

## Al-Ila'

*Ila'* is an oath taken by a husband in God's name to refrain from having sex with his wife. The Qur'anic basis of this concept is verse 226 of the *Surat al-Baqarah*:

لَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرِبُصُ أَرْبَعَةٍ أَشْهُرٍ فَإِنْ فَأْعُوا فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ \* وَإِنْ عَزَمُوا الطَّلاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلَيْهِمْ \*

***Those who forswear their wives (by pronouncing *ila'*) must wait for four months; then if they change their mind, lo! God is Forgiving, Merciful. And if they decide upon divorce, then God is surely Hearing, Knowing. ( 2:226--227)***

The Imamiyyah require that marriage should have been consummated in order for *ila'* to be valid, otherwise *ila'* will not take place.

The schools concur that *ila'* takes place where the husband swears not to have sex with his wife for the rest of her life or for a period exceeding four months.<sup>1</sup> The schools differ if the period is four months; the Hanafis assert that it takes place and the other schools maintain that it doesn't.

There is consensus that if the husband has sex within four months, he must atone (for breaking his oath), but the hindrance to the continuation of marital relations will be removed. The schools differ where four months pass without sex. The Hanafis observe: She will divorce herself irrevocably without raising the issue before the judge, or the husband will divorce her. (*Bidayat al-mujtahid*)

The Maliki, the Shafi'i and the Hanbali schools state: If more than four months pass without his having sex, the wife will raise the issue before the judge so that he may order the husband to resume sexual relations. If the husband declines, the judge will order him to divorce her. If the husband declines again, the judge will pronounce her divorce, and in all situations the divorce will be revocable. (*Farq al-zawaij* of *al-Khafif*)

The Imamiyyah state: If more than four months pass without sex, and the wife is patient and willing, it is

up to her and no one is entitled to object. But if she loses patience, she may raise the issue before the judge, who, on the completion of four months,<sup>2</sup> will compel the husband to resume conjugal relations, or to divorce her. If he refrains from doing either, the judge will press him and imprison him until he agrees to do either of the two things, and the judge is not entitled to pronounce divorce forcibly on behalf of the husband.

All the schools concur that the atonement for an oath is that the person taking the oath should perform one of these alternatives: feed ten needy persons, provide clothing to ten needy persons, free a slave. If he has no means for performing any of these, he should fast for three days.

Furthermore, according to the Imamiyyah, only those oaths which are sworn in the name of the sacred Essence of God will be binding. The oath of a child and a wife is not binding if the father and the husband prohibit it, except when the oath is taken for performing a *wajib* or for refraining from a *haram*. Similarly, an oath will not be binding upon anyone if it is taken to perform an act refraining from which is better than performing it, or is taken to refrain from an act whose performance is better than refraining from it, except, of course, the oath of *ila'*, which is binding despite the fact that it is better to refrain from it.

<sup>1.</sup> The secret of stipulating this period is that a wife has the right to sex at least once every four months. It has been said that the difference goes back to the interpretation of the verse ﴿لِّذِينَ يُؤْلِمُونَ﴾. Here there are those who say that the verse has not stipulated any period for *ila'*, and others who consider it necessary that four months pass before the judge may warn the husband either to restore conjugal ties or to divorce her, and this obviously requires a period of more than four months, even though by a moment.

<sup>2.</sup> Most Imamiyyah legists state: The judge will allow the husband four months' time from the day the matter was brought to his notice, and not from the day of the oath.

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