

ISLAMIC LAW OF MARRIAGE & DIVORCE

by

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The Ahmadiyya Anjuman Isha'at-i-Islam
LAHORE, W. PAKISTAN

PREFACE

The Objectives Resolution as ably put forward by the Pakistan Premier, Mr. Liaquat Ali Khan, and as adopted by the Pakistan Constituent Assembly, has made it clear that the law of Pakistan will be based on the Holy Qur'ān and the Sunnah of the Prophet, on both of which perfect agreement exists among all sects of Islam. Pakistan has thus in fact not only made clear the basis of its own Law but given a lead to other Muslim countries as well. The subject of marriage and divorce, however, is one which is of equal importance to the law-making body as well as to every individual Muslim. A full discussion of this subject from this point of view forms part of an exhaustive work on the Sources, Principles and Ordinances of Islam— *The Religion of Islam*—which I wrote thirteen years ago. But as every Muslim cannot have access to this bulky volume, the Ahmadiyyah Anjuman Isha'at Islam, Lahore, which is carrying on a systematic production of literature on Islam on a vast scale, asked me for an abridgement of the chapter on "Marriage" as dealt with in this book. It is this abridgement which I am offering in the following pages. In addition to the curtailment of the subject, I have omitted references to Hādīth and Fiqh books in this

treatise, while retaining references to the Quranic verses, the first number indicating the number of the chapter and the second the number of the verse. For a fuller discussion and full references to original authorities I would refer the reader to *The Religion of Islam*.

Muslim Town, Lahore

June 24, 1949.

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SIGNIFICANCE OF MARRIAGE

Importance of the Marriage Institution.

Marriage in Islām is a sacred contract which every Muslim must enter into, unless there are special reasons why he should not. Thus in the Holy Qur'ān, it is said: "And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allāh will make them free from want out of His grace¹; and Allāh is Ample-giving, Knowing. And let those who do not find a match keep chaste until Allāh makes them free from want out of His grace" (24: 32, 33). In another verse, marriage-relationship is given the same importance as blood-relationship: "And He it is Who has created man from water, then He has made for him blood-relationship and marriage-relationship" (25: 54). Hadith also lays stress upon living in a married state. The Holy Prophet is reported to have said to certain people who talked of fasting in

1. Merely being poor is not sufficient excuse for not marrying because the needy are told that if they marry, Allāh will make them free from want out of His grace. The Holy Prophet is reported to have performed the marriage of a man who did not possess so much as a ring of iron.

the day-time and keeping awake during the night, praying to God and keeping away from marriage: "I keep a fast and I break it, and I pray and I sleep, and I am married, so whoever inclines to any other way than my Sunnah, he is not of me." Another saying of the Holy Prophet laying stress upon marriage is worded thus: "O assembly of young people! Whoever of you has the means to support a wife (*al-bā'ah*), he should get married, for this (*i.e.*, marriage) is the best means of keeping the looks cast down and guarding the chastity; and he who has not the means, let him keep fast, for this will act as castration." Celibacy (*tabattul*) is expressly forbidden. According to one hadith, "the man who marries perfects half his religion." Another says: "Matrimonial alliances increase friendship more than anything else."

Marriage as the union of two natures which are one in their essence. The Holy Qur'ān repeatedly speaks of the two mates, man and woman, as being created from each other: "O people! Keep your duty to your Lord, Who created you from a single being and created its mate of the same (kind), and spread from them many men and women" (4:1); "He it is Who created you from a single being, and of the same did He make his mate that he might incline to her" (7:189). Both these verses are generally understood as referring to the creation of the first man and the first

woman, but that they signify the relation of man to woman in general is obvious from other verses : "And Allāh has made wives for you from yourselves and has given you sons and daughters from your wives" (16 : 72) ; "And one of His signs is that He created mates for you from yourselves that you may find quiet of mind in them" (30 : 21). And thus, in a Makkan revelation of the middle period : "The Originator of the heavens and the earth ; He made mates for you from yourselves.....multiplying you thereby" (42 : 11). Thus marriage is, according to the Holy Qur'ān, the union of two souls which are one in their essence.

Multiplication of the human race through marriage. It will be noted that in the above verses, the multiplication of the human race is mentioned as one of the objects of marriage. But it may be said that the multiplication of the race can be brought about without marriage, as with the lower animals ; that is to say, without uniting one man with one woman for their whole life. This would be only true if man lived upon earth like other animals, if there was nothing to distinguish him from the brute creation, if there were no such thing as civilization, no society, no sense of respect for one's own obligations and the rights of others, no sense of property and ownership. Deprived of its civilization there would be no human race at all, but a race of brutes in human form. The family which is the real unit of the human

race and the first cohesive force which makes civilization possible, owes its existence solely to marriage. If there is no marriage, then there can be no family, no ties of kinship, no force uniting the different elements of humanity, and, consequently, no civilization. It is through the family that humanity is held together and civilization made possible.

Feelings of love and service developed through marriage. The institution of marriage is also responsible to a very great extent for the development of those feelings of love and service which are the pride of humanity to-day. The mutual love of husband and wife—a love based not on momentary passion but life-long connection—and the consequent parental love for offspring leads to a very high development of the feeling of love of man for man as such, and this to the disinterested service of humanity. This love is described as a sign of God in the Holy Qur'ān: "And one of His signs is that He created mates for you from yourselves that you may find quiet of mind in them, and He put between you love and compassion" (30: 21). The natural inclination of the male to the female and of the female to the male finds expansion through marriage and is developed, first into a love for the children, then a love for one's kith and kin, and ultimately into a disinterested love for the whole of humanity. The home, or the family, is in fact the first training ground of

love and service. Here a man finds real pleasure in the service of humanity, and the sense of service is thus gradually developed and broadened. It is in fact a training ground for every kind of morality, for it is in the home that a man learns to have a sense of his own obligations and responsibilities, to have a respect for others' rights, and above all, to have a real pleasure in suffering for the sake of others. The Holy Prophet is related to have said: "The best of you is he who treats his wife best."

Marriage and "free love". The West is undoubtedly leaning more and more to "free love" in the place of marriage, but "free love" will certainly prove the ruin of European civilization. Marriage is being discarded, not on account of any inherent defect in it but simply because it entails certain responsibilities on both parties to the marriage contract, and it is really these responsibilities that are shirked in avoiding marriage. Marriage undoubtedly strengthens the ties of the natural love of the two mates, but it also requires them to share each other's cares and sorrows; for human life has its cares and sorrows as well as its pleasures. "Free love" makes each of the mates selfish in the extreme because, while the male and the female become each other's partners in happiness, each is free to leave the other, uncared for, in his or her sorrow. Marriage again makes the two mates jointly responsible for the welfare of the

children, but in "free love," either the procreation of children is altogether avoided, and thus the end which nature has in view in the union of the male and the female defeated, or when either of the parents has had his or her satisfaction of the other, the children may be left without a shelter. The institution of marriage is found in all countries and all nations, has been practised in every age for thousands of years and has worked to the advancement and welfare of humanity on the whole. "Free love," if practised on so large a scale for half a century, would either put an end to the human race altogether, or bring such chaos in society as would destroy its very foundations. It may suit a few irresponsible, selfish persons, who are the slaves of their passions but there can be no spark of true love in a union which may end abruptly at the whim of either, and it can serve no useful purpose for humanity in general.

LEGAL DISABILITIES

Mut'ah or *temporary marriage disallowed*. A marriage for a fixed period was recognized before Islām. It went under the name of *mut'ah*, meaning *profiting by* or *enjoying a thing*. Besides the temporary marriage, four kinds of union of man and woman were recognized by the pre-Islamic Arabs. The first of these was the permanent marriage tie which, in a modified form, was recognized by Islām. The other

three only legalized adultery in one form or another, and Islām did not recognize any of them, nor was any such practice resorted to by any Muslim at any time. Temporary marriage stood on a different basis, and reform in this matter was brought about gradually. Recently the idea has appealed to the Western mind which is seeking in temporary marriage, by way of experiment, a remedy for the rigidity of the Christian marriage laws. Islām, however, discarded the idea of temporariness in marriage, because it opens the way to loose relations of the sexes, and entails no responsibility of any kind on the father, for the care and bringing up of the children who, with the mother, might thus be left quite destitute. Occasions may arise for the dissolution of a permanent marriage, and will continue to arise so long as human nature is what it is, but the remedy for this is divorce and not temporary marriage. The moment the idea of temporariness is introduced into marriage, it loses its whole sanctity, and all responsibilities which are consequent on it are thrown off. According to the Holy Qur'ān, the union of the two sexes is only lawful because of the acceptance of the responsibilities consequent thereupon, and the idea of a temporary marriage is not in accordance with it. A union of the sexes with the acceptance of the consequent responsibilities is called *iḥṣān* (marriage), and without such acceptance it is called *satāḥ* (fornication)

and the Holy Qur'ān allows the first while it forbids the second (4 : 24).

Prohibitions to marry. The Holy Qur'ān forbids certain marriage relations :

“Forbidden to you are your mothers and your daughters and your sisters and your paternal aunts and your maternal aunts and brothers' daughters and sisters' daughters, and your mothers that have suckled you and your foster-sisters, and mothers of your wives, and your step-daughters who are in your guardianship, born of your wives to whom you have gone in—but if you have not gone in to them, there is no blame on you—and the wives of your sons who are of your own loins, and that you should have two sisters together, except what has already passed” (4 : 23).

It will be seen that these prohibitions arise either from consanguinity, as in the case of mother, daughter, sister, brother's daughter, sister's daughter, father's sister and mother's sister ; or from fosterage, such as in the case of foster-mother and foster-sister; or from affinity, such as in the case of wife's mother, wife's daughter and son's wife.

Marriage relations between Muslims and non-Muslims. The only other ground on which marriage is prohibited in the Holy Qur'ān is *shirk* (idolatry). “And marry not the idolatresses until they believe, and certainly a

believing maid is better than an idolatress even though she should please you; and give not (believing women) in marriage to idolaters until they believe, and certainly a believing slave is better than an idolater even though he should please you" (2 : 221). Along with this, it is necessary to read another verse which allows marriage with women who profess one of the revealed religions: "This day all good things are allowed to you, and the food of those who have been given the Book is lawful for you and your food is lawful for them; and the chaste from among the believing women and the chaste from among those who have been given the Book before you (are lawful for you) when you have given them their dowries, taking them in marriage, not fornicating nor taking them for paramours in secret" (5 : 5). Thus it will be seen that while there is a clear prohibition to marry idolaters or idolatresses, there is an express permission to marry women who profess a revealed religion (*Ahl al-Kitāb*). And as the Holy Qur'ān states that revelation was granted to all nations of the world (35 : 24), it is lawful for a Muslim to marry a woman belonging to any other nation of the world that follows a revealed religion. The Christians, the Jews, the Parsis, the Buddhists and the Hindūs all fall within this category.

It may be noted here that while there is an express mention of a Muslim man marrying a non-Muslim woman who professes a revealed

religion, there is no mention of the legality or illegality of a marriage between a Muslim woman and a non-Muslim man. The mere fact, however, that the Holy Qur'ān speaks of the one and not of the other is sufficient to show that marriage between a Muslim woman and a non-Muslim man is not allowed.

A marriage which is otherwise legal may be illegal because it does not fulfil a requirement of the law. For instance, the divorced woman and the widow have both to observe the *'iddah*, a waiting period, and marriage during this period is illegal. A woman who has been divorced thrice is not allowed to remarry her first husband. As the pregnant woman is required to observe *'iddah* till delivery (65 : 4), marriage during pregnancy is not allowed.

FORM AND VALIDITY OF MARRIAGE

Preliminaries of marriage. The very fact that marriage is looked upon as a contract in Islām, shows that before marriage both parties must satisfy themselves that each will have a desirable partner for life in the other. The Holy Qur'ān lays down expressly: "Marry such women as seem good to you (*mā ṭāba la-kum*)" (4 : 3). The Holy Prophet is reported to have given an injunction to this effect: "When one of you makes a proposal of marriage to a woman, then if he can, he should look at what attracts him to marry her."

Hadīth cites the case of a man who came to the Prophet and said that he was marrying a woman from among the Anṣār, and the Holy Prophet said to him, Hast thou looked at her? On his replying in the negative, the Prophet said: Then go and look at her. In another hadīth, it is reported that when Mughīrah ibn Shu'bah made a proposal of marriage to a woman, the Holy Prophet asked him if he had seen her; and on his replying in the negative, he enjoined him to see her, because "it was likely to bring about greater love and concord between them." The jurists are almost all agreed upon the *istiḥbāb* (approval) of looking at the woman whom one intends to marry. And since the contract is effected by the consent of two parties, the man and the woman, and one of them is expressly told to satisfy himself about the other by looking at her, it would seem that the woman has the same right to satisfy herself before giving her assent. The consent of both the man and the woman is an essential of marriage, and the Holy Qur'ān lays down expressly that the two must agree: "Prevent them not from marrying their husbands, when they agree among themselves in a lawful manner" (2 : 232). In this respect, however, much will depend upon the customs prevailing among a people, and satisfaction may be obtained either personally or through female relatives, as is generally the way in the East.

Proposal of marriage. When a man, who

wants to marry, has satisfied himself about a woman, he makes a proposal of marriage either to the woman in question or to her parents or guardians. When a man has made a proposal of marriage to a woman, others are forbidden to propose to the same woman, till the first suitor has given up the matter, or has been rejected. A woman may also make a proposal of marriage to a man or a man may propose the marriage of his daughter or sister to a man; generally, however, it is the man who makes the proposal. When assent has been given to the proposal of marriage, it becomes an engagement, and usually a certain time is allowed to pass before the marriage is performed. This period allows the parties to study each other further, so that if there be anything undesirable in the union, the engagement may be broken off by either party. It is only after the marriage has been performed that the two parties are bound to each other.

Age of marriage. No particular age has been specified for marriage in the Islamic law; in fact, with the difference of climatic conditions, there would be a difference as to the marriageable age in different countries. But the Holy Qur'ān does speak of an age of marriage which it identifies with the age of majority: "And test the orphans until they attain the age of marriage" (4: 6). The age of marriage and the age of maturity of intellect are identified with full age or the age of

majority in this verse. And as marriage is a contract the assent to which depends on personal liking, and since this function cannot be performed by any one but the party who makes the contract, it is clear that the age of marriage is the age of majority, when a person is capable of exercising his choice in matters of sexual liking or disliking. A man or a woman who has not attained to puberty is unable to exercise his or her choice in sexual matters and unable to decide whether he or she will like or dislike a certain woman or man as wife or husband. It is true that Fiqh, following the general law of contracts, recognizes, in the case of a marriage contract, the legality of the consent of a guardian on behalf of his ward, but there is no case on record showing that the marriage of a minor through his or her guardian was allowed by the Holy Prophet after details of the law were revealed to him at Madīnah.

Essentials in the contract. Marriage is called a *mīthāq* (covenant) in the Holy Qur'ān, a covenant between the husband and the wife: "And how can you take it (*i.e.* the dowry) when one of you has already gone in to the other and they have made with you a firm covenant?" (4: 21). The marriage contract is entered into by mutual consent expressed by the two parties, the husband and the wife, in the presence of witnesses, and that is the only essential. This mutual consent is techni-

cally called *ījāb* (affirmation or declaration), and *qubūl* (acceptance or consent). The marriage is made complete by the expression of mutual consent in the presence of witnesses, but it was the practice of the Prophet to deliver a *khutbah* (sermon), before the declaration of marriage was made, to give it the character of a sacred contract. A dowry (*mahr*) must also be settled on the woman, according to the Holy Qur'ān, but the marriage is valid even if *mahr* is not mentioned, or even if the amount of *mahr* is not agreed upon. The words of mutual consent may be addressed to each other by the two parties, but generally it is the man who delivers the *khutbah* who puts the proposal before each party, the latter giving consent to the proposal.

Mahr or the nuptial gift. The second most important thing in marriage is the *mahr* or dowry. The word *ajr* or *ṣaduqah* is used in the Holy Qur'ān, and the word *mahr* in Hadīth, to signify dowry, or the nuptial gift. According to the Holy Qur'ān, the *mahr* is given as a free gift by the husband to the wife, at the time of contracting the marriage: "And give women their dowries as a free gift" (4: 4). The payment of the *mahr* on the part of the husband is an admission of the independence of the wife, for she becomes the owner of property immediately on her marriage, though before it she may not have owned anything. The settling of a

dowry on the woman at the marriage is obligatory: "And lawful for you are all women besides these, provided that you seek them with your property, taking them in marriage, not committing fornication. Then as to those whom you profit by (by marrying) give them their dowries as appointed" (4: 24).

It would appear from this that the Holy Qur'ān renders the payment of dowry necessary at the time of marriage. Hadīth leads to the same conclusion. The payment of the dowry was necessary even though it might be a very small sum. In exceptional cases, marriage is legal even though the amount of mahr has not been specified, but it is obligatory and must be paid afterwards. The amount of dowry in this case would depend upon the circumstances of the husband and the position of the wife. The Holy Qur'ān makes this clear by requiring the provision for wife to depend upon the circumstances of the husband, "the wealthy according to his means, and the straitened in circumstances according to his means" (2: 236).

No limits have been placed on the amount of mahr. The words used in the Holy Qur'ān show that any amount of dowry may be settled on the wife: "And you have given one of them a heap of gold" (4: 20). Thus no maximum or minimum amount has been laid down. The Holy Prophet paid varying amounts to his wives; in one case when the Negus paid the

amount to Umm Ḥabībah (Abū Sufyān's daughter), who was then in Abyssinia, where the marriage took place, it being four thousand dirhams, while in the case of the other wives it was generally five hundred dirhams. The mahr of his daughter Fāṭimah was four hundred dirhams. The lowest amount mentioned in Ḥadīth is a ring of iron, and a man who could not procure even that was told to teach the Holy Qur'ān to his wife. In some ḥadīth two handfuls of meal or dates are also mentioned. The amount of the dowry may, however, be increased or decreased by the mutual consent of husband and wife, at any time after marriage; and this is plainly laid down in the Holy Qur'ān: 'Then as to those whom you profit by (by marrying), give them their dowries as appointed; and there is no blame on you about what you mutually agree after what is appointed of dowry' (4: 24).

Publicity of the marriage. Where the Holy Qur'ān speaks of marriage, it at the same time excludes clandestine sexual relations, "taking them in marriage, not fornicating, nor taking them for paramours in secret" (4: 24, 25; 5: 5). Thus the one fact distinguishing marriage from fornication and clandestine relations, is its publicity. The mutual consent of two parties to live as husband and wife does not constitute a marriage unless that consent is expressed

publicly and in the presence of witnesses. An essential feature of the Islamic marriage is, therefore, the publication of the news by gathering together, preferably in a public place. There are ḥadīth showing that marriage must be made publicly known, even with the beat of drums. With the same object in view music is allowed at marriage gatherings.

The khutbah. The delivery of a sermon before the announcement of marriage is another factor which helps the publicity of the marriage, and, at the same time, serves the double purpose of giving it a sacred character and making it an occasion for the education of the community. When the friends and relatives of both parties have assembled, a sermon is delivered by someone from among the party, or by the Imām, before announcing the marriage itself. The sermon begins with *tashahhud* which runs thus :

Al-ḥamdu li-llāhi naḥma-
du-hū wa nasta'inu-hū
wa nastaghfiru-hū wa
na'ūdhu bi-llāhi min
shurūri anfusi-nā wa
min sayyi'āti a'māli-nā,
man yahdi-hi-llāhu fa-lā
mudzilla la-hū, wa man
yudzil fa-lā ḥādiya la-
hū, wa ashhadu an lā
ilāha ill-Allāhu wa ash-
hadu anna Muḥammad-

All praise is due to Allāh ;
we praise Him and we
beseech Him for help
and we ask for His
protection and we seek
refuge in Allāh from the
mischiefs of our souls,
and from the evil of
our deeds ; whomsoever
Allāh guides, there is
none who can lead him
astray and whom Allāh

an 'abdu-hū wa rasūlu-
hū.

leaves in error, there is none to guide him; and I bear witness that there is no god but Allah and that Muḥammad is His servant and His Messenger.

After the *tashahhud*, the Holy Prophet would take as his text the following three verses of the Holy Qur'an:

Yā ayyuha-lladhīna āmanu-ttaqu-llāha ḥ a q q a tuqāti-hī wa lā tamūtunna illā wa antum Muslimūn (3 : 101).

O you who believe! Be careful of your duty to Allāh with the care which is due to Him and die not unless you are Muslims.

Yā-ayyuha-n-nāsu-t-taqū R a b b a-k u m u-lladhī khalaqa-kum min nafs-in wahidat-in wa khalaqa min-hā zauja-hā wa baththa min-humā rijāl-an kathīr-an wa nisā'a ; w a-t t a q u-llāha-lladhī tasā'alūna bi-hī wa-l-arḥām ; inn-Allāha kāna 'alai-kum raqībā (4 : 1).

O people! Be careful of your duty to your Lord, Who created you from a single being and of the same created its mate, and spread from these too many men and women; and be careful of your duty to Allāh, by Whom you demand one of another your rights and to the ties of relationship; surely Allāh watches over you.

Y ā-a y y u h a-lladhīna āmanu-ttaqu-llāha wa qūlū qaul-an sadid-an yusliḥ la-kum a'māla-kum wa yaghfir la-kum

O you who believe! Be careful of your duty to Allāh and speak the right word; He would put your deeds into a right

dhunūba-kum wa man
yuṭī'i-llāha wa rasūla-hū
fa-qad fāza fauz-an
'azimā (33: 70, 71).

state for you, and forgive
you your faults; and
whoever obeys Allāh
and His Messenger, he
indeed achieves a mighty
success.

The sermon, of course, must expatiate on these verses and explain to the audience the mutual rights and duties of husband and wife. At the conclusion of the sermon is made the announcement that such and such a man and such and such a woman have accepted each other as husband and wife, and the dowry is also announced at the time. The man and the woman are then asked if they accept this new relationship, and, on the reply being given in the affirmative, the marriage ceremony proper is concluded. After the expression of consent by both parties, the whole audience raises its hands and prays for the blessings of God on the newly wedded couple. Generally some dates or sweets are distributed before the audience disperses. A consummation of the marriage is followed by a feast called *walīmah*.

Guardianship in marriage. The essence of marriage being then, according to Islām, the consent of two parties, after they have satisfied themselves about each other, to live together as husband and wife permanently and accepting their respective responsibilities and obligations in the married state, it follows from its very nature, that the marriage contract

requires that the contracting parties should have attained puberty and the age of discretion. The Holy Qur'ān has already been quoted on this point, and Fiqh also recognizes this principle. Thus, according to the *Fatāwā 'Alamgīrī*, "among the conditions which are requisite for the validity of a contract of marriage are understanding (*'aql*), puberty (*bulūghah*) and freedom (*hurriyyah*) in the contracting parties." A distinction is, however, made between a minor who is possessed of understanding and one who is not so possessed, and while a marriage contracted by the latter is recognized as a mere nullity, one contracted by the former can have its invalidity removed by the consent of his guardian. As regards those who have attained majority, there is no difference of opinion in the case of the man, who can give his consent to marriage without the approval of a guardian, but some difference exists in the case of the woman, whether she can give such consent without the approval of her father or guardian. The Hanafī view of the law of Islām answers this question in the affirmative: "The marriage contract of a free woman who has reached the age of majority, and is possessed of understanding, is complete with her own consent, whether she is a virgin or has been married before, though it may not have been confirmed by her guardian." The Shī'ah view is exactly the same: "In the

marriage of a discreet female (*rāshidah*, or one who is adult), no guardian is required." Both Mālik and Shāfi'ī hold that the consent of the guardian is essential. Bukhārī inclines to the same view as that of Mālik and Shāfi'ī, the heading of one of his chapters being "Who says that there is no marriage except with the consent of a guardian"? though he adds another, "The father or any other guardian cannot give in marriage a virgin or one who has been married before without her consent." At the same time, he extends the meaning of the word guardian, saying that "the king is a guardian," and cites under this heading the case of a woman who came to the Holy Prophet and offered herself for marriage, and she was then and there married to a person who could not even settle any dowry on her on account of his poverty. It does not appear whether or not she had a natural guardian (father or other near relative). Some Quranic verses are quoted which, however, do not speak of a guardian in express words. Thus: "And when you divorce women and they end their term of waiting, prevent them not from marrying their husbands when they agree among themselves in a lawful manner" (2:232). From this it is probably concluded that the injunction against preventing women from marrying husbands who have divorced them presupposes a right of the guardian.

Conditions imposed at the time of marriage.

It is lawful to impose and accept conditions, which are not illegal, at the time of marriage, and the parties are bound by such conditions. The Holy Prophet is reported to have said : "The best entitled to fulfilment of all conditions that you may fulfil, are the conditions by which sexual union is legalized." Illegal conditions are those which are opposed to the law of Islām or to public morality, for instance, that the wife shall have the right to frequent immoral places or that she shall not be entitled to any dower or maintenance or that the husband and the wife shall not inherit from each other. If such a condition be imposed, the condition is void while the marriage is valid. Examples of legal conditions are that the wife shall not be compelled to leave her *dār* (conjugal domicile), that the husband shall not contract a second marriage during the existence of the first, that the husband and the wife or one of them shall live in a specified place, that a certain portion of the dower shall be paid immediately and the remainder on death or divorce, that the husband shall pay the wife a certain amount by way of maintenance, that he shall not prevent her from receiving visits from her relatives, that the wife shall have the right to divorce for a specified reason or for any reasonable cause, and so on.

Polygamy. As a rule, Islām recognizes only

the union of one man and one woman as a valid form of marriage. Under exceptional circumstances it allows the man more wives than one, but does not allow the woman more husbands than one. Thus while a married woman cannot contract a valid marriage, a married man can do it. There is no difficulty in understanding this differentiation, if the natural duties of man and woman in the preservation and upbringing of the human species are kept in view. Nature has so divided the duties of man and woman, in this respect, that while one man can raise children from more wives than one, one woman can have children only from one husband. Therefore while polygamy may at times be a help in the welfare of society and the preservation of the human race, polyandry has no conceivable use for man.

Polygamy is an exception. In the first place it must be borne in mind that polygamy is allowed in Islām only as an exception. It is expressly so stated in the Holy Qur'ān : " And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two and three and four ; but if you fear that you will not do justice (between them), then (marry) only one " (4 : 3). This is the only passage in the Holy Qur'ān that speaks of polygamy, and it will be seen that it does not enjoin polygamy ; it only permits it and that, too, conditionally. Before we

consider the significance of this verse, it must be understood clearly that polygamy is here allowed only when there are orphans to be dealt with, and it is feared that they will not be dealt with justly. This condition relates more to the welfare of society than to the needs of the individual.

The meaning of this verse is further explained by 4:127: "And they ask thee a decision about women. Say, Allāh makes known to you His decision concerning them, and that which is recited to you in the Book, concerning orphans of the women to whom you give not what is appointed for them—and you are not inclined to marry them—nor to the weak among children, and that you should deal towards orphans with equity." The reference to "that which is recited in the Book" is admittedly to 4:3. And the reference in "whom you give not what is appointed for them.....nor to the weak among children" is to the Arab custom, according to which women and minor children did not get a share of inheritance, the recognized usage being that only he could inherit who could ride on the back of a horse and take the field against the enemy. The position was therefore this, that when a widow was left with orphans to bring up, she and her children would get no share of the inheritance, nor were people inclined to marry widows who had children. In 4:3, the Holy Qur'an has therefore

enjoined that if you cannot be otherwise just to orphans, marry the mothers of such orphans so that you may thus be interested in their welfare, and for this purpose you are allowed to contract other marriages.

A consideration of the historical circumstances of the time when this chapter was revealed corroborates this conclusion. It was a time when the Muslims were compelled to carry on incessant war against an enemy bent upon their extirpation. The bread-winners had all to take the field against the enemy, and many had been lost in the unequal battles that were being fought by the small Muslim band against overwhelming forces. Women had lost their affectionate husbands and young children their loving fathers, and these widows and orphans had to be provided for. If they had been left to the mercy of circumstances, they would have perished, and the community would have been weakened to such an extent that it would have been impossible to maintain the struggle for life. It was under these circumstances that the fourth chapter was revealed, allowing the taking of more wives than one, so that the widows and orphans may find a shelter. If you fear, says the revelation, that you will not be able to do justice to orphans, marry women (the mothers of the orphans) up to four, but only on condition that you are just to all of them. That by *women* here are meant *the mothers of orphans* is made

clear by v. 127, as already shown.

It might be said that other arrangements could be made for the maintenance of widows and orphans. But a home-life could not be given to them in any other manner, and home-life is the real source whence all those good qualities of love and affection spring which are the greatest asset of social life and civilization. Islam bases its civilization on home-life; and under exceptional circumstances, where monogamy fails to provide a home for widows and orphans, it allows polygamy to extend to them that advantage. Even if it be half a home that the women and children find in a polygamous family, it is better than no home at all. Moreover, a community the ranks of whose fighting men were daily dwindling stood in urgent need of increasing its numbers by all possible means, and hence also it was necessary to provide a home for the widows so that they might be helpful in strengthening the numerical position of the community. The moral aspect of the question is not the least important. The war had decimated the male population and the number of women exceeded that of men. This excess, if not provided with a home, would have led to moral depravity, which is the greatest danger to a civilization like that of Islam, which is based on morality.

The question of war is not peculiar to one age or one country. It is a question which affects the whole of humanity for all ages to

come. War must always be a source of decrease in the number of males, bringing about a corresponding increase in the number of females, and a solution will have to be sought by all well-wishers of humanity for the problem of the excess of women over men. Monogamy is undoubtedly a right rule of life under normal conditions, but when abnormal conditions are brought about by the excess of females over males, monogamy fails, and it is only through a limited polygamy that this difficulty can be solved. Europe is to-day confronted with that question, independently of war, and war only aggravates its seriousness. Professions may be opened up for women to enable them to earn bread, and Islām has never closed the door of any profession against women. But the crux of the question is, not the provision of bread but the provision of a home-life, and that question cannot be solved without polygamy. It may be added here that polygamy in Islām is, both in theory and in practice, an exception, not a rule, and as an exception it is a remedy for many of the evils of modern civilization. It is not only the preponderance of females over males that necessitates polygamy in certain cases, but there is a variety of other circumstances which require polygamy to be adopted under exceptional circumstances, not only for the moral but also the physical welfare of society. Prostitution, which is on the increase

with the advancement of civilization, and which is eating into it like a canker, with its concomitant increase of bastardy, is practically unknown to countries where polygamy is allowed as a remedial measure. It may be further stated that the institution of polygamy, which was allowed by Islām only as a remedy, has largely been abused by sensual people, but then there are people in every society who would abuse any institution, however necessary it may be to the right growth of human society. In countries where polygamy is not allowed, the sensuality of man has invented a hundred other ways of giving vent to his carnal passions, and these are a far greater curse to society than the abuse of polygamy. Indeed that abuse can be easily remedied by the state by placing legal limitations upon its practice, while the state is quite helpless against the evils which result from its entire rejection.

RIGHTS AND OBLIGATIONS OF HUSBAND AND WIFE

Mutual relation of husband and wife. As already stated, the mutual relation of husband and wife is described in the Holy Qur'ān as one of closest union: "He it is Who created you from a single being, and of the same did He make his mate, that he might find comfort in her" (7: 189). The same idea is elsewhere very beautifully described in different words: "They (your wives) are an apparel for you and

you are an apparel for them" (2 : 187). The closest union of two souls could not be described more aptly. Yet Islām is a practical religion and it does not shut its eyes to the hard realities of life. It describes the home as a unit in the greater organization of a nation as a whole, and just as in the vaster national organization there is somebody to exercise the final authority in certain cases, so the smaller organization of the home cannot be maintained without a similar arrangement. Hence the husband is first spoken of as being "a ruler over the people of the house " and the wife is then described as "a ruler over the house of her husband and his children." The home is thus a kingdom in miniature, where authority is exercised by both the husband and the wife. But unless one of them is given a higher authority, there would be chaos in this kingdom. The reason for giving the higher authority to the male parent is thus stated in the Holy Qur'ān : "Men are the maintainers of women because Allāh has made some of them to excel others, and because they spend out of their property " (4 : 34). It means that the husband provides maintenance for the wife, and also that he has final charge of the affairs of the home, thus exercising authority over the wife when there is need for it. It is the man who can be entrusted with the maintenance of the family, and therefore it is he who must hold the higher authority.

A division of work. The functions of the husband and the wife are quite distinct, and each is entrusted with the functions which are best suited for his or her nature. The Holy Qur'ān says that God has made man and woman to excel each other in certain respects. The man excels the woman in constitution and physique, which is capable of bearing greater hardships and facing greater dangers than the physique of woman. On the other hand, the woman excels the man in the qualities of love and affection. Nature, for her own purpose of helping in the growth of creation, has endowed the female among men, as well as the lower animals, with the quality of love to a much higher degree than the male. Hence there is a natural division as between man and woman of the main work which is to be carried on for the progress of humanity. Man is suited to face the hard struggles of life on account of his stronger physique ; woman is suited to bring up the children because of the preponderance of the quality of love in her. The duty of the maintenance of the family has therefore been entrusted to the man, and the duty of bringing up the children to the woman. And each is vested with authority suited to the function with which he or she is entrusted. Modern civilization is ultimately coming round to the opinion that the true progress of humanity demands a division of work, and that while the duty of bread-winning

must be generally left to man, the duty of the management of the home and the bringing up of the children belongs to the woman. Hence it is that men are spoken of as being the maintainers of women, and women as rulers over the household and the children.

Women not excluded from any activity in the sphere of life. This division of work is only the general rule ; it does not mean that woman has entirely been excluded from other kinds of activity. A study of the Hadith literature shows that, notwithstanding her rightful position in the home, as the bringer up of children and manager of the household, woman took interest in all the national activities of the Muslim community. The care of the children did not prevent her from repairing to the mosque to join the congregational prayers, nor was this care an obstacle in her way to join the soldiers in the field of battle, to perform a large number of duties, such as the carrying of provisions, taking care of the sick and the wounded, removing the wounded and the slain from the battle-field, or taking part in actual fighting when necessary. One of the Holy Prophet's wives, Zainab, used to prepare hides and to devote the proceeds of the sale to charitable work. Women also helped their husbands in the labour of the field, served the guests at feasts and carried on business ; they could sell to and purchase from men, and men could sell to and purchase from them. A woman

was appointed by the Caliph 'Umar as superintendent of the market of Madīnah. But these were exceptions. The proper sphere of the woman was the house and care of the children.

Rights of husband and wife. The family concern must be kept going by husband and wife in mutual co-operation. The husband is mainly required to earn for the maintenance of the family, and the wife is responsible for the management of the household and the bringing up of the children. The rights of each against the other are therefore centred in these two points. The husband is bound to maintain the wife according to his means, as the Holy Qur'ān says: "Let him who has abundance spend out of his abundance, and whoever has his means of subsistence straitened to him, let him spend out of that which Allah has given him; Allah does not lay on any soul a burden except so far as He has granted it the means" (65:7). He must also provide for her a lodging: "Lodge them where you lodge according to your means" (65:6). The wife is bound to keep company with her husband, to preserve the husband's property from loss or waste, and to refrain from doing anything which should disturb the peace of the family. She is required not to admit any one into the house whom the husband does not like, and not to incur expenditure of which the husband disapproves. She is not bound to render personal service such as the cooking of food, but the respective

duties of the husband and wife are such that each must always be ready to help the other. The wife must help the husband even in the field of labour if she can do it, and the husband must help the wife in the household duties. Of the Holy Prophet himself, it is related that he used to help his wives in many small works of the household, such as the milking of the goats, patching his clothes, mending of shoes, cleansing the utensils and so on.

Stress laid on kind treatment towards wife. The Holy Qur'ān lays the greatest possible stress on kindly and good treatment towards the wife: "Keep them in good fellowship" and "treat them kindly" is the oft-recurring advice of the Holy Qur'ān (2 : 229, 231 ; 4 : 19, etc.). So much so that kindness is recommended even when a man dislikes his wife, for "it may be that you dislike a thing while Allah has placed abundant good in it" (4 : 19). The Holy Prophet laid equally great stress upon good treatment of a wife. "The most excellent of you," he is reported to have said, "is he who is best in his treatment of his wife." "Accept my advice in the matter of doing good to women," is another ḥadīth. In his famous address at the Farewell Pilgrimage, he again laid particular stress on the good treatment of women: "O my people! You have certain rights over your wives and so have your wives over you... They are the trust of Allah in your hands. So you must treat them with all kindness."

DIVORCE

Marriage and divorce. Though marriage, according to Islām, is only a civil contract, yet the rights and responsibilities consequent upon it are of such importance to the welfare of humanity, that a high degree of sanctity is attached to it. But in spite of the sacredness of the character of the marriage-tie, Islām recognizes the necessity, in exceptional circumstances, of keeping the way open for its dissolution. With the exception, perhaps, of the Hindū law, the necessity of divorce has been recognized by all people. The right of divorce according to the Jewish law belongs to the husband who can exercise it at his will. The Christian law recognizes the right of divorce only when there is faithlessness on the part of either of the parties, but the divorced parties are precluded from marrying again. According to Hindū law, marriage once performed can never be dissolved. Islām effected several reforms in divorce. It restricted the husband's right to divorce while recognizing the wife's right to it.

Divorce is permitted under exceptional circumstances. The Arabic word for divorce is *ṭalāq* which carries the literal significance of *freeing or the undoing of a knot*. Both from the Holy Qur'ān and the Ḥadīth it appears that, though divorce was permitted, yet the right could be exercised only under exceptional

circumstances, The Holy Prophet is reported to have said : "Never did Allāh allow anything more hateful to Him than divorce." According to a report of Ibn 'Umar, he said : "With Allāh the most detestable of all things permitted is divorce". Elsewhere divorce is thus discouraged : "If you hate them (*i.e.*, your wives), it may be that you dislike a thing while Allah has placed abundant good in it" (4 : 19). Remedies are also suggested to avoid divorce so long as possible : "And if you fear a breach between the two (*i.e.*, the husband and the wife), then appoint a judge from his people and a judge from her people ; if they both desire agreement, Allah will effect harmony between them" (4 : 35). It was due to such teachings of the Holy Qur'ān that the Holy Prophet declared divorce to be the most hateful of all things permitted. And it is due to this that in spite of the facility with which it may be effected, divorce takes place only rarely among the Muslims, as compared with the large number of divorces in Christian countries. The mentality of the Muslim is to face the difficulties of the married life along with its comforts, and to avoid the disruption of the family relations as long as possible, turning to divorce only as a last resort.

Principle of divorce. From what has been said above, it is clear that not only must there be good cause for divorce, but that all means to effect reconciliation must have been exhausted

before resort is had to this extreme measure. The impression that a Muslim husband may put away his wife at his mere caprice, is a grave distortion of the Islamic institution of divorce. But though the Holy Qur'ān refers to several causes when divorce may become necessary, it does not enumerate all of them, nor does it strictly limit them to specified cases. In fact, if the different nations of Europe and America, who profess the same religion, are at the same level of civilization and the same stage of advancement, and have an affinity of feeling on most social and moral questions, cannot agree as to the proper causes of divorce, how could a universal religion like Islām, which was meant for all ages and all countries, for people in the lowest grade of civilization as well as those at the top, limit those causes which must vary with changing conditions of humanity and society?

The principle of divorce spoken of in the Holy Qur'ān, and which in fact includes to a greater or less extent all causes, is the decision no longer to live together as husband and wife. In fact, marriage itself is nothing but an agreement to live together as husband and wife, and when either of the parties finds him or herself unable to agree to such a life, divorce must follow. It is not, of course, meant that every disagreement between them would lead to divorce; it is only the disagreement to live any more as husband and wife. In the Holy

Qur'ān such disagreement is called *shiqāq* (from *shaqq* meaning *breaking into two*). But not even the *shiqāq* entitles either party to a divorce, unless all possibilities of agreement have been exhausted. The principle of divorce is, therefore, thus described in the Holy Qur'ān : "And if you fear a breach between the two, then appoint a judge from his people and a judge from her people ; if they both desire agreement, Allāh will effect harmony between them ; surely Allāh is Knowing, Aware" (4:35). And further on, it is added : "And if they separate, Allāh will render them both free from want out of His ampleness, and Allah is Ample-giving, Wise" (4 : 130).

This verse gives us not only the principle of divorce, which is *shiqāq* or a disagreement to live together as husband and wife, but also the process to be adopted when a rupture of marital relations is feared. The two sexes are here placed on a level of perfect equality. A "breach between the two" would imply that either the husband or the wife wants to break off the marriage agreement, and hence either may claim a divorce when the parties can no longer pull on in agreement. In the process to be adopted, both husband and wife are to be represented on a status of equality ; a judge has to be appointed from his people and another from her people. The two are told to try to remove the differences and reconcile the parties to each other. If agree-

ment cannot be brought about, a divorce will follow.

It will be seen that the principle advanced here in the matter of divorce is an all-inclusive one. All causes of divorce are subject to the condition that one of the parties cannot pull on with the other. For instance, the husband is impotent, or one of the parties has a disease which makes him or her unfit for sexual relations. In such cases justice would demand a divorce, but only when the party entitled to it, wants it. If both are willing to live in marital agreement, in spite of the defects in one of them, no power on earth can effect a divorce; but if the aggrieved party finds that she or he is unable to live in marital agreement with the other, it would be a case of *shiqāq* or breach of the marriage agreement. Similarly, if the husband is imprisoned for life, or for a long period, or if he is absent and no news can be had of him, or if he is maimed for life and is unable to provide maintenance for his wife, it will be a case of *shiqāq* if the wife wants a divorce; but if she does not, the marriage will remain. In case the husband is aggrieved in a similar manner, he has the option of taking another wife.

The *shiqāq* or breach of the marriage agreement may also arise from the conduct of either party; for instance, if either of them misconducts himself or herself, or either of them is consistently cruel to the other, or, as may

sometimes happen, there is incompatibility of temperament to such an extent that they cannot live together in marital agreement. The *shiqāq* in these cases is more express, but still it will depend upon the parties whether they can pull on or not. Divorce must always follow when one of the parties finds it impossible to continue the marriage agreement and is compelled to break it off. At first sight, it may look like giving too much latitude to the parties to allow them to end the marriage contract thus, even if there is no reason except incompatibility of temperament, but this much is certain that if there is such disagreement that the husband and the wife cannot pull together, it is better for themselves, for their offspring and for society in general that they should be separated than that they should be compelled to live together. No home is worth the name wherein instead of peace there is wrangling ; and marriage is meaningless if there is no spark of love left between the husband and the wife. It is an error to suppose that such latitude tends to destroy the stability of marriage, because marriage is entered into as a permanent and sacred relation based on love between a man and a woman, and divorce is only a remedy when marriage fails to fulfil its object.

Wife's right of divorce. It will have been seen that the Holy Qur'ān places the two parties on a perfect level of equality in the

matter of divorce. Ḥadīth makes it clearer still. The wife of Thābit ibn Qais is reported to have come to the Holy Prophet and said: "O Messenger of Allāh! I do not find fault in Thābit ibn Qais regarding his morals or faith but I cannot pull on with him." The Holy Prophet said: "Wilt thou return to him his orchard (which he had settled upon her as a dowry)?" On receiving a reply in the affirmative, the Holy Prophet sent for Thābit, and ordered him to take back his orchard and divorce his wife. This is sufficient to show that the wife had the right to claim divorce on those very grounds on which the husband could divorce his wife.

The right of the wife to claim a divorce is not only recognized by the Holy Qur'ān and Ḥadīth but also in Fiqh. The technical term for the wife's right to divorce by returning her dowry is called khul', and it is based on the ḥadīth already quoted, and the following verse of the Holy Qur'ān: "Divorce may be pronounced twice; then keep them in good fellowship or let them go with kindness; and it is not lawful for you to take any part of what you have given them unless both fear that they cannot keep within the limits of Allāh. Then if you fear that they cannot keep within the limits of Allāh, there is no blame on them for what she gives up to become free thereby" (2: 229). By keeping "within the limits of Allāh" here is clearly meant the fulfilment of

the object of marriage or performance of the duties imposed by conjugal relationship. The dowry is thus a check on the party who wants the divorce ; if the husband wants to divorce the wife, the wife shall have the dowry ; if the wife wants the divorce, the husband is entitled to the dowry. But it is the judges spoken of in 4 : 35, and referred to here in the words " if you fear that they cannot keep within the limits of Allāh," that shall decide whether the husband or the wife is responsible for the breach and which of them is entitled to the dowry.

The wife is also entitled to a divorce if the husband is missing, or *mafqūd al-khabar*, which means that he has disappeared and cannot be communicated with, because though there is no *shiqāq* in this case, yet the husband is unable to fulfil his marital obligations. There is no definite statement in the Holy Qur'ān, or Ḥadīth, to show how long the wife should wait in such a case, but four years waiting is required by Imām Mālik. The view of Imām Aḥmad ibn Ḥanbal and the Shi'a view agree with Mālik. This is a reasonable view. Bukhārī has a chapter on the *Mafqūd*, in which there is no ḥadīth of the Holy Prophet relating to the subject proper, but the view of Ibn al-Musayyab is quoted, according to which when a person becomes *mafqūd* in the course of fighting, his wife shall wait for a year ; and a report is added relating to Ibn Mas'ūd who

searched for the husband of a maid-servant of his for one year and then treated him as *mafqūd*, and this was not the case of a man lost in fighting. Under present conditions when communication is so easy, one year would be a sufficient period of waiting for the *mafqūd*.

Husband's right of pronouncement of divorce.

Though the Holy Qur'ān speaks of the divorce being pronounced by the husband, yet a limitation is placed upon the exercise of this right. The following procedure is laid down in clear words: "And if you fear a breach between the two, then appoint a judge from his people and a judge from her people; if they desire agreement, Allāh will effect harmony between them" (4: 35). "And if they separate, Allāh will render them both free from want out of His ampleness" (4: 130). It will be seen that in all disputes between the husband and the wife, which it is feared will lead to a breach, two judges are to be appointed from the respective people of the two parties. These judges are required first to try to reconcile the parties to each other, failing which divorce is to be effected. Therefore, though it is the husband who pronounces the divorce, he is as much bound by the decision of the judges as is the wife. This shows that the husband cannot repudiate the marriage at will. The case must first be referred to two judges and their decision is binding. The Caliph 'Alī is reported to have told a husband, who thought he had

the sole right to divorce, that he would have to abide by the judgement of the judges appointed under this verse. The Holy Prophet is reported to have interfered and disallowed a divorce pronounced by a husband, restoring the marital relation. It was no doubt a matter of procedure, but it shows that the authority constituted by law has the right to interfere in matters of divorce. The only question is as to the procedure to be adopted when the Muslims are living under non-Muslim rule. In such a case, if no Qāḍzī has been appointed by the authorities, the appointment of the judges shall be in the hands of the Muslim community, and it may exercise that right in any way it likes. Failing even such arrangements the parties may come to an agreement between themselves. If, therefore, a Muslim government or the Muslim community makes any rules laying down the procedure of divorce and placing such limitations upon the husband in matters of divorce as are not inconsistent with the principles laid down by the Holy Qur'ān, it would be quite Islamic.

The 'iddah or waiting period. The final breaking off of marital relations is discouraged in many other ways and every chance is afforded to the parties to maintain the conjugal tie, even after differences have arisen leading to divorce. Every divorce must be followed by a period of waiting called the *'iddah*: "O Prophet! When you divorce women, divorce them for their

'*iddah* (prescribed or waiting time)" (65:1). The '*iddah* is about three months: "And the divorced women should keep themselves in waiting for three courses" (2:228). In the case of women who do not menstruate, the '*iddah* is three months (65:4), and in the case of pregnant women, the waiting period is till delivery. The '*iddah* among other purposes serves the purpose of affording the parties a chance of reconciliation. Though they are divorced, yet they still live in the same house, the husband being plainly told not to expel the wife from the house in which she has been living unless she is guilty of misconduct, and a similar advice is given to the wife not to leave the house (65:1). This injunction clearly aims at restoring amicable relations between the parties and minimizing chances of the accentuation of differences. If there is any love in the union, its pangs would assert themselves during the period of waiting and bring about a reconciliation.

Divorce is revocable. In fact, reconciliation is recommended in plain words when, speaking of the '*iddah* the Holy Qur'ān says: "And their husbands have a better right to take them back in the meanwhile if they wish for reconciliation" (2:228). Every divorce is thus an experimental, temporary separation during its initial stages and by making the parties live together, every chance is afforded to them to re-establish conjugal relations. Even after the

period of waiting has passed away, the two parties are allowed, even encouraged, to remarry: "And when you have divorced women and they have ended their term of waiting, do not prevent them from marrying their husbands, when they agree among themselves in a lawful manner; with this is admonished whosoever among you believes in Allāh and the last day; this is more profitable and purer for you: and Allāh knows while you know not" (2 : 232). Remarriage of the divorced parties is thus encouraged and recommended as being more profitable and purer for the parties. The condition is also laid down that such a revocable divorce, allowing reunion of the parties, can be pronounced twice: "Divorce may be pronounced twice: then keep them in good fellowship or let them go with kindness" (2 : 229). Thus the revocable divorce, the *ṭalāq rajʿī* in the terminology of the jurists, can be pronounced twice.

Irrevocable divorce. After the first divorce, the parties have the right to reassert their conjugal relations within the period of waiting, and to remarry after the waiting period is over. A similar right is given to them after a second divorce, but not after a third. Before Islām, however, while the wife had no right of divorce, the husband had an unchecked license to divorce the wife and to reassert his conjugal rights during *'iddah* as many times as he pleased. This had demoralized the whole institution of

marriage. Islām not only gave the wife a right of divorce but also checked the husband's license to divorce as often as he liked, by declaring that revocable divorce could be given only twice: "Divorce may be pronounced twice; then keep them in good fellowship or let them go with kindness" (2 : 229). It was thus laid down that, after the second revocation or remarriage, the parties must make their choice either to live together as husband and wife for ever, or to separate for ever, never thinking of reunion. Hence if even the second experiment failed and the parties were separated by a divorce for the third time, this was an irrevocable divorce, or *ṭalāq bā'in*, in the terminology of the jurists.

Effect of irrevocable divorce. It is clear from what has been stated that irrevocable divorce is the very rarest of things that can happen among Muslims. When a man and a woman have found by two experiments that they cannot live together as husband and wife, it is absurd on their part to think of remarriage again. Hence the Holy Qur'ān lays down that they shall not remarry after the second failure of the union, except in one case: "So if he divorces her (for the third time), she shall not be lawful to him afterwards until she marries another husband; then if he (the second husband) divorces her, there is no blame on them both if they return to each other (by marriage), if they think that

they can keep within the limits of Allāh" (2: 230). Thus the one case in which marriage with the first husband is allowed, after being divorced for the third time, is that in which a marriage has been contracted with a second husband and that too has proved a failure.

Taḥlīl or *ḥalālah*. *Taḥlīl* or *ḥalālah*, which means *legalizing* or *making* a thing *lawful*, was a pre-Islamic practice. When the wife was divorced irrevocably, by thrice pronouncing the divorce formula, and the husband wanted to take her back again, she had first to marry a third person on condition that he would divorce her after having sexual connection with her. This was called *ḥalālah*. It is a mistake to confound the *ḥalālah* with the marriage spoken of in the verse quoted under the previous heading. The Holy Prophet cursed those who resorted to this practice, his words being: "The curse of Allāh be on the man who commits *ḥalālah* and the man for whom the *ḥalālah* is committed." The Caliph 'Umar is reported to have said that if there were brought to him two men who took part in the practice of *ḥalālah*, he would treat them as adulterous people.

Procedure of divorce. Divorce may be given orally, or in writing, but it must take place in the presence of witnesses: "So when they have reached their prescribed time, then retain them with kindness or separate them

with kindness, and call to witness two men of justice from among you, and give upright testimony for Allāh" (65: 2). Whatever the actual words used, they must expressly convey the intention that the marriage tie is being dissolved. As to whether a divorce would be effective under certain circumstances, there are differences among the various schools of jurists. Evidently intention is as necessary a factor in the dissolution of marriage as in the marriage itself; but while some recognize that divorce is ineffective if given under compulsion or influence, or in a state of intoxication, or in anger or jest, or by mistake or inadvertence, others hold it to be ineffective in some of these cases and effective in others.

Zihār. The word *zihār* is derived from *zahr* meaning *back*. An Arab in the days of ignorance would say to his wife, *anti 'alayya ka-zahri ummī, i.e.,* thou art to me as the back of my mother. This was technically called *zihār*. No sooner were these words pronounced than the relation between husband and wife ended as by a divorce, but the woman was not at liberty to leave the husband's house and remained as a deserted wife. One of the Muslims, Aus ibn Šāmit, treated his wife *Khaula* in a similar manner. The wronged woman came to the Holy Prophet and complained of her husband's ill-treatment. The Holy Prophet told her that he was unable

to interfere. She was thus disappointed, and it was then that he received the following revelation: "Allāh indeed knows the plea of her who pleads with thee about her husband and complains to Allāh, and Allāh knows the contentions of both of you; surely Allāh is Hearing, Seeing. As for those of you who put away their wives by likening them to the backs of their mothers, they are not their mothers; their mothers are no others than those who gave them birth; and surely they utter a hateful word and a falsehood" (58: 1, 2). The man who resorted to this practice was ordered to free a slave; or if he could not find one, then, to fast for two successive months, and if unable to do that, to feed sixty poor people (58: 3, 4).

Li'ān. The word *li'ān* is derived from *la'nah* meaning *curse*. *Li'ān* and *mulā'anah* signify literally *mutual cursing*. Technically, however, the two words indicate that particular form of bringing about separation between the husband and the wife in which the husband accuses the wife of adultery but has no evidence to support the accusation, while she denies it. The *li'ān* is suggested in this case as the means of bringing separation between husband and wife, for whether the accusation is right or wrong, it is in the interests of both to get separated. The procedure is laid down in 24: 6—9.

Charitable view of divorce. Divorce is

looked upon as a necessity in marital relations, under the varying human conditions, irrespective of moral turpitude on the part of husband or wife. The Holy Qur'ān takes the most charitable view of the necessity for divorce, and therefore recommends as much kindness towards women in the case of divorce, as in that of marriage. Again and again stress is laid on this point: "Divorce may be pronounced twice; then keep them in good fellowship or let them go with kindness (*iḥsān*)" (2 : 229); "And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality" (2 : 231); "So when they have reached their prescribed limit, then retain them with kindness or separate them with kindness" (65 : 2). Thus woman is to be treated with equal kindness and generosity, whether she is a sharer in a man's weal or woe as wife, or one from whom he has been compelled to part company. Marital differences, like other differences, may be as often honest as not, but the Holy Qur'ān recommends that the most charitable view of them should be taken.