

Divorce

The Divorcer (al-Mutalliq)

A divorcer should possess the following characteristics:

1. Adulthood: Divorce by a child is not valid, even if of a discerning age (*mumayyiz*), according to all the schools except the Hanbali, which observes: Divorce by a discerning child is valid even if his age is below ten years.
2. Sanity: Divorce by an insane person is not valid, irrespective of the insanity being permanent or recurring, when the divorce is pronounced during the state of insanity. Divorce by an unconscious person and one in a state of delirium due to high fever is also not valid. The schools differ regarding the state of intoxication. The Imamiyah observe: Such a divorce is not valid under any circumstance. The other four schools¹ remark: The divorce is valid if the divorcer has voluntarily consumed an unlawful intoxicant. But if he drinks something permissible and is stupefied, or is coerced to drink, the divorce does not materialize.

Divorce by a person in a fit of anger is valid if the intention to divorce exists. But if he loses his senses completely, the rule which applies to an insane person will apply to him.

3. Free volition: All the schools except the Hanafi concur that divorce by a person under duress does not take place in view of the tradition:

رُفِعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ

My ummah have been exculpated of genuine mistakes, forgetfulness, and that which they are coerced to do.

The Hanafis say: Divorce by a person under duress is valid.

The practice of the Egyptian courts has been not to recognize the divorce by a person under duress or intoxication.

4. Intention: According to the Imamiyyah, divorce pronounced unintentionally or by mistake or in jest is not valid.

Abu Zuhrah says (page 283): The Hanafi school considers divorce by all persons except minors, lunatics and idiots as valid. Thus divorce pronounced by a person in jest or under intoxication by an unlawful intoxicant, or under duress, is valid. On page 286 he writes: It is the accepted view of the Hanafi school that a divorce by mistake or in a state of forgetfulness is valid. On page 284 he observes: Malik and al-Shafi'i concur with Abu Hanifah and his followers regarding a divorce pronounced in jest, while Ahmad differs and regards such a divorce as invalid.

Ibn Rushd states (*Bidayat al-mujtahid*, vol. 2, p. 74): Al-Shafi'i and Abu Hanifah have said, "Intention (*niyyah*) is not required in divorce".

The Imamiyyah have narrated from the Imams of the Ahl al-Bayt (A):

لا طلاق إلا لمن أراد الطلاق ، لا طلاق إلا بنية

No divorce (takes effect) except by one who intends divorce. Divorce does not take place except by intention.

The author of *al-Jawahir* says: If one pronounces divorce and subsequently denies intention, his word shall be accepted as long as the divorcee is undergoing her *'iddah*, because the fact of his intention cannot be known except from him.

Divorce by the Guardian (Talaq al-Wali)

The Imamiyyah, the Hanafi and the Shafi'i schools state: A father may not divorce on behalf of his minor son, because of the tradition:

الطلاق لمن أخذ بالساق

The Malikis state: A father may divorce his minor son's wife in the *khul'* form of divorce. Two opinions are ascribed to Ahmad.

The Imamiyyah observe: When a child of an unsound mind matures, his father or paternal grandfather may pronounce divorce on his behalf if it is beneficial for him. If the father and the paternal grandfather do not exist, the judge may pronounce the divorce on his behalf. As mentioned earlier, the Imamiyyah allow the wife of a lunatic to annul the marriage.

The Hanafis state: If a lunatic's wife suffers harm by living with him, she may raise the issue before a judge and demand separation. The judge is empowered to pronounce divorce to rescue her from the harm and the husband's father has no say in this affair.

All the schools concur that divorce by a stupid husband (*safih*) and his agreeing to *khul'* are both valid.²

The Divorcee (al-Mutallaqah)

There is consensus that the divorcee is the wife. For the validity of the divorce of a wife with whom intercourse has occurred, the Imamiyyah require that she should not have undergone menopause nor she should be pregnant, that she be free from menses at the time of divorce, and that intercourse should not have occurred during the period of purity. Thus, if she is divorced during her menses or *nifas*,³ or in a period of purity in which she has been copulated with, the divorce will be invalid.

Al-Razi in his exegesis of the first verse of *Surat al-Talaq*:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ

has said, "By *'iddah* is meant the period of purity from menses, by consensus of all Muslims. A group of exegetes has observed that by divorce at the time of *'iddah* is meant that the wife may be divorced only during the period of purity in which intercourse has not occurred. In brief, it is compulsory that divorce occur during the period of purity, otherwise it will not be according to the Sunnah, and divorce according to the Sunnah is conceivable only in the case of an adult wife with whom marriage has been consummated, and one who is neither pregnant nor menopausal."

For there is no *sunnah* concerning the divorce of a minor wife, a wife who has not been copulated with, or a wife in menopause or pregnancy. This is exactly what the Imamiyyah hold.

In *al-Mughni* (vol.7, p.98, 3rd.ed.) the author states: "The meaning of a *sunnah* divorce (*talaq al-sunnah*) is a divorce in consonance with the command of God and His Prophet (S); it is divorce given during a period of purity in which intercourse with her has not occurred." He continues (p. 99): "A divorce contrary to the *sunnah* (*talaq al-bid'ah*) is a divorce given during menses or during a period of purity in which she has been copulated with. But if a person pronounces such a divorce, he sins, though the divorce is valid according to the view generally held by the scholars. Ibn al-Mundhir and Ibn 'Abd al-Birr have said: None oppose the validity of this form of divorce except the heretics (*ahl al-bida' wa al-dalalah*)"! If to follow the command of Allah and the Sunnah of His prophet (S) is heresy and misguidance, then it is of course proper that following Satan be called '*sunnah*' and 'guidance'.

Whatever the case, the Sunnis and the Shi'ah concur that Islam has prohibited the divorcing of an adult, non-pregnant wife with whom marriage has been consummated, who is either undergoing periods or

has been copulated with during her period of purity. But the Sunni schools add that the Shari'ah's prohibition makes the divorce *haram* (unlawful) but not invalid, and one who pronounces divorce in the absence of these conditions sins and is liable to punishment, but the divorce will be valid. The Shi'ah state: The Shari'ah's prohibition is for invalidating such a divorce, not for making it *haram*, for the mere pronouncing of divorce is not *haram* and the sole purpose is to nullify the divorce as if it had not taken place at all, exactly like the prohibition of sale of liquor and swine, where the mere recital of the contract of sale is not *haram*, only the transfer of ownership fails to take effect.

The Imamiyyah permit the divorce of the following five classes of wives, regardless of their state of menstruation or purity:

1. A minor wife under the age of nine.
2. A wife whose marriage has not been consummated, regardless of whether she was a virgin or not, and irrespective of his having enjoyed privacy with her.
3. A menopausal wife; menopause is taken to set in at fifty for ordinary women and at sixty for Qurayshi women.
4. A wife who is pregnant.
5. A wife whose husband has been away from her for a whole month and the divorce is given during his absence from her, since it is not possible for him to determine her condition (whether she is in her menses or not). A prisoner husband is similar to a husband who has been away.

The Imamiyyah state: The divorce of a wife who has reached the age of menstruation but does not have menses due to some defect or disease or childbirth, is not valid unless the husband abstains from intercourse with her for three months. Such a woman is called *al-mustarabah* (a term derived from *rayb*, doubt).

[The Pronouncement of Divorce \(al-Sighah\)](#)

The Imamiyyah observe: Divorce requires the pronouncement of a specific formula without which it does not take place. This formula is:

أنتِ طالق (you are divorced), or فلانة طالق ('so and so' is divorced), or هي طالق (she is divorced).

Thus if the husband uses the words: الطالق or المطلقة or طُئقت, or الطلاق or المطلقات etc., it will have no effect even if he intends a divorce because the form طالق is absent despite the presence of its root (t-/q). It is necessary that the formula be properly recited without any error in pronunciation and that it be unconditional. Even a condition of certain occurrence such as, 'at sunrise', etc. is not adequate.

If the husband gives the wife the option of divorcing herself and she does so, divorce will not take place according to Imami scholars. Similarly, divorce will not take place if the husband is questioned. "Have you divorced your wife", and he answers affirmatively with the intention of effecting a divorce. If the husband says, "You are divorced, three times", or repeats the words, "You are divorced", thrice, only a single divorce takes place if the other conditions are fulfilled. Divorce does not take place through writing

or by gesticulation, unless the divorcer is dumb, incapable of speech. It is necessary that the divorce be recited in Arabic when possible. It is better for a non-Arab and a dumb person to appoint an attorney, if possible, to recite the divorce on his behalf. Similarly, according to the Imamiyyah, divorce will not take place by an oath, a vow, a pledge or any other thing except by the word طالق, on fulfillment of all the limitations and conditions.

The author of *al-Jawahir*, citing a statement from *al-Kafi*, says: "There can be no divorce except (in the form) as narrated by Bukayr ibn A'yan, and it is this: The husband says to his wife (while she is free from menses and has not been copulated with during that period of purity): **انتِ طالق** (You are divorced), and (his pronouncement is witnessed by two just (*'adil*) witnesses. Every other form except this one is void". Then the author of *al-Jawahir* quotes *al-Intisar* to the effect that there exists consensus on this issue among the Imamiyyah.

Consequently, the Imamiyyah have restricted the scope of divorce to its extreme limits and impose severe conditions regarding the divorcer, the divorcee, the formula of divorce, and the witnesses to divorce. All this is because marriage is a bond of love and mercy, a covenant with God. The Qur'an says:

و كَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

How can you take it back after one of you hath gone in into the other, and they (the wives) have taken a strong pledge from you? (4:21)

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

And one of His signs is that He created mates for you from yourselves that you may find tranquility in them, and He ordained between you love and compassion. (30:21)

وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ

...And hold not to the ties of marriage of unbelieving women.... (60:10)

Therefore, it is not permissible in any manner that one break this bond of love and compassion, this pledge and covenant, except with a knowledge that leaves no doubt that the Shari'ah has surely dissolved the marriage and has broken the tie which it had earlier established and confirmed.

But the other schools allow divorce in any manner in which there is an indication of it, either by oral word or in writing, explicitly or implicitly (such as when the husband says: "You are *haram* for me", or "You are separated" or "Go, get married", or "You are free to go wherever you want," or "Join your family," and so

on). Similarly, these schools allow an unconditional as well as a conditional divorce (such as when the husband says: "If you leave the house, you are divorced," or "If you speak to your father you are divorced," or "If I do this, you are divorced," or "Any woman I marry, she is divorced:" in the last case the divorce takes place as soon as the contract of marriage is concluded!). There are various other pronouncements through which divorce is effected, but our discussion does not warrant such detail. These schools also permit a divorce in which the wife or someone else has been authorized to initiate it. They also allow a triple divorce by the use of a single pronouncement. The legists of these schools have filled many a long page with no result except undermining the foundation of the family and letting it hang in the air.⁴

The Egyptian government has done well in following the Imamiyyah in most aspects of divorce. Apart from this, the four schools do not consider the presence of witnesses a condition for the validity of divorce, whereas the Imamiyyah consider it an essential condition. We hand over the discussion to al-Shaykh Abu Zuhrah regarding this issue.

Divorce and Witnesses

In *al-Ahwal al-shakhsiyyah* (p. 365), al-Shaykh Abu Zuhrah has observed: "The Twelve-Imami Shi'i legists and the Isma'iliyah state: A divorce does not materialize if not witnessed by two just (*'adil*) witnesses, in accordance with the Divine utterance regarding the rules of divorce and its pronouncement:

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَى عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ يُوعِظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا * وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ

Then when they (the wives) have reached their 'iddah retain them honourably, or part from them honourably. And have two just men from among yourselves bear witness, and give testimony for Allah's sake. By this then is admonished he who believes in Allah and the Last Day. And whoever is careful of (his duty to) Allah, He will provide for him an outlet and give him sustenance from whence he never reckoned (65:2-3)

This command about the witnesses in the Qur'an follows the mention of divorce and the validity of revoking it. Therefore, it is appropriate that the calling in of witnesses should be related to divorce. Moreover, the reason given for calling in the witnesses, that God seeks thereby to admonish those who believe in God and the Last Day, confirms this interpretation, because the presence of just witnesses is not without the good advice which they would offer to the couple; and this could bring about for them an escape from divorce, which is the most hated of lawful things in the eyes of God. If it were for us to choose the law to be acted upon in Egypt, we would choose this opinion, which requires the presence of two just witnesses for effecting a divorce".

Together with the restrictions that the Imamiyyah have laid down for the divorcer, the divorcee, and the pronouncement of divorce, they have also laid down an additional limitation regarding the witnesses by demanding that if all conditions are fulfilled except that the two just witnesses do not hear the pronouncement of the divorce, the divorce will not take place. Therefore, a single witness will not suffice even if he is a good substitute, not even if he is an infallible (*ma'sum*) person.⁵

Further, the witnessing of the pronouncement by one of them by listening and of the other by testifying to their admission (of having concluded the divorce) is not sufficient. The testimony of a group of people will also not suffice, even if it is big enough to make the divorce a known public fact. The testimony of women, with or without the testimony of men, is not sufficient. Similarly, if the husband pronounces the divorce and then brings in the witnesses, it will have no effect.

The Case of a Sunni Husband and a Shi'i Wife

If a Sunni husband divorces his Shi'i wife, either through a conditional divorce contingent upon something, or in a period of purity during which sexual intercourse has occurred, or during menses or *nifas*, or without two just witnesses being present or by an oath of divorce, or by saying, **حبك على غارك** ; "Go wherever you want," or in any other form which is valid in accordance with Sunni law and invalid according to Shi'i law, is such a divorce considered valid by the Shi'ah, so that the woman may remarry after completing her *'iddah*?

The answer is that there is consensus among the Imami jurists that every sect is bound by its own precepts,⁶ and that the transactions of its followers, as well as their affairs pertaining to inheritance, marriage and divorce, are valid if performed according to rules of their *shari'ah*. A tradition has been narrated from the Imams of Ahl al-Bayt (A):

أَلْزَمُوهُمْ مِنْ ذَلِكَ مَا أَلْزَمُوا أَنْفُسَهُمْ

Bind them with the laws with which they have bound themselves.

In another tradition, al-Imam al-Sadiq (A) was questioned regarding a woman who had been divorced by a Sunni husband against the principles of the Sunnah, whose compliance is necessary for the validity of a divorce according to the Shi'ah. The Imam (A) replied:

تتزوج، ولا تُترك المرأة من غير زوج

She will marry, and a woman shall not be left without a husband.

In a third tradition it is stated:

يجوز على أهل كل دين ما يستحلون

For the followers of every religion, that which they consider lawful is permissible for them.

A fourth tradition says:

من دان بدين قوم لزمته أحكامهم

One who follows the religion of a particular sect, is bound by its rules, (*al-Jawahir*, vol. 5, the discussion regarding *sighat al-talaq*).

Consequently, if a Shi'i husband divorces his Sunni wife according to the principles of her school and not his, the divorce is invalid, and if a Sunni divorces his Shi'i wife according to the principles of his own school, the divorce is valid.

Revocable and Irrevocable Divorce

A divorce is either revocable or irrevocable. The schools concur that a revocable divorce is one in which the husband is empowered to revoke the divorce during the *'iddah*, irrespective of the divorcee's consent. One of the conditions of a revocable divorce is that the marriage should have been consummated, because a wife divorced before consummation does not have to observe the *'iddah* in accordance with verse 49 of *Surat al-Ahzab*:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا

O believers! When you marry the believing women and then divorce them before you touch them, you are not entitled to reckon for them an 'iddah....

Among the other conditions of a revocable divorce are that the divorce should not have been given on the payment of a consideration and that it should not be one which completes three divorces.

The divorcee in a revocable divorce enjoys the rights of a wife, and the divorcer has all the rights of a husband. Therefore, both will inherit from each other in the event of death of one of them during the *'iddah*. The deferred *mahr* payable on the occurrence of any of the two events, death or divorce, will become payable only after the expiry of the *'iddah* if the husband does not revoke the divorce during that period. On the whole, a revocable divorce does not give rise to a new situation except its being accountable for ascertaining whether the number of divorces has reached three.

In an irrevocable divorce, the divorcer may not return to the divorced wife, who belongs to one of the following categories:

1. A wife divorced before consummation, by consensus of all the schools.
2. A wife who has been divorced thrice. There is consensus here as well.
3. A divorcee through *khul'*. Some legists consider this form of divorce void and say that it is not a divorce at all.
4. A menopausal divorcee, in the Imami school, which observes: She has no *'iddah* and the rules applicable to a divorcee before consummation apply to her as well. According to it, in verse 4 of *Surat al-Talaq*:

وَاللَّائِي يَئْسَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ

If you are in doubt concerning those of your wives who have ceased menstruating, know that their waiting period is three months, and (the same is the waiting period of) those who have not yet menstruated ...

the phrase: **وَاللَّائِي يَئْسَنَ مِنَ الْمَحِيضِ** does not imply those women who are known to have reached menopause but those whose menses have stopped and it is not known whether the reason is disease or age; consequently, their *'iddah* is three months. There is no question of doubt regarding those whose menopause is certain. The doubt arises in cases of uncertainty, as indicated by the words: **إِنْ ارْتَبْتُمْ** (if you are in doubt) of the verse, because it is not the Lawgiver's wont when explaining a law to say: "If you are in doubt regarding the law regarding something, the law is that...". This confirms that the doubt mentioned in the verse relates to the fact of menopause, in which case she is to observe an *'iddah* of three months. As to the phrase: **وَاللَّائِي لَمْ يَحِضْنَ** it refers to women who despite attaining the age of menses do not have them due to some congenital or contingent factor. Many traditions have been narrated from the Imams of the Ahl al-Bayt (A) with this interpretation of this verse.

5. The Hanafis say: Valid seclusion (*khalwah*) with the wife, even without consummation, requires the observance of *'iddah*. But the divorcer is not entitled to return to her during the *'iddah*, because here the divorce is irrevocable.

The Hanbalis state: Seclusion is similar to consummation in all respects so far as the necessity of *'iddah* and the right of revocation is concerned. As mentioned earlier, seclusion has no effect according to the Imamiyyah and the Shafi'i schools.

The Hanafis observe: If a husband says to his wife: "You are divorced irrevocably" or "divorced firmly," "(with a divorce as firm) as a mountain," and such similar strong words, the divorce will be irrevocable and the divorcer will not be entitled to return during the *'iddah*. Similarly, a divorce pronounced by using words which connote a break of relationship (such as, "She is separated," "cut off," "disassociated").

The Triple Divorcee

The schools concur that a husband who divorces his wife thrice cannot remarry her unless she marries another person through a valid *nikah*, and this second person consummates the marriage, in accordance with verse 230 of *Surat al-Baqarah*:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

So if he divorces her, she shall not be lawful to him afterwards, until she marries another husband (2:230)

The Imami and the Maliki schools consider it necessary that the person who marries her (*muhallil*) be an adult. The Hanafi, the Shafi'i and the Hanbali schools consider his capacity for intercourse as sufficient, even if he is not an adult. The Imami and the Hanbali schools state: If in a marriage contract *tahlil* (causing the woman to become permissible for her former husband to remarry) is included as a condition (such as when the second husband says, "I am marrying you to make you *halal* for your divorcer), the condition is void and the contract valid. But the Hanafis add: If the woman fears that the *muhallil* may not divorce her after the *tahlil*, it is permissible for her to say, "I marry you on the condition that the power to divorce be in my hands," and for the *muhallil* to say, "I accept this condition." Then the contract will be valid and she will be entitled to divorce herself whenever she desires. But if the *muhallil* says to her: "I marry you on the condition that your affair (of divorce) be in your own hands," the contract is valid and the condition void.

The Maliki, the Shafi'i and the Hanbali schools state: The contract is void *ab initio* if *tahlil* is included as a condition. The Maliki and Hanbali schools further add: Even if *tahlil* is intended and not expressed the contract is void.

The Malikis and some Imami legists consider it necessary that the second husband (*muhallil*) have intercourse with her in a lawful manner (such as when she is not menstruating or having *nifas*, and while both are not fasting a Ramadan fast). But most Imami legists give no credence to this condition and regard mere intercourse, even if unlawful, to be sufficient for *tahlil*.

Whatever be the case, when a divorcee marries another husband and is separated from him, either due to his death or by divorce, and completes the *'iddah*, it becomes permissible for the first husband to contract a new marriage with her. Then, if he again divorces her thrice, she will become *haram* for him until she marries another. This is how she will become *haram* for him after every third divorce, and will again become *halal* by marrying a *muhallil*, even if she is divorced a hundred times.

But the Imamiyyah state: If a wife is divorced nine times in the *talaq al-'iddah* form, and is married twice (i.e. following *tahlil* after every third divorce), she will become permanently *haram*. The meaning of *talaq*

al-'iddah, according to the Imamiyyah, is a divorce in which the husband after divorcing returns to her during the *'iddah* and has intercourse with her, and then divorces her again in another period of purity, then returns to her and has intercourse, then divorces her for a third time and remarries her, after a *muhallil* does the *tahlil*, by concluding a fresh contract, and divorces her thrice in the same manner, with a *muhallil* doing the second *tahlil*, and remarries her again. Now if he divorces her thrice again, the ninth *talaq al-'iddah* completed, she will become *haram* for him permanently. But if the divorce is not a *talaq al-'iddah* (such as when he divorces her, then returns to her and then divorces her again before having intercourse), she will not become *haram* perpetually, and will become *halal* through a *muhallil*, even if the number of divorces is countless.

Doubt in the Number of Divorces

The schools (except the Maliki) concur that he who has doubt regarding the number of divorces (whether a single divorce has taken place or more) will base his count on the lower number. The Malikis observe: The aspect of divorce shall preponderate and the count will be based on the higher number.

Divorcee's Claim of Tahlil

The Imami, the Shafi'i and the Hanafi schools state: If the husband divorces his wife thrice, and he or she knows nothing about the other for some time and thereafter she claims having married a second husband and separated from him and having completed the *'iddah*, her word will be accepted without an oath if this period is sufficient for her undergoing all this, and her first husband is entitled to marry her if he is satisfied regarding her veracity, and it is not necessary for him to inquire further. (*al-Jawahir*, Ibn 'Abidin, and *Maqsad al-nabih*)

- [1.](#) The Hanafi and the Maliki schools are explicit regarding the validity of a divorce by an intoxicated person. Two opinions have been narrated from al-Shafi'i and Ahmad, the preponderant among them is that the divorce does take place.
- [2.](#) Al-Ustadh al-Khafif writes in his book *Farq al-zawaj* (p.57): "The Imamiyah accept the validity of a divorce by a safih, if effected by the permission of his guardian, as expressly mentioned in *Sharh Shara'i' al-Islam*." There is no mention of this statement in the said book. Rather, such a statement is not present in any Imami book, and that which is mentioned in *Sharh Shara'i' al-Islam* is that the safih husband is entitled to divorce without the permission of his guardian. See *al-Jawahir*, vol.4, "Bab al-hijr".
- [3.](#) Nifas means the vaginal discharge of blood at the time of birth or thereafter, for a maximum period of: ten days according to the Imamiyah, forty days according to the Hanbalis and the Hanafis, and sixty days according to the Shafi'is and Malikis.
- [4.](#) The author of *Ta'sis al-nazar* (1st ed. p.49) has narrated from Imam Malik that he has observed: If a person resolves to divorce his wife, the divorce takes place by mere resolution, even if he does not pronounce it.
- [5.](#) The use of the expression 'infallible' (*ma'sum*) here belongs to the author of *al-Jawahir*.
- [6.](#) In *Ta'sis al-nazar* of Abu Zayd al-Dabusi al-Hanafi it is stated: "According to Abu Hanifah the presumption ab initio is that non-Muslims living under the protection of an Islamic state will be left to follow their beliefs and precepts. But his two disciples, Abu Yusuf and Muhammad, say that they will not be left to themselves."

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