

Section 29, Divorce and the Respect for the Law

Surah Al-Baqarah, Verse 229

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا
آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا
جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ
فَأُولَئِكَ هُمُ الظَّالِمُونَ

229. "Divorce (is permissible) only twice, then either maintain (them) in honor or let (them) go in kindness. And it is not lawful for you to take anything of what you have given them, unless both fear that they cannot keep (themselves) within Allah's bounds; and if you fear that they cannot keep (themselves) within Allah's bounds, it is no sin on either of them about what she gives up to get herself freed (from the wedlock). Those are Allah's limits; so do not transgress them. And, whoever transgresses Allah's limits -then these are they that are the (willful) wrongdoers."

Occasion of Revelation

Once there came a woman to one of the Prophet's wives and complained about her husband that he repeatedly divorced her and then revoked again to create damages for her thereby.

And, it was customary among pagan Arabs that a man could divorce his wife thousands of times and revoke it, while there was no limit in this regard. When this grievance was reported to the Prophet (S), the above verse was revealed and limited the divorce to three times.

It was pointed out in the commentary of the former verse that the regulations of 'waiting period' and 'revocation' are for the improvement of the conditions of family status and preventing from separation and

dispersion.

But, some of the new converted believers acted according to the old paganism and abused this regulation. To hurt their wives, they divorced them and revoked it again and again. So, this verse was sent down and prevented that ugly and unmanly action. It says:

"Divorce (is permissible) only twice..."

This kind of divorce (revocable divorce), of course, should be accomplished in different meetings, not in one session alone.

Then, the Qur'an adds that in each of these two meetings the husband should either keep his wife honorably with him and make peace with her, or kindly let her go and separate with her for ever.

"...then either maintain (them) in honor or let (them) go in kindness...."

Therefore, the third divorce has not any revocation, because when they had two occasions of dispute and divorce and then peace and revocation were fulfilled, they must put an end to it.

The purpose of the phrase: ***'let (them) go in kindness'*** is that the husband ought to pay that woman her rights fully and does not let himself say unsuitable words behind her back after he separates from her.

He must not make the attitude of other people bad against her and lets her retain the possibility of marriage. Hence, separation should also be accompanied with kindness and benevolence. That is why the verse continues saying:

"...It is not lawful for you to take anything of what you have given them,..."

It is not lawful for the husband to take or withhold anything out of what he has given or promised to give i.e. 'Mahr' or dower to the wife. The dower amount is usually large and much of it usually remains unpaid by the husband, the payment of the dower amount, particularly when the divorce is pronounced, is another check upon the husband resorting to an indiscriminate and unnecessary divorce of his wife.

So, at the time of separation and divorce, the husband is not allowed to take back from the woman forcefully what he has given her as a marriage-portion.

In the next part of the verse, it points to the divorce of khul', and says that it is only in one phase that taking the dower is possible. It is in the case that the woman does not want to continue the conjugal life and they both fear that they are not able to observe the limits of *Allah* in that kind of life.

"...unless both fear that they cannot keep (themselves) within Allah's bounds..."

Under this law the wife may seek to get freed of the wedlock by returning the dower to husband, if she has already received it, or to forgo it, if it be still due to her and take the divorce of khul' from Hakim-i-

Shar', viz. the Islamic judge. Then it says:

"...and if you fear that they cannot keep (themselves) within Allah's bounds, it is no sin on either of them about what she gives up to get herself freed (from the wedlock)."

In this phase, the origin of separation is, in fact, the wife. So, she must pay the indemnity of this action and let the man, who is willing to live with her, marry another lady with the same marriage-portion.

At the end of the verse, it points to the whole of the ordinances that are stated in this verse, and says:

"...Those are Allah's limits; so do not transgress them. And, whoever transgresses Allah's limits - then these are they that are the (willful) wrongdoers."

Messages

1- Plurality of divorce is based on plurality of marriage, i.e. there should be a marriage before a divorce. When a man, in one session, tells his wife: 'I divorced you thrice', there has occurred, indeed one divorce, because he has not ceased more than one marriage.

For this reason, in the jurisprudence of Ahlul-Bayt (as) it is cited that a number of divorces should be fulfilled in a number of stages; and before every divorce there should also be wedlock. This plurality, besides the apparent indication of the verse, is for a closer common good, too.

It is not convenient that the relation of a family be disturbed in one gathering and by one decision for ever.

2- Earning the life by the husband and obedience of the wife unto her husband are the limits of *Allah*.

3- The breaker of the law is unjust.

"...And, Whoever transgresses Allah's limits -then these are they that are the (willful) wrongdoers."

Surah Al-Baqarah, Verse 230

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

230. "If he divorces her (for the third time), she shall not be lawful to him thereafter, until she

marries another husband; and if he (the latter) divorces her, then it is no sin on (either of) them to return to each other (by marriage), if they think that they can keep Allah's bounds. Those are Allah's limits; He makes them clear to a people who know."

Occasion of Revelation

Once, at the time of Prophet of Islam (S), a woman came to him and said she had been the spouse of her cousin by the name of Rifa'ah, who divorced her thrice. After that, she married a man named, Abd-ur-Rahman, but he, before any sexual relations with her, divorced her, too. Then, she asked the Prophet (S) whether she could return to her first husband.

The Messenger of *Allah* (S) did not agree and said that her marriage with that first husband was right if she had sexual intercourse with her new husband. The above verse was revealed.

In the commentary of the previous verse this fact was briefly referred to that: after the second divorce, the couple should either follow the path of peace and kindness, or separate from each other for ever.

The verse under discussion is counted as a note, indeed, added to that ordinance. It says:

"If he divorces her (for the third time), she shall not be lawful to him thereafter, until she marries another husband; and if he (the latter) divorces her, then it is no sin on (either of) them to return to each other (by marriage), if they think that they can keep Allah's bounds"

Messages

1- Men should not misuse their conjugal rights. They ought to know that they are not free and authoritative upon their wives forever in this regard.

It is narrated from Imam Rida (as) who said: *"Do not take divorce light, and do not cause your wives to incur a loss."* 1

2- Not every one knows the secrets and the Wisdom of the Divine laws, therefore some people, maybe, look at these instructions surprisingly, while the secrets of them are clear for those who have insight. Common people often see the apparent of these instructions, but the cognizant recognize the spirit and the depth of them.

3- Muslims should know that the limits of *Allah* are not liable only to prayers, alms, Hajj, and Holy War. Observing the family affairs are the limits of *Allah*, too.

"...Those are Allah's limits; He makes them clear to a people who know."

Surah Al-Baqarah, Verse 231

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

231. "When you divorce women, and they have reached their waiting-period, then either retain them in a fair manner or set them free in a fair manner; and do not retain them for injury, so that you transgress (the limits); and whoever does that he indeed is unjust to his (own) self: And do not take Allah's Signs in mockery, and remember Allah's blessing upon you and what He has sent down unto you of the Book and Wisdom to admonish you thereby, and be in awe of Allah and know that Allah is All-Knowing of all things."

This verse, following the subject of the previous verse, states some limits that Islam has legislated upon divorce in order to prevent some disregards unto the rights and honour of women.

The verse indicates that during the waiting-period, even if there is only one day remained from that term, man is allowed to return to his wife and retain her with the purpose of living together sincerely.

But, if the circumstances are not favourable, he can set her free. At any rate, whatever his decision is: either revocation or separation, it should be fulfilled in a fair manner and with goodness and, consequently, far from any revengefulness.

"When you divorce women, and they have reached their waiting-period, then either retain them in a fair manner or set them free in a fair manner..."

Then the verse interprets the Qur'anic term /ma'ruf / (a fair manner) saying that the revocation should be based on serenity and sincerity.

"...do not retain them for injury, so that you transgress (the limits); and whoever does that he indeed is unjust to his (own) self..."

Since, at the Age of Ignorance, divorce and revocation had often been used as a means of injury and vengeance, the verse, with a severe tone, says that retaining a woman as one's wife should not be performed with the aim of hurting her or transgressing her, because this manner is not only unjust against her but also unjust to his own self. This meaning may be for the sake that:

1- The revocation which is based on the purpose of transgression contains no tranquility and peace with

it.

2- From the view point of the Qur'an, in the system of creation, man and woman are complementary parts of one unit. So, for a husband treading the rights of his wife is a transgression and injustice to his own self.

3- The one who acts unjustly against another person, he, indeed, goes forward unto the punishment of *Allah* and, thus, he has done cruelty to himself, in fact.

Mock not Allah's Laws

Some people usually commit thousands of offences, but, to fly from the pressure of their inner sense or, as they imagine, to fly from the chastisement of *Allah*, they seek protection of some legal devices and cling to the apparent meaning of verses or ordinances.

The Qur'an considers this style a kind of mockery to the revealed verses and the Divine laws. This swerve, unfortunately, is seen applied upon many of the ordinances, one of which is this very one of divorce.

As it was said before, the right of revocation is up to husband for the sake that the wedlock remains steadily all the longer. But some people move exactly opposite to this direction, i.e., abusing the right of revocation, they try to take revenge and hurt the woman. They cover their real cruel feature under the veil of acting upon Law.

This is the same as mockery unto the Qur'an and the Law. The verse under discussion remarks that we beware not to mock the Messages of *Allah* (*s.w.t.*) and remember the Divine great blessing of the religion of truth and the heavenly Book, too, which has come for our happiness.

"... And do not take Allah's Signs in mockery, and remember Allah's blessing upon you and what He has sent down unto you of the Book and Wisdom to admonish you thereby..."

Religion and its collection of regulations has originated from the firm system of this very world, and has been legislated based upon the real interests of men.

Therefore, it is not right that, by neglecting the requirements, we clasp to the apparent of some ordinances and make up some spiritless frames which put our interests in danger. They are also counted as heedlessness to *Allah's* Signs.

At the end of the verse, in order to defend from the rights of women and to prevent from the divine ordinances probably being abused, it reminds of this fact that to be careful of your duties to *Allah* and know that He is aware of all your activities and all the secrets of this world"

"...and be in awe of Allah and know that Allah is All-Knowing of all things."

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