westerners), during the course of history, have encountered events that have clearly manifested their need for it. For example, after World War II, the need for polygamy was intensely felt in the war-torn countries, especially Germany, which even compelled some of their intellectuals to reconsider their views with respect to the prohibition of polygamy. In addition, they conducted a study of the Islamic program of multiplicity of wives from al-Azhar University.

However, severe objections on the part of the Church forced them to shelve their plans; the consequence of which was wild and outrageous profligacy that eventually engulfed the length and breadth of the war-torn countries.

Apart from the above, the inclination of some of the men to possess more than one spouse is something that cannot be denied, although if it were to arise as a result of carnal desires, it is not to be taken into regard. A wife's inability to conceive and the husband's intense desire to have a child provide a rational support to such an inclination.

There may be instances where the inability of the wife to satisfy the intense sexual desires of the husband leaves him with no alternative except to turn towards a second marriage – at times even compelling him to resort to illegitimate means to achieve his objective in the absence of legitimate ones.

Hence, in cases such as these, his inclination cannot be regarded as being illogical or irrational. It is for this reason that even in countries that prohibit polygamy, in reality, relationships with several women are widely prevalent whereby one male tends to have illicit relationships with several women at the same time.

The well-known French historian Gustav Lebon considers the issue of Islamic polygamy, which is bound and limited by conditions, to be one of the distinguishing features of this religion. Comparing it with the free and illicit relationship of a male with several females in Europe, he states: In the West too, despite the fact that the weather and natural environment do not warrant such a custom (polygamy), monogamy is something that we come across only in books of law!

For, I do not suppose that the presence of traces of this custom, in our actual socialization, can be denied! Honestly, I am at a loss and fail to comprehend what the legal, but confined, polygamy of the East lacks in comparison to the phoney polygamy of the West? In fact, I declare that the former is better and more seemly than the latter, in every respect.<sup>18</sup>

Of course it is not to be denied that some of the so-called Muslims, without taking into regard the Islamic ideology behind this rule, have sought to misuse it, maintaining ignominious harems for themselves and violating the rights of their wives. This flaw is not in the law but rather in the individuals themselves, and

their deeds should not be regarded as the laws of Islam. Is there any law, which, despite its excellence, is not put to misuse by profiteering individuals for their personal benefit?

Question: At this juncture some may question that if women find themselves in the abovementioned circumstances; would they be permitted to take two husbands for themselves too?

The answer to the above question is not very difficult:

**Firstly:** (Contrary to what is popular among the general public) the sexual desire in men is several times more than that in women; books relating to sexual issues state frigidity to be the disorder which is prevalent in the majority of women whereas, in the case of men, it is just the opposite. Even with respect to animals it has been observed that sexual advancements are usually initiated by the males of the species.

**Secondly:** Polygamy, in the case of men, does not entail any social or legal complications whereas, if the women were to possess two husbands, it would lead to numerous problems – the simplest of them being the issue of genealogy of the child, for it would not be known to which of the husbands it belongs, and such a child would certainly not be cared for and supported by any of the husbands. Some of the scholars are of the opinion that a child, whose father's identity is unknown, tends to be less loved and cared for by the mother. Thus, such children find themselves deprived and denied with respect to love and affection, and unclear about their legal rights.

It may perhaps be unnecessary to mention that resorting to contraceptives such as pills or the like can never yield certainty or confidence that a child will not be conceived, for there have been innumerable instances where women, who have used them or made mistakes while using them, have conceived children. Thus, no woman can, by trusting and relying upon such measures, take multiple spouses for herself.

Due to these factors polygamy, in the case of women, cannot be rational, whereas in the case of men, after observing its conditions, it is not only logical, but practical too. 19

## **23. What is meant by 'justice' as mentioned in the conditions (to be considered) with respect to polygamy?**

In verse 3 of SuratulNisa, we read:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

*“...but if you fear that you will not do justice (between them), then (marry) only one.”*

Similarly, in verse 129 of this same chapter, we read:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ

***“And you have it not in your power to do justice between wives, even though you may wish (it).”***

The question that arises here is: What is meant by 'justice' with respect to multiple wives? Is this 'justice' associated with issues of life like sleeping together, gifting items and things, and providing ease and comfort, or is it associated with respect to the heart and human sentiments too?

Without any doubt justice, with respect to affections and sentiments of the heart, is something that is beyond the control of man. Who possesses the ability to exercise total control over his affection – a state, which is governed by factors external to himself? It is for this reason that Allah has not considered the observance of this kind of justice to be obligatory and in verse 129 of this chapter says:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ

***“And you have it not in your power to do justice between wives, (with respect to sentimental inclinations) even though you may wish (it).”***

Thus, till such time that the internal sentiments do not result in granting preference to some of the spouses over the others in actions, it is not prohibited. What is obligatory upon a man is to maintain justice amongst the spouses with respect to issues that are practical and external in dimension.

From the above explanation it becomes plain that those, who have sought to correlate the above verse:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

with verse number 129:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ

and thus conclude that polygamy is totally forbidden in Islam, have made a grave error. – They have argued that the first verse places the condition of 'justice', while the second verse considers this justice to

be an impossible task for the men.,

As has been referred to previously, the kind of justice, whose observance is beyond the ability of man, is that which is associated with the internal sentiments, and this is not one of the requirements for polygamy; the condition for polygamy is the justice which is associated with acts and deeds.

Testifying to this aspect is the latter part of the verse 129 of this same chapter, which says:

فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ

***“Now that you cannot observe justice with respect to your sentiments between your spouses, at least do not direct all your sentimental inclinations towards one, leaving the other in suspense.”***

Consequently, people who have taken one part of this verse and abandoned the other part, have erred in the issue of polygamy and it is a cause for astonishment for every researcher.<sup>20</sup>

Incidentally, according to Islamic traditions, it appears that the first person to raise this objection was Ibn Abi al-'Auja – one of the materialists and a contemporary of Imam as-sadiq (a.s) – who argued over it with Hisham b. Hakam, the diligent Islamic scholar. Not finding the answer to it, Hisham started out from his city, Kufah, towards Madinah and approached Imam as-sadiq (a.s).

The Imam (a.s) was greatly astonished to see him in Madinah at a time when it was not the season for Hajj and 'Umrah. Hisham presented his question, whereupon the Imam (a.s) said: “The justice intended in verse 3 of Suratul Nisa is the justice associated with the maintenance of the spouses (and observation of their rights, and the manner of conduct and behaviour) whereas the justice in verse 129, which has been regarded as an impossible task, is the justice associated with internal sentiments (thus, polygamy, with adherence to the Islamic conditions, is neither prohibited nor impossible).”

After returning from his journey, when Hisham presented Ibn Abi al-'Auja with the answer he swore that it was not Hisham's answer but somebody else's.<sup>21</sup>

It is quite evident that if we are interpreting the term 'justice' differently in the two verses it is because of the clear context that is present in both the verses. The verse under discussion clearly states: Do not direct all your inclinations towards one spouse, and has thus permitted the selection of two spouses, but on the condition that, despite the difference in internal inclinations, no injustice should be done to the other with respect to actions and deeds. Besides, the initial portion of verse 3 of this same chapter expressly permits polygamy.<sup>22</sup>

## 24. What is the philosophy behind temporary marriage?

It is a general and universal rule that if man's natural impulses are not satiated in the correct manner, he will resort to incorrect and devious means in order to satiate himself. In reality, the natural desires cannot be eliminated; and upon the supposition that they could be eliminated, such an act would not at all be rational for then it would be tantamount to opposing the laws of Creation.

Thus, the correct option would be to satiate them in a rational manner and utilize them constructively.

It cannot be denied that sexual desire is one of the strongest natural impulses existing within man to the extent that some of the psychoanalysts are of the opinion that it is the only primitive and primary impulse within man while all the other impulses are secondary in nature.

Now, in numerous circumstances and environments, a great number of individuals belonging to a particular age-group are unable to enter into a permanent marriage, or married individuals, who have embarked upon protracted journeys or other commitments, are faced with the dilemma of their sexual desires remaining unfulfilled. This issue has become especially acute in our times wherein the matrimonial age, due to the protracted period of education and other intricate social issues, has gone up and rarely can a youth enter into wedlock at a lower age during which he faces a period of heightened sexual tendencies.

What should be done in such circumstances?

Should the people be encouraged to suppress this impulse (like the monks and the nuns)?

Or should they be left free to indulge in profligacy, and the ignominious and scandalous scenarios that presently exist be permitted?

Or that we should adopt a third alternative – one, which neither brings about the problems of a permanent marriage nor leads to sexual licentiousness?

In summary, permanent marriage, in itself, has never been able to cater to the sexual needs of all the sections of the society – neither in the past nor today. We stand at a crossing – either to permit 'prostitution' (just as the material world of today has endorsed it and has officially recognized it) or accept the idea of temporary marriage. Those who oppose both prostitution as well as temporary marriage have not presented a solution for this problem.

The blueprint of temporary marriage neither possesses the strict conditions that are associated with permanent marriage so as to be inharmonious with educational engagements or lack of financial affluence, nor does it lead to the harmful ways of sexual wantonness and prostitution.

## Criticisms levelled against temporary marriage

However, there are certain objections and criticisms that need to be discussed, albeit concisely:

1. At times it is asked, what is the difference between 'temporary marriage' and 'prostitution'? Both of them can be considered to be prostitution in exchange for a certain sum of money. This kind of marriage is, in fact, a veil over prostitution and sexual pollution! The only difference between the two lies in the recitation of two simple sentences (recitation of the marriage formula.)

Answer: Those who make this criticism apparently do not have any awareness about the concept of temporary marriage. This is because temporary marriage, like permanent marriage, is governed by rules and ordinances. A woman entering into a temporary marriage must make herself available solely for this husband for the entire duration of the marriage, and must necessarily observe the 'Iddah after the termination of the term. In other words, she has to refrain from entering into any kind of matrimony with any other male for a period of forty five days at least, so that it becomes clear in case she bears the child of the first person.

The observance of this 'Iddah is obligatory upon her even if she had resorted to the use of contraceptives to prevent conception. If she happens to conceive, this child like the children that result from a permanent marriage, would have to be looked after and supported by the man, and all the rules that are associated with children would come to be associated with this child too. However, prostitution does not have any of these rulings associated with it. Can these two issues ever be compared with each other?

Of course, temporary marriage does differ from permanent marriage with respect to the issues of inheritance (between the temporary spouses),<sup>23</sup> maintenance, and some other rulings; however these differences do not place it on par with prostitution. In any event, temporary marriage is a form of marriage which possesses its own ordinances and stipulations.

2. Temporary marriage becomes a reason for some lustful individuals to misuse this ruling and use it as a pretext to indulge in every kind of prostitution and profligacy; consequently respectable individuals never enter into it while women of good repute tend to avoid it.

Answer: Is there any law in the world that has not been abused? Should a rule, which is a social requirement and is in accordance with the human innate, be suppressed because of it being misused, or should those, who misuse it, be taken to task?

Supposing some individuals misuse the pilgrimage to the House of Allah and engage themselves in peddling drugs in the course of their trip; should the people be prevented from participating in this great Islamic congregation or should those, who misuse the occasion, be brought to justice?

If we observe that nowadays respectable individuals experience an aversion with respect to this Islamic

statute, the fault lies not in the statute but in those who act upon it, or to put it more correctly, in those who misuse it. If, in our present day society, temporary marriage were to be portrayed in its correct form and the Islamic government were to implement it under the governance of specific rules and stipulations, not only would its misuse be prevented but even respected individuals (during social exigencies) would not experience an aversion towards it.

3. They say: Temporary marriage results in guardian-less individuals, such as illegitimate children, being handed out to the society.

Answer: In view of what we have mentioned previously, the answer to this objection is quite plain since according to (man-made) law, illegitimate children are neither affiliated to the father nor to the mother whereas children resulting from temporary marriage do not possess the slightest difference from those that result from permanent marriage – neither with respect to inheritance nor with respect to social rights and privileges – apparently this objection stems from their lack of attention towards this reality.

### **Russell and temporary marriage**

In conclusion it appears expedient to present what Bertrand Russell, the well-known English scholar, has stated in his book *Marriage and Morals* under the topic Trial Marriage. After mentioning the scheme of Ben B. Lindsey, one of the judges for juvenile delinquency, in connection with 'companionate marriage', he states as follows:

“His view is that young people should be able to enter upon a new kind of marriage distinguished from ordinary marriage by 3 characteristics. First, that there should be for the time being no intention of having children and that accordingly the best available birth-control information should be given to the young couple. Second, that so long as there are no children and the wife is not pregnant divorce should be possible by mutual consent. And third, that in the event of divorce, the wife should not be entitled to alimony.”

After mentioning Lindsay's idea, which was presented above, Russell goes on to state as follows: He holds, and I think rightly, that if such an institution were established by law, a very great many young people, for example, students at universities, would enter upon comparatively permanent partnerships, involving a common life, and free from the Dionysiac characteristics of their present sex relations.<sup>24</sup>

As you notice, the above plan with respect to temporary marriage is in many ways similar to the Islamic concept of temporary marriage except that the conditions and stipulations which Islam has laid out for it are more lucid and perfect in various respects. In the Islamic temporary marriage there is no prohibition in preventing conception, separation is simple and alimony too is not obligatory.<sup>25</sup>



## 25. Did temporary marriage exist during the time of the Noble Prophet (s.a.w)?

The general consensus of the Islamic scholars indicates that temporary marriage was lawful during the initial period of Islam and, in fact, the essentials of religion too emphasize this lawfulness – (and the difference of opinion that exists in connection with verse 24 of Suratul Nisa):

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

*“Then as to those whom you profit by, give them their dowries as appointed.”*

as to whether or not it establishes the legitimacy of mut'ah does not, in any way, serve to oppose the incontrovertible nature of the statute. This is because even the opponents are of the belief that the legitimacy of this statute has been established by means of the sunnah of the Noble Prophet (s.a.w) – and the Muslims, during the initial stages of Islam, even acted upon this ruling. Also, the famous sentence that has been reported from 'Umar:

مُتَعَاتِنِ كَانَتَا عَلَى عَهْدِ رَسُولِ اللَّهِ أَنَا مُحَرَّمُهُمَا وَأُعَاقِبُ عَلَيْهِمَا مُتْعَةَ النِّسَاءِ وَ  
مُتْعَةَ الْحَجِّ.

“Two mut'ahs existed during the time of the Prophet of Allah and I prohibit them and shall punish (those who act upon them), (and these are) mut'ah of the women and Hajj of Tamattu', is a clear proof of the existence of this statute during the period of the Noble Prophet (s.a.w); however, the opponents of this ruling claim that it was abrogated and prohibited later on.”<sup>26</sup>

Interestingly, the traditions which they present to substantiate their claims of abrogation are contradictory and inconsistent. Some traditions state that the Noble Prophet (s.a.w) himself abrogated this statute and as such, the nullifier of this ruling would be the sunnah of the Noble Prophet (s.a.w). Other traditions state that it was abrogated by the verse of Divorce:

لِعِدَّتِهِنَّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ

*“O Prophet! when you divorce women, divorce them for their prescribed time.”*

However, it ought to be known that this verse has no connection with the issue under discussion since this verse deals with divorce whereas there is no divorce in a temporary marriage – the separation taking place when the term (of marriage) reaches termination.

On the one hand, it is conclusively and categorically known that this ruling was lawful during the time of the Noble Prophet (s.a.w) while on the other hand there is authentic evidence to prove that it had been abrogated. Thus, according to an indisputable law, proved in methodology, we shall judge that this statute continues to exist.

The well-known sentence of 'Umar is also a clear testimony of the fact that this ruling had certainly not been abrogated during the period of the Noble Prophet (s.a.w).

It is quite evident that none, except the Noble Prophet (s.a.w), possesses the authority to abrogate laws and rulings, and it is only he (s.a.w), who can abrogate and annul certain laws in accordance with divine orders. After the Noble Prophet's death, the door to abrogation of laws was completely closed or else every person, according to his individual reasoning, would seek to abrogate portions of the divine laws and consequently there would be no such thing as an eternal and everlasting Shari'ah. Fundamentally, individual reasoning vis-à-vis explicit sayings of the Noble Prophet (s.a.w) lacks validity and authenticity.

Significantly, in the book sahih Tirmidhi, which is one of well-known siHaH of the Ahlus Sunnah, and also from al-Daraqutni,<sup>27</sup> we are informed of the following incident:

Once, an inhabitant from Syria approached 'Abdullah b. 'Umar and questioned him about Hajj-e-Tamattu', whereupon he expressly declared it to be permissible. The man said: "But your father has prohibited it!" 'Abdullah b. 'Umar turned furious and said: "If my father prohibits it while the Noble Prophet (s.a.w) permits it, should I forsake the sacred sunnah of the Noble Prophet (s.a.w) and follow my father's statements? Arise and go away from my presence!"<sup>28</sup>

Another tradition, possessing the same form as that seen in the above tradition, has also been reported from 'Abdullah b. 'Umar, but in connection with temporary marriage.<sup>29</sup>

It has been reported from the book 'Muhadhirat' of Raghīb that one of the Muslims entered into a temporary marriage. He was asked: "Who informed you that it was legitimate?" He replied: "'Umar!" Astonished, they asked him: "How is such a thing possible when 'Umar has himself prohibited it and has even threatened to punish the people for it?" He said: "I too base my reasoning upon this, for 'Umar had said: 'The Noble Prophet (s.a.w) had permitted it but I prohibit it.' I accept its legitimacy from the Noble Prophet (s.a.w) but shall never accept its prohibition from anyone else!"<sup>30</sup>

Another point that needs to be mentioned here is that those, who claim that this rule has been abrogated, face some serious problems:

Firstly: In numerous traditions from Sunni sources it has been explicitly stated that this ruling had not been abrogated during the life-time of the Noble Prophet (s.a.w) but, rather, its prohibition came into effect during the time of 'Umar. Thus, the proponents of abrogation need to provide an explanation for all these traditions, which are twenty four in number. 'Allamah Amini has mentioned them in detail in volume six of his book al-Ghadir and two examples of them are presented below:

1. It has been reported in sahih Tirmidhi that Jabir b. 'Abdullah Ansari said: “During the time of the Noble Prophet (s.a.w) we used to easily enter into temporary marriage and this continued till 'Umar totally prevented 'Amr b. Harith from entering into it.”<sup>31</sup>

2. In the books Muwatta of Malik and Sunan Kubra of Behaqi it has been reported from 'Urwah b. Zubair that one day, a lady by the name of Khaulah Bint Hakim approached 'Umar and informed him that one of the Muslims, Rabi' b. Umayyah, had committed mut'ah. Hearing this 'Umar said: “Had I prohibited this act previously, I would have had him stoned (but now, from this very moment, I shall prohibit it).”<sup>32</sup>

In the book Bidayah al-Mujtahid of Ibn Rushd al-Andulusi too we read that Jabir b. 'Abdullah Ansari said: “Temporary marriage was customary and usual amongst us during the time of the Noble Prophet (s.a.w), during the caliphate of Abu Bakr and (the first) half of the caliphate of 'Umar. Afterwards 'Umar prohibited it.”<sup>33</sup>

Secondly: The traditions that state that this ruling had been abrogated during the life-time of the Noble Prophet (s.a.w) are ambivalent and contradictory in nature. Some of them say that it was abrogated in the battle of Khaibar, some report it to have been abrogated on the day of the conquest of Makkah, some others specify that it was during the battle of Tabuk, while yet others declare that it took place during the battle of Autas, etc. Thus, all of these traditions, which advocate the abrogation of this ruling, appear to be fabricated as they differ so vastly from each other.

In view of what we have mentioned above, it becomes plain that the statement of the author of the commentary al-Manar, when he says: “Previously, in the third and fourth volume of the magazine al-Manar, we had expressly stated that it was 'Umar, who had prohibited mut'ah, but later we happened to come across some traditions, which indicated that it had been abrogated during the time of the Noble Prophet (s.a.w) and not during the time of 'Umar, and accordingly, we rectify our previous statements and seek forgiveness for it<sup>34</sup> is a prejudiced declaration.

This is because vis-à-vis these contradictory traditions that declare the abrogation to have taken place during the time of the Noble Prophet (s.a.w), we have traditions, which expressly declare the ruling to have continued till the time of 'Umar. Thus, neither is there a necessity to apologize nor a need to seek forgiveness; the evidences presented above indicate that it was the original declaration of the author that had been true and correct, and not his second one!”

It is evident that neither 'Umar nor anyone else – not even the Imams of the Ahlul Bayt G, who are the genuine successors of the Noble Prophet (s.a.w) – can abrogate laws that had existed during the life-

time of the Noble Prophet (s.a.w). Basically, abrogation after the death of the Noble Prophet (s.a.w) and the termination of revelation is absolutely meaningless and inconceivable. It is also a matter of immense astonishment that some individuals attribute the utterance of 'Umar to his 'individual reasoning' (ijtihad), for ijtihad vis-à-vis 'nass' (explicit text of the Noble Prophet (s.a.w)) is neither permissible nor acceptable.<sup>35</sup>

## **26. What is the philosophy behind Muhallil?**

After the third divorce, the man and the woman must separate from each other forever; however, if the woman enters into matrimony with another man and, after the consummation of this marriage, procures divorce from him, she can then marry the first husband again if she so desires. The question which arises here is: What is the philosophy behind this Islamic ruling?

In specific circumstances divorce, like marriage, becomes a crucial and essential issue and it is for this reason that Islam has permitted it. But, since division and break-up of families tend to inflict irreparable harm on the individuals and the society, Islam adopts various means in order to prevent the occurrence of divorce to the maximum extent possible – the issue of 'another marriage' or muhallil being one of these means.

This is because a woman's official marriage with another man, after having been divorced three times, is a great deterrent for pronouncing repetitive divorces (on the part of the husband). A man who intends to divorce his wife for the third time knowing fully well that with this divorce she would get married to someone else, forever, would find his conscience being pricked and, till the time he is certain that there exists no other alternative, he will not embark on such an act.

In reality, the issue of muhallil or to put it more correctly, 'a woman's second permanent marriage with another man' is an impediment placed before capricious and deceptive males so that they do not take women to be playthings for their wanton desires, and misuse the ruling of 'divorce and return'.

The conditions stipulated for this second marriage – one of them being that it should be a permanent marriage – indicate that this second alliance has not been stipulated for the purpose of providing the woman and the first husband with an opportunity to get together again; thus, this ruling cannot be misused by entering into a temporary marriage in order to remove the impediment.

A tradition, which some of the commentators have mentioned, serves to greatly elucidate the point. According to this tradition those, who misuse this ruling by arranging a marriage alliance so that the woman, by means of this marriage, can return to her first husband, are distanced away from Allah's mercy.

لَعَنَ اللَّهُ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ.

“Allah curses the 'muhallil', and the person for whom this person has endeavoured to act as a 'muhallil'.”<sup>36</sup>

Thus, it ought to be said that the objective is to separate the man and the woman after three divorces by means of this marriage, so that each of them can lead a life as desired by him or her and to prevent matrimony – an issue, extremely hallowed – from occasionally becoming a victim of the satanic inclinations of the first husband.

However, since Islam has always respected rational and logical desires, and utilizes every reformative opening that exists, it says: If this (second) alliance happens to break down too and the former spouses develop attachment with respect to each other and have seriously resolved to fulfil their familial responsibilities, there is no harm if they come together. This new marriage lifts the prohibition from over them and this is why it has been named as 'muhallil'.

It therefore becomes clear that muhallil has not been presented in Islam as just an issue or a ruling but rather it speaks of a new marriage, a concept which, in addition to the Qur`anic verse, is also inferred from the traditions of the infallibles (AS).

After studying the issue, another point which comes to the fore is that the issue of new marriage is serious and in sincere earnest. But if someone, from the very outset, had not intended to marry the woman permanently, only enacting a role in order to present an appearance of a muhallil (so that the woman acquires the excuse to return to her former husband), such a marriage would serve no purpose since in such a case, not only would the second marriage be null and void but in addition, the first husband would also never become legitimate for the woman and the previously mentioned tradition:

لَعَنَ اللَّهُ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ.

probably alludes to this kind of muhallil.<sup>37</sup>

## 27. What is the philosophy behind the observance of Iddah?

In verse 228 of Suratul Baqarah, we read:

وَالْمُطَلَّاتُ يُتْرَيْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

***“And the divorced women should keep themselves in waiting for three courses.”***

The question that crops up here is: What is the philosophy behind this Islamic ruling?

Since the breaking up of families generally tends to inflict irreparable damage upon the fabric of a society, Islam has set stipulations which, till the maximum possible limit, seek to prevent such matrimonial break-ups. On the one hand it regards divorce as 'the most abominable of the permissible acts', while on the other hand, by referring the matrimonial disputes to the family courts established by the relatives, and initiating reconciliatory measures through the relatives of the disputing spouses, it has sought to prevent this occurrence.

One of these stipulations, which is itself a cause for delaying the divorce and weakening this matrimonial break-up, is the observance of 'Iddah – the duration of which has been set to be three (قرء), which means to become clean, three times, from menstruation.

### **Iddah, a means for reconciliation and return**

At times, due to certain factors, the mentality of a person comes to possess such a state that a small dispute inflames feelings of revenge so intense as to blanket the intellect and conscience, and predominantly, the division of a family occurs in these circumstances. However, it frequently happens that a short while after the dispute the husband and the wife come to their senses and repent for their actions, especially when they realize that they would have found themselves in great difficulty had their family broken up.

It is here that the verse, under discussion, states: The women must observe Iddah and remain patient till this wave passes by and the dark clouds of strife and animosity disperse from the skies of their lives.

In particular, the stipulation of Islam asking a woman to refrain from going out of the house during the period of Iddah serves to stimulate the faculty of reflection within her and is very effective in the betterment of her relationship with her husband.

And it is for this reason that we read in the first verse of Suratul Talaq:

لَا تَخْرُجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

“Do not drive them out of their houses, nor should they themselves go forth, unless they commit an open indecency; and these are the limits of Allah, and whoever goes beyond the limits of Allah, he indeed does injustice to his own soul. You do not know that Allah may, after that, bring about reunion.”

Usually, reminiscence of the warm and sweet moments of the life before divorce is sufficient to bring back the lost love and brighten the dimmed light of affection.

## **Iddah, a means to protect the generation**

Another philosophy behind the Iddah is to make a woman cognizant of her state with respect to pregnancy. It must be admitted that although witnessing one phase of menstruation is usually indicative of absence of pregnancy in a woman, at times it has been observed that a woman, despite bearing a child, menstruates in the initial phase of her pregnancy and hence, in order to be absolutely sure that she does not bear a child from her previous husband, it has been ordered that she should witness three periods of menstruation after which she can enter into another marriage.<sup>38</sup>

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1. Suratul Ghafir (40), Verse 40
  2. Suratul Nahl (16), Verse 97
  3. Suratul Muddaththir (74), Verse 38
  4. Suratul Jathiyah (45), Verse 15
  5. Suratul Nur (24), Verse 2
  6. Suratul Nisa (4), Verse 32
  7. Refer Al-Mufradat of Raghīb Isfahani. It should be known that this point is applicable in instances when **اِكْتِسَاب** and **كَسْب** are used in conjunction with one another.
  8. Tafsir-e-Namunah, vol. 2, pg. 113
  9. Refer the books An apology for Muhammad and the Koran, Huqooq-e-Zan Dar Islam and other books related to the humans beliefs and views.
  10. Tafsir-e-Namunah, vol. 3, pg. 223
  11. Please note that some of the statistics presented may be outdated as this work is a translation from a book which was originally published many years ago. (Ed.)
  12. Tafsir-e-Namunah, vol. 14, pg. 442
  13. The currency used in Iran – at present (2005), one US Dollar is approximately 900 tuman.
  14. Tafsir-e-Namunah, vol. 3, pg. 290
  15. Tafsir-e-Namunah, vol. 1, pg. 611
  16. Tafsir-e-Namunah, vol. 3, pg. 263
  17. Tafsir-e-Namunah, vol. 3, pg. 373
  18. Le Civilisation des Arabes (Tarikh-e-Tamaddun-e-Islam Wa Arab), translated by Fakhr Gilaani, pg. 509
  19. Tafsir-e-Namunah, vol. 3, pg. 256
  20. Tafsir-e-Namunah, vol. 3, pg. 255
  21. Tafsir al-Burhan, vol. 1, pg. 420
  22. Tafsir-e-Namunah, vol. 4, pg. 155
  23. Nevertheless, the children resulting from a temporary marriage do not differ in any manner whatsoever from those resulting from a permanent marriage.
  24. Marriage and Morals, pg. 84
  25. Tafsir-e-Namunah, vol. 3, pg. 341
  26. Kanz al-'Irfan, vol. 2, pg. 158. In Tafsir Qurtubi and Tafsir Tabari, a tradition similar to the abovementioned tradition has been mentioned. It has also found a mention in 'The Chapter Of Nikah' in vol. 7 of Sunan of Behaqi.
  27. Tafsir Qurtubi, vol. 2, pg. 762, under verse 195 of Suratul Baqarah.
  28. The Mut'ah of Hajj that 'Umar had prohibited was the Hajj-e-tamattu'. Hajj-e-Tamattu' is that initially a person enters a

state of ihram and after performing the rites of 'Umrah comes out of his ihram, (whereupon everything, even sexual intercourse, becomes permissible for him) after which, he once again goes into the state of ihram and performs the rites of Hajj from the 9th of Dhul Hijjah. In the Age of Ignorance, the people considered this to be incorrect and would be given to astonishment over the fact that a person, having entered Mecca during the season of Hajj, performs his 'Umrah and comes out of his ihram, before having performed his Hajj. But Islam expressly declared such an act to be lawful and this has been asserted in verse 186 of Suratul Baqarah.

29. Sharh Lum'ah, vol. 2, 'The Book of Nikah'

30. Kanz al-'Irfan, vol. 2, pg. 159 (footnote)

31. al-Ghadir, vol. 6, pg. 206

32. al-Ghadir, vol. 6, pg. 210

33. Bidayah al-Mujtahid, The Book of Nikah

34. Tafsir al-Manar, vol. 5, pg. 16

35. Tafsir-e-Namunah, vol. 3, pg. 337

36. Tafsir al-Manar, vol. 2

37. Tafsir-e-Namunah, vol. 2, pg. 123

38. Tafsir-e-Namunah, vol. 2, pg. 106

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