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Dialogue on divorce

Allah Almighty hates divorce. Traditions discouraging divorce abound. It has been narrated from Imam Ja'far as–Sadiq (a.s.), "There is nothing more hateful to Allah, the Exalted, than divorce". The Imam (a.s.) was also quoted as saying, "Marry and do not divorce your wives, for divorce causes the Throne to rock".

- * Is it that abhorrent?
- Yes, and to keep abreast with the rules of divorce, I am going to outline the conditions that should be fulfilled so that divorce can be deemed valid.

The party who is filing for divorce must be adult, sane, and have free will. That is, a divorce coming from a boy, the insane, or one who is under duress is invalid.

The intent, by either or both parties, to go their own separate ways. That is, the divorce shall not be in order when it is done in jest, inadvertently, or by someone who is not able to discern what it means to divorce one's partner.

- * What is the formal wording of divorce?
- Divorce shall not be enforced, unless a particular procedure is followed. The formal wording of divorce should be recited in Arabic, for those who can speak the language, in the presence of two witnesses of impeccable character.

The husband may utter the following, "My wife – mentioning her name – is hereby divorced". If she is present, he could say to her, "You are divorced". If there is a proxy acting on behalf of the husband, he could say, "The wife of my mandator – stating her name – is hereby divorced". There and then, divorce becomes a reality.

- * Is it compulsory to mention the name of the wife?
- No, it is not necessary, if she is known, identifiable, and the husband does not have any other wife

beside her.

However, divorce cannot be carried out, unless the wife is free from haydh or nifas, except for a wife in a marriage that was not consummated, a pregnant woman, and some cases of absent husbands. The husband is not permitted to divorce his wife, who was tahir of haydh, after having a sexual intercourse with her; he should wait until she had her next haydh and become tahir thereof. Only then can he divorce her.

In a temporary marriage there shall be no divorce. Instead, the expiration of the agreed duration of marriage heralds the end of the relationship. If separation is sought before the end of the duration of marriage, the husband can grant the wife the remaining period by saying, "I grant you the remaining period".

The validity of granting the remaining period does not warrant the presence of witnesses, nor does it require the woman to be tahir from a haydh or nifas.

A divorced wife who has not attained menopause, after the marriage was consummated, should observe a waiting period from the date the divorce was pronounced, not from the date the news of the divorce was broken to her.

The waiting period for a non-pregnant woman is three menstrual periods. The duration between the divorcee and menstruation is considered one period, irrespective of whether it was short.

- * Does this mean that the period of waiting of a divorced woman ends as soon as the third menstruation occurs?
- Yes, that is correct.
- * What about the waiting period of a divorced pregnant woman?
- The waiting period of a divorced pregnant woman is the duration of her pregnancy, irrespective of whether it was full, culminating in birth, or premature or still birth.
- * Is it the case, even she gave birth to her baby one day after the divorce was announced?
- Yes, even if her giving birth took place one hour after she was divorced, provided that the born baby is the offspring of her ex-husband, i.e. not illegitimate.
- * Should the woman, who was a party to a temporary marriage, observe a waiting period, after separating from her husband?
- Yes, if she was adult, of a menopausal age, not pregnant, and her marriage was consummated, the waiting period is [two menstrual periods], for the woman who still has a period, and forty five days for her whose period has stopped due to illness or any other reason.

As for divorce, which is the prerogative of the husband, it is of two kinds – irrevocable and revocable.

In an irrevocable divorce, the husband may not return to his divorced wife, without a new marriage contract.

In a revocable one, the husband may return to his wife without the need of a new contract or dowry, so long as she was still in her waiting period.

Of the types of irrevocable divorce is (khal'ie), i.e. at the instance of the wife, who must pay a compensation to the husband. It is the case of a wife who is unhappy with her husband, so much so that she resorts to threatening that she will not grant him his matrimonial rights. This khali'e divorce can come about when the wife is determined to end the marriage. She can address the husband thus, "I absolve you of paying my dowry, provided that you part company with me". The husband can reply, in Arabic and in the presence of two witnesses of unblemished character, "My wife, –stating her name– is divorced in return for the compensation she offered", or "X is divorced in return for – x – amount".

- * Do you have to mention the name of the wife here?
- If she was identifiable, i.e. being the only wife for instance, you may choose not to mention her name.
- * Is it all right if the compensation offered to the husband is anything other than the dowry?
- Yes, it is in order.
- * Can man and wife appoint proxies to carry out the divorce procedure?
- Yes, they can.
- * In some cases, the absent husband's whereabouts are not known and it cannot be ascertained as to whether he is alive, can the wife divorce him?
- The wife has the right of recourse to the Marji'. In such a case he would normally request that every effort should be made to trace the absent husband. This could take the best part of four years. The investigation period may yield nothing of substance regarding the husband's whereabouts or fate. The other course of action, that must be exhausted, is if the husband has any property the marriage can still be salvaged by providing maintenance for the wife. If he has an agent, he should provide for the wife. If neither is forthcoming, the Marji' could instruct the agent to grant her a divorce. In the event of the agent refusing to comply, or the husband having no agent, the Marji' can pronounce her divorced.
- * If the husband was imprisoned for life, and thus not in a position to maintain his wife, but was insistent on not divorcing her, what will happen?
- She could approach the Marji'. He would contact the husband to instruct him to grant his wife a divorce. Should he choose not comply, and it was not feasible to force him to do so, the Marji' could

pronounce her divorced.			

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