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Divorce

2507. The man who divorces his wife must be adult and sane and should divorce her of his own free will. Hence, it he is forced to divorce her, the divorce will be void. It is also necessary that the man has an intention of divorcing her. If, therefore, he pronounces the formula of divorce only in jest, the divorce is not valid.

2508. It is necessary that when a woman is divorced she should be free from menses and lochia. It is also necessary that her husband should not have had sexual intercourse with her during the period of her purity. The details of these two conditions will be given in the succeeding Articles.

2509. It is valid to divorce a woman even if she is in menses and lochia in the following three circumstances:

- (i) The husband has not had sexual intercourse with her after marriage.
- (ii) It may be known that she is pregnant. In case, however, this fact is not known and the husband divorces her during menses, and comes to know later that she was pregnant, the obligatory precaution is that he should divorce her again.
- (iii) On account of the husband's being absent or under imprisonment, he may not be able to ascertain whether or not she is pure of menses or lochia.
- **2510.** If a man thinks that his wife has been purified of menses and divorces her, but it transpires later that at the time of divorce she was in the state of menses, the divorce is void. And if he thinks that she is in the state of menses and divorces her, and it is known later that she was pure, the divorce is in order.
- **2511.** If a person who knows that his wife is in menses or lochia disappears for example if he proceeds on a journey and wishes to divorce her, he should wait till the time women are usually purified of menses or lochia and then divorce her.
- 2512. If a man who is absent wishes to divorce his wife and can acquire information as to whether or not

his wife is in the state of menses or lochia, although his information may be in the light of her habit of menses or other signs prescribed in law, he should wait for the time women are usually purified of menses or lochia.

- **2513.** If a man has sexual intercourse with his wife who is pure of menses and lochia and then wishes to divorce her he should wait till she has menstrual discharge again and is purified. However, there is no harm if a woman, who has not completed nine years of her age or is pregnant, is divorced after sexual intercourse. And the same order applies if the woman is menopause (Yaisa). For details see Article **441.**
- **2514.** If a person has sexual intercourse with a woman who is pure of the blood of menses and lochia and divorces her during the same purity but it transpires later that she was pregnant at the time of divorce, he should, on the basis of obligatory precaution divorce her again.
- **2515.** If a person has sexual intercourse with his wife who is pure of menses and lochia blood, and then proceeds on a journey and wishes to divorce her while journeying, he should wait for as much time as the woman usually takes for menstrual discharge and becomes pure once again after that purity, and the obligatory precaution is that this period should not be less than one month.
- **2516.** If a man wishes to divorce his wife who does not have menstrual discharge by nature or because of some ailment, he should refrain from having sexual intercourse with her for three months from the time he has had the last intercourse and then divorce her.
- **2517.** It is necessary that the formula of divorce should be pronounced in correct Arabic using the word "TALAQ" and two just (Aadil) persons should hear it. In case, however, the husband wishes to pronounce the formula of divorce himself and his wife's name is, for example, Farida, he should say: Zawjati Farida taliq (i.e. my wife Farida is divorced) and in case he appoints another person as his representative to pronounce the formula of divorce, the representative should say: Zawajtu muwakkili Farida taliq (Farida, the wife of my client is divorced). And, in case the woman is specified it is not necessary to mention her name.
- **2518.** There is no question of divorce in the case of a woman with whom fixed time marriage is contracted, for example, for one month or one year. She can become free when the period of her marriage expires or when the man forgoes the period of her marriage saying to her: "I hereby excuse the remaining time of marriage" and it is not necessary that any one should be called to witness or that the woman should be pure of menses.

Iddah Of Divorce

(It means period during which a divorced woman cannot many another man or waiting period of divorce).

2519. A girl who is under nine, and a menopause woman (See. Article No. 441) are not required to observe any waiting period. It means that, even if such a woman is divorced by her husband after having

sexual intercourse with her, she is free to many another man immediately.

2520. If a girl, who has completed nine lunar years of her age and is not a menopause, is divorced by her husband after sexual intercourse, it is necessary for her to observe the waiting period or divorce. The waiting period of a woman is that when her husband divorces her while she is free of menses she should wait till she has menses twice and then is purified. Thereafter, as soon as she has menses for the third time her waiting period comes to an end and she can marry again. In case, however, a husband divorces his wife before having sexual intercourse with her there is no waiting period for her and she can marry another man immediately after being divorced by her husband.

2521. If a woman, who does not have menstrual discharge, is of the age of women who have menstrual discharge, and her husband divorces her after sexual intercourse, she should observe iddah for three months after divorce.

2522. If a woman whose iddah is of three months is divorced on the first of a month she should observe iddah for three lunar months (i.e. for three months from the time the moon is sighted). And if she is divorced during the month she should observe iddah for two months thereafter and for as many days of the fourth month as are short of the first month so that the total may come to three months. For example, if she is divorce on the 20th of the month at the time of sunset and that month is of 29 days she should observe iddah for nine days of that month and the two months following it and for twenty days of the fourth month. And the recommended precaution is that in the fourth month she should observe iddah for twenty–one days so that the total number of the days of the first month and the fourth month comes to thirty.

2523. If a pregnant woman is divorced her iddah lasts till the birth or abortion of the child. Hence, if, for example, she gives birth to a child one hour after being divorced, her iddah comes to an end.

2524. If a woman who has completed nine years of age and is not menopause contracts a fixed time marriage for example, if she marries a man for a period of one month or one year and the period of her marriage comes to an end or her husband excuses her the remaining period of marriage she should observe Iddah. Hence if she has menstrual discharge she should observe Iddah for two periods of menses and should not many a man during that period, and if she does not have menstrual discharge she should refrain from marrying a man for forty–five days. And in case she is pregnant the obligatory precaution is that she should observe iddah till the birth of the child or for forty–five days, whichever period is longer.

2525. The time of the iddah of divorce commences when the pronouncing of the formula of divorce completes, whether the woman knows it or not that she has been divorced. Hence, if she comes to know after the end of the iddah that she has been divorced, it is not necessary for her to observe iddah again.

Iddah (Waiting Period) Of A Widow

2526. If a woman is not pregnant and her husband dies she should observe iddah (the waiting period) for four months and ten days (i.e. she should not marry during that period), even though she may be menopause, or her husband may have contracted fixed time marriage with her, or he may not have had sexual intercourse with her. In case, however, she is pregnant she should observe the waiting period till the birth of the child. But if the child is born before the expiry of four months and ten days from the death of her husband she should wait till the expiry of that period. This period is called the waiting period of death (Iddatul wafat).

2527. It is unlawful for a woman who is observing the waiting period of death to wear brightly colored dress or to use collyrium and similarly any such thing as is considered to be an adornment is unlawful for her.

2528. If a woman becomes certain that her husband has died and marries another man after the completion of iddah of death, and it is known afterwards that her husband died later, she should separate herself from her second husband. And on the basis of precaution in case she is pregnant she should observe iddah of divorce for the second husband till she gives birth to a child, and should thereafter observe iddah of death for the first husband, and if she is not pregnant she should first observe iddah of death for her first husband and thereafter she should observe iddah of divorce for the second husband.

2529. If the husband of a woman has disappeared or is treated to have disappeared the iddah of death commences from the time the woman receives information about his death.

2530. If a woman says that her iddah has come to an end her word can be accepted subject to the fulfillment of these two conditions: (i) On the basis of precaution she should not be liable to accusation and (ii) So much time should have passed since her being divorced or the death of her husband that it should be possible that her iddah has come to an end.

Irrevocable and Revocable Divorce

2531. Irrevocable divorce is that after the divorce the man may not be entitled to rejoin his wife i.e. he may not be entitled to accept her as his wife without marriage. This divorce is of five kinds namely:

- (i) The divorce of a woman who has not completed nine years of her age.
- (ii) The divorce of a woman who is menopause.
- (iii) The divorce of a woman whose husband has not had sexual intercourse with her after their marriage.
- (iv) The third divorce of a woman who has been divorced thrice.

- (v) The divorce called Khula and Mubarat. Order pertaining to these kinds of divorces will be narrated later. Divorces other than these are revocable in the sense that while the woman is observing iddah her husband can return to her.
- **2532.** When a person has given revocable divorce to his wife it is unlawful for him to turn her out of the house in which she was residing at the time of divorce. However, on certain occasions (including her being of loose character and her coming and going with strangers) there is no harm in turning her out. And it is unlawful for the woman to go out of the house un necessarily.

Orders Regarding Return (Ruju)

2533. In the case of a revocable divorce a man can return to his wife in two ways:

- (i) He may converse with her which should mean that he treats her again to be his wife.
- (ii) He may perform some act and his intention by performing that act is to return to her. And what is apparent is that return is proved by sexual intercourse although the man may not have intended by such intercourse to return to his wife.
- **2534.** It is not necessary for 'Reunion' that the man should call any person to witness or should inform his wife On the other hand if he 'returns' himself without any one else realizing this the 'return' is in order. However, if the man says after the completion of iddah that he 'returned' during iddah he must prove this.
- **2535.** If a person who has given revocable divorce to his wife takes some property from her and makes a compromise with her to the effect that he will not return to her, though this compromise is valid and it is necessary for him not to 'return' to her, but he does not forfeit the right to 'return' and in case he 'returns' to her, the divorce given by him does not become the cause of their separation
- **2536.** If a man divorces a woman twice and returns to her or divorces her twice and marries her after each divorce, or return after one divorce and marries her after the second divorce, she becomes unlawful for him after the third divorce. In case, however, she marries another man after the third divorce, she becomes lawful for the first husband on fulfillment of five conditions i.e. he can remarry her:
- (i) The marriage with the second husband should be a permanent one. In case, therefore he, for example, contracts with her a fixed time marriage for one month or one year and then separates from her the first husband cannot marry her.
- (ii) The second husband should have sexual intercourse with her and the obligatory precaution is that the sexual intercourse should take place in the vagina of the woman.
- (iii) The second husband divorces her or dies.
- (iv) The waiting period (Iddah) of divorce or iddah of death of the second husband should have come to

an end.

(v) On the basis of obligatory precaution the second husband should be adult.

Khula 'Divorce or Talaqul Khula'

2537. The divorce of the woman who is not inclined to her husband and surrenders to him her dower or other property so that he may divorce her is called Khula Divorce.

2538. If the husband himself wishes to pronounce the formula of Khula divorce and his wife's name is say, Fatima he should say after taking the property Zawjati Fatimatu Khala'tuha 'ala ma bazalat and should also say on the basis of recommended precaution: Hiya Taliq i.e. "I have given Khula' divorce to my wife Fatima in lieu of what she has given me, and she is free'. And in case the woman is specified it is not necessary to mention her name in Talaqul khula and also in Mubarat Divorce.

2539. If a woman appoints a person as her representative to surrender her dower to her husband and the husband, too, appoint the same person as his representative to divorce his wife and is for instance, the name of the husband is Muhammad and the name of the wife is Fatima the representative will pronounce the formula of divorce thus: 'An muwakkilati Fatimah bazalat mahraha li muwakkili Muhammad li Yakhla'aha 'alayh. Then he says immediately: "Zawajtu muwakkili khala'tuha 'ala ma bazalat hiya Taliq". And if a woman appoints a person as her representative to give something other than dower to her husband so that he may divorce her the representative should utter the name of that thing instead of the word "Mahraha" (her dower) for example, if the woman gives \$ 500 he should say: bazalat khamsu miati Dollar.

Mubarat Divorce

2540. If the husband and the wife both do not like each other the woman gives some property to the man so that he may divorce her this divorce is called 'Mubarat.

2541. If the husband wishes to pronounce the formula of Mubarat and if his wife's name is 'Fatima' he should say: i.e. "baratu zawajti Fatima ala ma bazalat fahiya Taliq" My wife Fatima and I separate from each other in consideration of what she has given me. Hence; she is free." And if he appoints another person as his representative the representative should say: 'An qibali muwakkili barati zawajtahu Fatimata ala ma bazalat Fahiya Taliq'. And in either case it he says: bimia bazalat instead of the words 'ala ma bazalat there is no harm in it.

2542. It is necessary that the formula of Khula' or Mubarat divorce is pronounced in correct Arabic. However, if in order to give her property to her husband the woman says in English: "I give you such and such property in lieu of divorce" it is sufficient.

2543. If during the waiting period of Khula' or Mubarat divorce the wife declines to give her property to

the husband, he can 'return' to her and make her his wife again without marrying.

2544. The property which the husband takes in Mubarat divorce should not exceed the dower of the wife. In the case of Khula' divorce, however, there is no harm if it exceeds her dower.

Miscellaneous Orders Regarding Divorce

2545. If a man has sexual intercourse with a non-mehram woman under the impression that she is his wife the woman should observe iddah. Whether she knows that the man is not her husband or thinks that he is her husband.

2546. If a man commits adultery with a woman knowing that she is not his wife, it is not necessary for the woman to observe Iddah, whether she knows that the man is not her husband or thinks that he is her husband.

2547. If a man seduces a woman so that she may take divorce from her husband and marry him, the divorce and marriage are in order, but both of them have committed a major sin.

2548. If a woman makes it a condition of the marriage contract that if her husband performs a journey or for example, does not give her subsistence for six months the option of divorce will rest with her, the condition is void. However, if she imposes a condition that if her husband performs a journey or, for example, does not give her subsistence for six months, she will be his representative for her own divorce, the condition is in order, and if such a situation arises and she divorces herself the divorce is valid.

2549. If the husband of a woman disappears and she wishes to many another man she should approach an adil Mujtahid (Religious Head) and act according to his order.

2550. The father and the paternal grandfather of an insane man can divorce his wife.

2551. If the father or paternal grandfather of a child contracts a fixed time marriage between him and a woman and a part of the period tired for the marriage also covers some of the time when the child will have attained the age of puberty for example, it he contracts the marriage of a fourteen years old boy for a period of two years he (the father or the paternal grandfather of the child) can excuse the woman a part of the period of marriage if doing so is in the interest of the child, but he cannot divorce the child's permanent wife.

2552. If a man considers two persons to be just (Adil) according to the standard prescribed by law, and divorces his wife in their presence, another person to whom their being Adil is not proved can, after the expiry of that woman's Iddah, marry her himself or give her in marriage to some other person, although the recommended precaution is that he should not marry her himself and should not also give her in marriage to someone else.

2553. If a person divorces his wife without her realizing it, and he meets her expenses as he met them when she was his wife, and, for example, tells her after a year that he divorced her a year earlier, and also proves it legally, he can take back from her the things which he supplied her during that period, and which she has not used, but he cannot demand from her the things which she has already expended.

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