FATĀWĀ DĀR AL-‘ULŪM
ZAKARĪYYĀ

VOLUME FOUR

Hadrat Maulānā Muftī Radā’ al-Haq
Sāhib
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INTRODUCTION

All praise is due to Allāh ta’ālā the fourth volume of Fatāwā Dār al-'Ulām Zakarīyyā is in your hands. We cannot thank Allāh ta’ālā sufficiently for having enabled unworthy people like us to do this good work.

May Allāh ta’ālā reward the post-graduate students who helped in obtaining the references. May He make their effort a means for an increase in their knowledge and practice. Allāh willing, this effort will be the first brick in their academic building.

Muftī Muḥammad Ilyās Sāhib needs to be thanked for his continuous and unrelenting efforts which brought this work to fruition, and due to which readers are benefiting.

Some 'ulamā’ drew my attention to a certain ruling in Kitāb az-Zakāh. We had stated in volume three, page 103 that as a precaution, zakāh on nine carat gold should be paid. We had ascertained that other metals make up a major portion of it, and these cannot be separated easily. In addition to juridical texts, there is a clear text in Bahīshṭ Zewār in this regard. The text of the jurists on this issue reads as follows:

قائمة بالدليل والدليل الدانس على الذهب المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهب المُقلود المُقلود على الذهبو
This topic is also discussed in *Sharḥ Tuhfah al-Mulāk* (1085).

*Al-Jauharah an-Nayyirah* states:

وإنما تكون نفي حكم العروض إذا كانت محلًا لأحرقت لا يخلص منها
نصاب أما إذا كان يخلص منها نصاب وجب زكاة الخالص. (الجزهرة المبيرة: ١٥٨١)

This subject is mentioned in other books of fiqh. However, we have learnt that gold and non-gold metals cannot be separated from the nine carat jewellery of today with the heat generated by a normal fire. Instead, the non-gold metals get burnt. This is why a fire which is about four times more powerful than the normal fire is required. In other words, a heat of about 400°C is needed. Furthermore, mere melting of the metals is not sufficient. An acidic chemical costing a lot of money has to be added. The gold in nine carat jewellery is generally less than the other metals. It also contains silver either in the proportions of 4%, 10% or 20%.

Bearing the above facts in mind, if the amount of gold and silver contained in such jewellery is equal to nisāb, or less than it but when added to other gold, silver or cash money; it equals nisāb, then caution lies in the owner paying the zakāh. If this jewellery is for trade, then zakāh will be obligatory on nine carat jewellery because zakāh is obligatory on trade goods. In this case, all the jewellery is classified as trade goods.

The following is stated in *Imdād al-Fatāwā*:

There are two scenarios in the case where gold and silver are mixed with other metals.

1. Both can be distinguished, they have not been mixed through melting. One rule will not apply to the total. The rules of gold and silver will apply to the amounts of gold and silver respectively. The rules which apply to other metals [besides gold and silver] will apply to the other metals. For example, *bayʿ aṣ-ṣarf* and zakāh, will be considered only in the amounts of gold and silver, and not on everything.

2. They cannot be distinguished. They were melted and mixed together. In this case, the jurists say that the metal which constitutes the larger amount will be considered. In other words, if it has more gold or more silver, then the entire weight will fall under the rules of gold or silver. If the larger amount is another metal [neither gold nor
silver], it will fall under the ruling of the other metal. The rules of gold or silver will not apply to whatever amount of gold or silver it contains. There will be no zakāh on it nor will the rules of bay’aqṣ-garf apply.¹

The scholars may have come across the texts of Ḥadrat Thānwi raḥimahullāh and Muftī ‘Abd ar-Raḥīm Ṣāḥib raḥimahullāh on the issue of metals which can be separated through melting. However, this was generally not possible in the past. This is why these scholars applied the rule of the major metal which is found in the item. Shāmī must have made mention of certain specific types where the gold and silver could be separated easily through melting.

An answer to a question in Fatwā Dār al-‘Ulūm Deoband states that if an item has more than 50% gold, it will be classified as gold. And like pure gold, zakāh will have to be paid on the weight of the entire item.²

To sum up, if the gold and other metals can be separated easily, zakāh will be obligatory on the gold. If not, zakāh should be paid to be on the side of caution.

I request the reader to kindly inform me of any errors or slip-ups in the book so that these could be corrected in future editions or in the subsequent volumes.

We beg Allāh ta’ālā to pardon us for the mistakes contained herein.

(Hadrat Mufti) Raḍā’ al-Haqq (Ṣāhib, may Allāh ta’alā perpetuate his blessings)
Dār al-iftā’, Dār al-‘Ulūm Zakarīyya, Lenasia, South Africa
9 Sha’bān al-Mu’azzam 1431 A.H.
21 July 2010

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² Fatwā Dār al-‘Ulūm Deoband Mukammal wa Mudallal, vol. 6, p. 115.
KITĀB AT-TALĀQ

INSTANCES WHEN DIVORCE TAKES PLACE/DOES NOT TAKE PLACE

Divorce on a false admission and presentation of a witness

Question

A person, due to some wisdom, made a false admission of divorce by saying: “I divorced my wife.” He also presents a witness to this admission. Does divorce take place?

Answer

Divorce does not take place by a false admission of divorce on the basis of religious integrity. If a person proves this with a witness, then divorce will not take place even by a judicial decision.
(الفتاوى الناتج خانية: ٣٦٦/٣، الفصل الرابع فيما يرجع الى صريح الطلاق، إدارة القرآن).

Fatāwā Māhmūdīyyah:

When the husband admits to a divorce solely as a temporary rebuttal and did not issue a divorce in reality in court, then divorce will not take place on the basis of religious integrity.¹

If a false information was intended to be conveyed to the addressee and a false admission was intended, then on the basis of religious integrity between the person and Allāh ta’ālā, divorce will not take place. If he appointed a witness from beforehand and told the witness that he is going to make a false admission, then the divorce will not take place judicially as well.²

Allāh ta’ālā knows best.

**Issuing a divorce with the intention of divorce**

**Question**

A person issues a verbal or written divorce, due to some wisdom, without the intention of divorce. It is not his objective to issue a divorce but has some other specific objective, will the divorce take place?

**Answer**

When the word of divorce is explicitly uttered, whether verbally or in writing, divorce takes place. There is no consideration to the intention even if uttered or written with some specific objective.

Sunan at-Tirmidhī:

عن أبي بريرة رضي الله تعالى عنه قال: قال رسول الله صلى الله عليه وسلم: ثلث جدين جد وبرزبين جد النكاح، والطلاق، والرجعة، بدأ حديث حسن غريب. (رواه الترمذي: ٤٠٠/١، باب ما جاء في الجد والبهزل في الطلاق)

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¹ Fatāwā Māhmūdīyyah, vol. 12, p. 237.
² Fatāwā Māhmūdīyyah, vol. 12, p. 234.
Abū Hurayrah radīyallāhu 'anhu relates that Rasūlullāh sallallāhu 'alayhi wa sallam said: “There are three statements which, whether uttered in earnestness or light-heartedness, will be treated in earnestness: marriage, divorce and revoking a divorce.”

The ruling with regard to an explicit divorce is that it takes place even without an intention.¹

Further reading: *Fatāwā Mahmūdiyyah*, vol. 12, p. 334.

Allāh ta'ālā knows best.

**Intending to issue a divorce in the future**

**Question**

A man said the following three times to his wife: “I want to give you ṭalāq.” When he was asked about what he really said, he replied: “I do not know what I said.” What is the ruling of the Shari‘ah? Did divorce take place?

**Answer**

Divorce does not take place when words which clearly demonstrate the future are uttered. Therefore, in the case in question, divorce did not take place. Furthermore, if the husband does not remember what he said and the wife said that he expressed an intention to divorce, the wife’s statement will be accepted and divorce will not take place.

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¹ *Majmū‘ah Qawānīn Islām*, p. 137, register 15, All India Muslim Personal Law Board, under the supervision of Ḥādīrat Qādī Mujāhid al-Islām Qāsimī Sāhīb.
Issuing a divorce in the present tense

Question

A man was having an argument with his wife and he said: “I am divorcing you.” He said this three times. He did not say: “I divorced you.” Did divorce take place? Will it be acceptable if he makes a threat of issuing divorce in the future?

Answer

In this case where he issued divorce in the present tense “I am divorcing you”, divorce takes place. Muftī Kifāyatullāh Sāhīb ragimahullāh writes that if he said these words with the intention of “I have divorced you”, then a talāq-e-mughallagah will fall on his wife. (That is, if the word “three” is attached to it). But if he says that when...
he said “I am divorcing you”, his intention was that he intends divorcing her, then divorce will not take place.²

Al-Ahṣan al-Fatāwā:
The words “I am divorcing you” are used in the present tense. This is why divorce takes place, even though these words are occasionally used for the near future...²

Allāh ta’ālā knows best.

**Issuing a divorce when the wife is pregnant**

**Question**

Does divorce take place when it is issued at a time when the wife is pregnant? How is such a divorce classified, makrūh or mubah?

**Answer**

Divorce takes place no matter in what condition it is issued. A divorce issued when the wife is in her menstrual periods is classified as a bid’ah (innovation) and it is inappropriate. A divorce issued when the wife is pregnant is classified as āḥsan (best).

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¹ Kifāyatul Muftī, vol. 6, pp. 79-80.
الأحسن أن يطلق امرأة واحدة رجعية في طهرها لم يجامعها فين ثم يتركها حتى تنفضي عدتها أو كانت حاملاً قد استبان حملها. (الفتاوى الهندية: ٤٨٨١، كتاب الطلاق، الباب الأول)

والبدعي من حيث الوقت أن يطلق المدخول بها وبي من ذوات الأقراء في حالة الحيض. (الفتاوى الهندية: ٤٩١، كتاب الطلاق، الباب الأول)

**Fatâwâ Rahîmîyyah:**

**Question:** Is a divorce valid when issued at a time when the woman is pregnant?

**Answer:** Yes. Divorce takes place when a woman is pregnant. The Qur’ân states:

وَأَوْلَاتُ الْأُمَلَاءِ أَجْلَهُنَّ أَنْ تَضْعَفَنَّ خَلِيفَهُنَّ.

As for those who are pregnant, their waiting period is that they deliver their burden. ¹


Allâh ta’âlâ knows best.

**Issuing a divorce without directing it to one’s wife**

**Question**

A person had an argument with his wife’s brothers. His wife was the reason for the argument. He said: “She is divorced to me with three divorces.” He neither mentioned her name nor did he direct this statement to her. Does divorce take place?

**Answer**

Divorce took place when he uttered the words “She is divorced to me with three divorces.” This is because a divorce is issued to one’s wife and not to anyone else. Nonetheless, if the husband takes an oath and says that his wife was not intended, divorce will not take place.

¹ Sûrah at-Talâq, 65: 4.
An explicit reference is not needed for divorce to take place.¹

Fatāwā Mahmūdīyyah:

When the husband utters the word “divorce” with reference to his wife, divorce takes place even if he did not say the full sentence (I have divorced you). The meaning is the same. At the same time, if the husband says: “I did not issue a divorce and did not utter this word with reference to my wife”, his word accompanied with an oath will be considered.²

Kifâyatul Muftī:

These words of Zayd as quoted in the question contain the word “divorce” explicitly but an explicit reference to his wife is not made. If Zayd takes an oath and says that he did not utter these words to his wife, his statement and oath will be considered, and the judgement of divorce will not be given.³


Allāh ta’ālā knows best.

² Fatāwā Mahmūdīyyah, vol. 12, p. 274.
³ Kifâyatul Muftī, vol. 6, p. 54.
A person says: “Understand that it is a divorce.”

**Question**

In the course of an argument with his wife, a person says to her: “Go away, and understand that it is a divorce.” Has a divorce taken place?

**Answer**

If the husband said: “Go away, and understand that it is a divorce”, divorce does not take place.

A woman said to her husband: “Give me a divorce.” The husband replies: “Consider it to be given” or “Consider it done”. Divorce does not take place even if the husband made the intention of divorce by uttering these words, and even if he uttered them after her asking for a divorce.


Allāh ta’ālā knows best.

**Issuing a divorce in a play or drama**

**Question**

Husband and wife took part in a play. As part of the script of the play, the husband issues a divorce to his wife. Does divorce take place? For example, the story of Laylā and Majnūn is played out, and the wife and husband play the roles of Laylā and Majnūn respectively.
**Answer**

Hadrat Muftī Walī Ḥasan Ṣāḥib rahmahullāh used to say that divorce does not take place because this divorce is uttered as a quotation. As though Majnūn issued a divorce to Laylā or Farhād issued a divorce to Shīrīn. It is a presentation of an assumed incident. It is not an initiated divorce; it is a quoted one. This is similar to the fictitious narrating of the stories of Abū Zayd Sarījī and Hārīth ibn Humām by the author of the *Maqāmāt*. This is why the sin of fabricating a lie will not be applied to the author of *Maqāmāt*. A fictitious story is not an incorrect presentation of a factual incident.

**الفقه الإسلامي وادله:**

يشترط بالاتفاق القصد في الطلاق وبو إرادة التلفظ بـ ولو لم ينهو فلا يقع طلاق فقيه يحصره ولا طلاق حاكم عن نفسه أو غيره لأنه لم يقصد معناه بل قصد التعليم والحكية. (الفقه الإسلامي وادله: 7/368، شروط الطلاق، دار الفكر)

فتح القدير:

لو كرر مسائل الطلاق مكررة زوجته ويقول: أنت طالق ولا ينوي طلاقاً لا تطلق. (فتح القدير: 4/4، باب ايقاع الطلاق، دار الفكر)

Further reading: *al-Ashbāh Wa an-Nazāʾir*, vol. 1, p. 91; *Fatwā Dār al-ʿUlūm Deoband*, vol. 9, p. 284; *Fatwā Maḥmūdiyyah*, vol. 12, p. 249.

Allāh taʿālā knows best.

**A person utters the word “ṭāq”**

**Question**

A person says to his wife: “You are ṭāq [instead of ṭalāq].” Does divorce take place?

---

1 Laylā and Majnūn, and Farhād and Shīrīn are characters of epic romantic tales of Arab and Persian origin respectively. Many poets composed poetry on these couples. The most famous are those written by Nizāmī Ganjāwī (1141-1209 C.E.) in the Persian language.
Answer

Divorce does not take place by uttering the word “tāq”.

Divorce does not take place by uttering the word “tāq”.

Allāh ta’ālā knows best.

Divorce issued by a dumb person

Question

How will the divorce of a dumb person take place?

Answer

Divorce will take place if the dumb person writes down the statement of divorce. It will also take place if he puts his signature to a divorce document after its contents are explained to him. If he cannot write, divorce will take place through specific gestures (which are understood by those who are close to him). It is through gestures that the number of divorces will be established.

We learn from the above juridical texts that the gestures of a dumb person will be considered only if he does not know how to write. If he is able to write, gestures will not be valid. This is the view chosen by Qādi Mujāhid al-Islām Sāhib. (Refer to Majmū‘ah Qawānīn Islāmī, p. 136, register 10).

On the other hand, it is gauged from other juridical texts that the inability to write is not a precondition for the acceptance of gestures. In other words, the gestures of a person who can write are also valid.

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After shedding light on this issue, Shams ad-Dīn Qādī Zādah Āfendī raḍīmahullāh writes in Natā‘īj al-Afkār:

To sum up, the importance of writing is at its peak nowadays. It would therefore be proper to lay down the condition of writing for a person who is dumb as regards marriage, divorce and other dealings and transactions. In this way, the written word will be preserved and come to use when needed.

Allāh ta‘ālā knows best.

Issuing a divorce over the telephone

Question
A person spoke to his wife over the telephone and issued a divorce to her. The wife says that she had put the phone down before he could utter the word of divorce and that she did not hear it. Has divorce taken place?

Answer
The divorce has taken place. This is because it is not necessary for the wife to be in front of the person and to hear the words of divorce. You can understand this ruling as follows: A person writes a letter of divorce to his wife and sends it off. It reaches her house but she is not at home. The divorce takes place.

'Azīz al-Fatāwā:
For a divorce to be valid, it is not a prerequisite for the wife to be present.¹

¹ 'Azīz al-Fatāwā, vol. 1, p. 488.
For a divorce to be valid, it is not a prerequisite for the wife to be present, to hear the words of divorce or to mention her by name.\footnote{\textit{Fatāwā Rahīmīyyah}, vol. 8, p. 266.}

Allāh ta’ālá knows best.

**Issuing a divorce via sms**

**Question**

A person issued a divorce to his wife via sms. One week later, he issued a second divorce via sms. Three years later they decided to live together. Is their marriage still in-tact? What should they do?

**Answer**

The two divorces issued via sms are valid and divorce has taken place. If they want to live together again, they will have to renew their marriage in the presence of two witnesses. However, in the future, the husband will have the right of issuing only one divorce. If he issues one divorce at some time in the future, his wife will become mughallagah (one who is completely forbidden to him).
الخلاصة. (الدر المختار مع رد المختار: ۴۶/۳، مطلب في الطلاق بالكتابة، سعيد).

البداية:

وإذا كان الطلاق بائناً دون الثلاث فله أن يتزوجها في العدة وبعد انقضائها لأن حل المحلية بايت لأن زوال معلق بالطلاق الثلاثة فيتعدم قبل، ومنع الغير في العدة لاشتباه النسب ولا اشتباها في إطلاق. (البداية: ۴۹/۲، باب الرجل، فصل فيما تحل بالمطلقة).

البحر الرائق:

قوله. ويبدع الزوج الآتي ما دون الثلاث حتى لو طلقتها واحدة وانقضت عدنها وتزوجت بآخر وطلقتها وانقضت عدنها منه ثم تزوجها الأول يملك ثلاثة إن كانت حرة. وعند محمد يملك عليها ثنتين في الحرة وواحدة في الأمة ومرأده إن دخل بها ولو لم يدخل بها لا يهدم اتفاقاً كما في القنينة وقد أخذ أبو حنيفة وأبو يوسف فيها بقول شبان الصحابة رضي الله تعالى عنهم كابن عباس رضي الله تعالى عنهما وابن عمر رضي الله تعالى عنهما وأخذ محمد بقول الأكابر كعمرو رضي الله تعالى عنهم وعلي رضي الله تعالى عنهم وحاصل ما استدلوا به من قول صل الله عليه وسلم: لعن الله المحلل ل طريق الدلالان أن لما كان محللاً في الغليظة فه الخفيفة أولى أو بالقياس بينهما كون زوج، ورد المحقق في فتح القدير والتحرير بأن التحليل إنما جعل في حرمها بالثلاث فلا حريمة قبلها فظهر أن القول ما قاله محمد وباقي الأئمة الثلاث.


Allāh ta’ālā knows best.
Issuing a divorce with the words “Inshā Allāh”

Question
A person divorced his wife in this way: “Ṭalāq, ṭalāq, ṭalāq inshā Allāh.” Has divorce taken place? How many took place?

Answer
Divorce does not take place if the words “Inshā Allāh” are uttered together with the words of divorce. Therefore, in this case too divorce has not taken place.


Allāh ta’ālā knows best.

Issuing a divorce while saying the words “Inshā Allāh” silently

Question
A person issued a divorce while uttering the words “Inshā Allāh” silently. For example, he says: “I am issuing a divorce in the presence of all these people” and he says “Inshā Allāh” silently. No one heard him saying “Inshā Allāh.” Has divorce taken place?

A person has been compelled into issuing three divorces. He was threatened with death if he does not issue the divorce. He issues three divorces under compulsion and says “Inshā Allāh” silently. Has the divorce fallen on his wife bearing in mind that no one heard him saying these words? What is the ruling if the wife does not accept? Is there any difference in the ruling on the basis of religious integrity and a judicial decision?

Answer
If the husband said “Inshā Allāh” in such a tone that if someone put his ear near him he would have heard it, and the husband is a pious and
righteous man, then his statement under oath will be considered and divorce will not take place.

This ruling is on the basis of religious integrity. But if the wife rejects his claim of saying “Inshā Allāh”, the husband’s statement will not be acceptable without an evidence.

If he said these words in his heart and did not say them verbally whereby a person who puts an ear to his mouth could hear it, then it will not be considered and divorce will take place.

الدر المختار مع فتاوى الشايي:
قال لها أن تطلق إن شاء الله متصلًا... مسموعًا بجيث لو قرب شخص أذن، إلى فيه يسمع. وفي الشامية: (قوله مجمول قرب) أفشار به إلى أن المراد من المسموع ما شأن. أن يسمع وإن لم يسمع المشتكي لكثرة أصوات مثلاً. وقوله (مسموعاً) بذا عند الهندواني، وبو الصحيح كما في البادائع، وعند الكرخي ليس بشرط. (الدر المختار مع فتاوى الشايي: 368/3)

فتاوى الشايي:
وفي الشامي عن البحر: والشرط سامعه لا سامعهم على ما عرف في الجامع الصغير. (فتاوى الشايي: 37/3, سعيد)

الدر المختار:
وفي الدر المختار: ويقبل قوله إن ادعاه وأثنكرت في ظاهر المروي عن صاحب المذهب وقيل: لا يقبل إلا ببينة وعلم الاعتمد والفتوى احتمالاً لغبية الفاسد، خانية، وقيل إن عرف بالصلاح فالفقول له. وفي الشامي: (قوله إن عرف.. الخ) قائله صاحب الفتح. قلت: ولا يخفى أن هذا تحقيق للقول الثاني المفقه، لأن المشايخ علموه ففساد الزمان أي فيكون الزوج متهماً وإذا كان صالحاً تنتفى الشبهة فيقبل قوله فلا يكون بهذا قولًا ثالثًا فتدبر. (الدر المختار مع فتاوى الشايي: 369/3, سعيد)
Ahsan al-Fatâwâ:

When an exclusion is made [e.g. by saying “Inshā Allāh] then the wife has to produce evidence for it. If she cannot produce it and the husband is well-known for his piety and righteousness, then his word under oath will be considered. If not, the statement of the husband without evidence will not be accepted.¹


Allāh ta‘ālā knows best.

The validity of divorce when the mouth of the husband is shut closed

Question

A man was having an argument with his wife and he said angrily: “I will make a decision just now. I have decided to divorce you.” He then said: “You do not listen to me, so I am…” He said this much when his wife placed her hand over his mouth and the word of divorce could not be uttered by him. Has divorce taken place?

Answer

Divorce did not take place on his wife. For divorce to take place, it is necessary to utter the word of divorce. The act of uttering is not found here.

We learn from the above text that when the husband uttered the word of divorce but did not utter the word “three”, one divorce falls on the wife and not three.

Furthermore, from the Hadīth experts, Maulānā Zafar Ahmad ʿUthmānī raḥimullāh says that one meaning of the following Hadīth is that when the mouth is shut closed at the time of issuing a divorce, the divorce does not take place. The Hadīth reads as follows:

لا طلاق في إغلاق (رواه أبو داود، ص ۹۹۸، باب الطلاق على غيظ).

¹ Ahṣan al-Fatâwâ, vol. 5, p. 196.
Issuing a divorce on the instruction of one’s parents

Question

If a father instructs his son to divorce his wife, does the Shari‘ah impose on the son to obey his father?

Answer

A Hadith states that a man said to Rasūlullāh ʿalayhi wa sallam:

١٨٨١، ﺍٌﺪارة ﺍﻟﻘﺮآن

My wife allows all and sundry to touch her.

Rasūlullāh ʿalayhi wa sallam said: “So divorce her.” The man replied: “But I love her.” Rasūlullāh ʿalayhi wa sallam said: “Then you can continue taking enjoyment from her as she is.” We learn from this Hadith that if a father orders his son to divorce his wife, it is on the level of an advice and not on the level of a ruling of the Shari‘ah. In the above-quoted Hadith, Rasūlullāh ʿalayhi wa sallam ordered – i.e. advised – the man to divorce his wife because of the defect which was found in her. The status of Rasūlullāh ʿalayhi wa sallam is certainly superior to that of a father. In this case, the counsel of Rasūlullāh ʿalayhi wa sallam was neither accepted nor did he express any displeasure at this.

The same can be said about the incident between Ibn ʿUmar radīyallāhu anhu and his father’s order. It was not necessary for Ibn ʿUmar radīyallāhu anhu to accept his father’s order together with the advice of Rasūlullāh ʿalayhi wa sallam, but he accepted it. If anyone does not accept such a piece of advice, there is no harm in it. Anyway, the advice of parents as regards divorce is incorrect in most cases. The same can be said about the incident of Ḥadrat Barīrah

Allāh taʿālā knows best.
radiyallahu 'anhā when Rasūlullāh ﷺ allahu 'alayhi wa sallam advised her to continue living with her husband. She did not accept the counsel of Rasūlullāh ﷺ allahu 'alayhi wa sallam and he did not express his displeasure at her refusal.

The relevant Ahādīth on this subject are quoted below:

Although an objection could be levelled against the narrator Abū az-Zubayr as he is labelled a mudallis, one point which becomes clear from this Ḥadīth is that the order was on the level of an advice [and not an obligation].

The following is related in Tirmidhī:

Shaykh Muḥammad ibn Ẓālih al-ʿUthaymīn writes in his commentary of Riyyād as-Ṣāliḥīn:

The other hadith quoted is:}


Although divorcing one’s wife for the pleasure of one’s parents is a towering example of obedience, to do such a thing especially when the wife has committed no crime amounts to playing around with her life, pushing her down the valley of separation, and placing one’s self under the unbearable weight of separation. This is a severe test. In a normal society, where does a person have a father like Ḥadrat 'Umar radīyallāhu 'anhu that he could be expected to display the character of Ibn 'Umar radīyallāhu 'anhu? Therefore, although it is permissible to issue a divorce to earn the pleasure of one’s parents, taking such a step without considering the pros and cons could be a prelude to a calamity.¹

¹ Fatāwā Ḥaqqānīyyah, vol. 4, p. 580.
to divorce her he will be trampling on her rights – then in the light of all these conditions, divorce should not be issued. The person will not be sinning if he does not issue the divorce.¹

Allāh ta‘ālā knows best.

**When the husband does not see to his wife’s needs**

**Question**

A reasonably wealthy man removed his wife from his house. He does not give her anything for her expenses. She is languishing in hardship and poverty. The man wrote his properties and possessions in favour of someone else, so she cannot present her case in a court. Can such a helpless woman obtain a divorce?

**Answer**

If the husband does not see to her needs, refuses to give her anything for her expenses and is not bothered about fulfilling her rights; then he ought to divorce her. If he does not, he will be compelled to divorce her. However, the woman cannot leave his marriage without being divorced. She must present her case to the Jam‘iyyat ‘Ulamā’ who will then investigate her matter and annul the marriage.

¹ *Fatāwā Mahmūdīyyah*, vol. 12, p. 161.
Further reading: Fatwā Dār al-ʿUlām Deoband, vol. 9, p. 35; Kitāb al-Faskh wa at-Tafrq, p. 88; Majmūʿah Qawānīn Islāmī, p. 198; al-Ḥilaḥ an-Nājīzah, p. 117.

Allāh taʿālā knows best.

Preventing a baseless and non-Sharʿī divorce

Question

Husband and wife make an agreement that if the husband issues three divorces without a reason or without a basis from the Sharʿīah, it will become obligatory on the husband to give to the wife the house, a vehicle or a large amount of money. Does the Sharʿīah permit such an agreement?

Answer

If the intention is to prevent the husband from exercising his right to divorce needlessly, and at the time when their marriage is solemnized, he is made to agree to a precondition that if he divorces his wife hastily and without due cause, then a large amount of money is imposed on him as a form of muʿāḥ (allowance) then this type of arrangement will most probably be in line with the Qurʾān wherein Allāh taʿālā says:

وَمَنْ مَطَّلَبَ مَنَافِعُ بِالْمَعْوِّفِ،ْ حَقًا عَلَى الْمَطَّلَبِينَ.

For the divorced women there is an allowance according to the rule. (This is) incumbent on the pious.¹

¹ Sūrah al-Baqarah, 2: 241.
Although, as per the statements of the jurists, this type of arrangement is only on the level of mustahab (desirable), it will be essential to fulfil it once it is agreed upon, as per the following statement of Rasūlullāh sallallāhu 'alayhi wa sallam:

وَأَوْفِيَا يَعَهَدَ اللُّهُ

It becomes essential to fulfil a promise in certain situations when a promise is made in a contract.

وَإِنْ ذَكَرَ الْبِيْعَ مِنْ غَيْرِ شَرْطٍ ثُمَّ ذَكَرَ الشَّرْطَ عَلَىٰ وَجْهِ الْمُوَافَةِ جَازَ الْبِيْعَ وَلِيَؤْلَمِ الْوَفَاءَ بِالوَعْدِ لَأَنَّ الْمُوَافَاةَ قَدْ تَحْكَمُ لَا زَمْةَ فَتَجْعَلُ لَا زَمْةَ لَحَاجَةَ النَّاسِ (قَاضِيْخَان عَلِى بَابِشِ الْهَنْدِيَّةُ: ۲/۱۶۵۲۰ فَصْلٌ فِي الْشَّرْطَ الْمُفْسَدَةَ، تَحْتَ مُسْتَلِعَةٍ بِعِيْضَ الْوَفَاءِ)

Here too we can say that just as it is essential to fulfil a promise in a trade transaction, its fulfilment can be made obligatory in a marriage contract on the basis of wisdom.

۳۵۰۱. فَإِذَا شَرَطُوْا فِي أَمَانِ الرِّسُلِ أَلَا يَأْخُذُ عَائِشَةُ الْمُسْلِمَيْنَ مِنْهُمْ شَيْئًا، فَإِنَّهُمْ كَانُوا يَعَامِلُونَ رَسُلَنَا بِمِثْلِ بَذَا فِينِيْبِيْلِ الْمُسْلِمِيْنَ أَنْ يَشْرَطُوْا لَهُمْ بِذَا وَيَوْفِيُوْا بِهِ لَأَنَّ بَذَا شَرْطُ مَوْافِقٍ لِّحَكْمِ الْشَّرَعِ يُحِبُّ الْوَفَاءَ بِهِ (شَرْحُ كَتَابِ السَّيِّرِ الْكَبِيرِ مَهْمَدٌ بْنُ الْحَسَنِ الشَّيْبَانِي: ۵/۱۷۹۲۰، بَابُ الْشَّرْطُ فِي الْمُوَافَاةِ وَغِيْرَاهَا).

Allāh ta‘ālā states:
Fulfil the covenant of Allâh.¹

‘Allâmah Qurṭûbî ra’îmahullâh writes in his commentary to the above verse:

لفظ عام لجميع ما يعقد باللسان ويلزمه الإنسان من بيع أو صلة أو موافقة
في أمر موافق للدائنة. (المجمع لإحكام القرآن: ۱۰/۱۱۱، بيروت)


Allâh ta’âlâ knows best.

¹ Sûrah an-Nahl, 16: 91.
ISSUING A DIVORCE IN UNAMBIGUOUS WORDS

Issuing three divorces with the intention of emphasis

Question

In the course of an argument with his wife, a person said: “You are divorced, divorced, divorced.” He now claims that he repeated the word “divorce” for emphasis and his intention was only one divorce. Should his wife accept his claim? Bear in mind that his wife has presented this case in court.

Answer

If a person issues three divorces and says that his intention was emphasis, his claim will be accepted under religious integrity and the fatwa of one divorce will be issued. However, in this case, when the wife heard the three divorces, she presented the case in court. The judge or the Jam‘iyatul ‘Ulamâ will be required not to accept the claim of the husband and issue a verdict on the obvious meaning by saying that three divorces have taken place.
Nizām al-Fatāwā:

If this case is presented to a judge (or someone acting in place of a judge, e.g. a Sharʿī committee) he will not accept the claim of the husband. Instead, he will issue a verdict of three divorces.¹

Allāh taʿālā knows best.

Resorting to unambiguous words with the intention of emphasis

Question
A person said to his wife: “You are divorced, divorced, divorced.” The second and third divorces were uttered with the intention of emphasis. How many divorces will fall; one or three? What type of divorce will it be, rajī or bāʾīn?

Answer
In this case, because the intention was for emphasis, then on the basis of religious integrity, one ṭalāq-e-bāʾīn will take place. But the husband’s claim will not be accepted judicially.

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Question: Zayd was angry with his wife and he issued three divorces to her. He said: “You are divorced. You are divorced. You are divorced.” He now claims that his intention in repeating the words was for emphasis.

Answer: The following is stated in *ad-Durr al-Mukhtar*:

This shows that the judge will not take this into consideration. His intention is valid on the basis of religious integrity.¹

*Fatwa Mahmūdiyyah*:

A husband uttered the word “divorce” once and then repeated it several times for emphasis. He was oblivious at the time, having no intention of a new divorce. One divorce will take place on the basis of religious integrity.²

Allāh ta‘ālā knows best.

**Divorce issued by an oblivious person**

**Question**

A person said to his wife: “You are divorced, divorced, divorced.” He did not have any intention and was totally oblivious. How many divorces will apply to her?

**Answer**

Hadrat Muftī Farīd Ṣāḥib states that if a person has no intention at all, then one ʿタルح-e-rajī will apply.

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¹ *Fatwa Dār al-ʿUlām Deoband*, vol. 9, p. 227.
² *Fatwa Mahmūdiyyah*, vol. 12, p. 280.

الأشياء والنظائر:


الأشياء والنظائر:

يدخل في هذه القاعدة (أي إعمال الكلام أولى من إعمال) قولهم: التأسيس خير من التأكيد إذا دار اللفظ بينما تعيين الحمل على التأسيس، ولذا قال أصحابنا: لو قال لوجه: أنت طالق طالق طالق طلقت ثلاثًا. (الأشياء والنظائر: ۳۷۶/۷۲، القاعدة التاسعة، إدارة القرآن).

Allâh ta’âlâ knows best.
Issuing a divorce jokingly with unambiguous words

Question

A man said this three times: “You are divorced, you are divorced, you are divorced.” He then says that one was issued in earnestness while the second two were said in jest. How many divorces took place?

Answer

In this case, three divorces have taken place because a divorce issued in earnestness is already considered, and a divorce issued in jest is also considered to be in earnestness. Therefore, the two which he said in jest are also counted and have fallen on his wife. As per the explicit text of the Qur’ān, this woman cannot be lawful to her first husband without the process of ḥalālah. This is the unanimous creed of the jurists.

Observe the absolute text of the Qur’ān:

وَإِذْ قَالَ تَلَقَّهَا فَلَا تَعْلَمَنِهِ مَنْ بَعْدَهُ تَنْكِحَ رُؤْجَا عِنْدَهُ

Now if he divorces her (a third time), she is not lawful for him thereafter as long as she does not marry a husband other than him.¹

Sunan at-Tirmidhī

عن أبي بريدة رضي الله تعالى عنه قال: قال رسول الله صلى الله عليه وسلم: ثلاث جد ورزلين جد، الطلاق، والرجعة، إذا خذبت حسن غريب. (رواه الترمذي: 1/260، باب ما جاء في الجد والهرزل في الطلاق)

Abū Hurayrah raḍi Allāh ‘anhu relates that Rasūlullāh ﷺ raḍi Allāh ‘alayhi wa sallam said: “There are three statements which, whether uttered in earnestness or light-heartedness, will be treated in earnestness: marriage, divorce and revoking a divorce.”

¹ Sūrah al-Baqarah, 2: 230.
Issuing a divorce and claiming that a divorce from the first husband was intended

*Question*

A man had issued two divorces to his wife in the past. After some time, they had an argument and he issued another divorce. However, he claims that he made the intention of a divorce from her first husband. Does the Shari’ah permit the wife to continue living with her husband? Bear in mind that this wife had been divorced by her previous husband.

*Answer*

If the intention of the husband was as claimed in the question, then divorce has not taken place. His wife can continue living with him. However, he should abstain from words of this nature in the future.

The best thing to do in such a situation is for husband and wife to go to an arbitrator who will take an oath from the husband. If he takes an oath and the wife had certainly been divorced by her previous husband, she can continue living with him.

Allâh ta’âlâ knows best.
A person says: أنت طالق واحدة في ثنتين.

Question
A person said: أنت طالق واحدة في ثنتين. How many divorces take place? Is there any difference of opinion on this issue? On whose opinion is the fatwā issued?

Answer
According to the zāhir ar-riwāyah, one divorce takes place. Imām Zufar raḥimahullāh is of the view that two divorces take place. The fatwā is issued on the latter’s view. In other words, two divorces will take place.

The fatwā:

ولو قال: أنت طالق واحدة في ثنتين ونوى الضرب والحساب أو لم تكن له نية فيبي واحدة، وقال زفر: تقع ثنتان لعرف الحساب وبو قول حسن بن زيد.

(البداية: 2/363)

فتح القدير:

وجه قول زفر أن عرفهم فيم تضعيف أحد العددين بعدد الآخر فقال، واحد في ثنتين كقوله واحد مرتين أو ثنتين مرة. (فتح القدير: 4/33، دار الفكر)

المرمختار:

وبواحدة في ثنتين واحدة إن لم يبنو أو نوى الضرب لأن يصبر الأجزء لا الأفراد... وفي الشامية: وقال زفر والحسن بن زياد والأئمة الثلاثة، يقع ثنتان، لأن عرف أب الحساب فيم تضعيف أحد العددين بعدد الآخر، ورحمة في الفتح: بأن العرف لا يمنع... واختاره أيضاً في غاية البيان. قال الرحميّ: فتراد بذل المسألة على المسائل المفتي بها بقول زفر. أي لأن المحقق ابن الهمام من
A person says: “You are divorced” three times out of fear

Question
The father-in-law of a new Muslim obtained three divorces from him in the English language. This new Muslim did not know what happens when three divorces are issued. He merely uttered these words out of fear, without having such an intention. How many divorces took place by his saying: “You are divorced. You are divorced. You are divorced?”

Answer
Only one ṯalāq-e-raji’ took place because when he uttered the second two, it was not his intention to issue new divorces. Because he did not know the difference between saying the words one time and three times, he merely repeated them. His words will be accepted on the basis of religious integrity. However, if the wife had presented the case to a judge, he will pass a verdict of three divorces.

Allāh ta’ālā knows best.
When there is a doubt in the number of divorces

Question
A person is not sure whether he issued two or three divorces. How many will be considered?

Answer
If there is a doubt between two and three, then because two are definite, two divorces will be considered. However, if there is more inclination to three divorces, then three will take place.

الدر المختار:
ولو شك أطلق واحدة أو أكثر بنى على الأقل. وفي الشامية: بنى على الأقل أي كما ذكره الأسبيجالي، إلا أن يستيقن بالأكثر أو يعكون أكبر ظنه. (الدر المختار مع رد المختار: 483، باب الصريح، سعيد)

بدائع الصنائع:
شك الزوج لا يحلو إما أن وقع في أصل التطبيق أطلفها أم لا؟ وان وقع في القدر يحكم بالأقل لأنه منتقين به. في الزيادة شك. (بدائع الصنائع: 36/3، في الرسالة في الطلاق، سعيد)


Allāh ta’ālā knows best.
One two three divorces to you

Question
A person says to his wife: “One two three divorces to you.” How many divorces are considered?

Answer
Three divorces have taken place. This woman will not be lawful to her husband unless the process of ḥalālah is followed.

Fatwāwā Mahmūdiyyah:
When a person says “One two three divorces”, a ṭalāq-e-mughallazah takes place. The wife cannot remarry her husband without ḥalālah.¹


Allāh ta’ālā knows best.

¹ Fatwāwā Mahmūdiyyah, vol. 12, p. 464.
A person says: “You are divorced on three conditions”

Question
A man said to his wife: “You are divorced on three conditions.” How many divorces are considered?

Answer
In certain regions, the words “three conditions” are taken to mean “three times”. If a person belonging to such a region says “You are divorced on three conditions”, then three divorces will be considered.

Fatāwā Farīdiyyah:

In the region where we live, the words “three conditions” are said to mean “three times”. Based on the common practice in this region, the wife has been issued with a talāq-e-mughallazah.

Allāh ta’ālā knows best.
THREE DIVORCES

Issuing three divorces in a single assembly

Question
A person issues three divorces to his wife in a single assembly. How many divorces fall on her; one or three? Kindly provide a referenced answer from the Qur’ān and Hadith.

Answer
It is the unanimous decision of the Qur’ān, Hadith, Ijmā’ of the ummat, ‘ulamā’ of the past, the four Imāms and the senior scholars and saints that when three divorces are issued in a single assembly, three divorces will apply. For example, a person issues three divorces to his wife in one sentence – whether he engaged in sexual intercourse with her or not – or three divorces in a single assembly to his wife with whom he engaged in sexual intercourse by saying: “You are divorced, divorced, divorced.” In both cases, three divorces will take place. His wife will become a mughallazah (one who has been issued a ṭalāq-e-mughallazah).

Passing a verdict of one divorce is therefore against the texts and is wrong. If the man and woman want to re-establish a marriage relationship, it cannot happen unless she completes her ‘iddah, marries another man, has conjugal relations with him, lives with him, and the second husband happens to divorce her [for whatever reason] or passes away. Once she completes this ‘iddah [whether of divorce or of death], it will be permissible for her to marry her first husband.

Proofs of the majority for three divorces

Proofs from the Qur’ān

\[
\text{أخلاقًا، فإِمَاسَالَةً يَمْعَرْفُ أوْ يَتَسَرِّحُهُمْ بإِحْسَانٍ.}
\]

A divorce may be revoked up to two times. Thereafter retain (her) in accordance with the norm or release (her) in a good manner.¹

¹ Sūrah al-Baqarah, 2: 229.
All the exegists explain that in pre-Islamic Arabia there was no limit to the number of divorces a person could issue and the number of times a person could revoke his divorce and take back his wife. A person could issue thousands of divorces. Sometimes, a person – merely to vex his wife – would issue a divorce and then revoke it before the expiry of the waiting period. This custom continued for some time in the early part of Islam. The above-quoted verse was then revealed and this uncivilized custom was cancelled. The number of divorces and revocations was now limited. A person has the right to divorce and revoke up to two times. The right to revoke after that has been put to an end. The final limit of the number of divorces is explained in the following verse:

 فإن طلقها فلا تجعل له من بعد حنيفت رؤوجا عيرة

Now if he divorces her (a third time), she is not lawful for him thereafter as long as she does not marry a husband other than him.¹

Now if a person issues three divorces – whether in three different assemblies or in a single one, with a single word or separate sentences – three divorces will take place and his wife will become a mughallazah. He will not have the choice of revoking his divorce.

Those who believe that three divorces have to be counted as one say that the verse under discussion mentions the word marratān which means marratan ba’da marratin (one after the other). This means that two divorces are issued in two assemblies. In other words, this verse is not referring to two divorces in a single assembly.

The reply to this objection is that in the light of traditions, Imam Ibn Jarir Tabari rahimahullahu explains the word marratān to mean taqīqaṭān (two divorces). This could apply to two divorces in a single assembly or two divorces in two separate assemblies. An explanation which is given in the light of Hadith traditions will be given preference.

Furthermore, the word marratān does not necessarily mean marratan ba’da marratin all the time. It has also been used to mean “twofold” or “double” in the Qur’an and Hadith. A few examples are quoted below:

(1)

¹ Sūrah al-Baqarah, 2: 230.
They shall receive their reward twofold.¹

Whoever of you obeys Allāh and His Messenger and does good deeds, to her We shall bestow her reward twofold.²

Both these verses use the word marratayn to mean “double” or “twofold”. It does not mean that they will receive their reward two times on two separate occasions.

Ṣaḥīḥ Bukhārī and several other Hadith collections contain the following narration of 'Abdullāh ibn Zayd radīyallāhu 'anhu on the method of performing ṭuḥūt:

Rasūlullāh ﷺ washed the limbs two times each.

This means that Rasūlullāh ﷺ washed the limbs of ṭuḥūt two times in one place. It certainly does not mean that he washed them once in one place and a second time in another place.

¹ Sūrah al-Qāsas, 28: 54.
The people of Makkah asked Rasûlullâh ﷺ to show them a miracle, so he showed them the splitting of the moon into two pieces.

The word marratayn in the above Hadîth means filqatayn (two pieces). It does not mean that he displayed the miracle of the splitting of the moon on two separate occasions. This miracle was displayed on only one occasion.

Furthermore, even if the word marratayn was to mean marratan ba‘da ukhrâ, the only thing it proves is that two divorces are given one after the other; and not at one and the same time in one word. Furthermore, there is not even a slight reference to any other restriction such as a separate assembly. Therefore, if a person says “You are divorced, you are divorced” in a single assembly or during the same period of the wife’s purity, this will also be totally in line with the words of the Qur‘ân:

\[
	ext{فإِنَّ طَلَّقَهَا فَلَا جِلَّلٌ لَهُ مِنْ أَبْعَدُ حَتَّى تَنْفَكَ زُوجَاهُ غَيْرَهُ}
\]

Now if he divorces her (a third time), she is not lawful for him thereafter as long as she does not marry a husband other than him.¹

Some ‘ulamâ furnish this verse as proof for the imposition of three divorces in a single assembly. They say that the phrase “if he divorces”

¹ Sûrah al-Baqarah, 2: 230.
is a conditional verb used in a general sense as clearly stated in the books on principles of jurisprudence. Therefore, three divorces in a single assembly are included in this generality.

‘Allāmah Ibn Hazm Zāhirī rahimahullāh writes in his explanation of the above verse:

فِي ذَلِكْ دُونْ بَعْضٍ بِغِيْرِ نَصِّ (المحلٌ: 10/)

﴾٣﴿

َّٰثَ لَكَ حُدُودُ اللَّهِ وَمَنْ يَتَّعَدُّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ. لَا

تدْرِيٗ لِّلَّهِ يَعْلَمُ بَعْدَ ذَلِكَ أَمْرًا.

These are the limits set by Allāh. Whoever transgresses the limits of Allāh has certainly harmed himself. He does not know, perhaps Allāh may cause something new to come about after that divorce.¹

The apparent meaning of this verse teaches us that if a man utilizes the right of three divorces which Allāh ta’ālā gave him at once, then all three divorces will be imposed. However, because he has transgressed the limits laid down by Allāh ta’ālā, he will be classified as one who has wronged himself. This is because it is possible that Allāh ta’ālā may instil regret over the divorce in his heart. Now that he has issued all three divorces in one assembly and husband and wife have been separated, he will not be able to make up for or remove that regret. If three divorces issued at once were counted as one revocable divorce – as believed by some of the Ahl-e-Zāhir, ‘Allāmah Ibn Taymiyyah rahimahullāh, Shaykh Ibn al-Qayyim rahimahullāh and other Ghayr Muqallids – then what is he going to regret and rue over? After all, he has the leeway to make up for his action by revoking his divorce.

Summary: It is established from these three verses of the Qur’ān that three divorces in a single assembly or in a single word are imposed as three divorces.

¹ Sūrah at-Talāq, 65: 1.
On the other hand, there is not a single verse – even by inference – which shows that three divorces in a single assembly or in a single word are counted as one.

**Proofs from Ahādīth**

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Hadrat ‘A’ishah ra’diyallahu ‘anh briefly narrates that a man issued three divorces to his wife. She then married another man who also divorced her. Rasulullah sallallahu ‘alayhi wa sallam was asked: “Is it permissible for her to marry her first husband?” He replied: “Not until he tastes her as her first husband had tasted her.”

The obvious meaning of the words “issued three divorces to his wife” is that all three were issued together. Imām Bukhārī rahimahullāh uses this argument as a basis for titling this chapter باب من أجاز الطلاق الثلاث.

Hāfīz Ibn Hajar ‘Asqalānī rahimahullāh writes:

فالتمسك بظاهر قوله طلقها ثلاثاً فان ظاهر في كونها مجموعة. (فتح البارى: ٣۷/۹، باب من جوز طلاق الثلاث، الحديث الثالث حديث عائشة، لا بور)

٢

In the chapter باب من أجاز الطلاق الثلاث Imām Bukhārī rahimahullāh quotes the narration of Hadrat Sahl ibn Sa’d ra’diyallahu ‘anhu in which the story of the li’ān of Hadrat ‘Uwaymir ‘Ajalānī ra’diyallahu ‘anhu is related.

It is mentioned in this story that when husband and wife completed the li’ān, Hadrat ‘Uwaymir ra’diyallahu ‘anhu issued three divorces to
his wife before Rasūlullāh ṣallallāhu 'alayhi wa sallam could ask him to do so. The words read as follows:

فَطَلَقَهَا ثَلَاثًا قَبْلَ أَن يَأْمُرَهُ رَسُولُ اللَّهِ صَلِّي اللَّهُ عَلَيْهِ وَسَلَّمَ (صحيح البخارى: 697/3، باب من اجتز طلاق الثلاث)

This Ḥadīth proves that three divorces issued in a single assembly are imposed.

قال العلامة العبي: "فطلقتها" وأمضى رسول الله صلی الله علیه وسلم، ولم يذكر عليه فدل على أن من طلق ثلاثاً يقع ثلاثاً. (عهد القاري: 338/14، ملتان)

Objection: Some of the scholars who believe that three are counted as one say that separation between husband and wife was already realized through the ʿīn. Since his wife has already become a stranger to him, a divorce cannot be imposed on her. This is why Rasūlullāh ṣallallāhu 'alayhi wa sallam remained silent when he divorced her in this way.

Reply: Ḥadrat 'Uwaymir raḍiyyallāhu 'anhu was thinking that separation does not take place through the ʿīn, and that the separation will be realized by issuing three divorces at once. This is why he issued all three at once. It cannot happen that a ʿAbīṣ holds that three divorces at once to be correct and his correct thinking be wrong, and Rasūlullāh ṣallallāhu 'alayhi wa sallam remains silent despite this without expressing any disapproval. This proves that three divorces in a single assembly are imposed.

As regards the incident of the ʿīn of Ḥadrat 'Uwaymir raḍiyyallāhu 'anhu, there is no narration which mentions that Rasūlullāh ṣallallāhu 'alayhi wa sallam considered three divorces to be totally invalid or counted as one. In fact, the opposite is found in a narration of Sunan Abī Dāwūd. It clearly states that Rasūlullāh ṣallallāhu 'alayhi wa sallam imposed these three divorces.

فطلقتها ثلاث تطليقات عند رسول الله صلی الله علیه وسلم فأتنيه رسول الله صلی الله علیه وسلم وكان ما صنع عند رسول الله صلی الله علیه وسلم سنة. (سنن ابن داود: 336/1، باب في المعان، فيصل)
Their argument is that husband and wife are separated by the li’ān itself whereas this is not necessarily the case. Separation solely through li’ān is neither indicated by the word “li’ān” nor is there any explicit text of the Qur’ān or Ḥadīth in this regard. Therefore, separation through li’ān is not an absolute matter. It is an ijtihād issue. This is why the jurists hold different views in this regard.

After the li’ān of Ḥadrat ‘Uwaymir raḍi’Allāhū ‘anhu, he issued three divorces in the presence of Rasūlullāh sallallāhu ‘alayhi wa sallam and the latter remained silent – in fact, he imposed all three divorces as per the narration of Sunan Abī Dāwūd. This is a clearly established fact from the texts. As regards an ijtihād issue, the statement, action and tacit approval of Rasūlullāh sallallāhu ‘alayhi wa sallam will obviously be given preference. This is the creed of all the Muḥaddithūn and jurists.

3

Ḥadrat ‘Ā’ishah raḍi’Allāhū ‘anāhā was asked a ruling:

The obvious meaning of the words “issues three divorces to her” is that all three were issued together.
Sunan Nasa’i contains a Hadith narrated by Maḥmūd ibn Labīd who said that Rasūlullāh ﷺ was informed of a person who issued three divorces to his wife. Rasūlullāh ﷺ became angry, stood up and said: “Is the Book of Allāh being played around with while I am present among you?”

A clear meaning of this Hadith is that three divorces took place.

Hāfiz ibn al-Qayyim rahmahullāh says with reference to the status of this Hadith:

أيسنده على شرط مسلم (زاد المعاد: 46/5، فصل في حكمة صل الله عليه وسلم فبين طلاق ثلاثاً وحدها: مؤسسة الرسالة)

’Allāmah Mārdīnī says that this is an authentic Hadith.

الجوير النقي: 7/333 (دار المعرفة بيروت)

Hāfiz ibn Kathīr rahmahullāh says:

إسناده جيد (تيل الإوطار: 6/461، باب ما جاء في طلاق البتة، إداره القرآن)

Hāfiz ibn Hajar rahmahullāh says:

رواه النسائي ورواه مؤقفون (بلغ المرام: 320، باب الطلاق، الكويت)

Qādī Abū Bakr ibn al-’Arabī says with reference to this Hadith: Like the three divorces issued by ’Uwaymir Ḥajālānī raddiyyallāhu ‘anhu, Rasūlullāh ﷺ imposed the three divorces of this person as well.

فلم يبرد النبي صلى الله عليه وسلم بل أمضاء كما في حدوث عويمبر العجلاني

في اللعان حيث أمضى طلاق الثلاث ولم يبرد (تذيب سنن ابن داود: 3/329، طبع مصر)
The incident of Ḥadrat 'Abdullāh ibn 'Umar raḍi'allāhu 'anhu is related in Dāraquṭnī. Towards the end of it, it is stated that he asked: “O Rasūlullāh! Had I issued three divorces, would it have been permissible for me to revoke them?” Rasūlullāh ṣallallāhu 'alayhi wa sallam replied: “No. Your wife would have been separated from you and this action (of three divorces at once) would have been a sin.” The Hadith reads as follows:

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The gist of the above narration is that Ḥadrat Ḥasan ibn ‘Alī raḍiyyallāhu ‘anhu divorced his wife ‘Ā’ishah Khath'amīyyah by saying: “Go away, you are divorced three times.” She left him. Later on he learnt that she is intensely grieved by the separation, so he cried and said: “Had I not issued an irrevocable divorce, I would have taken her back. I heard Rasūlullāh ﷺ saying (another narration states: Had I not heard from my father and had he not heard from my grandfather): The person who issues three divorces to his wife whether by issuing one divorce in each period of purity, one divorce at the beginning of each month, or three divorces at once; she cannot be lawful to him unless she marries another man.”

(7)

The Ḥadīth of Fāṭimah bint Qays raḍiyyallāhu ‘anhā is quoted in Sunan Ibn Mājah. Ibn Mājah raḍīmu’llāh himself uses this Ḥadīth to prove the imposition of three divorces issued in a single assembly. He has a chapter titled “The chapter on the one who issues three divorces in a single assembly”. He then quotes the following Ḥadīth under this chapter:

 حدثنا محمد... عن عامر(shewi) قال: قلت لفاطمة بنت قيس: حدثني عن طلاقك قالت: طلقتني زوجي ثلاثاً وبو خارج الى اليمن فأجاز ذلك رسول الله صلى الله عليه وسلم. (ابن ماجه: 467. نسائي: 2/201. ابو داود: 319/1 دارقطني: 1/4, القابرة)

In other words, the husband of Fāṭimah bint Qays raḍiyyallāhu ‘anhā issued three divorces to her. Rasūlullāh ṣallallāhu ‘alayhi wa sallam passed a verdict of three divorces having taken place.

(8)

The following is quoted in Sunan Dāraquṭnī:
Hadrat 'Alī radiyallāhu 'anhu narrates that Rasūlullāh sallallāhu 'alayhi wa sallam heard about a certain man who divorced his wife al-battāh (this word can be used to mean one divorce and also three divorces). Rasūlullāh sallallāhu 'alayhi wa sallam became angry and said: "Are you making a mockery of Allāh's verses, or are you making the Dīn of Allāh ta'ālā a play and amusement!? Whoever divorces al-battāh, we will impose three divorces on him. His wife will then be unlawful to him unless she marries someone else."

The above Hadith makes mention of the issuing of 1 000 divorces. Rasūlullāh sallallāhu 'alayhi wa sallam imposed three divorces on the person.
Proofs from the practices of the Sahābah

1

The verdict of Hadrat 'Umar radīyallāhu 'anhu:

A man in Madīnah issued 1 000 divorces to his wife. When the case was presented to 'Umar radīyallāhu 'anhu and he questioned the man, the latter replied: “I was merely joking.” 'Umar radīyallāhu 'anhu struck him with a whip and said: “Three would have been sufficient.”

2

The verdict of Hadrat 'Uthmān radīyallāhu 'anhu:

A man came to 'Uthmān radīyallāhu 'anhu and said: “I issued 1 000 divorces on my wife.” He said: “She has been separated from you with three divorces.”

3

The verdict of Hadrat 'Alī radīyallāhu 'anhu:

A man in Madīnah issued 1 000 divorces to his wife. When the case was presented to 'Alī radīyallāhu 'anhu and he questioned the man, the latter replied: “I was merely joking.” 'Alī radīyallāhu 'anhu struck him with a whip and said: “Three would have been sufficient.”

A man came to 'Alī radīyallāhu 'anhu and said: "I issued 1 000 divorces on my wife." He said: "She has been separated from you with three divorces."

The verdict of Hādrat 'Ā'ishah radīyallāhu 'anāhā:


Hādrat Abū Hurayrah, Ibn 'Abbās and 'Ā'ishah radīyallāhu 'anhum said with regard to a man who issues three divorces to his wife before having conjugal relations with her: "She is not lawful to him until she marries another person."

The verdict of Hādrat 'Abdullāh ibn Mas'ūd radīyallāhu 'anhu:

'Abdullāh ibn Mas'ūd radīyallāhu 'anhu was asked about a man who issues one hundred divorces to his wife. He replied: "She has been separated from you with three divorces, and the remaining number is a transgression."

The verdict of Hādrat 'Abdullāh ibn 'Umar radīyallāhu 'anhu:
When Ibn 'Umar radhiyallahu 'anhu was asked about a person who issues three divorces, he said: "Why didn't you issue one or two? This is what Rasūlullāh sallallahu 'alayhi wa sallam ordered me to do. Now that you have issued three divorces to her, she is forbidden to you until she marries another person."

The verdict of Ḥadrat 'Abdullāh ibn 'Abbās radhiyallahu 'anhu:

Ibn 'Abbās radhiyallahu 'anhu was asked about a person who issues one thousand divorces to his wife. He said: "Your wife has become forbidden to you with three divorces and the remaining number is a sin against you. You are making a mockery of the verses of Allāh."

The verdict of Ḥadrat Abū Hurayrah radhiyallahu 'anhu:

Ibn 'Abbās radhiyallahu 'anhu was asked about a person who issues three divorces, he said: "Why didn't you issue one or two? This is what Rasūlullāh sallallahu 'alayhi wa sallam ordered me to do. Now that you have issued three divorces to her, she is forbidden to you until she marries another person."

The verdict of Ḥadrat 'Abdullāh ibn 'Abbās radhiyallahu 'anhu:

Ibn 'Abbās radhiyallahu 'anhu was asked about a person who issues one thousand divorces to his wife. He said: "Your wife has become forbidden to you with three divorces and the remaining number is a sin against you. You are making a mockery of the verses of Allāh."
Mu'āwiyah ibn Abī 'Ayyāsh Ansārī was sitting with 'Abdullāh ibn Zubayr ra'diyallāhu 'anhu and Āsīm ibn 'Umar ra'diyallāhu 'anhu when Muḥammad ibn Iyās ibn Bukayr came to them and said: “A Bedouin issued three divorces to his wife without having engaged in conjugal relations with her. What do you two have to say about this?” Ibn Zubayr ra'diyallāhu 'anhu said: “We do not know what to say in this regard. Go and ask Ibn 'Abbās ra'diyallāhu 'anhu and Abū Hurayrah ra'diyallāhu 'anhu, and then come back and tell us what they said.”

Muḥammad ibn Iyās went to them and asked them. Ibn 'Abbās said to Abū Hurayrah: “Give him your verdict, O Abū Hurayrah! A complex question has been posed.” Abū Hurayrah ra'diyallāhu 'anhu replied: “One divorce separates her from her husband, and three divorces makes her unlawful to him unless she marries another man.”

The verdict of Hadrat 'Abdullāh ibn 'Amr al-Ās ra'diyallāhu 'anhu:

'Āṭā' ibn Yasār relates that a man came to 'Abdullāh ibn 'Amr ra'diyallāhu 'anhu and asked him about a person who issues three divorces to his wife before having touched her. I said: “The man may issue one divorce to a virgin woman.” 'Abdullāh said: “You are cutting it short. One divorce separates her from him, and three divorces make her unlawful to him unless she marries another man.”

The verdict of Umm al-Mu‘minīn Hadrat Umm Salamah ra'diyallāhu 'anāhā:
Umm Salamah ra diyallahu 'anhā was asked about a man who issues three divorces to his wife before having engaged in conjugal relations with her. She said: “She is not lawful to him until someone else [marries her] and engages in conjugal relations with her.”

Proofs from ijma’

During the caliphate of Ḥadrat 'Umar ra diyallahu 'anhu the Sahābah ra diyallahu ’anhum had already reached consensus that three divorces issued in a single assembly will be counted as three.

Observe the following statements of the jurists and Ḥadīth experts on ijma’ on this issue”

Shaykh Abū Bakr Jassāg Rāzī rahimahullāh:

فَالْكِتَابُ والْسَّنَةُ وَإِجْمَاعُ السَّلَفِ تُوجِبُ إِيقَاعِ الثَّلَاثِ مَعَا وَإِنْ كَانَتْ مَعْصِيَةً.

(أخلاق القرآن: 388، ذكر الحجاج لإيقاع الثلاث معا، سبيل)

Shaykh Ibn al-Humām rahimahullāh:

فإن جماعتهم ظاهر، فإنه لم ينقل عن أحد منهم أنه خالف عمر رضي الله تعالى عند حين أمضى الثلاث له. (فتح القدر: 3/67، باب طلاق السنة، دار الفكر)

'Allāmah Badr ad-Dīn 'Aynī rahimahullāh writes in 'Umdah al-Qārī:

ومذيب جمابر العلماء من التابعين ومن بعدم منهم: الأوزاعي والنخعي والثوري وأبو حنيفة وأصحابه وأهل ذلك وأصحابه والشافعي وأصحابه وأحمد وأصحابه وإسحاق وأبو ثور وأبو عبيد وآخرون كثيرون، على أن من طلاق امرأة ثلاثاً وفغن، ولكن بيأتهم، وقالوا: من خالف فيه فهو شاذ مخالف لأصل السنة، وإنما تعلق به أعلى البدع ومن لا يلتفت إليه لشذوذه عن الجماعة التي
Shaykh Muḥammad ash-Shanqīṭī quotes the statement of Ibn Ṭarabī Malikī rahimahullāh in his exegesis:

وَقَدَ اتَّفَقَ عَلَى أَنَّ الطَّلَاقَينَ عَلَيْهِمَا حَرَامٌ هُما كُلَّمَا كَانَ احْتِزَاءً فِى فُوْلِ بَعْضِهِمْ وَبَدْعَةً فِى فُوْلِ الآخَرِينَ لَا زَمَّى، وَمَا نَسْبَهُ إِلَى الْصَّحَابَةِ كَذَٰلِكَ بِحَتْطَ، لَأَصْلُ لَهُمْ فِى كِتَابٍ وَلَا رَوَايَةً لَهُ عَنْ أَحَدٍ. (أَضْوَاءُ الْبِيْانِ: ۱۳۶/۱)

Hāfīz Ibn Ḥajar 'Asqalānī rahimahullāh writes while supporting the view of the majority:

فَالرَاجِحُ فِي الْمَوْضِعِينَ حُرُطَمُ اللَّمْعَةِ وَإِبْقَاعُ الطَّلَاقِ الْإِلَّاّلِلّهِ الَّذِي اتَّفَقَ فِيهِ عَنْ عَبْدِ عَمْرٍ رَضِيَ اللَّهُ عَنْهُ عَلَى ذَلِكَ، وَلَا يَحْفَزُ أَنَّ أَحَدًا فِى عَبْدِ عَمْرٍ رَضِيَ اللَّهُ عَنْهُ عَلَى ذَلِكَ كُلَّمَا كَانَ احْتِزَاءً فِى فُوْلِ بَعْضِهِمْ وَبَدْعَةً فِى فُوْلِ الآخَرِينَ لَا زَمَّى، وَمَا نَسْبَهُ إِلَى الصَّحَابَةِ كَذَٰلِكَ بَيْنَهُمْ وَلَا رَوَايَةً لَهُ عَنْ أَحَدٍ. (فَتَحُ الْبَيْارِ: ۳۶۵/۹، بَابُ مِنْ جُوُزِ الطَّلَاقِ الْعَلَامِ)

'Allāmah Ibn Ḥambalī rahimahullāh who was an erudite student of Hāfīz Ibn al-Qayyim rahimahullāh writes in his Bayān Mushkil al-Aḥādīth al-Wāridah Fi Anna at-Talāq at-Talāth Wāḥidah:

عَلَمَ أَنَّهُ لَمْ يُشْبِهَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا مِنْ النَّابِئِينَ. وَلَا مِنْ أَنْثِيَةِ السَّلِيفِ المَعْتَدِ بِقُوْلِهِمْ فِى الْفَتاَوِى فِى الْحَلَالِ وَالْحُرَامِ شَيْءٌ صَرِيحٌ فِى أَنَّ تَلَاقَ الطَّلَاقِ بَعْدَ الْدَخُولِ بِحَسْبِ وَاحِدٍ إِذَا سَيْقَ بَلْفُظِ وَاحِدٍ. (الْعِشِيرُ عَلَى احْكَامِ الطَّلَاقِ عَلَى اللَّمْعَةِ الْكُوْشَرِيَّةِ: ۴۱، سَعِيدٍ.)

A forefather of 'Allāmah Ibn Taymiyyah rahimahullāh, Abū al-Barakāt Majd ad-Dīn ‘Abd as-Salām wrote a famous book titled Muntaqā al-Akhbār. The book has a chapter - Bāb Mā Jā’ī Fi Talāq al-Battah Wa Jam‘i
ath-Thalāth Wa Tafrīqah – under which he quotes Ḥadīth and statements of the Sahābah rādiyallāhu ‘anhum on this subject. He then writes:

وبدا كل يدل على إجماعهم على صحة وقوع الثلاث بالكلمة الواحدة. (منتقى الأخبار: 337)

Majallah al-Buhāth al-Islāmiyyah is a Saudi Arabian periodical which contains a detailed article comprising about one hundred and fifty pages on this subject. The following is quoted from this periodical:

خامساً أن القول بوقوع الثلاث ثلاثا قول أكثر أبل العلم فلقد أخذ به عمر وعثمان وعلي والعبادلة ابن عباس وابن عمر وابن عمر وابن مسعود رضي الله تعالى عليهم وغيرهم من أصحاب رسول الله صلى الله عليه وسلم وقال به الأئمة الأربعة: أبو حنيفة ومالك والشافعي وأحمد وابن أبي ليلاء والأوزاعي وذكر ابن عبد ال바ادي عن أبي رجب بقوله: أعلم أنه لم يثبت عن أحد من الصحابة ولا من التابعين ولا من أئمة السلف المعتمد بقولهم في الفتاوى في الحلال والحرام شيء صريح في أن طلاق الثلاث بعد الدخول يحبس واحدة إذا سبق بلفظ واحد. وقال شيخ الإسلام ابن تيمية في معرض بعض الأقوال في ذلك: الثاني أن طلاق محرم ولازم وبو قول مالك وأبي حنيفة وأحمد في الرواية المتاخرة عنه، اختارا أكثر أصحاب، وأبدا القول منقول عن كثير من السلف من الصحابة والتابعين. وقال ابن القيم: واختلف الناس فيها أي في وقوع الثلاث بسكينة واحدة على أربعة مذاهب أحدها: أنه يقع، بهذا قول الأئمة الأربعة وجمهور التابعين وكثر من الصحابة. وقال القرطبي: قال علمائنا وافق أئمة الفتاوى على زروم إيقاع الثلاثة في كلمة واحدة وبو قول جمهور السلف. (مجلة البحوث الإسلامية: المجلد الأولعدد الثالث، سنة 1397 هـ الرياض، مكة المكرمة)

Hadrat ‘Alī rādiyallāhu ‘anhu is wrongly attributed to being opposed to the ījmā'.
It is said that Ḥadrat 'Alī rdiyallāhu ‘anhu did not concur with the ijmā‘ which was established on this issue [of three divorces] during the caliphate of Ḥadrat ‘Umar rdiyallāhu ‘anhu. This is furthest from the reality. The following incident of Sulaymān A’mash ṭahimatullāh as quoted by Imām Bayhaqī ṭahimatullāh in his Sunan refutes such a claim:

In addition to learning the correct creed of Ḥadrat ‘Alī rdiyallāhu ‘anhu on this issue, we learn to what extent the desire-worshippers distorted Ahādīth to suit their ends.

In short, it is wrong to claim that Ḥadrat ‘Alī rdiyallāhu ‘anhu did not concur with the ijmā‘.

An overview of the proofs of those who think otherwise

The Shī‘ah and Dāwūd Zāhirī reject the concept of three divorces in a single assembly. They say that three divorces issued in a single assembly are counted as one. They present two proofs in support of their belief:
The first proof: A Hadīth of Ibn 'Abbās radīallāhu 'anhu.

The following statement of Ḥadīrat 'Abdullāh ibn 'Abbās radīallāhu 'anhu is related in Sahih Muslim:

وجاء عبد الله من أبوبكر، قال: رأيت رسول الله صل الله عليه وسلم وهو يبلغ عن ابن عباس رضي الله عنه، قال: عُلِّمي وسم الله عز وجل رضي الله عنه وسنتين من خلاله عمر رضي الله عنه طلاق الثلاث واحدة، فقال عمر بن الخطاب رضي الله عنه، إن الناس قد استعجلوا في أمر كانت لهم أئمة فلو أمضينا عليهم، فأمضوا عليهم. (صحيح مسلم شريف: 2/74، باب الطلاق الثلاث: فصل)

Those who believe three divorces to be one say that the above narration demonstrates that the original Sunnah which was practised upon during the blessed era of Rasūlullāh صل الله عليه وسلم, the era of Ḥadīrat Abū Bakr radīallāhu 'anhu and the first two years of the caliphate of Ḥadīrat 'Umar radīallāhu 'anhu was that three divorces were counted as one. Therefore, this is what is worthy of emulation.

The Hadīth experts went into much discussion on this Hadīth and gave several answers to it. The leading commentator of Sahih Bukhārī,фиز Ibn Hajar rażīmahullāh, gives eight answers to this Hadīth in his Fath al-Bārī. These have been given on behalf of the majority. A few are presented here:

1. This narration is incorrect. None of the `ulamā‘ believe it to be worthy of consideration. The following is stated in al-Jauhar an-Naqī:

وفي الاستذكار: قال أبو عمر: ما كان ابن عباس رضي الله عنه ليخلف رسول الله صل الله عليه وسلم والخليفيين إلى رأي نفسه، ورواية طاوس وبم وغلط لم يعرج عليها أحد من فقهائ الأنصار بالحجاز والعراق والمغرب والمشرق والشام. (الاستذكار لابن عبدالله: 2/6، باب ما جاء في البينة، دار الكتب العلمية)
2. This narration is attributed to Ṭā'ūs raḥimahullāh but he himself refutes it.

قال العالمة محمد زايد الكوثري: قال الحسين بن علي الكرايسي في أدب القضاء: أخبرنا علي ابن عبد الله - وبو ابن المدني - عن عبد الزراك عن معاصر عن ابن طاووس عن طاووس أنه قال: من حدثت عن طاووس أنه كان يروي طلاق الثلاث واحدة، كذب. (الإشراق على أحكام الطلاق: ص 39، سعيد)

3. The verdict of Ḥadrat 'Abdullāh ibn 'Abbās raḍiyallāhu ‘anhu is also in conflict with this statement. He used to issue the verdict that anyone who issues three divorces to his wife, all three will apply to her. The following is stated in as-Sunan al-Kubrā of Bayhaqī raḥimahullāh:

 وعن سعيد بن جبر عن ابن عباس رضي الله عنه في رجل طلق أمهات ألفاً، قال: أما ثلاث فتحرم عليك امرأتك، وبقيت عن عليك وزر، اتخذت آيات الله بزواً. (السنن الكبرى للبيهقي: ٣٢٧، وسنن دارقطني: ١٣٥، وقال الشيخ الألباني في الارواء: اسناده صحيح)

Furthermore, the following students of Ḥadrat Ibn 'Abbās raḍiyallāhu ‘anhu state that he used to give the verdict of the application of three divorces issued in a single assembly. If the verdict of a narrator is different from his narration, the narration is either mu‘awwal (dubious) or abrogated. The students are:


4. If this statement of Ibn ‘Abbās raḍiyallāhu ‘anhu is assumed to be correct, a clear meaning of it will be that if a person issues three divorces to his wife and then says that he issued the first as a divorce, and the second and third merely for emphasis – and not for divorce – then because honesty and integrity prevailed in the early eras of Islam, his claim used to be accepted. The verdict of one divorce used to be given by the judiciary. During the caliphate of Ḥadrat ‘Umar raḍiyallāhu ‘anhu, there was an increase in incidents related to divorce. Furthermore, honesty and integrity were also on the decline.
This is why he announced that if anyone issues a divorce like this in the future – i.e. three divorces at one – the excuse of uttering the second and third for emphasis will not be accepted. The verdict will be issued on the obvious meaning of the words and three divorces will be counted.¹

Imām Qurṭubī raḥimahullāh gave preference to this answer.²

Imām Nawawī raḥimahullāh said that this is the most correct answer.³

5. This statement of 'Abdullāh ibn 'Abbās raḍiyallāhu 'anhu refers to a woman with whom the husband did not engage in conjugal relations. In other words, this is how people in the blessed era of Rasūlullāh ṣallallāhu 'alayhi wa sallam used to issue a divorce to such a woman. He used to say to her: “You are divorced. You are divorced. You are divorced.” In such a case, the non-consummated woman would be separated by the first divorce, and the second and third would not apply to her. On the other hand, during the era of Ḥaḍrat 'Umar raḍiyallāhu 'anhu, the people began issuing a divorce to a non-consummated woman by saying to her: “You are divorced three times.” This is why he issued the verdict that all three will apply.

6. Previously when three divorces were issued, the husband could revoke them. This rule was abrogated later on. This answer is supported by the following narration:

7. The erudite Hadīth expert, Maulānā Habīb ar-Rahmān A’zamī raḥimahullāh writes:⁴

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¹ لِيُذِلُّ الْمَجَهَّدِ: ٣٠٠٠ مِنْ حَسَّمِ الطَّلَافَاتِ الثَّلَاثِ، المَكْتُوبَةُ الإِمَامِيَةُ.
² الجامع لأحكام القرآن: ٨٦٣.
³شرح مسلم للنوروي: ٤٧٢٨٨، فيصل.
⁴ كتاب الإيمان والمذهب: ٢٣٣٠، مَكْتُوبَةُ الإِمَامِيَةُ.
This Hadith is totally unacceptable. Firstly because it does not contain a statement of Rasūlullāh ﷺ'alayhi wa sallam nor his action. Nor does it mention that three divorces counted as one was mentioned to Rasūlullāh ﷺ'alayhi wa sallam and that he remained silent when he was informed of it. Since none of these three (statement, action and tacit approval) are mentioned, this is not a Hadith.

Ibn Ḥazm Zāhīrī rahimahullāh refuted this narration:

وأما حديث طارس فليس شيء أثر عليه السلام هو الذي جعلها واحدة أو ردبها إلى الواحدة ولا أثر عليه السلام علمه فأتى. (المجلل لابن الحزم: 168/10)

Secondly, this narration does not explicitly state that three divorces are counted as one. All it says is that three divorces were one, or one was issued. Nothing more and nothing clearer is not mentioned through any authentic source.

When presenting this narration as a proof, it is even more necessary to prove that whatever is mentioned in it is exactly as it means, and that it can have no other meaning apart from that three divorces are counted as one. And it is not possible to prove this.

Imām Abū Zur'ah Rāzī rahimahullāh was a senior Hadith expert and an accepted authority in this field to the extent that Imām Muslim rahimahullāh presented his Sahih to him and removed, without any hesitation, those Aḥādīth which Imām Rāzī considered to be doubtful. The same Imām Abū Zur'ah Rāzī explains the Hadith under discussion by saying that the three divorces which are commonly issued today used to be issued as one divorce during the eras of Rasūlullāh ﷺ'alayhi wa sallam and Abū Bakr rađiyyallāhu 'anhu. During the caliphate of Ḥadrat 'Umar rađiyyallāhu 'anhu people began issuing three divorces in a quick and uncontrolled way. This is why he instituted all three divorces. (Refer to as-Sunan al-Kubr of Bayhaqī).

Thirdly, the narration of Sahih Muslim does not state clearly which three divorces were counted as one. Were they issued all at once or in separate periods of purity. Further, if they were issued at once, was the utterance with one word or three words? Also, were they issued to a consummated woman or non-consummated woman? Before offering this narration as a proof, it is necessary to ascertain if it refers to all types of three divorces, or certain categories. If all categories are meant, this narration will go against the Qur'ān and Hadith. If certain categories are meant, what are they? And what is the proof that Ḥadrat Ibn 'Abbās rađiyyallāhu 'anhu had said this with reference to those specific categories and that he explicitly stated that they refer to
those specific categories. As long as these points are not clarified, it will be a manifest error to present this Hadīth as evidence.¹

The second proof: A Hadīth of Rukānah radiyallāhu ‘anhu

The following Hadīth is quoted from the Musnad of Imām Ahmad rahimahullāh:


The unanimous answer of the scholars is that the incident related to the divorce issued by Ḥadrat Rukānah radiyallāhu ‘anhu is narrated through conflicting narrations. Some narrations contain the words:

طقق امرأته ثلثاءاً.

Others have the words:

طقق امرأته البيتة.

Erudite Hadīth experts such as Imām Abū Dāwūd, Imām Shāfi‘ī, Imām Ibn Hibbān, Imām Ḥākim, Imām Dāraquṭnī rahimahumullāh say that the narration with the words البيتة is correct. 'Allāmah Shaukānī rahimahullāh writes:

أثبت ما روي في قصة ركانية أن طلقها البيتة لا ثلثاءاً. (نيل الأوطان: 347/1)

On the other hand, the narration containing the words طلقه ثلثاءاً is sāqi'¹ according to the Hadīth experts and not eligible to be furnished as evidence.

Imām Abū Dāwūd raḥimahullāh said that the narration with the words
is more authentic.

قال أبو داود: بما أصح من حديث ابن جريج أن ركآة طلق امرأته ثلاثًا. لأنهم
أبى بيته وهم أعلم به، وحديث ابن جريج رواه عن بعض بيئ أبي رافع عن
عكرمة عن ابن عباس رضي الله عنه. (سنت ابن داود: 16/1، باب في البتة،
كتاب الطلاق، فيصل).

Objection: The annotator to Bulūgh al-Marām, Ṣafy ar-Raḥmān
Mubārakpūrī, classified the narration of Abū Dāwūd as weak and tried
to prove that the narration of Imām Aḥmad is strong. As for the
statement of Abū Dāwūd – هذا أصح – he explains it away by saying that
Imām Abū Dāwūd raḥimahullāh is actually referring to two weak
narrations, one of which is less weak than the other. In essence, both
are weak. Refer to the annotation to Bulūgh al-Marām (p. 321). What is
the answer to this objection?

Answer: The objection of the annotator to Bulūgh al-Marām is not based
on justice and equity. Imām Hākim, Ḥāfiz Dāhabī, Ibn Ḥibbān and
others also classified this narration as authentic. The authentication of
Imām Abū Dāwūd raḥimahullāh has been quoted in no uncertain terms
by Imām Dāraquṭnī, Ibn Ḥajar, Ṣan’ānī raḥimahumullāh and
others. In fact, Ibn Ḥajar raḥimahullāh classifies the narration of
Musnad-e-Aḥmad (which mentions revocation after issuing three
divorces in a single assembly) as a dubious narration. Observe the
following statement of Ibn Ḥajar raḥimahullāh:

وصحح أبو داود ابن حبان والحاكم، وفي الباب عن ابن عباس رضي الله
عنه رواه أحمد والحاكم، وبو معلول أيضاً. (تلميح الخبير: 6/444،
كتاب الطلاق).

Ṣan’ānī raḥimahullāh writes:

1 A narrator is classified as sāqīt al-Ḥadīth when his narration does not deserve
to be narrated because it has no value. It does not fall in the category where it
could be furnished as evidence. (Lisān al-Muhaddithīn, Muḥammad Khalaf
Salāmāh).
The narrators of Abū Dāwūd

1. ١٠٠٤ق6
2. ١٠٠٥ق6
3. ١٠٠٦ق6
4. ١٠٠٧ق6
5. ١٠٠٨ق6

 وقال الدكتور بشار عواد وشبيب الأرنؤوط في التحرير على التقريب

وقال الإمام الدارقطني: قال أبو داود: هذا حديث صحيح. (سند الدارقطني: ٤/٣، كتاب الطلاق، والجلم، القابرة)

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The narrators of Abū Dāwūd

1. ١٠٠٤ق6
2. ١٠٠٥ق6
3. ١٠٠٦ق6
4. ١٠٠٧ق6
5. ١٠٠٨ق6
(2) نافع بن عمجر: قال الحافظ في التهذيب (1/364): ذكره ابن حبان في
البخاري وفي نسائي: ليس له بأس، وقال أبو حاتم: صدوق صالح. انتهى.
وقال النبي في الكافش (1/364): وث. انتهى.

An investigation into the second chain of transmission

(1) جرير بن حازم: قال النبي في الكافش (1/364): ثقة. انتهى.

وقال الحافظ في التهذيب (1/363): قال ابن معين: ثقة، وقال العجلي: بصرى
ثقة، وقال النسائي: ليس له بأس، وقال أبو حاتم: صدوق صالح. انتهى.

وقال الدكتور بشار عواد وشمع الأرنؤوط في التحرير على
التقريب (1/261): أخرج له البحرة في صحيحه وأحاديث يسيرة. وقال
النبي في السير (7/304): اخترقت أوباما في سعة ما روى، وأنه اختلف قبل
موته بسنة وقد حجبه أولاده فلم يجد في حال اختلاط. انتهى.

(2) زبير بن سعيد بن سليمان أبو باشم: قال الحافظ في التهذيب (3/288): قال
الدوري عن ابن معين: ثقة، وقال أبو زرعة: شيخ، وقال الدارقطني: يعتبر به،
وذكره ابن حبان في البدائة. انتهى.

وقال النبي في الميزان (5/267): روى عباس عن ابن معين: ثقة، وقال أحمد بن
حنبل: فيه لين. انتهى.

(3) عبد الله بن علي بن يزيد بن ركدة: قال النبي في الكافش (2/39): وث. انتهى.


وقال الحافظ في التنقيب: لين الحديث. انتهى.
Objections have been levelled against ‘Alî ibn Yazîd. This narration is therefore weak. However, it can be presented as a witness together with the narration of Nâfi’ ibn ‘Ujayr, bearing in mind that a strong support for it is present.

The Musnad of Abû Dâwûd at-‘Tayalîsî:

قال أبو داود: وسمعت شيخاً بمكة فقال: حدثنا عبد الله بن علي عن نافع بن عجير عن ركابة بن عبدزيز قال: كانت عندي امرأة يقول لها سهيمة، فطلقتها البنت. الحديث. (٨٦/١٨٨، دار المعرفة، بيروت)

Shaykh Alßânî writes in Irwâ al-Ghallî:

و يغلب على ظني أن هذا الشيخ المكي إما بهب محمد بن علي بن شافع فإنه مكي، وعلى فيكون الطالسي قد تاب الإمام الشافعي في رواية الحديث عنه. والله أعلم.

قلت: وهذا الإسناد أحسن حالاً من الذي قبل، فإن رجال ثقات. (ارواء الغليل، ٣-٤٧، باب صريح الطلاق وكتبه، المكتب الإسلامي)

An investigation into the narration of the Musnad-e-Ahmad

This is in connection with the revocation of three divorces issued in a single assembly:
قال الشيخ شعيب الأرنؤوط في تعلقه على مسنده الإمام أحمد بن حنبل:

إسناده ضعيف، رواية داود عن عكرمة فيها شيء، قال ابن المديني: ما روى عن عكرمة فمنكر، وقال أبو داود: أحاديثه عن شيوخه مستقيمة، وأحاديثه عن عكرمة مناكير، وقال الذهبي في كتابه من تهذيب حديث وبو موثق (58): ثقة مشهور له غرائب تشتنك، وقال الحافظ في التصريح: ثقة إلا عن عكرمة.

وقد روى أبو داود بهذا الحديث بإسناد أجد منه: أن ركينة طلق امرأتها البنت.

وقال الحافظ ابن حجر في الفتح (363/979): إن أبا داود رجح أن ركينة إنما طلق امرأتها البنت، كما أخرج أبو من طريق آل بيت ركينة، وبو تعليل قوي. (مسند الإمام أحمد بتحقيق شعيب الأرنؤوط: 28/38744/765) مؤسسة الرسالة)


وقال ابن الجوازي في الضعفاء والمتركون (31/9): قال ابن حبان: يحدث عن الثقات بما لا يشبه حديث الأثبات، يجب محاسنة روايته. انتهى.

وقال أبو الغفاد في تعلقه على الضعفاء والمتركون (36/1) بعد ذكر أقوال المحدثين: من ذلك يتضح أن داود مضعف لسببين:

الف) روايته عن عكرمة منكرة.

(ب) يكون خارجياً ومنكرًا الحديث.

The correct meaning is that he did not issue three divorces explicitly. Rather he issued a *talāq al-battah*. At that time, a divorce of this nature was also used to refer to three divorces as mentioned in the *Sunan* of Dāraquṭnī (p. 433). This is why Rasūlullāh sallallahu ‘alayhi wa sallam made him take an oath and asked him if he intended one. When he said under oath that his intention was for only one divorce, he was given the choice to revoke it.
Sunan Tirmidhī:


Imām Tirmidhī raḥimahullāh says:

وقد اختلف أهل العلم من أصحاب النبي صلى الله عليه وسلم وغيرهم في طلاق البيعة فروي عن عمر بن الخطاب رضي الله عنه أن جعل البيعة واحدة، وروي عن علي رضي الله عنه أن جعلها ثلاتا، وقال بعض أهل العلم: في نية الرجل إن نوى واحدة فواحدة، وإن نوى ثلاتا فثلاث، وإن ثنتين لم تكن إلا واحدة، وروي قول النبي وأبي الكوفة، وقال مالك بن أنس في البيعة: إن كان قد دخل بها، فإنها ثلاتي تطليقات، وقال الشافعي: إن نوى واحدة فواحدة بملك الرجعة، وإن نوى ثنتين فثنتين، وإن نوى ثلاتا فثلاث. (ترمذي: شريف: 222، باب في الرجل طلق امرأته البيعة، فيصل)

Refer to the following for more answers and additional details:

فتح الباري شرح صحيح البخاري: 2,373-393, كتاب الطلاق، باب من جوز الطلاق الثلاث. وعمدة القاري شرح صحيح البخاري: ج12, وبندل المجدوب: 838/20، باب في نسخ المرجعية بعد الطليقات الثلاث. وأوجز المسالك المؤثرة الإمام مالك: 231/20، باب ما جاء في البيعة. وشرح النوري على صحيح مسلم: 878/1، باب الطلاق الثلاث. والجامع لاحكام القرآن: 83/3، ونيل الالوان: 204/245، إcustomize the document contents to match the natural text of the document.

Asr-e-Hādir Ke Pechdah Masā’il Aur Oen Kā Hall, vol. 2; Fatāwā Maḥmūdiyyah, vol. 12; Fatāwā Raḥimīyyah, vol. 7; Khayr al-Fatāwā, vol. 5; Tin Talāq Kā Thubāt Islāmi Sharī'at Mei (by Maulānā Muḥammad Shihāb ad-Dīn Nadwī), and 'Umdah ath-Thalāth Fī Ḥukm at-Talaqāt ath-Thalāth
When a person says: “Talāq, talāq, talāq”

**Question**

Husband and wife were having an argument. The husband said: “Talāq, talāq, talāq. Are you happy now? Will you keep silent now?” Later on the husband says that he merely said this to silence her. What is the ruling of the Sharī'ah?

**Answer**

Three divorces have taken place because when explicit words are used, there is no need for an intention. Divorce takes place even when said in jest. His claim that he said this to silence her will not be considered. However, if he made a testimony from before hand, e.g. he said; “I will say it like this but it is not my intention to divorce; it is merely to silence my wife”, his statement will be accepted and divorce will not take place.

(by Shaykh al-Hadith Ḥadrat Maulānā Muḥammad Sarfarāz Khān Sāhib).

Allāh ta‘ālā knows best.
Fatāwā Rāḥīmīyyah:

The divorce word was uttered three times. The ruling of three divorces will be issued. As for the husband having no intention of divorce, the reality is that the word “ṭalāq” is an explicit word for the issuing of divorce. It does not need an intention.

ولا يقترب إلى نية لأنه صريح في لغبة الاستعمال. (البداية: ٢٣٥٩، باب إيقاع الطلاق)

In the same way, the excuse that it was said merely to threaten and instil fear is also unacceptable. However, for the divorce to apply, attribution is necessary. In other words, the wife’s name must be taken, he must point to her or address her while issuing the divorce to her. At the same time, an explicit attribution is not necessary; an ambiguous attribution which can be gauged from the situation and circumstances is sufficient.¹


Allāh taʿālā knows best.

Issuing two divorces but claiming to have issued three

Question

A man issued two divorces to his wife. Later on when her family members came to visit and asked him: “How many divorces did you issue?”, he replied; “I issued three divorces.” How many divorces took place?

Answer

Three divorces took place by the admission of the husband, even though he issued two in reality.

١ فتاوى راهيمية, vol. 8, p. 313.

المراد المختار:

وكذا أنت طالق قبل أن أتزوجك أو أمس وقد نصحها اليوم ولن نصحها قبل أمس وقع الآن لأن الإنشاء في الماضي إنشاء في الحال... أنت حر قبل أن أشتريك أو أنت حر أمس وقد اشترى اليوم فإنه يعتق لما يعتق لو أقر لعبد ثم
Fatāwā Dār al-'Ulūm Deoband:

Question: A man issued two divorces to his wife. A few days later, a Maulānā came to the house to arbitrate. In the presence of many people, the Maulānā asked the man: “How many divorces did you issue to your wife?” He replied: “Three tālāq-e-mughallazah.” Three or four days later, the man says: “I had actually issued two divorces. Two witnesses were present. I spoke a lie when I said three.” How many divorces are considered; two or three?

Answer: When the question was posed to the man and he said: “Three tālāq-e-mughallazah”, three divorces have fallen on his wife. His retraction is not valid.1

Allāh ta‘ālā knows best.

I gave you one, now I am giving you two

Question

A man said to his wife: “I had given you one divorce; I am now giving you two.” How many divorces will apply?

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Three divorces take place by saying “I had given you one divorce; I am now giving you two.” She will not be lawful to him without the process of ḥalālah. The words “I am divorcing you” are in the present tense. These result in divorce taking place immediately.

Fatwā al-Shayā: قول و ما بمعنایا من الصريح أي مثل ما سيذكره من نحو: كون طالقاً وأطلقي يا مطلقة بالتشديد وكذا المضارع إذا غلب في الحال مثل أطلقتك كما في البحر. (فتاوى الشاي: 3/18/8، باب الاصطحاب، سعيد).


Fatwā Raḥīmīyyah: When words refer to the issuing of divorce in the present tense are uttered, divorce takes place. It is not necessary for them to be in the past tense.


Allāh ta’ālā knows best.

When the husband says: “You have received it”

Question: Husband and wife were having an argument when the wife said to him: “Give me my divorce” or “Can I get a divorce?” The husband replies: “Very well, you have received it.” The wife then asked: “Are they three?” He replies: “Yes, they are three.” What kind of divorce takes place; rajī or bā’in? Did one or three divorces take place?

Answer: The wife made a request and the husband fulfilled it. In this case, one revocable divorce took place. Then when she asked about the number, the husband admitted to three. Therefore three divorces took place,
A woman asks for divorce and her husband replies: “I ta'laq you” three times

Question
Husband and wife were having an argument which continued for about three hours. The wife finally said: “Give me a divorce. I want to go home.” The husband replies by saying the following three times: “I ta'laq you.” How many divorces took place?
Three divorces took place and the wife became mughallazah. She is not lawful to him without going through the process of halâlah.

Annulling a marriage after two divorces

Question

A man issued two divorces on separate occasions to his wife. He revoked the divorce on both occasions. Subsequently, due to several reasons, the Jam‘iyat annulled their marriage because the husband was refusing to issue a third divorce. The woman now wants to return into the marriage of this previous husband. Is she lawful to him without having to go through the process of halâlah?

Allâh ta’âlâ knows best.
Answer

The annulment of the Jam‘iyat was due to the shortcomings of the husband. This annulment therefore falls under the ruling of talāq-e-bā‘in. When added to the previous two divorces, it will take on the ruling of three divorces. The woman will not be lawful to him without having gone through the process of ḥalālah.

Al-Hilah an-Najizah:

In the instances where the judge gives a choice to a woman and she wants separation in that assembly, husband and wife can be separated. If not, they cannot be separated. If the woman says in that assembly: “I want to be separated from my husband”, the judge will say to her husband: “Divorce this woman.” If he issues a divorce then talāq-e-bā‘in will apply. If he refuses to divorce her, the judge will himself separate the two. For example, he says: “I have removed you from her marriage.” In such a case, this separation will also be in place of a talāq-e-bā‘in according to the Sharī‘ah.¹

If a Sharī‘i panchāyat² concurs to separate husband and wife, its ruling will be representative of the ruling of a judge. The separation and other related matters will be correct.³

Allāh ta‘ālā knows best.

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¹ Al-Hilah an-Najizah, p. 82.

² A native court of arbitrators, a council of village elders.

³ Al-Hilah an-Najizah, p. 74.
Three divorces in a state of anger

Question
A husband issued ʿtalāq-e-mughallagah to his wife. When they went to a bidʿatī scholar and asked him for a verdict, he said that the marriage is not annulled because he issued the divorce while he was angry. What is the ruling?

Answer
Three divorces issued in a state of anger are valid and will apply. The woman will be unlawful to her husband unless she goes through the process of ḥalālah. After all, a divorce is generally issued in a state of anger; not when husband and wife are having a loving and fond discussion.

فتاوى الشامى:
ويقع طلاق من غضب خلافًا لابن القيم، وبدلاً الوافق عندنا ما مر في المدبوش. (فتاوى الشامى: 3/446مطلب في طلاق المدبوش، سعيد)

الفقه على المذاهب الأربعة:
فاعلم أن بعض العلماء قدقسم الغضب إلى ثلاثة أقسام الأول أن يكون الغضب في أول أمره فلا يغير عقل الغضبان بحيث يقصد ما يقول ويعلمه، ولا ريب في أن الغضبان بهذا المعنى يقع طلاقه. وتنفذ عباراته باتفاق. (4/337، شروط الطلاق، القارية)

Fatāwā Mahmūdiyyah:
A divorce issued in a state of anger falls on the woman. This is also the creed of the Ḥanafis. Some latter day Ḥambalī scholars are of the view that a divorce issued in a state of anger does not take place. This is not the view of early Ḥambalī scholars. Rather, they concur with the Ḥanafi scholars.

قال أبو داود: الغلاغ أظنه في الغضب.

Some latter day Ḥambalī scholars say that the word ʿighlāq in the Hadīth quoted below has been explained by Abū Dāwūd as “anger”.
Hambalî scholars therefore say that a divorce issued in a state of anger does not take place. A reply to them is given in Badhl al-Majhûd as follows:

ورده ابن السيد فقال: لو كان كذلك لم يقع على أحد طلاق لأن أحدًا لا يطلق حتى يغضب. (بذل المجبدو: 3/716، باب الطلاق على غضب)

Ibn as-Sayyid refuted this claim by saying: Had this been the case, no divorce will take place on anyone because no one issues a divorce until he is angry.

Hâfiz Ibn Hajar rahîmahullah writes:

قال المطروزي قولهم إياك والغلق أم الضجر والغضب ورد الفارسي في مجمع الغرائب عن من قال الإغلاق الغضب، وغلط في ذلك وقال: إن طلاق الناس غالبًا إنه بع في حال الغضب، وقال ابن المرابت: الإغلاق حرج النفس، وليس كل من وقع له فارق عقد، ولو جاز عدم وقوع طلاق الغضبان لكان لكل أحد أن يقول فيما جنده كنت غضبًا، وأراد بذلك الرد على من ذهب إلى أن الطلاق في الغضب لا يقع، وبو مروي عن بعض متاخرى الحنابلة ولم يوجد عن أحد من متقدمهم إلا ما أشار إليه أبو داود. وأما قولهم في المطالع: "الإغلاق الأكره" وبو من أغلقت الباب، وقيل الغضب، وأيده ذهب أبل العراق، فليس بمعروف عن الحنفي، فتح الباري: 389/9، باب الطلاق في الإغلاق والأكره.

Allâh ta’âlâ knows best.

Issuing one hundred divorces in a state of anger

Question

A man became angry at his wife and said: “I have given you one hundred divorces.” He now claims to have said this in a state of anger without any intention of divorce. Has divorce taken place?
Answer

The words “I have given you one hundred divorces” are explicit and have no need for any intention. Divorce takes place without an intention. Three divorces have fallen on this man’s wife. The burden of the remaining ninety seven will remain on him. It is necessary for him to repent and seek forgiveness. Furthermore, divorce takes place even when uttered in anger. In fact, a divorce is generally issued when a person is angry; it is rarely issued out of love and affection.


Observe the following Ahadith:

عن مطيع بن عباس رضي الله عنه أنه سئل عن رجل طلق امرأتُه مائة تطليق قال: عصيت ربك وبانت منك امرأتُك، لم تتق الله فيجعل لك مخرجًا. (السنن الكبرى: 37/7، بيروت)

وعن سعيد بن جبير بن عباس رضي الله عنه في رجل طلق امرأته ألغًا، فقال: أما ثلاث فتحرم عليك امرأتُك وفيئتين عليك وزر، أخذت آيات الله بروا. (السنن الكبرى: 330/7، بيروت)

Ibn 'Abbás radīyallāhu ‘anhu was asked about a person who issues one thousand divorces to his wife. He said: “Your wife has become forbidden to you with three divorces and the remaining number is a sin against you. You are making a mockery of the verses of Allāh.”

وفي المصنف لعبد الرزاق: عن داود بن عبادة [بن] الصامت رضي الله عنه قال: طلق جدي امرأة له ألف تطليقة؛ فانطلق أبي إلى رسول الله صلى الله عليه وسلم فذكر ذلك له; فقال النبي صلى الله عليه وسلم: "أما ثلاث فله أما تسبع مائة وسبعة وثمانون فعدوان وظلم إن شاء الله تعالى عذب وإن شاء غفر له." (مصنف عبد الرزاق: 393/6، المجلس العلمي)
Issuing three divorces during a wife’s menses

Question
What is the ruling if a man issues three divorces to his wife while she is in her menses? Is a divorce issued during such a period valid?

Answer
Three divorces issued while the wife is in her menses are valid and they have fallen on her. She is unlawful to her husband unless she goes through the process of ḥalālah.


Allāh ta’ālā knows best.

سنن دارقطني:

When a person denies issuing three divorces

Question

I was in privacy with my husband. He issued three divorces to me while he was angry. I personally heard him issuing the divorces. When I started packing up to go to my [parents’] house, he stopped me and denied having issued the three divorces. What is the way out for me?

Answer

The jurists state that the woman is like a judge. Since you heard your husband issuing the divorces with your own ears, you must separate yourself from your husband. If this is difficult to do and your husband is neither prepared to release you nor agree to a khula’, you will have to present your case before a Sharī‘ah judge or arbitrator. Since there is no witness, your husband will have to take an oath. If he takes an oath, you will be able to live with him and the sin will rest on his shoulders. This issue is mentioned in several places in Fatāwā Dār al-'Ulām Deoband.

However, objections have been made in this regard. If a person testifies to seeing the Ramadān crescent and his testimony is not accepted, the man himself will observe the fast. We learn from this that in comparison to the judge, the statement of the person who witnessed the incident is considered while here, in the case of the divorce, the statement of the judge [wife] has been considered. The answer to this is that on the issue of Ramadān, the fast is applicable to the fasting person and not anyone else. This is why he will observe the fast. In the present scenario, the marriage is also applicable to the husband. And he is denying it [the divorce] under oath. Therefore, while accepting his right and remaining aloof as much as possible, the sin of sexual intercourse will be on the husband. Furthermore, as regards fasting, there is no conflict between the judicial decision and religious integrity. The one who testifies to seeing the crescent will observe the fast while others will not. On the other hand, in the relationship between husband and wife, there is a conflict between the judicial decision and religious integrity.

When Ḥadrat Muftī Wali Hasan Šāhī rahimahullāh used to be presented with a case wherein the husband denied issuing three divorces while the wife claimed that he did issue them, he used to ask the wife to present a witness. If she had no witness, he would take an oath from the husband. If he took an oath that he did not issue three divorces, Ḥadrat Muftī Šāhī rahimahullāh would say to the wife: “You may live with your husband. If he is lying, the sin will be on him.” There is more ease in adopting this ruling. I myself am inclined to it.

الدر المختار:
سمعت من زوجها أنه طلقها ولا تقدر على منعها من نفسها إلا بقتله. وقال الأوزجندو: ترفع الأمر للفاعي فإن حلف ولا بينة لبنا، فالائم عليه. وفي الطحظاوي: قوله فالائم عليه ولا إثم عليها بتمكين من نفسها. (حاشية الطحظاوي على الدر المختار: ١٨٧/١، باب الوجعة، كونته)

فتوى الشاكي:
والمرأة كالفاعي إذا سمعتها أو أخبرها عدل لا يجل لها تمكين، والفتوى على أنه ليس لها قتل ولا تقتل نفسها بل تفدي نفسها بمال أو تهرب كما أنه ليس لـ
فيفتؤى النسفي عن السيد الإمام أبي شجاع بذلك وفي فوائد شمس الإسلام إن لم يستحسن بينة ترفع إلى القاضي وتخلف فإن حلف فالإثم عليه.
(خلاصة الفتى: 2/326، المكتبة الرشيدة)

وفي التنارخانية وجريبا: سمعت المرأة من زوجها أنه طلقها ولا تقدر عن معه من نفسها إلا بقتله لها قتله بالدواء ولا تقتل نفسها ونقل لا تقتل ورب فيفق وترفع الأمر إلى القاضي فإن لم تستحسن بينة تخلف فإن حلف فالإثم عليه.
(مجمع الأنهر شرح ملتقى الأطب: 3/326، باب الرجعة)

Kifāyatul Muftī:
If the husband denies having issued a divorce, witnesses will be needed to prove the divorce before a judge. If there are no two witnesses, an oath will be taken from the husband. If he takes an oath that he did not issue a divorce, the judge will declare that divorce has not taken place. However, if the man did issue a divorce in reality, the woman will be unlawful to him. He will be committing adultery for the rest of his life.¹

¹ Kifāyatul Muftī, vol. 6, p. 82.
...If the wife finds no way out and the husband takes a false oath and keeps his wife with him, the wife will not be sinning. Rather, the entire sin will be on the husband. The jurists refer to this issue as follows:


A parallel to this issue can be found in the following ruling:

Allāh ta’ālā knows best.

When there is a conflict in the ruling of a muftī and a judge

Question

A man’s wife was not present. Later on, he informed her that he had said: “My wife is divorced” three times but his intention was for emphasis. A Muftī Sāḥib gave the verdict of one divorce and the man revoked the divorce. The wife presented her case to a judge who passed a verdict of ḥurrmat-e-mughallazah (three irrevocable divorces). Whose verdict will be followed?

Answer

The verdict of the judge will be given preference over the muftī’s verdict. The woman will therefore be unlawful to this man unless she goes through the process of ḥalālah. Furthermore, it will not be permissible to give the wife control over her self. If the husband does not agree, she can obtain freedom through khula’.

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A person presented a case to a mufti and obtained a verdict from him. The same case is then presented to a judge who then passes a verdict. The mufti issued his verdict on the basis of religious integrity while the judge issued it on judicial integrity and what is apparent. For example, a husband said to his wife; “You are divorced, divorced, divorced.” He says that his intention was only one divorce. The mufti takes religious integrity into consideration and issues a verdict in line with the person’s intention. He says that one revocable divorce has taken place. The judge considered the obvious and apparent meaning of the words and issued the verdict of three irrevocable divorces. In such a case, it will be obligatory on the person to leave aside the verdict of the mufti and practise on the judge’s verdict. 1

Allâh ta‘âlâ knows best.

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Meaning of the term 

Question

What is the meaning and limitation of the juridical term \( \text{اﺮأة كالفاضي} \)?

Answer

There are two applications for this term, and there is a difference between the two.

First Application

Like a judge, the woman has the right to take the obvious and apparent into consideration and make a decision as regards permissibility and impermissibility over her own self.

For example, the husband said: “You are divorced, divorced, divorced.” He claims that his intention was repetition for emphasis; and not three divorces. The wife herself heard the three divorces emanating from her husband’s mouth. If this case were to be presented before a judge, he will not take the intention of the husband into consideration. Instead, he will look at the obvious and apparent words and give a verdict of three divorces. The woman will be completely free from the husband.

However, because of an absence of a Shari’ah judge nowadays, the case was presented to a mufti who took the intention of the husband into consideration and gave a verdict of one divorce on the basis of religious integrity. In other words, the husband will have the right to revoke his divorce. In such a case, just as a judge has to give his decision on the basis of facts presented to him, it is essential for the woman to take the obvious words into consideration – three divorces – and then make a decision about herself and do not give the husband power over herself. Instead, she must obtain a khula’ and free herself in this way, or make a payment and obtain a divorce. It is as though her right to pass a decision on the obvious and apparent meaning has been termed, in the definition of the jurists, as \( \text{اﺮأة كالفاضي} \) – the woman is like a judge.

Observe the following texts of the jurists;
تبيين الحقائق:

وأما قال: أنا طالق، طالق، قال: إنما أردت بأنك تذكر صدق دينك، فإن القاضي أمر بالاستجابة والملف في الشام، والسرعة، والمرأة كانت تفعل بذلك. لا يكليف ليها أن تكمن إذا سمعت منه ذلك أو علمت بأنها لا تعلم إلا الطارب. (تبيين الحقائق: 28/2، والفتاوى الهندية: 254/1)

تنقيح الفتاوى الحامدية:

وقال في الخانة: لو قال: أنا طالق، أنا طالق، قال: إنما أردت بأنك تذكر صدق دينك وفي القضاء طلقته ثلاثاً ومثله في الأشياء والحدادي وزاد الزويلي أن المرأة كانت قاضية فلا يكليف ليها أن تكمن إذا سمعت منه ذلك أو علمت بأنها لا تعلم إلا الطارب. (تنقيح الفتاوى الحامدية: 37/1، دار الأشاعة العربية)

حاشية الطحطاوي:

المدار يكون المرأة قاضية إن ذلك في عدم التصديق لا مطلقًا فإن خبر الواحد يعتبر عند المرأة ولا يعتبر عند القاضي لأن شأن القاضي التفريق بشأن المرأة عدم التسكيك احتباً. (حاشية الطحطاوي على الدر المختار: 2/23، كتبته)

الدر المختار:

المفتي يفتي بالدين والقاضي يقضي بالظابر. وفي الشامه: قوله المفتي يفتي بالدين إذا قال رجل: قلت لزوجي أنا طالق قاصداً بذلك الإباحة كاذباً فإن المفتي يفتي بعدم الوقوع والقاضي يحتسب عليه بالوقوع لأن يحكم بالظابر. (الدر المختار مع رد المختار: 235/5، سعيد)

Second Application

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After issuing three divorces, the husband flatly denies divorcing his wife while she personally heard him issuing three divorces. The case is referred to a judge. Because the wife does not have a Sharī'ī witness, the judge asks the husband to take an oath after which he rules that three divorces have not taken place. On the other hand, the muftī issued a verdict on the basis of religious integrity and said that since the woman personally heard the utterance of divorce, it will not be permissible for her to live with her husband and to empower him over her. Neither will it be permissible for her to kill her husband or for her to commit suicide. Instead, she must ask for khula' or pay him an amount of money and obtain a divorce from him. Like a judge, the woman has the right to act on her conviction and what is obvious and apparent. The jurists term this as the woman is like a judge.

The difference between these two applications

In the first application, the verdict of the judge is against the husband and in accordance with the wife. In the second application, it is in agreement with the husband and against the wife.

Some jurists say that in the second application the woman has no way out, the husband takes a false oath and keeps his wife with him. In such a case, the woman will not be committing any sin; the entire burden of sin will be on the husband.

Hadrat Muftī Wālī Ḥasan Šāhīb rahimahullāh used to prefer the view of Bazzāzīyyah and Khūlāṣah al-Fatwā – that the woman must live with the husband while the sin will be on him. And the woman will be similar to a judge before the case can be presented to him.
A woman who was issued three divorces becomes an apostate

**Question**

A man issued three divorces to his wife. Subsequently, she became an apostate (we seek refuge in Allāh ta'ālā). After some time, she became a Muslim once again on her own volition. Can she marry her previous husband without going through the process of halālah?

**Answer**

The woman is unlawful to her previous husband unless she goes through the process of halālah. The rule of halālah does not fall even with apostasy.

Fatāwā Raḥīmīyāh:

If it is established that the husband issued three divorces due to which the woman had become bā’īnah mughallazah, they cannot remarry
without the woman going through the process of ḥalālah. Becoming an apostate does not cancel her status as bā‘īnah mughallazah.ā

Allāh ta‘ālā knows best.

Removing the precondition of sexual intercourse in ḥalālah

Question

A man issued three divorces to his wife. He now wants to remarry her, but ḥalālah is obviously necessary. Is there any way of removing the precondition of sexual intercourse in ḥalālah?

Answer

When the process of ḥalālah is followed, it is essential for the second husband to engage in sexual intercourse. There is no ḥalālah without it and the woman will be unlawful to the first husband. This is established from the Ahādīth and juridical texts. It is therefore essential to practise on it. Acting on the injunctions of the Sharī‘ah guarantees our success in this world and the Hereafter even if our defective minds cannot understand the wisdom.

Imām Abū Bakr ḽassāf rahimahullāh writes:

قوله تعالى: "فإن طلقتها فلا تحل له من بعد حتى تنكح زوجاً غيره." منتظماً

لعن منها تحريمها على المطلق ثلاثاً حتى تنكح زوجاً غيره مفيد في شرط

ارتفاع التحريم الواقع بالطلاق الثلاث العقد والوقت جميعاً لأن النكاح بو

الوطئ في الحقيقة وذكر الزوج يفدي العقد وبدا من الإيجاز والاقتصاد على

الكتابة المفيدة المغنية عن التصريح وقد وردت عن النبي صلى الله عليه

 وسلم أخبار مستفيدة في أنها لا تحل للأول حتى يطأبا الثاني (أحكام القرآن:

٣٩/٣٩ ذكر الحجاج لا ايقاع الطلاق الثلاث معًا سهيل)

صحيح البخاري:

عن عائشة رضي الله تعالى عنها أن رفاعة القرظي تزوج امرأة ثم طلبتها

فتزوجت آخر فأتت النبي صلى الله عليه وسلم فذكرت أنه لا يأتيتهما وأنه ليس

١ Fatāwā Rahīmīyāh, vol. 3, p. 150.
When three divorces are issued, the only way that husband and wife can remarry is for the woman to observe the 'iddah. On the completion of the 'iddah she marries another man. He engages in sexual intercourse with her and then either dies or divorces her. She observes the 'iddah of death or divorce and, after mutual consent, the two remarry.¹

Allāh taʾālā knows best.

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¹ Majmūʿah Qawānīn Islāmī, 142, register 20; Fatāwā Mahmūdīyyah, vol. 13, p. 479.
AMBIGUOUS DIVORCE

The husband says: “I have no relationship with you.”

Question

A man said to his wife: “I have no relationship with you. The affair between you and me is over.” Did divorce take place? Is there a need for an intention?

Answer

If the husband uttered the words “I have no relationship with you” with the intention of divorce, then one talāq-e-bā’in has taken place. Divorce will not take place without an intention. The reality of the intention can be learnt from the husband.

Fatwāwā Dār al-‘Ulām Deoband:

If the husband said: “I have no relationship with you” with the intention of divorce, one talāq-e-bā’in will apply to the wife. The reality of the intention can be learnt from the husband.¹

Ad-Durr al-Mukhtar clearly states that these words which point to severance of the relationship – even if uttered in anger – will not validate a divorce without an intention. The text of ad-Durr al-Mukhtar reads as follows:²

وفي الغضب توقف الأولان، إن نوى وقع وإلا لا

The second statement - “The affair between you and me is over” - is also an ambiguous statement. When several ambiguous statements are made, only one divorce applies.

¹ Fatāwā Dār al-‘Ulām Deoband, vol. 9, p. 394.
² Fatāwā Dār al-‘Ulām Deoband, vol. 9, p. 437.
Fatāwā Dār al-‘Ulām Deoband:

If the husband uttered various ambiguous statements, only one ṭalāq-e-bā’īn will apply to his wife. This is stated in ad-Durr al-Mukhtār:¹

لِبَائِنِ لا يَلْحَقُ البَائِنَ، المَرَادُ بِالبَائِنِ الَّذِي لا يَلْحَقُ بِهِ ما كَانَ بِلَفْظِ الْكِتَابِةٌ، لأَنَّ بَوْ الَّذِي لَيْسَ طَابِراً فِي إِنَتِشَاءِ الطَّلَاقِ، كَذَا فِي الْفَتَحِ.

Majmū‘ah Qawānīn Islāmī:

If one ambiguous statement which causes ṭalāq-e-bā’īn is followed by another ambiguous statement, a second ṭalāq-e-bā’īn will not apply. This is irrespective of whether the same statement is repeated several times or various ambiguous statements are made.²

Allāh tā‘ālā knows best.

“You are ḥarām to me.”

Question

A man said to his wife: “You are ḥarām to me, ḥarām to me, ḥarām to me.” How many divorces will apply? Are these words classified as ambiguous or unambiguous?

Answer

The statement “You are ḥarām to me” is essentially ambiguous. However, due to common societal practice (‘urf), a ṭalāq-e-bā’īn without intention applies. This is the verdict of latter day scholars. Since an ambiguous statement cannot be added to another ambiguous statement, only one ṭalāq-e-bā’īn will apply.

قال لامرأته: أنت علي حرام، وحُو ذلك كانت معني في الحرام إلَى إن نوى التحريم... وتطبق بائنة إن نوى الطلاق وثلاث إن نواها، ويفتى بأنطلاق بائنة وإن لم ينوه لغله العرف.

وفي الشغام: قول: "إن لم ينوه" تبدأ في القضاء، وأما في الديانة فلا يقع ما لم ينوه، وعدم نية الطلاق صادق بعدم نية شيء أصلاً... قلت: الطابر أنه إذا لم

¹ Fatāwā Dār al-‘Ulām Deoband, vol. 9, p. 471.
² Majmū‘ah Qawānīn Islāmī, p. 149, register 34.
A person made the following statement three times: “You are haram to me.” He did not utter an explicit divorce but an ambiguous one, and a talāq-e-bā’in applies when an ambiguous divorce is issued. Furthermore, an ambiguous statement cannot be added to another ambiguous statement, as stated in ad-Durr al-Mukhtār and other juridical texts. The woman is not classified as muṭallaqa thalāthah and mughallazah. Rather, one talāq-e-bā’in applies to her.¹

¹ Fatāwā Dār al-ʿUlām Deoband, vol. 9, p. 523.

Allāh taʿālā knows best.

“I have left you.”

**Question**

A man said to his wife: “I have left you, left you, left you.” What is the ruling?

**Answer**

The words “left you” are ambiguous and there has to be an intention. If the man’s intention was to divorce his wife, one ʿālq-e-bā’in will apply. If he had no intention of divorce, no divorce will apply.

Some ‘ulamā’ include this statement among the unambiguous statements and issue the verdict of a revocable divorce. Refer to Fatāwā Māhmūdīyyah, vol. 12, p. 340.

Hadrat Muftī ʿAbd al-Ḥayy Lucknow ṭahimullāh and Hadrat Maulānā Zafar Aḥmad Thānwī ṭahimullāh and Hadrat Maulānā ‘Abd al-Ḥayy Lucknow ṭahimullāh are of the view that it is a revocable divorce.

However, Hadrat Muftī Kifāyatullāh Sāḥib ṭahimullāh classifies these words as ambiguous and issues the verdict of a ʿālq-e-bā’in.

**Kifāyatul Muftī:**

Answer: If the husband said: “I have left you” three times, a ʿālq-e-bā’in applies to his wife and she is no longer in his marriage. The man can remarry her provided the woman gives her consent. There is no need for ḥalālah.¹

Hadrat Muftī ʿĀzīz ar-Ḥmān ṭahib ṭahimullāh writes:

Answer: (I have left her, left her, left her). If the intention of the husband was divorce and he uttered these words with this intention, one ʿālq-e-bā’in has applied to his wife. The second and third did not apply.²

١ Kifāyatul Muftī, vol. 6, p. 44.

A person says with reference to his wife: “I have left her.” This is classified as an ambiguous statement. In the presence of an intention, one ṭalaq-e-bā’in has applied. However, Ḥājimah Shāmī rahimahullāh listed it as a revocable divorce on the basis of societal norm. In such a case, an irrevocable divorce applies even in the absence of an intention.\(^1\)

Allāh ta’ālā knows best.

“...am divorcing my wife...This is the final word.”

**Question**

A man says to his wife: “I, ‘Abd al-‘Azīz, while fully conscious and aware am divorcing my wife Zāhidah Sulaymānī, in which she can get married again. This is the final word.” What type of divorce will apply; revocable or irrevocable?

**Answer**

The words “am divorcing my wife” are explicit, resulting in a revocable divorce. However, he added other words for emphasis. Therefore, an irrevocable divorce applies. The two can remarry after mutual consent within the woman’s ‘iddah or after. If the ‘iddah expires, the woman has the right to marry someone else.

**Hadīth**

إذا وصف الطلاق بضرب من الزيادة والشدة كان بائداً. (الحديث: 3/69، باب إيقاع الطلاق)

**بدائع الصانع**

وأما الصريح البائت... وبوأن يصحون بمحور الإبانة أو بمحور الطلاق لحسن قبل الدخول حقيقة أو بعده، لحسن مقرناً بعد ثلاث نصاً أو إشارة أو موصوفاً بصفة تدل عليها. (بدائع الصانع: 3/9/1، بيان صفة الواقع، سعيد.

وكانا في الشام: 3/45، سعيد)

\(^1\) *Fatāwā Ḥaqqānīyyah*, vol. 4, p. 479.
Question: Zayd said to his wife: “You are divorced from my side. Go away.” What is the ruling in this regard?

Answer: An irrevocable divorce (taq-e-ba’in) has applied to the woman.\(^1\)

Allâh ta’âlâ knows best.

“You are not my wife. Get out of the house.”

Question

A man said to his wife: “You are not my wife” and he made the intention of one divorce. He added: “Get out of the house.” Here too he made the intention of one divorce. How many divorces apply?

Answer

One taq-e-ba’in applies because a taq-e-ba’in followed by another does not add to two.

الفتاوى الهندية:

ولو قال خريمت نفسك فاسترخي ونرى بما طلاقا في بني واحدة بائنا، لأنه لا يقع على بائنا: والطلاق البائى يلحق الطلاق الصريح. ولأ يلحق البائى البائى بأن قال لها: أنت بائنا: فأنت بائنا: لا يقع إلا طلقة واحدة بائنا. (الفتاوى الهندية: ۲۷۷/۸، الفصل الخامس في الكتابات)

\(^1\) Fatâwâ Dâr al-Ulâm Deoband, vol. 9, pp. 270-271.
Allāh taʻalā knows best.

**When a ʿṭalāq-e-bāʿin is followed by another**

**Question**

The jurists state that a ʿṭalāq-e-bāʿin cannot be attached to another ʿṭalāq-e-bāʿin because the second one has the possibility of informing about the first one. What if a person issues the second one with the intention of a new ʿṭalāq-e-bāʿin?

**Answer**

ʿAllāmah Ibn Nujaym raḥimahullāh and Ḥāḍrat Muftī Rashīd Ahmad Ludhyānwī raḥimahullāh say that when a second ʿṭalāq-e-bāʿin is issued as a new one, it will apply.

**However, ʿAllāmah Shāmī, ʿAllāmah Taḥtāwī and Ḥāḍrat Maulānā Thānwi raḥimahumullāh are of the view that under no condition can one ʿṭalāq-e-bāʿin be added to another one. There is also no consideration of the intention.**
After quoting the text from *al-Bahr ar-Rāʾiq*, 'Allāmah Shāmī raḥimahullāh writes:

أقول: ويدفع البحث من أصل تعبير بالإمكان، ويأبى، لا حاجة إلى جعل إنشاء متي ممكن جعل خبراً عن الأول، لأنه صادق يقول: "أنت بائع" على أن البائع لا يقع إلا بالنيّة، فقولهم "بائع لا يلحق البائع" لا شكل أن المراد به البائع المنوي، إذ غير المنوي لا يقع به شيء أصلاً، ولم يشرطو أن يبني به الطلاق الأول فعلم أن قولهم: إذا أمسكن... الخ احترام عما إذا لم يمكن جعل خبراً كما في "أبنتك بأخرى" لا عما إذا نوى به طلاقاً آخر، فتدبر.

(فتاوى الشايب: 3/393، سعيد. وكذا في منحة الحالف على البحر الرائق: 3/283، كونته)

'Allāmah Tahtāwī raḥimahullāh writes:

(إذا أمسكن جعل إخباراً عن الأول...فلا يقع، لأنه إخبار الأول أن يقول: "لصالحتهم للإخبار" فإنه لو أنثاً ثانياً لا يعتبر الشارع، بل جعل بمنزلة الإخبار... وما سيأتي عن المحيط صريح في إلغاء النية. (حاشية الطحاتاوي على الدر المختار: 4/137)

Ḥadrat Thānwi raḥimahullāh writes:

In the case where a tālāq-e-bā'in has applied – whether explicit or ambiguous – and is followed by an ambiguous tālāq-e-bā'in, the latter divorce will not apply even if the man makes an intention of it applying...

Another reason for the non-application of a second tālāq-e-bā'in is that after a tālāq-e-bā'in, the woman is no longer a person on who is qualified to be divorced. This is why the second one does not apply.

وفرق في الذخيرة بين "أنت بائع" للمباني، وبين وقع "أنت بائع" المعلق بعد الإبانيّة: أنه لما صح التعليق أولاً لكونها مكاً ل، جعلنا المعلق "الطلاق البائع".

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However, an objection is made against this ruling, viz. if ṭalāq-e-bā’in does not apply because the woman is not qualified for divorce, then even an explicit divorce ought not to fall after a ṭalāq-e-bā’in. Whereas, the ruling is that if a person issues an explicit divorce after a ṭalāq-e-bā’in, then it will apply on the woman. What is the answer to this?

1. One answer which could be given is that for the application of divorce, the explicit words are definitive, while in an ambiguous statement there are other possibilities. There is no obstacle to a definitive statement and it certainly leaves an effect.

2. Another answer could be that a bā’in followed by a bā’in has the overriding element of conveying a piece of information. While an explicit divorce has the overriding element of an order. This is why a new divorce applies when an explicit statement is made.

Allāh ta’ālā knows best.

“**It’s all over.**”

**Question**

A man said to his wife: “It’s all over.” What is the ruling? Will divorce take place? If it does, what type of divorce; revocable or irrevocable?

**Answer**

The statement “It’s all over” is an ambiguous statement. If the husband made it with the intention of divorce, then one ṭalāq-e-bā’in will apply. If there was no intention, no divorce will take place.
When words of this nature are uttered, divorce will apply if an intention for divorce was made.\(^1\) Allâh ta'âlâ knows best.

“*Our Islamic marriage is over.*”

**Question**

A man made the following statement several times to his wife: “Our Islamic marriage is over.” What is the ruling?

**Answer**

The jurists list this statement – *Our Islamic marriage is over* - among the ambiguous statements. If he made it with the intention of divorce, one divorce will apply to his wife. As per the statement of the author of *al-Bâhîr ar-Râ‘îq*, one revocable divorce will apply.

And it is said: When the above statement is said, a revocable divorce is applicable. (al-Bâhîr ar-Râ‘îq, vol. 9, p. 456).

\(^1\) *Fatâwâ Dâr al-‘Ulûm Deoband*, vol. 9, p. 456.
If by repeating this statement his intention was to confirm the divorce and not emphasise it, then three divorces will apply.

 لو قال لها: لا نسّاح ببني ويبنوك أو قال: لم بيق ببني ويبنوك نسّاح أو قال: فسخت نسّاحك يقع الطلاق إذا وى. (فتاوى قضيّان على بامش الهندية: 1/384، فصل في الكنيانات. وكذا في الفتاوى الهندية: 3/65، الفصل الخامس في الكنيانات)

Our seniors also accept that statements of this nature are dependent on the intention. If the man had the intention of divorce, it will apply. If not, there will be no divorce. The Fatwā Dār al-‘Ulām Deoband accepts the following statement as a divorce provided it was accompanied with such an intention: “I have separated you from the marriage.”

The words “I have broken the thread of marriage of the woman” are also classified as ambiguous.

[The same can be said about]: “You are out of my marriage” provided they are said with the intention of divorce.

In his Aḥsan al-Fatwā, Muftī Rashīd Ahmad Ludhyānī raḥimahullāh also listed statements of this nature as ambiguous statements and said that a revocable divorce applies provided an intention was made.

One objection which comes to mind is that words which indicate separating the wife from the marriage or putting an end to the marriage are more or less explicit and similar to active words of divorce. Why, then, is the application of divorce dependent on an intention? In fact, they are immediate negations of marriage or for the application of divorce. Furthermore, it is difficult to consider them to be wilful negations because they are used for the immediate termination of a marriage.

An answer to this is that the societal norm is that while these words maintain the marriage, they are used for the absence of a marriage relationship or for the wife to establish a relationship with someone else. For example, if a woman does not have relationships with her

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3 Fatwā Dār al-‘Ulām Deoband, vol. 9, p. 382.
4 Aḥsan al-Fatwā, vol. 5, p. 142.
husband, it is said: “My marriage is not with her, she is married to such and such person.” In other words, it is used to demonstrate the end of a marriage or the end of conjugal relations. This is why the jurists list them among the ambiguous statements.

Moreover, the statement “There is no marriage between us, or, you are not a wife to me” could possibly mean: “There is no marriage between us because you are having a relationship with someone else.” If this is what is meant, divorce will not take place. But if his intention was: “There is no marriage between us because I have divorced you”, then a revocable divorce will apply.

Allâh ta’âlâ knows best.

“You are permitted to marry elsewhere.”

Question
A man says to his wife: “If you want to marry elsewhere, you have my permission.” Does divorce take place? If it does, what type of divorce? Bear in mind that the two were not discussing divorce.

Answer
If a person says: “If you want to marry elsewhere, you have my permission” with the intention of divorce, then one talâq-e-bâ’in will apply. If he had no such intention, no divorce will apply.

This issue is discussed in Fatwâ Dâr al-Ulûm Deoband, vol. 9, pp. 385, 398, 403, 434, 460, 469, 481 and 483. Ad-Durr al-Mukhtâr and al-Fatwâ al-Anqarawîyyah state that if a husband says to his wife: “Go and get married”, then divorce takes place even without such an intention. ‘Allâmah Shâmî raḥimahullâh has refuted this view. He writes:
Some of our senior 'ulamā’ say that if statements of this nature are made during a discussion on divorce, then divorce will take place even without an intention. Bear in mind that the scenario described in the question states that there was no discussion of divorce. According to the jurists, “a discussion of divorce” means that the wife or some outsider acting on her behalf asks for a divorce, or a divorce had been issued since before. This is not the case in the present case as is clearly stated in the question.

In short, the husband will have to be asked if he had the intention of divorce or not. If he says that he did not have the intention and the woman is not convinced, she can ask him to take an oath as stated in the books of jurisprudence. In the absence on an intention, husband and wife can live together without having to renew their marriage. Yes, if the husband made the intention of divorce, then one ṭalāq-e-bā’in will apply.

Allāh ta’ālā knows best.

“Go away from my house.”

**Question**

Zayd said to his wife: “Go away from my house.” When he said this, she left the house and went to her parents’ house where she spent about 10-12 years. Did divorce take place? If it did, what type of divorce? During this entire period, Zayd did not ask for his wife.

**Answer**

These words are classified as ambiguous. If, at the time of uttering them, Zayd's intention was divorce, then one ṭalāq-e-bā’in will apply. If he did not have any intention, no divorce took place. She continues to be Zayd’s wife.
A person says: “Go away from my place.” If he said it with the intention of divorce, a talāq-e-bā’īn applies on his wife. He will not be able to go back to her without renewing the marriage.\textsuperscript{1} Allāh ta’ālā knows best.

“Get out; go to your mother’s house.”

Question

A man was having an argument with his wife and he uttered these words: “Get out; go to your mother's house.” When he thought about his intention, he was doubtful as to whether he had one or not. Will a divorce apply in the case where the intention is doubtful?

Answer

These words are not explicit; they are ambiguous. They need an intention. Since there is a doubt about the intention, divorce did not

\textsuperscript{1} Fatāwā Dār al-‘Ulām Deoband, vol. 9, pp. 393, 409, 413; Fatāwā Maḥmūdīyyah, vol. 12, p. 557.
take place. A juridical principle states that a conviction cannot be removed by a doubt. A divorce cannot apply on the basis of a doubt.

Because the statement under discussion is not explicit but ambiguous, it requires an intention. And there is a doubt about the intention. Divorce will therefore not take place.

Allāh ta‘ālā knows best.

“Neither am I your husband nor are you my wife”

**Question**

A man said to his wife: “Go! Neither am I your husband nor are you my wife.” He did not make an intention of divorce. Will a divorce apply?

**Answer**

If he made this statement with the intention of divorce, a revocable divorce will apply. If he made no intention of divorce, divorce will not apply even if he made it in a state of anger.
The meaning of “a discussion on divorce”

**Question**

The jurists state that if during a discussion on divorce, ambiguous statements are made, the divorce takes place even if it is without an intention. What is the meaning of “a discussion on divorce?”

**Answer**

According to the jurists, “a discussion of divorce” means that the wife or some outsider acting on her behalf asks for a divorce, or a divorce had been issued since before. The husband then utters one of the
ambiguous statements of divorce, then divorce takes place even without having such an intention.

**Question**
A man says to his wife: “Pack your things and go to your father's house. I don't want you anymore, get out!” However, he claims that it was not his intention to divorce his wife. Did divorce take place?

**Answer**
Since the husband is denying having any intention of divorce, divorce has not taken place. This is because his statement is ambiguous. When an ambiguous statement is made, divorce only applies if there was an intention for it or it was during a discussion on divorce. If it is made in the course of a discussion on divorce, it takes place judicially without...
an intention. Yes, divorce does not take place on the basis of religious integrity – between him and Allāh ta’ālā.

Al-Hidāyah:

الكتابات لا يقع بها الطلاق إلا بذلتها أو بذلالة الحال، لأنها غير موضوعة للطلاق بل تعتمد وحده فلا بد من التعيبين أو دلالتها، وبي على ضربين...

وبقية الكتابات إذا نوى بها كانت واحدة بائدة، وإن نوى ثالثا كان ثالانا... إلا أن يكونون في حالة مذاكرة الطلاق فيقع بها الطلاق في القضاء، ولا يقع فيما بينه وبين الله تعالى إلا أن ينوي. (البداية: 3/373، باب إيقاع الطلاق. وكذا في بدائع الصنائع: 3/106، والشام: 3/303، سعيد).

Allāh ta’ālā knows best.

"I have retired you"

Question

A man says to his wife: “I have retired you.” She then goes to her parents’ house. The husband says that he said this out of anger and had no intention of divorce. What is the ruling?

Answer

This is an ambiguous statement and comes in the meaning of فارقتك. The ruling in this regard is that if it is uttered in a state of anger or while having a discussion on divorce, then divorce takes place without making such an intention. In this case, one talāq-e-bā’in applies on the woman. Husband and wife can renew the marriage when she is still observing her ‘iddah. Once the ‘iddah expires, the woman is free to marry whomever she wants.

والمكتوبات ثلاث، ما يجعل الرذ، أو ما يصلح للسب، أو لا ولاء فنحو آخر: واثني وفوي... يجعل رذا... و نحو خليهة، بريء، حرام، بائن... يصلح سباً، و نحو اعتدي... أن يت حرة... فارقتك لا يجعل السب والرذ، فإن حالة الرضا أي غير الغضب و المذاكرة توقف الأقسام الثلاثة تأثيراً... وفي الغضب توقف الأولان، إن نوى وقع ولا لا.
“Go! You are free. I am freeing you.”

Question

Honourable Mufti Sahib! I have come to you with a question and request your opinion on it. I was having an argument with my husband when he said to me: “How long does it take!? It takes just one
minute to issue a divorce. You want to be free! Go! You are free. I am freeing you.” I replied: “Very well. If it takes only one minute, then issue it. I too do not want to live with you. I also want a divorce.” In the light of this argument, has a divorce applied to me?

Answer

If the husband really made the statements as mentioned in the question, then one ṭalāq-e-bā’īn has fallen on his wife. There are two reasons for this.

(1) These words are used in society to refer to divorce. ʿAllāmah Shāmī rahimahullāh said that if a man says: “You are ḥarām on me”, then ṭalāq-e-bā’īn will apply on the basis of societal norm.

Muftī Rashīd Ahmad Ludhyānwī rahimahullāh writes: The third statement “I have freed you” is an explicit ṭalāq-e-bā’īn. A ṭalāq-e-bā’īn will therefore apply irrespective of whether an intention was made or not.1

(2) The second reason is that they had been discussing divorce from the beginning. The man had said: “How long does it take!? It takes just one minute to issue a divorce. You want to be free! Go! You are free. I am freeing you.” A ṭalāq-e-bā’īn therefore applies to the wife. She most probably passed the ‘iddah after the divorce was issued because a woman who experiences the monthly menses has to pass through three menstrual periods. If the ‘iddah has expired, she can marry someone else. She may also marry her previous husband. There is no need for ḥalālah. If the husband denies having made these statements and the wife has no Shar’ī witnesses, the husband will have to take an oath. If he takes an oath that he did not make these statements, it will be accepted. However, if the wife is absolutely certain that he uttered these statements, she must not leave the husband without renewing the marriage. If she remarries her first husband, he will have the right to issue only two divorces in the future. If he happens to issue two divorces, his wife will become mughallazah.

Allāh ta’ālā knows best.

“You go away” – said with the intention of three divorces

Question
A man said to his wife: “You go away.” The wife said: “You gave me three divorces!?” The husband replied: “Yes.” How many divorces are applicable?

Answer
The husband’s statement “You go away” is classified as ambiguous. When this is the case, he will be asked about his intention. If his intention was divorce, one ʿaqlī bāʾin will apply. If he intended three, then three divorces will apply. From your question it seems that the husband admitted to three divorces. Therefore, three divorces have applied to his wife and she has become mughallazah. She is unlawful to him unless she goes through the process of ḥalālah.

Allāh taʿālā knows best.

“Take your kitchen and go.”

Question
The day before yesterday my wife said to me: “I am fed up with you. I want to go.” I replied: “Take your kitchen and go.” She phoned her mother and uncle to take her home. When they came to pick her up, I tried to stop her from going but she insisted on going. I said to her
uncle: “If you take her, three divorces will fall on her.” He responded with utter harshness, caught hold of me, and said to my wife: “Go.” She left. How many divorces have taken place?

Answer

The statement: “Take your kitchen and go” is ambiguous. It is dependent on the husband’s intention. If he had an intention of divorce, one ʿtalāq-e-bā’in is applicable. If not, no divorce has taken place. However, subsequently the husband made an explicit statement: “If you take her, three divorces will fall on her.” This is a conditional divorce. It means that if the condition is fulfilled, the divorce will apply. In this case, the wife left. The condition was fulfilled so three divorces applied to her and she has become a mughallazah. She is unlawful to him unless she goes through the process of ḥalālah.

الهداية:

وبقية الكنيات إذا نوى ببا الطلاق كانت واحدة بائنة، وبذا مثل قوله:
اخرجي واذبي وقوي، لأنها تحمل الطلاق وغيره فلا بد من البينة. (البداية: 374/2)

الدر المختار:

الكنيات لا تطلق بها قضاة إلا بنية أو دلالة الحال وبي حالة مذكرة الطلاق أو الغضب. فالحالات ثلاث: رضا وغضب ومذكرة، والكنيات ثلاث: ما يحتل الرد... فنحو أخرجي واذبي وقوي... إن الأول يتوقف على البينة في حالة الرضا والغضب ومذكرة. (الدر المختار مع الشاعر: 3/30-31/396)

الهداية:

وإذا أضاف إلى شرط وقع عقب الشرط مثل أن يقول لامرأتين دخلت الدار فأتت طالق. (البداية: 3/385)
“The bond of marriage is broken.”

Question

A husband said to his wife: “The bond of marriage between me and my wife has broken to such an extent that there is no possibility of rejoining it.” He made this statement five times. He also said it once in court and emphasised it. However, he claims that he never had any intention of divorce.

Answer

The husband’s statement, “The bond of marriage is broken...” is ambiguous. Divorce does not take place without an intention. If he had an intention, one talâq-e-bâ’in will apply.

ولما فسخت النكاح ونوى الطلاق بقع، وعن أبي حنيفة رحمه الله تعالى: إن نوى ثلاثاً فئاث كذا في معراج البدراية. (الفتاوی الهندیة: ۳۷۵/۱، الفصل الخامس في الكنایات)
"Your marriage with me is broken." This is not an explicit statement; it is ambiguous. The husband must be asked if he intended divorce. If he replies in the affirmative, divorce will apply.

However, 'Allāmah Ibn Nujaym rahimahullah and 'Allāmah Shāmī rahimahullah are of the view that a revocable divorce will take place.\footnote{Fatāwā Maḥmūdīyyah, vol. 12, p. 559; Aḥsan al-Fatāwā, vol. 5, p. 193.}

The husband must be asked if he intended divorce. If he replies in the affirmative, divorce will apply.
Allāh ta’ālā knows best.

“*The marriage is no longer intact.*”

**Question**

A husband is speaking to another person about his wife and says: “*My marriage to that woman is no longer intact.*” Will he have to renew his marriage?

**Answer**

This is an ambiguous statement. If his intention was: “*The marriage is no longer intact; it is broken*,” then a talaq-e-bain has fallen on her. If his intention was: “*The marriage has become unstable and defective, even though it is still standing*,” then divorce did not take place.

It is stated in *Fatāwā Sirajyyah* that all ambiguous statements apart from the following three require an intention. The three statements which are excluded are:

َاعتدي، اختاري، أمرك بيدك

Observe the 'iddah. Make a choice for yourself. The matter is in your hands.

The statement: “*The marriage is no longer intact*” is also ambiguous. Yes, there are certain ambiguous statements which, if said during a discussion on divorce, will cause a divorce even without an intention. For example:
You are devoid [of marriage]. You are free. You are cut off. You are separated.

However, 'Allāmah Ibn Nujaym rahimahullāh and 'Allāmah Shāmī rahimahullāh are of the opinion that if a present negation of marriage is made, then a revocable divorce will apply. This was mentioned previously.

Allāh ta’ālā knows best.

“Leave the house.”

Question

Five years ago, a man said to his wife: “Leave the house.” At the time, he claimed that he had no intention of divorce. They had children subsequently. He is now saying that his intention at that time was of divorce. Has the divorce taken place after this admission which he made after five years? Are the children legitimate?

Answer

The statement “Leave the house” is ambiguous. If his intention was divorce then divorce took place. But when he said that he had no intention of divorce, divorce did not take place. After five years he is saying that he intended divorce. This will have no effect because it is synonymous to retracting his admission, and a retraction of this nature is not considered. Furthermore, the children will be legitimate.
Ambiguous statements of divorce are dependent on the intention. If such a statement is made with the intention of divorce, a ṭalāq-e-bā’īn will apply. If there was no such intention, no divorce will apply. The marriage will remain intact. As regards the intention, it is only the husband’s word which is considered.¹

Fatāwā Dār al-‘Ulām Deoband:
If these ambiguous statements are made with the intention of divorce then ṭalāq-e-bā’īn applies. If there was no such intention, divorce did not take place. The woman is still his wife as normal.²

Allāh ta’ālā knows best.

“By Allāh I will never keep that woman.”

Question
A man struck and beat his wife and expelled her from his house. He said: “I take an oath, by Allāh I will never keep that woman.” Four years have passed since he has not seen to her needs and not supported her in any way. When he made such an explicit statement, is there still a need for an intention of divorce?

¹ Fatāwā Maḥmūdiyyah, vol. 12, p. 500.
² Fatāwā Dār al-‘Ulām Deoband, vol. 9, p. 381.
Divorce has not applied to his wife and there is no need for an intention. The reason for this is that if a person utters the words of divorce explicitly but in the future tense, then divorce does not take place. For example, if he says: "I take an oath by Allâh, I will divorce you." Divorce does not take place. By saying the words which he said, it is more emphasised that divorce will not take place.

Answer

Divorce has not applied to his wife and there is no need for an intention. The reason for this is that if a person utters the words of divorce explicitly but in the future tense, then divorce does not take place. For example, if he says: "I take an oath by Allâh, I will divorce you." Divorce does not take place. By saying the words which he said, it is more emphasised that divorce will not take place.

Further reading:

Allâh ta‘ālâ knows best.
"You are not my wife."

**Question**

A man was angry when he said to his wife: “You are now not my wife. Neither will I consider you to be my wife in the future.” Has divorce taken place?

**Answer**

If he made this statement with the intention of divorce, then one revocable divorce has taken place. If he had no such intention, no divorce has taken place.

البحر الرائق:

(قوله وتعلق بلست لي بامرأة أو لست لك بزوج إن نوى طلاقاً)... ولو قال لا نستحضاً بيننا يقع الطلاق، والأصل أن نفي النكاح أصلاً لا يكون طلاقاً بل يكون جحوداً، ونفي النكاح في الحال يكون طلاقاً إذا نوى، وما عداء فالصحيح أن على هذا الخلاف، قيد بالنية لأنه لا يقع بدون النيا الاتفاقاً لكونه من الكنيايت. ولا يخفى أن دلالة الحال تقوم مقامها حيث لم يصلح للرد والشتم ويصلح للجواب فقط، وقدمنا أن الصلاح للجواب فقط ثلاثة ألفاظ ليست بهذا منها فلذا شرط النية للإشارة إلى أن دلالة الحال بنا لا تستحي، وأشار بقوله تطلق إلى أن الواقع بهذه الكنية رجعي. (البحر الرائق: 3/673، باب الكنيايت. وكذا في الدر المختار مع فتاوى الشامي: 3/483، باب الصريح، سعيد)


Allāh ta’ālā knows best.

**Referring to one’s son as “the child of a divorcee”**

**Question**

A man became angry with his son and called him: “The child of a divorcee.” This man never issued any divorce to his wife before this. Does divorce take place by making such a statement?
Answer

Divorce did not take place because no reference was made to his wife. Moreover, a statement of this nature is by and large made as a way of rebuke and reprimand. If a person has the intention of rebuke and reprimand, and he were to address his wife in this way, even then divorce will not take place on the basis of religious integrity.

Addressing one’s wife as a “divorcee”

Question

A man was having an argument with his wife. In the course of the argument he addressed her as a divorcee. Is a divorce applied to his wife?

Answer

By addressing her as a “divorcee”, one revocable divorce has fallen on her. However, if he made this statement with the intention of rebuking
and reprimanding her, then his word will be accepted on the basis of religious integrity and divorce will not take place.

*Imdād al-Aḥkām:*

...however, by addressing her as a “divorcee” and “divorced”, one revocable divorce has fallen on her...¹

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**Fatwā fi al-Sharīʿah:**

وفي الشامية: يا طالق أو يا مطلقة بالتشديد ولو قال أردت الشتم لم يصدق
قضياء ودين، خلاصة، ولو كان ليا زوج طلقتها قبل فقال أردت ذلك الطلاق
صدق دبابة باتفاق الروايات، وقضياء في رواية أبي سليمان وبو حسن كما في
الفتح وبو الصحيح كما في الخانة ولو لم يحكم ليا زوج لا يصدق، وكذا لو
كان ليا زوج قد مات، (فتاوى الشايب: ٣/٠٥٠، وكذا في الفتاوى الهندية:١/٥٥٠،
وخلاصة الفتاوى:٢/٥٥٠)

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If the woman was divorced by a previous husband, and this is why the present husband addressed her as a “divorcee”, then his word will be accepted by the Shariʿah.²

To sum up, if the husband referred to her as such with the intention of reprimanding her, and the woman has no objection to it, then the muftī can issue a verdict of no divorce. This is because an address of this nature is considered to be a reprimand in current society.

Allāh taʿālā knows best.

“*You are equal to my sister.*”

**Question**

A man said to his wife: “*You are equal to my sister.*” Does divorce take place by making such a statement?

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² *Fatwā Mahmūdiyyah*, vol. 12, p. 370.
Answer

This is an ambiguous statement. If he made it with the intention of divorce then one ṭalāq-e-bā’īn takes place. If he had no intention, then no divorce takes place. Nonetheless, he should desist from making such utterances.


Allāh ta’ālā knows best.

“You must tell everyone that I divorced you.”

Question:

A woman said to her husband: “Give me a divorce. There is disgrace in this marriage.” In reply to this request, he took a piece of paper and wrote: “Your disgrace will be removed. You must tell everyone that I divorced you.” It seems that he did not want to issue a divorce. Has divorce taken place?
Answer:

If he really did not issue a divorce and only said to his wife: “You must tell everyone that I divorced you”, then divorce did not take place on the basis of religious integrity. Yes, it has taken place judicially. However, if he had brought a witness from before hand, then divorce will not take place even judicially. If the husband’s intention behind this statement was divorce, then divorce has taken place.


Allāh ta‘ālā knows best.

“Go to your mother’s house until your mind comes right.”

Question:

A man said the following in anger: “Go to your mother’s house until your mind comes right.” There was no discussion of divorce nor was it the husband’s intention. Rather, it was an argument related to the children, and the husband made this statement. Has divorce taken place?

Answer:

Provided the question which is posed is correct, divorce did not take place. This is because the statement: “Go to your mother’s house” is ambiguous. When an ambiguous statement is made, divorce only takes place if an intention was made for it. Bearing in mind that the second part of the statement – “until your mind comes right” – negates divorce, we conclude that divorce was not the objective. Rather, it was to keep her at her mother’s house until a certain time.
“If you go to your parents’ house, then the third one.”

Question:
A man had issued two divorces on separate occasions in the past. He now has only one divorce to issue. He said to his wife: “If you go to your parents’ house, then the third one.” He did not utter the word “divorce” or any other word of similar meaning. Will the third divorce apply if she goes to her parents’ house?

Answer:
If the husband had the intention of divorce when he said “the third one”, then the third divorce will apply to the woman if she goes to her parents’ house. But if he said it merely to threaten her, divorce will not take place.

From the above text we learn that the husband uttered the word “one thousand” in reply to the wife, but when he did not make an intention, divorce will not take place.

The following is stated in another place:

Allāh ta’ālā knows best.
The husband said to the wife: “Implement the leeway of women.” Apparently it means that she must make a plan for ḥalālah because three divorces have been issued. However, since he did not utter the word of divorce, his statement will be dependent on his intention. If he had an intention of divorce, it will apply. If not, there will be no divorce.

Allāh ta’ālā knows best.
WRITTEN DIVORCE

الطلاق الباهرة في تنفيذ كتابة الطلاق للزوجة الحاضرة

Issuing a written divorce in the presence of the wife

Question:
A person issues a written divorce in the presence of his wife and gives the note to her without uttering any word. Does divorce take place?

Answer:
A written divorce is like a verbal one. Whether the wife is present or not, divorce takes place. Yes, if a person is compelled to write it, then the written note of such a person will not be considered and divorce too will not take place.

The following are examples of a written divorce:

Kitābat-e-mustabiṇah: To write on paper, on a wall, etc. a divorce which is clear and permanent. This is divided into two categories:

1. Mustabiṇah marsūmah: When a formal divorce document is written with the addressee's name.

2. Mustabiṇah ghayr marsūmah: When a person writes on any piece of paper or on a wall. He writes “divorced” or “I have divorced” without attributing it to his wife and without sending it to her.

The first type takes the place of a verbal utterance and divorce takes place with it.

In the second type divorce will only take place if the husband says that it was his intention to divorce his wife.

Kitābat-e-ghayr mustabiṇah: When the writing does not come into existence and cannot be read. For example, a person writes on water or in the air. Divorce does not take place under any condition.¹

¹ Majmū‘ah Qawānīn Islāmī, 129-130; register 3/4, Muslim Personal Law Board.
الفتاوى الهندية:

الكتابة على ثلاثة أوجه مستبين مرسوم أو معون ويبو يجري مجرى النطق في الحاضر والغائب على ما قالوا، ومستبين غير مرسوم كالكتابة على الجدار وأوراق الأشجار ويبو ليس بحجة إلا بالبينة والبيان وغير مستبين كالكتابة على اليواء والماء ويبو بمزلة كلام غير مرسوم فلا يثبت به الحكم (الفتاوى الهندية: ٤٤٤، مسائل شتى).

الدر المختار:

كتب الطلاق، إن مستبيناً على نحو لوح وقع إن نوى، وقيل مطلقاً، وقيل نحو الماء فلا مطلقاً، ولو كتب على وجه الرسالة والخطاب كان يستحب با فلانة: إذا أتاك كتابًا، إذا فأتا طالق طلقت بوصول الكتاب جوابه.

وفي الشامية: (قول) كتب الطلاق الأخ قال في الهندية: الكتابة على نوعين: مرسومة وغير مرسومة، وتعني بالمرسومة أن يكون مصدرًا ومعونًا مثل ما يكتب إلى الغائب وغير المرسومة أن لا يكون مصدرًا ومعونًا، ويبو على وجهين مستبيناً وغير مستبيناً، فالمستبينة ما يكتب على الصحفة والحائط والأرض على وجه يمثّل فيه، وقراءته، وغير المستبينة ما يكتب على اليواء والماء وشيء لا يمثّل فيه، وقراءته، ففي غير المستبينة لا يقع الطلاق فإن لوى، وإن كانت مستبينة لكنها غير مرسومة إن نوى الطلاق يقع واللاأ، وإن كانت مرسومة يقع الطلاق لوى أو لم ينوي، ثم المرسومة لا تخلو إلا أن أرسل الطلاق بأن كتابة، أما بعد فأنت طالق، فكما كتابة إذا كان يقع الطلاق وترحمها العدة من وقت الكتابة، وإن علق طلاقها بحضر الكتابة: إذا جاء ككتاب فأنت طالق فجاها الكتاب فقرأه أو لم تقرأ يقع الطلاق كما في
الخلاصة. (الدر المختار مع رد المختار: 3/456، مطلب في الطلاق بالكتابة، ص: 372، مسائل شقي، سعيد)

البداية:

ثم الكتاب على ثلاثة مراتب: مستبين مرسموم وبو بمزولة النطق في الغائب والحاضر على ما قالوا، ومستشارين غير مرسموم كالكتابة على الجدار وأوراق الأشجار ويبني في لأنه بمزولة صريح الكتاية فلا بد من البينة وغير مستبين كالكتابة على البهواء والماء وبو بمزولة كلام غير مسموع فلا يثبت به الحكم.

(البداية: 4/270، كتاب الحقن)

وفي الشامية: أعلم أن هذا في كتابة غير مرسمومة أى غير معتمدة، لما في التببين وغيره أن الكتاب على ثلاثة مراتب: مستبين مرسموم وبو أن يوصون معاوناً أى مصدراً بالعنوان، وبو أن يكتب في صدره من فلان إلى فلان على ما جرت به العادة فهذا كالنطق فلزم حجة..الع. (فتاوي الشاه: 2/372، مسائل شقي، سعيد)

بذاع الصنائع:

وأما النوع الثاني فهو أن يكتب على قرطاس أو لوح أو أرض أو حائط كتابة مستبينة لحسي لا على وجه المخاطبة أمرته طالق فيستقل عن نية. فإن قال: نويت طالق وإن قال: لم أنى طالق صدق في الغضاء لأن الكتابة على هذا الوجه بمزولة الكتابة لأن الإنسان قد يكتب على هذا الوجه، وبريد به الطلاق وقد يكتب لتجويد الخط فلا يحمل على الطلاق إلا بالنية..وإن كتب كتابة مرسمومة على طريق الخطاب والرسالة مثل أن يكتب أما بعد يا فصلة فأن طالق أو إذا وصل كتابي إليك فأن طالق يقع به الطلاق ولو قال: ما أردت به الطلاق أصلاً لا يصدق إلا أن يقول نويت طلاقاً من وثائق
From the above-quoted texts of the jurists, it is established that kitābat-e-mustabīnah marsūmah takes the place of a verbal utterance of divorce, and that divorce takes place without making a distinction between whether the wife is present or not.

Observe the verdicts of the seniors:

At-Tarāʾif wa az-Zarāʾif contains an answer of Ḥadrat Mufti ʿAzīz ar-Raḥmān Ṣāḥib – the mufti of Dār al-ʿUlūm Deoband – to a question asked by Ḥadrat Maulānā Ashraf ʿAlī Thānwī Ṣāḥib rahimahullāh.

As regards a written divorce, it seems to be established from the texts that an explicit or ambiguous divorce takes place when written in the presence of the wife. This is if it is his intention to issue a divorce, and not for mere writing practice. In the case of marriage, the prerequisite is that witnesses must hear the proposal and the acceptance of both partners. Where it is possible for the proposal and acceptance to be heard, if it is written down [and not uttered] it is possible to classify it as a futile action. And there is no need for it in the case of a divorce. In
Kitāb al-Iqrār of Shāmī, like the acknowledgement of various debts, divorce has been classified as equally applicable whether uttered verbally or written.

If an acknowledgement of debt is written down, and the writer acknowledges that it is his writing, there will be no doubt about the compulsion of the debt. Although Shāmī has expressed – based on a text from al-Ashbāh wa an-Naṣīr – with regard to various issues that the written word by a person who is present and can speak will not be considered, the obvious meaning of this is that a witness cannot give testimony solely on the basis of a written document. This is because a mere piece of writing could have been written for writing practice. In short, the preferred and established ruling seems to be that if a written divorce is given even to a woman who is present, then divorce takes place. This is the cautious approach and is also the view of Ḥadrat Maulānā Maḥmūd Ḥasan Šāhīb and Maulānā Anwar Shāh. That is all. Was salaamic. Ṭāzīz ar-Rahmān, Deoband, 1330 A.H. Thursday.

Fatāwā Raḥimīyyah:
A written divorce is like a verbal one. In other words, whatever rule is applied to a verbal divorce will be applied to a written one. However, when a person is compelled to write a divorce, divorce will not take place until the man utters it verbally.


However, Ṭālāmah Shāmī raḥimullāh writes:

أظهر أن المعنى من الناطق الحاضر غير معتبر (فتاوی الشایع: ۶۳۷، مسائل شیء سعید)

From the above, it seems that the inscribed divorce of a dumb person against the wife who is present is valid while the written divorce of a speaking person against the wife who is present is not considered. However, there are explicit texts of the jurists against the opposing meaning which Ṭālāmah Shāmī raḥimahullāh expresses here. An

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1 Ṭāfāwā Ṭāfāwā, vol. 8, p. 309.
opposing meaning will only be considered when the expressed word is not contrary to it. 'Allāmah Shāmī rahimahullāh himself accords it the level of qiyās (analogical reasoning) and not an established rule. Furthermore, 'Allāmah Rāfi‘ī rahimahullāh objects to 'Allāmah Shāmī’s expression of qiyās. He writes:

قوله وظاهره لا يظهر وجه ظهوره من عبارة الأشياء. (تقريرات الرافعي، ج 6، ص 355، مسائل شتي، سعيد.

It is possible that the text of al-Ashbāh means that the inscribed divorce of a dumb person is valid while his non-inscribed divorce is not taken into consideration.

Furthermore, this is not even the preferred creed of 'Allāmah Shāmī rahimahullāh. His preferred creed is what is mentioned in the previously-quoted texts. We conclude that a written divorce which is mustabnah marṣūmah is classified as an explicit divorce. Just as an explicit divorce is the same whether issued in the presence of the wife or in her absence, the same can be said about a written divorce which is mustabnah marṣūmah. That is, divorce will take place whether the wife is present or not, and whether the man uttered the word of divorce with his tongue or not.

We learn from the texts of most jurists that the written and spoken words are equal for establishing rulings even though there is a difference between the two, viz. the written word is compared to the spoken word. This is similar to the difference between the written word and gesture of a dumb person. Nonetheless, the two are equal in establishing a ruling.

Shams ad-Dīn Qādī Zādah makes an objection to this. Observe the following from Natā‘īj al-Afkr:

قوله ويبو بمثلة النطق في الغائب والحاضر على ما قالواFoo، فإنا إذا كان بمثلة النطق في حق الحاضر أيضاً لم يكمن حجة ضرورية، فربما أن يكون حجة في الحدود أيضاً كما كان النطق حجة فيها أيضاً فليتأمل في المخلص. (نناتج الافكار: 10/5، مسائل شتي، دار الفكر).

In other words, if the written word is like the spoken one, it ought to be an evidence in the penal laws.
This objection is incorrect because penal laws are established as prescribed by the Sharī'ah; and the written word is not prescribed for them. For example, a single admission of guilt is sufficient. But when it comes to adultery, the Aḥādīth contain the admission of guilt repeated four times. This is why it will be necessary to say it four times.

Furthermore, penal laws fall off in the presence of doubts.

If the spoken word is considered to be effectual for the one who is present but the written word is ineffectual, then in the case of a written divorce, the one who has the ability of speech will have to accompany his written divorce with a verbal one. Irrespective of whether he issues it in the presence of witnesses or not, just as it is necessary to utter it at the time of a marriage. For example, Zayd writes a proposal of marriage to Hindah. Before she can accept the proposal, it will be necessary for it to be read in the presence of witnesses and then accept the proposal so that the prerequisite of the proposal and acceptance is fulfilled.

If a person in Durban sends a written divorce to his wife in Johannesburg, divorce will take place even though – in our times – he is able to utter it to her over the telephone together with proving his identity. Why does divorce still take place?

A written bequest is valid. But if a person is able to speak, he ought to make a verbal request and the written word ought to be disregarded.

Furthermore, when permission is given to relate Aḥādīth which were heard verbally, the written permission is valid even though the person is able to speak. In such a case, a written permission ought to be invalid.

For a transaction to be valid, the Sharī'ah prescribes the words “I have bought it.” At the same time, a mutual exchange [of goods and money without uttering a single word] is valid. If the two parties are able to speak, why is such a mutual exchange valid?

Rasūlullāh ﷺ gave a letter to 'Abdullāh ibn Jahlīsh radhiyallāhu 'anhu and forbade him from opening it before he reached a certain place. He was ordered to open it only when he reaches that place.
If the written word is invalid without reading it verbally, this letter of Rasūlullāh ṣallallāhu 'alayhi wa sallam would be unacceptable.

The principal’s office of a madrasah sends out a written announcement for the examinations; a verbal announcement is not made. Imagine if the students do not write the exams and say: “You sent a written instruction even though you are able to speak. This announcement is therefore unacceptable.” What reply will we give to them?

The ṣalāh times are written on the masjid board but the imām of the masjid does not come to perform the ṣalāh at the stipulated time. When asked, he says: “You have the power of speech, so your written word is not considered.” What reply will we give to him?

In short, if we were to consider the written word to be unacceptable, it will give birth to various other issues.

The jurists say that the written divorce of a person under compulsion is invalid. This ruling applies only to the divorce of the person who is compelled to issue a divorce. The reason behind this is to save one’s self from wrong and oppression. Adopting a leeway is legitimate to save one’s self from wrong. For example, an oppressor compels a person to take an oath to issue three divorces, and he issues them to save himself from the oppression. He then presents witnesses that it was a false oath. The same can be said about a written divorce – the person refuses to utter it verbally but writes it down to save himself from injustice.

This means that the spoken word is left out for the written word because of some need or reason. Here the objective is only to save one’s life and not for any other need. His life has been saved and divorce did not take place. Now if a person writes down a divorce, there could be several reasons for it. The wife could have demanded it so that it could serve as a proof in the future. It could be needed in court. The husband may be scared of his wife and cannot pluck the courage to issue a divorce verbally. Or, because this is an era of writing; it is not only to save one’s life.

There are countless injunctions which are based on societal norms. Just as societal norms are considered in commercial transactions, the societal norm of today is that the written word is like the spoken word. In fact, it is more conclusive. This is why Ḥadrat Maulānā Thānwī, Ḥadrat Shaykh al-Hind, Ḥadrat Muftī ‘Azīz ar-Rahmān and Ḥadrat
Anwar Shāh Kashmīrī rahimahullāh considered the written word to be equal to the spoken word.

We cannot understand how the written word is not accepted as valid especially in our times.

After quoting the texts of the jurists, Mufti Muhammad Ashraf Şahīb – the muftī of Jāmi‘ah Māhmūdiyyah, Springs – writes:

The following points are established from the previously-quoted rulings and texts:

1. Kitābat-e-mustabānah falls under the ruling of a verbal divorce.

2. Mustabānah marsūmah falls under the ruling of an explicit divorce.

3. Mustabānah ghayr-marsūmah falls under the ruling of an ambiguous divorce.

4. If the written divorce is not preconditioned, it falls under the ruling of an issued divorce. The divorce will apply the moment it is written.

5. Erasing a kitābat-e-mustabānah is the same as retracting from a precondition. And the rule is that one cannot retract from a precondition.
6. If the written divorce is confirmed, it is accepted in a court of law. The denial of the husband will not be considered.

...Based on the previous discussion, especially the general texts related to the rules of a written divorce, the validity of a written divorce in court, the principle of “a woman is like a judge”, and the demands of present-day conditions and societal norms; it is our view that a written divorce – with its prerequisites and details – is valid irrespective of whether the wife is present or not.

The societal norm of today is that people give more importance to the written word. Sometimes, they note down a point instead of speaking it because the written word remains, it becomes a piece of evidence, and proves beneficial at the time of need. More significance is given to the written word at the time of making important agreements.\(^1\)

A detailed fatwā on this subject has been published by the Dār al-Iftā’ of Dār al-‘Ulūm Karachi. It proves that a written divorce issued in the presence of the wife is valid. This fatwā contains the corroborative signatures of several muftīs and is also the fatwā of several dār al-iftās of Pakistan.

Allāh ta‘ālā knows best.

**An issue related to a written divorce**

**Question:**

Here in South Africa, a man wrote three divorces on a piece of paper and gave it to his wife who was present. Some muftīs labelled this divorce ineffectual. They present the following text of Shāmī as proof.

لهكذا في الدار المنتقم عن الأشياء أن في حق الأخر يشترط أن يكون معنوناً وإن لم يكن لغائب وظاهره أن المعون من الناطق الحاضر غير معتبر. (شامی: 737)\(^2\)

This means that the divorce written by a person who has the power of speech and given to a woman who is present – and written in line with societal norms and habits – is not valid. What is the reply to this verdict?

\(^1\) Condensed from a fatwā of Muftī Ashraf Ṣāḥib, dated 16 Rajab 1424 A.H./13 September 2003.
A written divorce given to a woman in her presence is valid and applies to her. A meeting of muftis was held a few years back. The final view of many of the muftis present was that divorce takes place. This issue has raised his head once again because of the incident [which you related]. Observe the following texts of the jurists:

وهو أي المستجيبين بمنزلة النطق في الغائب والحاضر على ما قالوا فإن كان
بمنزلة النطق في حق الحاضر أيضاً لم يصح حجة ضرورية. (تحكيمة فتح
القدير: 15/5، دار الفكر)

وفي الشام: في هذا أي المستجيبين كالنطق فلزم حجة. (فتوى الشامي: 1737/6،
سعيد، وشرح الحموى على الأشياء: 13/5، أحكام الكتابة)

وهو جرى مجرى النطق في الحاضر والغائب. (حاشية الكنز من ملا مسكي
والبعين: ص 94، ورمز الواقائق: 999، مسائل شتي)

وهو أي هذا المذكور من الكتابة كالنطق في الغائب والحاضر على ما قالوا فلزم
حجة وفي زماننا الحضي شرط يكون معتادا. (مجمع الأزهر: 1733/3، دار أحياء
التراث العربي)

ثم الكتابة على ثلاثة أوجه مستجيبين مرسوم، وهو جرى مجرى النطق في الحاضر
والغائب على ما قالوا. (عالم الزيار: 1744/5، مسائل شتي)

ثم الكتابة على ثلاث مراتب مستجيبين مرسوم وهو بمنزلة النطق في الغائب
والحاضر على ما قالوا. (البداية، مسائل شتي: 175/5)

والحاصل أن كل كتاب يتحرر على الوجه المعترف من الحاضر حجة على كتب
النطق بالنسان. (دار الحكم شرح محلة الاحكام، مادة الكتاب كالمطاب،
لعل حيدر)
It becomes clear from the above-quoted texts that a written divorce is valid irrespective of whether the wife is present or not. The answers to the text which was quoted from Shāmī are as follows:

1. The view of ‘Allāmah Shāmī raḥimahullāh differs with that of the previously-quoted juridical texts. His view is therefore less acceptable. The view that divorce takes place is the preferred view.

2. ‘Allāmah Rāfī’ raḥimahullāh, the annotator of Shāmī, refutes this view and classifies it “not obvious”. He writes:


3. The above-quoted text is in itself different from ‘Allāmah Shāmī’s other text. The latter which is in line with the texts of the various juridical books will be taken into consideration. For example:


When ‘Allāmah Shāmī raḥimahullāh said:


He proved that it is the opposite meaning of what was mentioned before. The principle is that the expressed word (mantūq) is given preference over the non-expressed word (mafiḥ mukhlīf).


5. The text under question is related to the issue of compulsion. ‘Allāmah Shāmī raḥimahullāh quoted it from Ashbāḥ; in fact from
Sharḥ Ashbāḥ who in turn quotes it from Khānīyyah. (Refer to Ashbāḥ Maʿa Sharḥ al-Ḥamawī, vol. 3, p. 123). The texts of Sharḥ Ashbāḥ and Khānīyyah contain a discussion on compulsion; not on when a husband issues a divorce in the presence of his wife without being compelled to do so.

Observe the text of Ṯaṭwā Qādī Khān:

The gist of this is that if a person writes a note of divorce under compulsion and gives it to his wife, the divorce will not take place. This is because the written word takes the place of the spoken word at the time of need, and there is no need here. In other words, in the light of the previous texts, the written word is a fundamental evidence, but in the case of compulsion, the verdict of non-application of the divorce is given and the written word is accepted as an essential evidence.

In normal situations, the written word is a fundamental evidence and akin to the spoken word. However, there is no need to fulfil it in a state of compulsion and it will have no effect. In short, the written word is not valid in a state of compulsion irrespective of whether the wife is present or not. The issue of compulsion is therefore not related to whether the wife is present or not. Rather, it has been accepted as an essential evidence in this situation. That the written word is a fundamental evidence in normal situations is mentioned in the previous texts of al-Bahr ar-Rāʾiq and Ṯaṭwā al-Qadr.

Additional details on this subject can be found in Taḥrīr Aur Zabardastī Talāq Kī Taḥqīq of Maulānā Muḥammad Ṭayyib Sāhib. Kindly refer to it. This book contains the recommendations and reviews of many muftīs.

Allāh taʿālā knows best.

**Writing a divorce in an unconventional manner**

**Question:**

Zayd was sitting on a chair with a table in front of him. He wrote his wife’s name and three divorces on the table. He wrote: “Three divorces to my wife Zaynab.” Later on, he said that there was neither an
argument between them nor did he write it in anger. He was merely joking. Has divorce taken place?

**Answer:**

When a divorce is written in an unconventional manner without having an intention of divorce, then divorce does not take place. If it is written with an intention of divorce then divorce will take place. In the present case, the divorce was written in jest and there was no intention of divorce, so divorce does not take place.

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**Majmū‘ah Qawānīn Islām:**

Divorce will take place in a kitābat mustabīnah ghayr marsūmah when the husband says that it was his intention to divorce his wife. *Radd al-Muhtār* states:

وإن كانت مستبينة لكنها غير مرسومة إن نوى الطلاق يقع وإلا لا


Allāh ta‘ālā knows best.

**A divorce written under compulsion**

**Question:**

A woman had a divorce notice written, asked a policeman to accompany her and went to her husband. The policeman threatened the husband saying: “Sign this document or I will shoot you.” The husband asked: “What does this document contain?” The policeman replied: “One divorce.” The husband had no alternative but to sign the document. Later on he was informed that the divorce notice contained three divorces. How many divorces are applicable, one or three?

**Answer:**

A written divorce is accepted as valid by the Sharī‘ah provided it is written willingly by the husband. In other words, the husband wrote

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1 *Majmū‘ah Qawānīn Islām*, p. 130.
the divorce note willingly by himself, or he willingly signed the divorce document. Divorce does not take place when the husband is compelled to write a divorce note or to sign such a document. In the above case, if the husband did not utter any divorce verbally, no divorce has taken place.

وفي البحر: فلو أكره على أن يكتب طلاق امرأته، فكتب لا تطلق. (فتاوي
الشائى: 326/19، مطلب في الأكرار على التوكيل، سعيد)

رجل أكره بالضرب والحبس على أن يكتب طلاق امرأته، فلنان بنت فلان
ابن فلان فكتب امرأته، فلان بنت فلان ابن فلان طالق لانطلاق امرأته.
(فتاوي قاضيخان على باشم الهندية: 761)

وفي الظهيرة: رجل أكره بالضرب والحبس على أن يكتب طلاق امرأته
فكتب فلنان بنت فلان امرأته طالق، وفي الحاوي: ولم يعبر بلسان لانطلاق.
(الفتاوي التاتارخانية: 38، إيقاع الطلاق بالكتابة)

*Fatwā Dār al-‘Ulām Deoband:*

Divorce does not take place when a husband is compelled to sign a divorce document while he did not utter a divorce verbally nor wrote it himself.¹

*Kitāb al-Fatāwā:*

The threat of a policeman is included in the classification of a compulsion.²


Allāh ta‘ālā knows best.

¹ *Fatwā Dār al-‘Ulām Deoband*, vol. 9, p. 154.
² *Kitāb al-Fatāwā*, vol. 5, p. 90.
When an intoxicated person is asked to sign a divorce document

Question:
The enemies of a man made him consume alcohol or made him lose his senses in some other way. They then got a person to write a divorce notice and forced the man's thumbprint onto the document while he was in a state of intoxication. Or, they got him to sign the document. They then wrote a divorce addressed to his wife, while attributing it to him. The man and his wife have no knowledge of this divorce document. The entire episode came to pass deceptively. Has the divorce taken place?

Answer:
Divorce does not take place by deceiving a person or making him sign a blank document without informing him.

Fatāwā Dār al-‘Ulām Deoband:
Writing a divorce document without informing the husband of its contents and then asking him for his thumbprint will not validate the divorce. In the same way, divorce does not take place if the husband is tricked into placing his thumbprint on a blank page and then someone writes the divorce on it later on.

A Hadīth of Ibn Mājah states:

الطلاق من أخذ الساق ...

The following is stated in Shāmī:

وكذا كل كتاب لم يكتب جخط ولم يملع بنفسه لا يقع الطلاق ما لم يقر أنه كتاب.

Thus, in such a case, divorce from the husband did not take place.1 Allāh ta‘ālā knows best.

When a written divorce is not accompanied by the spoken word

Question:
A man wrote a divorce and sent it to his wife. He did not say anything verbally. Does the divorce take place?

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Answer:

Divorce takes place when it is willingly written by a person or he willingly dictates it to someone who then writes it for him. This applies even if he does not make a verbal statement. This is because the spoken word is not a prerequisite for the validity of a divorce.

بدائع الصنائع:

وكذا الكلام بالطلاق ليس بشرط فقع الطلاق بالكتابة المستبينة وبالإشارة المفيدة من الآخرين لأن الكتابة المستبينة تقوم مقام اللفظ. (بدائع الصنائع: ٣/١٠٠، شرائط ركن الطلاق، سعيد)

الدر المختار:

كتب الطلاق، إن مستبيناً على نحو لوح وقع إن نوى، وقيل مطلقاً، ولو على نور الماء فلا مطلقاً، ولو كتب على وجه الرسالة والخطاب كان يستبب بما فلانة:

إذا أتاك كتابي بدأ فاقت طلاق طلقت بوصول الكتاب جويرة.

وفي الشامية (قوله كتاب الطلاق الغ) قال في الهندية: الكتابة على نوعين:

مرسومة وغير مرسومة، وتعني بالمرسومة أن يكون مصداً ومعيناً مثل ما يكتب إلى الغائب وغير المرسومة أن لا يكون مصداً ومعيناً، ويو على وجهين مستبينة وغير مستبينة، فالمستبينة ما يكتب على الصحفية والحائط والأرض على وجه يمikan فهم وقراءتها، وغير المستبينة ما يكتب على البواء والماء وشيء لا يمكن فهم وقراءتها. وفي غير المستبينة لا يقع الطلاق وإن نوى، وإن كانت مستبينة لكنها غير مرسومة إن نوى الطلاق وإن لا، وإن كانت مرسومة يقع الطلاق نوى أو لم ينوى، ثم المرسومة لا تخلو إما أن أرسل الطلاق بأن كتاب: أما بعد فأئت طلاق، فكما كتب بهذا يقع الطلاق وتلمزها العدة من وقت الكتابة، وإن على طلاقها، يمكن الكتابة بأن كتاب؛ إذا جاء ككتاب فأئت طلاق ففجاءا الكتاب فقرأ أو لم تقرأ يقع الطلاق كما في
A person writes a divorce document on the instruction of a Maulānā

Question:

I left the woman to whom I was engaged and got married to someone else. Despite this, my fiancé continued waiting for me. I eventually yielded to the requests of people and made preparations for the marriage. However, at the very time of the marriage, my fiancé’s father ordered me to divorce my first wife. I refused. A Maulānā said to me, write the divorce on a piece of paper and the father will fall silent. The Maulānā added that divorce does not take place just by writing it down on paper. Because it was a Maulānā who said this, I was convinced that divorce will not apply if I write it down. The Maulānā was dictating the words to me and I was writing them. He also dictated the words of three divorces, the name of my wife and other details. What is the ruling of the Sharī‘ah? Has divorce taken place?

Answer:

A written divorce is just as applicable as a divorce issued verbally. In this case, a formal divorce note or a letter with a heading and the name of the one who is addressed were written. This written word takes the place of the spoken word and divorce has taken place.
A divorce document is followed by another letter as confirmation

Question:
A man wrote a divorce document and sent it to his wife. He then wrote another letter to confirm the previous one. How many divorces took place?

Answer:
If the man wrote the second letter only to confirm the previous one and not with the intention of divorce, then only one divorce will apply to his wife.
If he wrote the second letter with the intention of another divorce, two divorces will apply.

If the ‘iddah has passed, there is the possibility of renewing the marriage in both situations. However, if he remarries her in the first instance, he will have the right of two divorces. If he remarries her in the second case, he will have the right of only one divorce.

Allāh ta’ālā knows best.

When husband and wife sign a single document

Question:
Husband and wife sign a written agreement which, in addition to other points, contains the words: “It has become impossible for us, husband and wife, to live together.” Does divorce take place by signing such a document?

Answer:
Divorce will not take place by signing an agreement of this nature because the above-quoted words are not the words of divorce. Yes, if any other words are written later on, then re- pose the question.

Mufti ‘Azīz ar-Rahmān Sāhib writes:

Question: A husband wrote to his father-in-law: “It is difficult for your daughter and me to live cordially in this world.” The husband says that he merely wrote the letter without any intention of severing the marriage bond. Does ṭalāq-e-bā’in apply by making such a statement?

Answer: Divorce did not take place because the words “It is difficult...to live cordially...” are neither explicit nor ambiguous words of divorce.

Allāh ta’ālā knows best.

A conditional written divorce

Question:
There is constant bickering between my wife and my parents. My parents complain about my wife not doing any of the domestic chores.
They do not want her in the house. My father wrote a letter to me in which he asked me to issue a conditional divorce to my wife. If I do not, they will be displeased with me. There is no dispute between me and my wife; we are living amicably and we also have children. My father composed a conditional divorce and gave it to me. He wants me to transcribe it and convey it to my wife. His composition reads as follows:

A note of warning

My wife, Shamīmah Khātūn bint Naṣīr ad-Dīn, listen attentively! You are my wife. I will give you an allowance wherever you live. When I was away from the house for a few weeks, you caused psychological and physical discomfort to my parents. They are compelled to deprive me of their possessions. Consequently, I am forced to accept their conditions. If you ever set foot in the house and the property of my parents, you will be immediately divorced, divorced, divorced.

Is there any leeway for me to transcribe this note merely to please my parents, and then say to them that I have conveyed it to my wife, without mentioning anything about it to her? Will this conditional divorce remain in abeyance? Will it apply when the condition is fulfilled?

Answer:

A conditional written divorce is valid like a conditional verbal divorce. When the condition is fulfilled, the divorce applies. If you wrote the divorce note for your parents but not for your wife, and did not mention it to her, the divorce will still be conditional. If your wife goes to your parents’ house while they are alive, three divorces will apply to her. Therefore, you should not write the divorce note for even your parents. You could resort to an allusion by saying to your parents that you certainly wrote a letter to your wife without mentioning what the subject matter is. As a safety measure, you could have a witness to the letter. In such a case, divorce will not take place because you did not write a divorce note in the first place.

وإذا أضاف إلى شرط وضع عقيب الشرط مثل أن يقول لأمرأته إن دخلت الدار فأنتم طالق. (البداية: 38/3)
A divorce applies when it is written and also when it is dictated to another to be written. It is the same whether a person is serious or joking. Divorce will take place even if a person issues it jokingly or asks someone to write it.¹

Ahṣan al-Fatāwā:

¹ Fatāwā Dār al-ʿUlām Deoband, vol. 9, p. 146.
For a divorce to take place, it is not a prerequisite for the divorce note to reach the wife. It takes place merely by writing it. The type of divorce which is written will apply to the wife.\(^1\)

Allāh ta‘ālā knows best.

**When the husband denies having written a divorce note**

**Question:**

A man left his house and was away for quite some time. His father-in-law received a letter from him. It read: “Absolve me of the dowry and I give permission to my wife.” The letter did not contain any signature. When the man was informed of it, he denied having any knowledge of the letter. Has divorce taken place?

**Answer:**

There seems to be no reason for divorce to have taken place. The man is denying knowledge of the letter. Furthermore, it makes no mention of divorce. All it says is that his wife has permission from him. This is an ambiguous statement which requires an intention. When the husband himself is rejecting it, the verdict of divorce will not be given.

\(^1\) *Ahṣan al-Fatāwā*, vol. 5, p. 147.
TAFWĪD, TAWKĪL AND TA’LĪQ OF DIVORCE

One type of tafwīd

Question:

According to South African law, a wife has a right to issue a divorce just as a husband has. In the light of this law, a husband said to his wife: “If you are summoned to court and asked to divorce me, you must issue a divorce. However, I am not giving you the Shari‘ah right of divorce which I have.” My question is, will tafwīd be understood from this statement? Will the wife be classified as a divorced woman?

Answer:

The pure Shari‘at has given full right of divorce to the husband. If he wants, he can give over this right to his wife. This is known as tafwīd-e-talāq in the Shari‘ah. However, the wife does not have the right to issue a divorce without the husband’s consent. While it may be permissible in non-Islamic law, it will not have any effect on the Islamic law. Bearing this rule in mind, in the case under question, the husband only took the non-Islamic law into consideration so that he does not have to face legal obstacles and challenges. In reality, he made no intention of tafwīd. Moreover, the explicit statement of the husband, “However, I am not giving you the Shari‘ah right of divorce which I have” clearly shows that he did not give the right of divorce to his wife. Therefore, Shari‘a tafwīd did not take place and divorce will not apply on his wife.
الدر المختار:

(قال لنا: اختاري أو أمرك بيدك بنو) تفويض (الطلاق) لأنها كتابة فلا يعملان بلا نية (أو طلقي نفسك فلا) أن تطلق في مجلس علمها به. وفي الشامية: ثم أعلم أن اشتراط النية إنما بعما إذا لم يذكر النفس أو لم يقوم مقامها في كلامه... قول فان يعملان بلا نية أي قضاء ودبيان في حالة الرضاء، أما في حالة الغضب أو المذاكر فلا يصدق قضاء في أن لم بنو الطلاق... قول طلقي نفسك بهذا تفويض بالتصريح ولا يحتاج إلى نية والواقع برجعي (الدر المختار مع رد المختار: 3/556، باب تفويض الطلاق، سعيد).

ثم أعلم أن اشتراط النية إنما بعما كلماتهم متفقة على اشتراط النية وذكر النفس أو لم يقوم مقامها والأكتفاء بذكر النفس عن النية تكون مخالفًا لما انتموا على اشتراطه فلا يعول عليه. (تقريرات الرافعي: 3/192، سعيد).

ثم لا بد من النية في قوله اختياري فإن اختيارت نفسها في قوله اختياري كانت واحدة بائنة... فإذا اختارت نفسها أن تكفر قصد الطلاق فالقول لمع يمينه.

(الفتاوى الهندية: 388/1، الباب الثالث في تفويض الطلاق).

ولو لم يرد الزوج بالأمر باليد طلاقًا ليس بشيء إلا أن يكون في حالة الغضب أو في حالة مذكرة الطلاق فلا يدين في الحكم. (الفتاوى العاترخانية: 239/3، تفويض الطلاق. وكذا في البحر الرائق: 3/317، كوثة).

Allāh ta’ālā knows best.

The difference between tafwīd and tawkīl in divorce

Question:

What is the difference between tafwīd and tawkīl in divorce?
Answer:

Tafwīd is when the husband gives his wife the right of applying divorce on herself or he gives someone else the right to divorce his wife.

If the husband instructs a mature and sane person to issue the divorce but does not give him a choice [of issuing it or not issuing it], then this is known as tawākil.

The second difference is that tafwīd entails giving power or ownership to a person, while this is not the case in tawākil. This is why retraction in tafwīd is not valid while it is valid in tawākil. Moreover, a person who is given ownership, acts according to his will while a representative has no will of his own; he merely has to carry out the order.

The third difference is that a tafwīd is restricted to the assembly while this is not the case with tawākil.
Retracting from a tafwid-e-talâq

Question:
If a person gave the right of divorce to his wife, can he retract from it [can he take back his right]?
**Answer:**
The husband cannot retract after giving his right of divorce to his wife.

وإن قال طلقي نفسك تفويض، لم أن يرجع عنه، لأن فيه موعى اليمين لأن تعليم الطلاق بتطليقة ولي عين تصرف لازم (البداية: 38/2، باب تفويض الطلاق)

ولا يملك الزوج الرجوع عن أي عن التفويض. (المر المختار: 33/2، باب المشيئة، عبيد. وكذا في البندية: 387/1)

*Majm‘ah Qawānīn Islāmī:*
A husband cannot retract from *tafwīd-e-talāq.*
Allāh ta‘ālā knows best.

**Restricting the tawfīd to the assembly**

**Question:**
Is the right of tawfīd restricted to the assembly or is it applicable forever?

**Answer:**
If the husband did not give an eternal right to his wife nor did he specify a time-limit, then in such a case the *tawfīd* will be restricted to that assembly. If he gave her an eternal right, she will enjoy that right until eternity. For example, he said to her: “You may give yourself a divorce whenever you like.” If he specified a time-limit, she will enjoy that right until that time. In short, the decision will be based on the statement of the husband.

**بديائع الصنائع:**

فإن كان مطلقاً بأن قال: أمرك بيدك فشرط بقاء حكمه بقاء المجلس وبو مجلس علمها بالتفويض فما دامت في مجلسها فالأمر بيدبا... وسواء قصر

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The husband has the first right to divorce, the wife has the second, and the husband has the third

Question:
At the time of the marriage, husband and wife laid down the condition that the husband will have the right to issue the first divorce, the wife will have the right for the second, and the husband will have the right for the third. Is the tafwîd in this sequence valid?

Answer:
The right of tafwîd given to the wife in this manner is correct and valid. She can now issue one divorce to herself. However, this most certainly does not mean that the husband has the right to issue only
two divorces. Rather, he still has the right to issue three divorces as normal. Therefore, if he issues three divorces to his wife, all three will apply.

Since the scenario in question lays down the condition of a sequence, it will be taken into consideration as follows: When the husband issues one divorce, his wife will have the right to divorce herself after that and not before.

*Majmū‘ah Qawānīn Islāmī:*

If the husband confines the number of divorces or type of divorce to the will of his wife or representative in the case of tafwīd (giving over the right to divorce to the wife) or tawkīl (representation), it will be necessary to adhere to the number or description laid down by the husband. Divorce will not apply if anything contrary to the condition is done.

قال في الدار: طلقي نفسي ثلثاً إن شئت فطلقت واحدة وكذا عكس لا يقع فيما لاشتراط الموافقة لفظًا (قول لاشتراط الموافقة لفظًا...)، إن اشتراط الموافقة لفظًا خاص بالمطلق بالمشيئة فيكون تعليقًا للاتيان بصورة اللفظ. الدار المختار مع رده المختار: 3/334/3، فصل في المشيئة، سعيد. ويكذا في البداية على فتح القدير: 188/3.

*Jadīd Fiqḥī Mas‘īl:*

One type of tafwīd is when the tafwīd of divorce is agreed upon at the time of the proposal and acceptance [of the marriage]. This is permissible. However, it is necessary that the proposal for tafwīd of divorce be made by the woman while the man accepts it. If the proposal is done by the man and he makes tafwīd of divorce with his proposal, and the woman accepts it, then it is not considered. The following is stated in *Khulsah al-Fatwā:*

وعلى بدأ لو تزوّج امرأة على أنها طلقت أو على أن أمري بيدي أطلق نفسها كلما تريد لا يقع الطلاق ولا يصير الأمر بيدي ولا بدأ المرأة فقلت: زوجت نفسي منك على أي طالق أو على أن أمري بيدي أطلق نفسي كلما أريد فقال

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الزواج: قيلت، وقع الطلاق وصار الأمر بيدبة. (خلاصة الفتوى: 2/393، ط: المكتبة الرشدية)

Ibn Nujaym raḥimahullāh quotes his view from Ḳhulāṣah (al-Brāʾr ar-Rāʾiq, vol. 3, p. 318) and ‘Allāmah Shāmī raḥimahullāh quotes from Ibn Nujaym raḥimahullāh in Ṣadd al-Muṭṭār. The same type of ṭafwīḍ of divorce with certain conditions and restrictions is also described in Fatāwā Bazzāziyyah.

إذا خافت المرأة أن إذ تزوجها لا يجعل الأمر بيدبة بعد التزوج تقول زوجت نفسي منك بهدف على أن أمري بيدي، أطلق نفسي منك بآئاً مني شنت كلما ضربتي بغير جنابة أو تزوجت علي- أخرى أو أشربت أو غبت عنني سنة.

(البازرية: 4/۴٣٠)

This becomes incumbent from the side of the husband.¹

Majm‘āh Qawānin Islāmī

The husband’s right to divorce does not terminate on account of ṭafwīḍ or tawkīl.²

Jadīd Fiqhī Mabāḥīth:

The husband’s right to divorce which has been given to him by the Sharī‘ah transfers to the wife through ṭafwīḍ. The transfer of this right does not pose any danger to the common good and wisdom of the Sharī‘ah. This is because by giving the right of divorce to the wife, the husband’s fundamental right to divorce does not terminate. Rather, it remains as before.³

Allāh ta‘ālā knows best.

2 Majm‘āh Qawānin Islāmī: 154.
3 Jadīd Fiqhī Mabāḥīth, vol. 11, p. 353.
If you enter your mother’s house, you are divorced three times

Question:
A person said to his wife: “If you enter your mother’s house, you are divorced three times.” Will divorce apply by her entry of the house? Is there any way to circumvent this condition?

Answer:
The condition is valid. If the woman enters her mother’s house, three divorces will apply to her. She will not be lawful to her husband without going through the process of ḥalālah.

There is one way circumventing this condition. The husband must issue one divorce to her and separate her from him. When her ’iddah expires, she will go to her mother’s house and the condition will be fulfilled. Because she was not in his marriage at the time of entering her mother’s house, the three divorces will not apply. The man can then renew his marriage with her and she can continue going to her mother’s house whenever she likes. Bear in mind that this leeway will only work if the wife has not gone to her mother’s house as yet. If she already went, three divorces have applied to her.
Allāh ta‘ālā knows best.

If I go to Lenasia, three divorces will apply to me

Question:
A man said to his wife: “If I go to Lenasia, three divorces will apply to me.” Subsequently, he went to Lenasia. He now says: “I forgot about the condition which I had made.” Will divorce apply to his wife?

Answer:
Divorce will apply to his wife by a judicial decision but not through religious integrity.

تُقَلِفُ الفَتَاوَى الْحَامِدِيَّةَ

وَيَقْعُ طَلَاقُ كُلْ زُوْجٍ بَالْغَ عَاقِلٍ... أَوْ مَخْطَأً... أَوْ غَافِلًا... أَوْ سُبْبًا... يَقْعُ قَضَاءٌ فَقْطً. وَفِي الْشَّامِيَةِ: قُولِ أَوْ غَافِلًا أَوْ سَبِيلًا فَالْظَّابِرُ أَنَّ الْمَرَادُ بَنَٰءِالْغَافِلِ النَّاسِي بْقَرِينَةٍ عَطْفٍ السَّبِيلِ عَلَى، وَصَوْرَتْ أَنَّ يَقْعُ طَلَاقُهَا عَلَى دَخُولِ الدَّارِ مِثْلًا، فَدُخُلَتْ بَنَاءُ الْتِلْكِ الْتِلْقِيْلِ أَوْ سَبِيلًا، قُولِ يَقْعُ قَضَاءٌ مَتَّقَالِ بِالْمَخْطُوقِ وَمَا بَعْدَهُ، لِتَشَكَّكُ فِي وَقُوَّعِهِ فِي السَّبِيلِ وَالْغَافِلِ عَلَى مَا صُوْرَتْهَا لَيُتَظَهَّرُ الْتِلْقِيْلِ بِالْقَضَاءِ، إِذَا لَا فَرْقٌ فِي مِبَاشِرَةِ سِبْبِ الحَنِثِ بَيْنِ الْتَّحَمِّدٍ وَغَيْرِهِ. (الْمَرْحَابُ بِإِسْتِعْمَالِ، ۳۱۱۵۶۴، كِتَابُ الطَّلَاقِ، سَعِيدٌ)}
If you go to that house, you must not come back

Question:
A husband said to his wife: “If you go to that house, you must not come back.” Is a condition of this nature valid?

Answer:
This statement is classified as ambiguous. If the husband made the intention of divorce, the condition will be valid and divorce will apply upon the wife’s entry into that house. Divorce will not apply without the husband’s intention.

البداية:

إذا أضاف إلى شرط وقع عقيب الشرط مثل أن يقول لأمأته إن دخلت الدار فأن ت طالق وبدأ بالاتفاق لأن الملك قائم في الحال والظاهر بقاوئه إلى وقت وجود الشرط فيصح يميناً وأيقعاً. (البداية: ۳۸۶/۳، باب الإيمان في الطلاق)

الدر المختار:

الكتبات لا تتعلق بها قضاء إلا بنية أو بدالة الحال، قول قضاء قيد بأن لا يقع دينان بدون النية، ولو وجدت دالة الحال فوقه، واحد من النية أو بدالة الحال إنما بو في القضاء فقط. (الدر المختار مع رد المختار: ۳۹۶/۳، باب الكتاتب، سعيد)

Fatāwā Dār al-ʿUlūm Deoband:
If a person makes an explicit condition of divorce, a revocable divorce will apply after the fulfilment of the condition. If he made a bā’inah
condition, a bā‘inah divorce will apply. In short, the nature of the divorce will depend on the type of condition.

Allāh ta‘ālā knows best.

**When the wind blows, you are divorced**

**Question:**

A man said to his wife: “When the wind blows, you are divorced.” What is the ruling in this regard? Is the condition valid?

**Answer:**

This condition “when the wind blows” is invalid and divorce will apply immediately.

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1 Fatāwā Dār al-‘Ulūm Deoband, vol. 10, p. 91. Also Fatāwā Raḥīmīyyah, vol. 6, p. 308.
Allāh ta’ālā knows best.

If you are not giving a reason, you can separate yourself with one divorce

**Question:**

Husband and wife were having an argument. In the course of the argument, the wife said to her husband: “I want to separate from you.” By separation, she was not referring to divorce. The husband asked her to explain the reason for wanting to be separated but she refused to give a reason. The husband eventually said: “If you are not giving a reason, you can separate yourself with one divorce.” The wife replied: “Very well.” What is the ruling with regard to divorce? Is it a conditional divorce?

**Answer:**

The husband issued a conditional divorce to his wife, viz. “If you are not giving a reason, one divorce on you.” Not giving a reason will only be known when either of the two pass away. Therefore, divorce will not take place before the death of either of the two. If the wife explains the reason, the conditional divorce will fall away. In short, no divorce has taken place at present.

المبادئ:

ولو قال: أنت طالق إن لم أطلفك، لم تطلق حتى يموت لأن العدم لا يتحقق إلا باليأس عن الحياة و بو الشرط كما في قوله إن لم آت البصرة، وموتها بمنزلة موتة بو الصحيح. (المبادئ: 365، باب ابقاء الطلاق)

فتح القدير:

قول: ولو قال: أنت طالق إن لم أطلفك، لم تطلق حتى يموت باتفاق الفقهاء لأن الشرط أن لا يطلقها وذلك لا يتحقق إلا بالياض عن الحياة لأن متي
When husband and wife differ on the condition and its fulfilment

Question:

Husband and wife had an argument. In the course of it, the husband said: “When I leave here just now, I will leave you with two divorces and depart.” The wife says that the words of the husband were: “I am leaving you with two divorces.” The husband then departed on a journey after four or five days. Whose word is considered? Will divorce apply?

Answer:

The husband is making a claim of a conditional divorce while the wife is making a claim of an immediate divorce. It is necessary for the wife to produce two witnesses. If she cannot, the statement of the husband will be taken after he takes an oath. If the wife produces two witnesses, two revocable divorces will apply. The husband will have the right to revoke them before the expiry of the 'iddah. If the 'iddah expires [and he did not revoke them], he can renew the marriage provided the woman agrees to it. There will be no need to go through the process of halâlah. If the wife is unable to produce the witnesses, the statement of the husband will be considered after he takes an oath. The divorce will remain conditional. In the case of the condition which he made, the divorce will not apply because he had said: “I will be leaving just now”, and he did not leave at that time. He only left after four or five days.
In the case of a conditional divorce, evidence has to be provided by the wife. If not, the statement of the husband together with an oath will be accepted.²

Allāh ta‘ālā knows best.

If I marry without my wife’s permission, she is divorced

Question:
Zayd took an oath in Allāh’s name and said to his wife in the presence of two witnesses: “If I marry any woman without the permission of my first wife, then she – the second wife – is divorced.” Subsequently, Zayd entered into a second marriage without permission from his first wife. He now claims that his second marriage is still intact because some muftis said to him that he has to pay kaffārah for breaking his

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oath. Zayd paid the kaffārah. What is the status of Zayd’s second marriage?

**Answer:**
It was a conditional divorce and the condition was fulfilled, i.e. he entered into a second marriage without the permission of his first wife. Divorce applies to his second wife and he also has to pay kaffārah for breaking his oath.

A type of conditional divorce

**Question:**
A man’s wife became angry at him and left. The husband said: “If you do not return by the 1st of January 2010, the marriage is terminated and annulled.” His wife did not return by the stipulated date. Does divorce apply to her or not? If it does, what type of divorce will it be?

**Answer:**
If the man made this statement with the intention of divorce, one ṭalaq-e-bā’in applies to his wife. The phrase “termination of marriage” is generally used to demonstrate termination of relationships. It therefore seems that he did make an intention of divorce.
If you phone me again you must conclude that you are divorced

Question:
A man issued two divorces to his wife and revoked them. Husband and wife were speaking over the phone when an argument ensued. The man became angry and said to her: “If you phone me again, you must conclude that the third divorce has taken place.” Before making this statement, the husband had also said to her: “I will divorce you.” The wife says: “When I heard him saying ‘I will divorce you’, I put the phone down. I did not hear anything further.” Subsequent to this conversation, the wife phoned her husband after fifteen minutes to seek pardon. Bearing in mind that the wife did not hear the condition, will the third divorce apply on the fulfilment of the condition?

Answer:
Divorce did not take place by the statement: “If you phone me again, you must conclude that the third divorce has taken place.”

Al-Fātīḥah al-Hindīyyah:
This issue is also discussed by Ḥadrat Maulānā Zafar Ahmad Thānwī Ṭūḥmānī ṭalāmahullāh in Ḳimād al-ḥākīm, vol. 2, p. 423. Refer to it.

With regard to the issue of the husband addressing his wife while she put the phone down, my humble opinion is that divorce will apply. You can understand this from the example of a husband writing a letter of divorce to his wife and conveying it to her house but she is not present at the time. Divorce will apply to her.

If I listen to his lecture, my wife is divorced

**Question:**

A man said to Zayd: “You must not listen to the lectures of such and such Maulānā because they are filled with poison.” Zayd said: “If I listen to that Maulānā’s lectures, three divorces to my wife.” Subsequently, Zayd listened to one of the Maulānā’s lectures over a tape recorder. Does divorce apply to his wife?

**Answer:**

If he heard the lecture over a tape recorder, divorce will not apply because he heard a recording or duplication of the lecture and not the

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1 Ḳāzīm al-ḥākīm, vol. 1, p. 482.
lecture itself. This is similar to hearing a recording of a verse of sajdah tilawat. Sajdah tilawat does not become obligatory. In the same way, if a person hears an echo of a verse of sajdah tilawat, then sajdah tilawat does not become obligatory. The issue of divorce is the same.

Ālāt-e-Jadīdah Ke Sharīʿī Āhkām:

When a verse of sajdah is heard over a tape recorder, the ruling will be the same as hearing it through a gramophone. The ruling is that sajdah tilawat will not be obligatory. The reason for this is that a valid recitation is a prerequisite for sajdah tilawat. Recitation is not the objective of a lifeless instrument or device.¹

Further reading:

Note: The juridical texts generally state that an oath is concealed in a conditional divorce. This is in the sense that when an oath is broken, kaffarah is imposed. In the same way, divorce is imposed after the fulfillment of the condition. Apart from this meaning, a conditional divorce does not contain a real or terminological oath. Therefore, divorce will depend on the reality. Listening to a recording of a lecture will not cause a divorce to apply. But this is not the case with an oath. This ruling is mentioned in Kitāb al-Aymān (the book of oaths) that if a person hears the recording of a lecture, he would have broken his oath.

Allāh taʿálā knows best.

Whenever I marry, my wife is divorced

Question:

A person said: “Whenever I marry, my wife is divorced.” How can such a person get married? He is currently yearning to get married.

Answer:

He must present his case to a Shāfiʿī judge. According to the Shāfiʿī madh-hab, when a person makes such a statement, it is classified as futile and baseless because there is no place for its application. The judge will cancel his condition. When this man gets married, divorce

¹ Ālāt-e-Jadīdah Ke Sharīʿī Āhkām, p. 223.
will not apply. According to the Hanafis, whenever he gets married, a divorce will apply to his wife.

Another leeway is to ask a jester to perform his marriage, while he accepts the marriage in earnestness.

**Fatawa al-Shayā:**

 قال في البحر: وللحنفي أن يرفع الأمر إلى شافعي يفسخ اليمين المضافة، فلو قال: إن تزوجت فلانة فيي طلاق ثلاثاً فتزوجها فخصسته إلى قاض شافعي وادعت الطلاق فحكم بأنها امرأته وإن الطلاق ليس به شيء حل له ذلك.

(فتاوى الشاى: ٣/٣٤٧، مطلب في فسخ اليمين المضافة إلى الملك، سعيد)

وفي الدار المزيد: كل امرأة تدخل في نساحة أو تصير حلالاً لي فكذا فاجز فضولي بالفعل لا يبحث. (الدر المختار: ٣/٤٥٨، باب اليمين في الضروب، سعيد)

وفي الشاي: وينبغي أن يجي إلى عالم ويقول له ما حلف واختصب إلى نساح الفضولي فيزوجه العالم امرأة ويجيز بالفعل فلا يبحث. (فتاوى الشاى: ٣/٣٤٨، باب التعليق، سعيد)

**الفتاوى السراجية:**

 الفاضي إذا فوض إلى شافعي ليقضي ببطلان اليمين بالطلاق جاز وعليه.

(الفتاوى السراجية: ص ١٩٩، كتاب القضاء، باب المنفقات)

Allāh ta’ālā knows best.

**Referring to a Shafi’i judge for a conditional divorce**

**Question:**

A man said: “If I were to marry any woman, she is divorced.”

According to the Hanafis, no matter which woman he marries, divorce will apply to her.

A man touched a woman with lust. Subsequently, he married the woman’s daughter without knowing she was her daughter. She then
bore him children. Alternatively, she did not bear him any children but he loves her.

A Hanafī muftī or judge refers this case to a Shāfī’ī judge, and the Shāfī’ī judge or a Shāfī’ī jam‘īyyatul ‘ulamā’ rules that the first marriage is valid while the divorce is inapplicable. Or in the second case, it rules that the marriage to the daughter is valid.

Will it be permissible for a Hanafī to accept this ruling?

**Answer:**

From certain juridical texts we learn that there is no objection to accepting the judgement of a Shāfī’ī judge. There are many other parallel rulings to this issue from which we conclude that if a Hanafī accepts the verdict of a Shāfī’ī judge, it will apply. In the same way, if a Shāfī’ī person accepts the ruling of a Hanafī judge, it will apply. Furthermore, a Hanafī judge may refer a case to a Shāfī’ī judge when there is a need. Observe the following texts from the books of jurisprudence:

(1)

الفتاوى السراجية:
الفتوى إذا فوض إلى شافعي ليقضي ببطلان اليمين بالطلاق جاز وعلى
الفتوى. (الفتاوى السراجية: ص 119، كتاب القضاء، باب المتفرقات)

In other words, a man said to a strange woman: “If I marry you, you are divorced” and they get married after that. A Hanafī judge referred this case to a Shāfī’ī judge who then declared the condition invalid. This will be permissible.

البحر الرائق:
الف) وللحنفي أن يرفع الأمر إلى شافعي يفسح اليمين المضافة فلو قال: “إن
تزوجت فلانة ففي طلاق ثلاثاً” فتزوجهما خاصمته إلى قضية شافعي وادعت
الطلاق، فحكم بأنها امرأتان وأن الطلاق ليس بشيء، حل له ذلك، ولو
وطنها الزوج بعد النكاح قبل الفسخ ثم فسخ يتكون الوطء حالاً إذا فسخ
وإذا فسخ بعد النزوج لا يحتاج إلى تجديد العقد.
A man committed adultery with his mother-in-law. He was not religious at the time. Now that he has become religious, he admits to the affair. When his wife came to know of this, she proceeded to a judge to ask for a separation. The judge happened to be a Shafi'i and he
instructed the wife to continue living with her husband. He did not separate the two. This woman may continue living with her husband.

A man committed adultery with a certain woman. Subsequently, he got married to her daughter. The judge ruled on the validity of the marriage. Imām ʿAbū Yūṣuf raḥimullāh is of the view that his verdict will not apply. Imām Muḥammad raḥimullāh is of the view that it will apply. It is learnt from Fatāwā Zahīrīyyah that the fatwā is issued on the view of Imām Muḥammad raḥimullāh. This was mentioned above.
A Shafi'i girl got married to a Hanafi boy without obtaining the permission of her guardian. According to the Shafi'is, marriage without a guardian's permission is not valid. Hanafis are of the view that it is valid. In such a situation, can the husband engage in conjugal relations with his wife? Can the woman give her husband power over her self? Bear in mind that some Muslims in South Africa are Hanafis while others are Shafi'is.

**Answer:** The first duty on the woman is to obtain her parents' approval. If this is not possible, the solution to the problem will be for the girl to go to a Hanafi judge or jami'iyatul 'ulamā' and present her case. If they issue a ruling that the marriage is valid, their decision will apply and be upheld. Although this marriage is valid according to Hanafi jurisprudence, because the woman is not fully at ease, the need was felt to obtain the verdict of a judge.

قال الماوردي: وليس للزواج الاستبداد بعقد مختلف فيه، إلا أن كنا من أبل الاجتهاد واداما إلى ذلك ولا فوجيان أحدهما: نعم، وثانيهما: لا، إلا بإفتاء مفسر أو حكم حاكم. (حواشي الشيخ عبد الحميد الشرواني والشيخ أحمد بن قاسم العبادي على تشغيلة المحتاج: 483/7)

**الدر المختار:**

والحنفي كفاه لبنت الشافعي، وقال الشافعي: يعني لو تزوّج حنفي بنت شافعي تفاص بصحة العقد، وإن كان في مذهب أبيه أنه لا يصح العقد إذا كانت بحكملاً إلا ببماشرة وليها، لأننا نحكم بما نعقد صحنه في مذهبنا.

قال في البازارة: وسل شيخ الإسلام عن حكم بالعلاقة شافعية زوجت نفسها من حنفي أو شافعي بلا رضا الأب بل يصح؟ أجاب: نعم وإن كانا يعتقدان عدم
A person gets his immature daughter married to an immature boy in the presence of incompetent witnesses. Subsequently, they reach the age of maturity but they live very far from each other. It is difficult for them to meet. If a Ḥanafī judge writes to a Shāfiʿī judge requesting him to invalidate this marriage, and the latter passes the verdict of invalidity, his decision will be valid and promulgated. The Ḥanafī can practise in line with his verdict.

A person leaves his wife and goes to another country. And there is no possibility of his returning. Furthermore, their marriage was solemnized in the presence of witnesses who are classified as fāsiq (flagrant sinners). If a Ḥanafī judge sends the woman to a Shāfiʿī judge and the latter passes a verdict of invalidity of the marriage, his judgement will be promulgated.

الفتاوى الهندية:
ذكر في مجموع النوازل: سئل شيخ الإسلام عطاء بن حمزة عن أب الصغيرة زوجها من صغير، وقيل أبوه، وكبر الصغيران وبينهما غيبة منقطعه، وقد كان التزويج بشهادة الفسقة بل يجوز للقاضي أن يبعث إلى شافعى الذنب ليبطل هذا النكاح بسبيب أن كان بشهادة الفسقة؟ قال: نعم. (الفتاوى الهندية: ۳۳۳/۳. وكذا في حاشية الطحاراوي على الدر المختار: ۱۹۶/۵. وفتاوى الشام: ۱۹۶/۵)
وفي المحيط: سئل شيخ الإسلام أبو الحسن عطاء بن حمزة عن رجل غائب عن أمراً غيبة منقطعه، وقد كان النكاح بينهما بشهادة الفسقة، بل يجوز للقاضي أن يبعث إلى القاضى الشافعى ليبطل هذا النكاح بسبيب؟ قال: نعم. (المحيط العربي: ۴/۵۸۵)
A man got married to a woman without the permission of her guardian. He issued three divorces to her after engaging in sexual intercourse with her. The guardian now wants to have her married to the same man, but he wants to save her from having to go through the process of ḥalālah. This could be done by the judge sending them to a Shāfi’ī judge who will pass a verdict of invalidity of the first marriage. He will then state that a new marriage will be permissible. His decision will be promulgated without any uncertainty.

To sum up, it becomes clear from these rulings that if a Ḥanafī judge or muftī sends husband and wife to a Shāfi’ī judge or Shāfi’ī ‘ulamā’ body, and it passes a ruling of validity, its verdict will be valid and it will be permissible for a Ḥanafī to practise on it.

Allāh ta’ālā knows best.
DIVORCE ISSUED BY AN INTOXICATED, LUNATIC OR COMPELLED PERSON

Issuing a divorce while in a state of intoxication

Question:
Will divorce apply if a person issues it while he is intoxicated? What will the ruling be if a person is intoxicated because of some medication?

Answer:
According to the Hanafi madh-hab, a divorce issued in a state of intoxication applies. Its application is promulgated to serve as a reprimand, a warning and a punishment; provided the intoxicant was consumed unlawfully. If a person consumes something lawful and he happens to get intoxicated by it, or he is compelled into consuming an intoxicant, then the divorce will not apply.

Certain medicines have an intoxicating effect. If a person becomes intoxicated by them and issues a divorce in that state, the divorce will not apply. Then there are items which are not harām to consume, but makrūh. When they are misused, a person is sometimes intoxicated by them. For example, tobacco. In such a case, divorce will not apply.

بدائع الصنائع:

السكران إذا طلّق أمرأة فإن كان سكره بسبب محظور بأن شرب الخمر أو السبحين طوعاً حتى شرب عقله فطلاقه. واقع عند عامة العلماء وعامة الصحابة رضي الله عنهم لعوم قوله عز وجل: {الطلاق مرنز} إلى قوله سبحانه وتعالى {فإن طلقبا فلا تحل له من بعد حتى تنكح زوجاً غيره} من غير فصل بين السكران وغيره إلا من خص بدبل، وقوله علامة الصلاة والسلام: "كل طلاق جائز إلا طلاق الصبي والمعبوده." ولأن عقله عاقل بسب معصية，则نزل قائماً عقوبة عالمي وزوجها له عن ارتكاب المعصية بخلاف ما إذا زال بالدواء، لأنما زال بسبب بو معصية. (بدائع الصنائع: 99/3، شرائط ركن الطلاق، سعيد)
وفي السئ المختار:

سواء كان سكره من الحمر أو الأشربة الأربعة المحرمة أو غيرها من الأشربة الأربعة المتذخة من الحبوب والعسل عند محمد. قال في الفتوى: ويقول، يفيق لأن السكر من كل شراب محرم، وفي البحر عن الزراعة: المختار في زماننا لزوم الحد وتوقيع الطلاق. وما في الحانية من تصحيح عدم الوقوع فهو مبني على قولهم من أن النبي حلال، والمفتي بخلاف. وفي النهر عن الجوبيرة أن الخلاف مقيد بما إذا شرب للتلدوي فلو للبدو والطبب فيقع بالإجماع.. قول أو أفون أو بنج إن كان التلداوي لم يقع لعدم المصيبة، وإن للبدو وإدخال الأفة قصداً، في ينبغي أن لا يتردد في الوقوع. وفي تصحيح القدوري عن الجواب: وفي هذا الزمان إذا سكر من البنج والأفون يقع زجزاً، وعلى الفتوى، وتماماً في النهر. قوله (لو زال عقد بالصداع أو بمباح لم يقع) كما إذا سكر من ورق الربان فإنه لا يقع طلاقًا، ولا عقد. ونقل الإجماع عن ذلك صاحب التذذيب، كذا في الهندية. (الدر المختار مع رد المختار: 339، مطلوب في تعريف السكران وحكمه، سعيد).

وكذا في المحيط البرياني في الفقه الهمداني: الفصل الثالث في بيان من يقع طلاق، ومن لا يقع طلاق، رشيدية.

وفي الفتاوى الهندية:

ولو أدرك على شرب الحمر أو شرب الحمر لضرورة وسكر وطلق أمران، اختلفوا فيه، والصحيح أنه لا يلزم الحكم لا يقع طلاق ولا ينذل تصرف. كذا في فتاوى قاضي خان. (الفتاوى الهندية: 353، فصل فيمن يقع طلاق، وفيمن لا يقع طلاق).

Allah ta’ala knows best.
When a person becomes angry and loses his mind

Question:
A person gets so angry that he loses control over himself. He knocks his head against the wall, smashes and breaks items of the house, etc. and does not remember doing these things. His voice also changes. This man is also affected by black magic. If he issues three divorces to his wife in such a situation, will they apply?

Answer:
If the person’s condition is really as described, then divorce will not apply. However, he will have to seek treatment so that he does not experience episodes of this nature.
The divorce of a person who is under the influence of magic and an evil spirit

Question:

Black magic was done to a person, and he issues three divorces to his wife while in that condition. Will the divorces apply? His condition does not appear to be like that of a lunatic. If it is like a lunatic’s, will there be a difference in the ruling? If someone says that he is under the influence of jinn and it is the jinn which issued the divorce – and not him – what will the ruling be?

Answer:

The claim of being under the influence of magic and jinn is not apparently acceptable. It is made to escape from divorce. Therefore, the person who divorced his wife – and his madness and lunacy is not well-known – his divorce will apply. Yes, if he is well-known as a lunatic, his divorce will not apply.

Fatāwā Mahmādiyyah:

If a person loses his senses because of lunacy, black magic, etc., and he does not know what he is saying and what its consequences will be, then his divorce will not apply. If this is not the case, and he understands the meanings of words, divorce will apply if he utters it.

The time when he issued the divorce must be compared to his other situations and conditions. From there you will be able to gauge if he was in his senses or not.

(وكذا في الفتوى النائتا خانية: 3/255، في بيان من يقع طلاق، ومن لا يقع، وامداد الاحكام: 2/358، وفتاوي التجمان: 8/43، وفتاوي محمود: 12/230، ومجموع قوائين إسلامي (131)  

Allāh ta’ālā knows best.
When a divorce is issued under compulsion

Question:
A person said to another: “If you do not issue the divorce, we will beat you.” Is beating a person classified as a compulsion to divorce, or does it only refer to the threat of killing him or breaking his hands, legs, etc.? If a person is compelled to divorce, does it apply?

Answer:
A divorce issued by a person who is compelled is valid and applicable. The word “compulsion” refers to the threat of killing him, breaking his hands, etc.

Abū al-Layth Samarqandī rahimahullāh writes:

Compulsion is accomplished by beating a person, confining him or locking him up. The author says: Our Ḥanafi jurists concur that compulsion by threatening the person with death or breaking any of his limbs is a valid compulsion in the Sharī'ah irrespective of whether
it is done verbally or physically. If it is accomplished through confining him or locking him up, and it is done for carrying out an action, then it is not valid in the Sharī’ah. It is as though he did it without compulsion.

If he is compelled to say something verbally, and the statement is such that the ruling for a serious and frivolous statement is not the same, e.g. buying and selling, endowing, gifting, renting, absolving, giving in charity – then it will be valid in the Sharī’ah. If the statement is such that the ruling for a serious and frivolous statement is the same, e.g. divorce, freeing a slave; then the compulsion is not valid.

Allāh ta’ālā knows best.

A second opinion with regard to divorce under compulsion

According to al-Aḥwāl ash-Shakhsīyyah and other books written by Hanafi scholars state that a divorce issued by a compelled person is not valid. Observe the following:

The following is stated in the marginalia of the above book:
The introduction of this book clearly states that it has been compiled in line with the Hanafi madh-hab. Observe the following:

أما كتاب "الأحكام الشرعية في الأحوال الشخصية على مذهب الإمام أي حنيفة النعمان." (مقدمة، ص 3)

Alláh ta’álá knows best.

A threat made by a policeman

Question:
The father-in-law or someone else said to a man: “Write three divorces against your wife or else I will hand you over to the police.” Is this classified as a compulsion? Will divorce apply?

Answer:
When a person is compelled into writing a divorce note, the divorce will not apply. Yes, if he utters the divorce verbally, the divorce under compulsion will be valid. A threat made by a policeman is included in this.
If a person is compelled to sign a divorce notice while he did not utter it verbally nor wrote the divorce notice himself, the divorce will not apply.¹

A threat made by a policeman is also classified as a compulsion.²

Allah ta’ala knows best.

**ZIHĀR**

The meaning of zihār in the Shari’ah

Question:

A man said to his wife: “Your private part is like my mother’s and sister’s for me.” Some `ulamā’ said to him that this is zihār and he will have to pay kaffārah. Whereas this man does not even know what zihār is nor did he make an intention for zihār. What is the ruling?

² *Kitāb al-Fatāwā*, vol. 5, p. 90.
Answer:
The view of some of the 'ulamā’ is correct. His statement is classified as zihār and he will have to pay kaffārah. Ignorance of a ruling of the Sharī’ah is not an excuse. If he does not know what it is, we will explain it to him. The correct meaning of zihār is as follows:
The literal meaning of zihār is to turn the back.

In the definition of the Sharī’ah, it refers to comparing one’s wife or any part of her body which is taken to mean her entire body to women who are eternally unlawful to him or to any of their body parts which are forbidden for him to look at.

The conditions and prerequisites for zihār:
1. The husband has to be in his senses and must have reached the age of puberty.
2. The wife or any part of her body which refers to her entire self must be compared.
3. She must be compared to any of the person’s eternally unlawful women or to any part of their body which is forbidden for him to look at.
4. A simile, e.g. like, similar to, etc. must be used explicitly. If not, the statement will be classified futile. For example, if he says:
"You are my mother" or "You are my mother's back", then it will be classified as baseless and futile.

الدر المختار:

وشرعًا تشبيه المسلم زوجته وتشبيه جزء شائع منها كصفك ونحوه بحرم عليه تأبًيا أو بعض يحرم النظر إليه من أعضاء محترمه عليه نسباً أو صهراً أو رضعاً كما في البحر، أو مجملتها كانت على كم فإن تشبيه بالنظر وزيادة. (الدر المختار مع المختصر، 3/66، سعيد، وثاني في فتح القدر: 4/245، دار الفكر)

البحر الرائق:

والحاصل أن بنا أربعة أركان المشبه والمباني ب، أما الأول، وبو المشبه وبو بحصر الباء فيه الزوج البالغ العاقل المسلم، وأما الثاني، وبو المشبه بفتح الباء المفتوحة أو تاء منها يعبر عن كليها، أو جزء شائع، وأما الثالث، وبو المشبه عضو لا يجعل النظر إليه من محترمه تأبًيا، وأما الرابع، وبو المال عليه، وبو ركبة وبو صريح وكتابة. (البحر الرائق: 4/65، سعيد، الزهري، كونه، وثاني في فتح القدر، 4/246، ط: دار الفكر، وثاني الصنائع: 3/32، شرائط الظهور، ط: سعيد، ومجموعة قواعدين اسلامي: 123، قانون ظهار)

Types of zihār

There are two types of zihār:

(1)

As regards the words.

This type is further subdivided into two categories: (a) explicit zihār, (b) ambiguous zihār.

(a) Explicit zihār

To compare one’s wife to a part of the women who are eternally unlawful to the husband and whose looking at is unlawful. For example: “You are like the back of my mother.” This is an explicit
zuhr. An intention is not considered. Zuhr will apply even without an intention.

(b) Ambiguous zuhr

To compare one’s wife to the whole of an eternally unlawful woman. For example, the husband says: “You are like my mother.” This is ambiguous. It could refer to zuhr, divorce, an oath, a demonstration of honour and sanctity. The ruling will be according to what the person intended. However, if it is made during a discussion on divorce or during a mutual argument, then the claim of a demonstration of honour and sanctity will not be accepted in a court of law.
As regards the period of time.

This type is subdivided into two categories: (a) zihār which is limited by time. (b) zihār which is not limited by time.

(a) zihār which is limited by time

The zihār is uttered with a specific time limit. For example, the husband says: “You are to me like my mother’s back for one day, one month, or one year.”

The ruling in this regard is that the zihār will expire with the expiry of the time which was specified. There is no need to pay kaffārah.

(b) zihār which is not limited by any time.

The zihār is uttered without any time limit. For example, the husband says: “You are to me like my mother’s back.” The ruling in this regard is as follows:

1. Divorce does not apply with the uttering of the zihār unless he made the intention of divorce. However, it will be unlawful to engage in conjugal relations with his wife for as long as he does not pay the kaffārah.

2. If the husband does not engage in conjugal relations with his wife because of his inability to pay the kaffārah, the wife has the right to compel him to pay the kaffārah or issue a divorce via a judge.
When ẓihār is terminated or rendered invalid

Ẓihār is terminated or rendered invalid by any one of the following situations:

1. With the death of any one of the partners. This is because the place has become invalid.
2. By the payment of the kaffārah for ẓihār.
3. If it is a time-bound ẓihār, it will terminate with the expiry of the time.

The kaffārah for ẓihār

1. The person has to observe fasting for two continuous months in such a way that the month of Ramadān and the five forbidden days of fasting do not come in-between. If either of the two happens, he will have to restart the fasting.
2. If the person is unable to observe the fast, he will have to feed sixty poor people with two meals of an average standard. Alternatively, he may give approximately 3.134kg of wheat or its equivalent in cash money to sixty poor people.

The intention of honour and respect in zihār

Question:
A man said to his wife: “You are like my maternal aunt.” Subsequently, his wife left him and went away to her parents’ house. The husband claims that it was not his intention to issue a divorce; it was said as a demonstration of honour and respect. Whereas, they were arguing at the time when he made this statement. What is the ruling?

Answer:
His intention will be considered on the basis of religious integrity, but it is a zihār by judicial verdict. When such a statement is made at the time of an argument, the intention of honour and respect is not considered. Therefore, he will have to pay kaffārah as per a judicial verdict.

We should note that if a person is unsure about the validity of a divorce, the Sunnah ratified the door of repentance. (Fatawa al-Shaykh: 3/270, in the book of divorce, by the venerable Shaykh, Saeed. And it was opened by the Foremost: 5/505, in the book of divorce, Dara al-Fikr)
If comparison is made to the entire being of women who are eternally prohibited to the man, e.g. he says: “You are like my mother”, then this will be an ambiguous ḥār. It could refer to ḥār, divorce, an oath, or a demonstration of honour and sanctity. The ruling will be given according to whatever intention he made so much so that if the husband’s intention was to compare his wife to his mother as regards honour and sanctity, it will be accepted. If the same statement was made while husband and wife were discussing divorce and they were having an argument, then the intention of honour and sanctity will not be accepted in a court of law.¹

Allāh ta‘ālā knows best.

**You are my mother**

**Question:**

A man said to his wife: “You are my mother”, and made the intention of divorce or ḥār. Will it be considered to be a divorce or ḥār?

**Answer:**

This statement does not contain a simile [e.g. like, similar to, etc.]. Therefore, it will neither be a ḥār nor will divorce apply. It will be classified as a useless statement.

Qādī Mujāhidul Islām writes:

A simile, such as “like, similar to” has to be mentioned explicitly. This is a major pillar in ḥār. Without it, the statement will be classified useless and futile. For example, someone says: “You are my mother”, or “You are my mother’s back”.²

¹ Majmū‘ah Qawānīn Islāmī: 162, register 48.
² Majmū‘ah Qawānīn Islāmī, p. 162.
الفتاوي الهندية:

لو قال أنت أي لا يكون مكروهاً، وينبغي أن يكون مكروياً، ومعنى أن يقول
يا بنتي، ويا أختي. (ال الفتاوي الهندية: 6/185، باب الظهار)

الدر المختار:

ويستره قول "أنت أي" و "يا بنتي" و "يا أختي". أن الشامية: والذي في الفتاح:
وفي "أنت أي" لا يكون مكروهاً، وينبغي أن يكون مكروياً، فقد صرحوا بأن
قوله لزوجته "يا أختي" مكروه، وفي الحديث رواه أبو داود أن رسول الله صلى
الله عليه وسلم سمع رجلاً يقول لامرأته "يا أختي" فكره ذلك ونهى عنه. ولو
لا بهذا لأمكن أن يقال: بو ظهار، لأن التشبيه في "أنت أي" أقوى منه مع
ذكر الأداء. (الدر المختار مع فتاوى الشام: 3/173)

وفي البدائع: وروى ابن سعجة عن محمد فين قال لامرأته "إن فعلت كذا
فأنت أي" يريد التحريم، قال: بو باطل، لأن لم يجعلها مثل أمر ليكون
تحريماً، وإنما جعلها أمر فكرون كنبأ، قال محمد: ولو ثبت التحريم بهذا لثبت
إذا قال: أنت حواء، وإذا لا يصح. (بدائع الصنائع: 3/176، سعيد. وكذا في فتح

Mufti Rashid Ahmad Sahib wrote a detailed fatwâ on this issue in his
Ahsan al-Fatwa. He has established that an irrevocable divorce will
apply. Refer to the original for details. (Ahsan al-Fatâwâ, vol. 5, pp. 185-
187)

However, we do not understand his fatwâ because the Hadith does not
classify it as a divorce. If there was a need for an intention, Rasûlullâh
shallallâhu 'alayhi wa sallam would have asked the person what his
intention was just as he had asked Hadrât Rukânah radhiyallâhu 'anhu.

عن نافع بن العجير بن عبد يريد بن ركافة أن ركابة بن عبد يريد طلق امرأته
سهيماً ألابة، فأخبر النبي صلى الله عليه وسلم بذلك وقال: ما أردت إلا
In fact, we learn from the Hadith that there are specific words for gihār through which divorce or gihār takes place. Words which do not have a َكَافٍ (a letter denoting a simile) neither cause gihār nor divorce even though it is a common practice among Arabs to omit the َكَافٍ in a simile.

Furthermore, the current deluge in the divorce rate and the break down of countless marriages demand that the ruling of divorce not be given. As for Hadrat Muftī Rashīd Ahmad Sāhib saying that it is well-known that divorce takes place when statements of this nature are made, our reply is that since these are not even the words of divorce, societal norms will not be taken into consideration. For example, it is common practice to throw three stones for three divorces. However, divorce does not apply by the throwing of three stones unless and until the word “divorce” is uttered over the three stones.

فتاوى الشايمي:
(وركبه لظف خصوص)... وبه ظهر أن من تشاجر مع زوجته، فأعطتها ثلاثة أحجار بنوى الطلاق، ولم يذكر لظفًا صريحًا ولا كتابية لا يقع عليه، كما أخفى به الخير الظملي وغيره. (فتاوى الشايمي: ٣/٣٢)

فتاوى الهندية:
وفي مجموع النوازل: سئل شيخ الإسلام عمن ضرب امرأة، فقال: دار طلاق (أي حذى الطلاق) قال: لا تطلق. (الفتاوى الهندية: ٣٨٢/١)
وفيها أيضًا: ولو قالت لزوجها طلغيً، فأشار بثلاث أصابع وأراد بذلك ثلاث تطليقات لا يقع مال مقل بلبسانه. (الفتاوى الهندية: ٣٥٧/٣٣. وكذا في الحادية عمل باشم الهندية: ٢٣٢/١)

Allāh ta‘ālā knows best.
If I keep you, I’ll be keeping my mother and sister

Question: A man said to his wife: “If I keep you, I’ll be keeping my mother and sister.” Does ghar or divorce apply by making such a statement?

Answer: By saying: “If I keep you, I’ll be keeping my mother and sister” neither divorce nor ghar will apply because it does not contain a simile. It will be classified as a futile statement. Nonetheless, it is makrūh to make such statements.

Qādī Mujāhidul Islām writes:

A simile, such as “like, similar to” has to be mentioned explicitly. This is a major pillar in ghar. Without it, the statement will be classified useless and futile. For example, someone says: “You are my mother”, or “You are my mother’s back”.

Fatāwā Mahmūdīyyah:

Question: A man went into a rage with his wife and said: “If I engage in sexual intercourse with you, I will be engaging in sexual intercourse with my mother.” Is this statement classified as an oath? Will he have to pay kaffārah?

Answer:

We learn from the above text that kaffārah does not become obligatory on the husband for making such a statement. Divorce too does not apply to his wife. It is a useless and futile statement.

\(\text{لم قال: إن وطنتك وئنت أمي، فلا شيء علي، كذا في غاية السروحي.}\)

We learn from the above text that kaffārah does not become obligatory on the husband for making such a statement. Divorce too does not apply to his wife. It is a useless and futile statement.

\(\text{وقال: إن فعلت كذا فأت أمي، وفعله، فهو باطل إن نوى التحريم، سكب الأثير. (فتاوی محمودیه: 326/13)}\)

\(\text{الفتاوی الهندیة: لو قال: أنت أمي، لا يتكون مظابراً، وينبغي أن يتكون مكروباً، ومثل أن يقول يا ابنتي ويا أختي. (الفتاوی الهندیة: 50/61)}\)

1 Majmū‘ah Qawānīn Islāmī, p. 162.
وِللاِسْتِزَادَةِ اِنْظِرُ: لَالْمُهْتَمِّرَ مِعَ رَدِّ المُهْتَمِّرَ: ۱۷/۳۳، سَعِيدٌ، وَبِدَائِعُ الصَّنَائِعُ: ۱۷/۳۷، سَعِيدٌ، وَالْمَحيِّثُ الْبَريِّ: ۳۶/۶۶)

Allāh ta‘älā knows best.
A person takes an oath not to engage in conjugal relations

Question:
A person took an oath and said to his wife: “I will not have intercourse with you for one year.” What is the ruling?

Answer:
If a person takes an oath not to have intercourse with his wife for a period of more than four months – e.g. one year – and four months pass without having intercourse with her, then an irrevocable divorce will apply to her. If he has intercourse within four months, he will have to pay kaffārah for breaking his oath. If he was unable to have intercourse with her during this period, a verbal revocation will suffice to save himself from divorce and the payment of kaffārah.
Taking an oath of four rak’ats of salah

Question:
A man took an oath that if he has sexual intercourse with his wife, four rak’ats of salah will become obligatory on him. Will this be classified as an ‘ilā’? Also, is it a precondition to specify a time-limit for an ‘ilā’ or does a general ‘ilā’ apply? What are the essentials - according to the Sharī‘ah - for ‘ilā’ to be established?

Answer:
‘Ilā’ refers to: A husband taking an oath that he will not engage in sexual intercourse with his wife for four months or more, or without specifying a time-period; or imposing on himself a very difficult task if he has intercourse with her. If he imposes on himself a task which is generally not too difficult, it will not be ‘ilā’. For example, “If I have intercourse with you, four rak’ats of salah or fasting for one day will become obligatory on me.”

Prerequisites for ‘ilā’ to be established

a) The person making the ‘ilā’ has to be in his senses and must have reached the age of puberty.

b) The woman has to be his wife at the time of the ‘ilā’.

Allāh ta’ālā knows best.
c) If 'ilâ' is made to a woman who is not his wife, it will only be valid if it was dependent on marrying her.

d) The abstaining from sexual intercourse must not be restricted to any particular place.

e) No day from within the four months can be excluded.
Types of 'īlā'

There are two types of 'īlā': (1) On the basis of time. (2) On the basis of words.

The first type is sub-divided into two categories:

a) Time-limited 'īlā': When the husband takes an oath to abstain from sexual intercourse with his wife for a specific time period (which is not less than four months).

b) Eternal 'īlā': When the husband takes an oath to abstain from sexual intercourse with his wife forever or without specifying a time-limit.

The second type is also sub-divided into two categories:

a) Explicit 'īlā': When the husband uses words which immediately make one conclude that he is referring to abstaining from intercourse.

b) Ambiguous 'īlā': When the husband uses words which are not as defined above. His statement will be dependent on his intention. If his intention was abstaining from sexual intercourse, it will be classified as 'īlā'.

Rules of 'īlā'

If the husband engages in sexual intercourse with his wife within four months, kaffārah or the difficult task which he had imposed on himself will become obligatory on him.

If he does not engage in sexual intercourse in the four-month period, an irrevocable divorce will apply to his wife the moment the time expires. In both cases, 'īlā' will terminate.

If an eternal 'īlā' is made but the person has intercourse within four months, kaffārah will be obligatory and the 'īlā' will terminate. If he does not have intercourse for the full four months, an irrevocable divorce will apply but the 'īlā' will not terminate. This sequence will continue. If the woman enters into a marriage with him again and he has intercourse with her within four months, kaffārah will become obligatory and the 'īlā' will not terminate. If he does not have intercourse within four months, an irrevocable divorce will apply. This will continue until three divorces take place. 'Īlā' will terminate when the limit of divorces is reached. If he remarries this woman after she goes through the process of ḥalālah and has intercourse with her, divorce will not apply but kaffārah will be obligatory.
Retracting from an 'īlā'

Question:
A man made 'īlā' for four months or more. He now wants to retract from it. How can he do this? If he does retract, will divorce apply? Will kaffārah be obligatory?

Answer:
If a person wants to retract from his 'īlā' and is able to engage in sexual intercourse, he must do it within the period. Kaffārah will become obligatory and the 'īlā' will terminate. If he is able to engage in intercourse, a verbal retraction will not suffice. If a person is unable to
engage in intercourse for four continuous months because of a
temporary or permanent illness, or because of some other strong
impediment, then a verbal retraction will suffice for him. Divorce will
not apply and he will not have to pay any kaffārah.

البحر الرائق:
فإن وقعت في المدة سفر وسقط الإبلاء بإجماع الفقهاء حتى لو مضت أربعة
أشهر لا يقع طلاق لإخلال اليمين بالحدث وسواء حلف على أربعة أشهر أو
أطلق أو عاد الأب. وإلا بآت أي إن لم يبلأ في المدة وبي أربعة أشهر وفتت
عليه طلقة باينة. (البحر الرائق: ٢٣٤، باب الإبلاء، كونته).

البداية:
وإن كان الموالي مريضا لا يقدر على الجمع أو كانت مريضة أو رتقاء أو صغيرة
لا تجامع أو كانت بينهما مسافة لا يقدر أن يصل إليها في مدة الإبلاء ففيه أن
يقول بمساند ففت إليها في مدة الإبلاء فإن قال ذلك سقط الإبلاء. (البداية:
٣٣٧، باب الإبلاء. ومجموع قوانين اسلام: ١٧٨، قانون الإبلاء).

Allāh ta‘ālā knows best.
**KHULA’**

Khula’ without the husband’s approval

**Question:**
A woman became fed-up with her husband’s acts of oppression and did khula’ on her own because her husband refused to divorce her. The husband claims that he was neither made any offer for the khula’ nor was he given any choice. Did khula’ take place? Can the woman marry someone else?

**Answer:**
Like other pacts and agreements, khula’ is an agreement prescribed by the Shar’ah which cannot be completed without the mutual agreement of both parties. The woman’s claim to khula’ is futile and baseless. She is still in the man’s marriage as before. It is not permissible for her to marry anyone else without divorce or separation.

'Allāmah Zayla’ī rahimahullāh writes:
ولا بد من قبولها لأن عقد معاوضة أو تعليق بشرط فلا تنعقد المعاوضة بدون القبول... إذ لا ولاية لأحدهما في إلزام صاحبه بدون رضاء (تبيين الحقائق: ۸۳۷، ملتان). 

Shams al-A’immah Sarakhsī rahimahullāh writes:
فيحتمل الفسخ بالتراضي أيضاً وذلك بالخلع واعترب بذ هذه المعاوضة المحتملة للفسخ بالبيع والشراء في جواز فسخها بالتراضي. (المبسوط: ۸۱۹، باب الخلع، إدارة القرآن. وكذا في بدائع الصنائع: ۴۰۵، سعيد).

Allāh ta’ālā knows best.
Resorting to khula’ because of the husband’s oppression

Question:
A man continues to wrong and oppress his wife and refuses to issue a divorce. How can she obtain freedom from him? Is there any way the Sharī‘ah permits her to free herself from him?

Answer:
The first step is for family members to strive to reconcile husband and wife so that they can start living a life of affection and love. If there is no way of reconciling them and the wife cannot tolerate living with her husband because of his oppression, the husband must be convinced to issue a divorce. If he refuses, he must be given the choice of forgoing the dowry or offered some money to effect a khula’. The wife can acquire freedom from him in this way. At the same time, it is not permissible to demand an astronomical amount of money in lieu of the khula’. Rather, the dowry which he had given must be returned and khula’ effected.

If you fear that they harbour mutual enmity, set up an arbiter from his family and an arbiter from her family. If these two resolve to set things right, Allāh will bring about reconciliation between the two. Surely Allāh is all-knowing, fully aware.¹

الفتاوى الهندية:
إذا تشاق الزوجان وخافا أن لا يقيما حدود الله فلا بأس بأن تنتظدي نفسها
من بمال يحلعوا به فإذا فعلما ذلك وقفت تطليقة بالائدة ولزمها المال كما في

Majmū’ah Qawānīn Islāmī

¹ Sūrah an-Nisā’, 4: 35.
Khula’ is a type of agreement in which the husband terminates his rights in exchange for something. This is why it falls under the ruling of a ًتالافق-e-bā’in (an irrevocable divorce). Because the wife has to make the payment, her approval is essential. The offer for the khula’ can be made by either of the partners. For example, the husband could say: “I make khula’ with you in exchange for the dowry.” The wife replies: “I have accepted.” Alternatively, the wife could say: “Give me khula’ in exchange for the dowry.” The husband replies: “I have given you khula’.”

Through khula’, the same rights will fall off and the same payment will have to be made on which the two had agreed upon.

If the wife explicitly forgoes the right of maintenance for the duration of her ‘iddah, then it will fall off. However, the right of accommodation and maintenance of the children will not fall off even if she says so.

Whatever amount is agreed upon for the khula’ will be valid. However, it is disliked to lay down and accept an amount which is more than the dowry.¹

If the wife dislikes her husband because of his evil character, there is leeway for khula’. If she dislikes him without any reason, and the two agree to khula’, it will still be permissible.

‘Allāmah Sha‘rānī raḥimahullāh writes:

وافتق الأئمة على أن المرأة إذا كبرت زوجها لفتي من هو غير عشرة جاز لها أن تتخالف على عوض وإن لم يحكم من ذلك شيء وتراضك على الخلع من غير سبب جاز ولم يستوى. (الميزان الكبير: ۱۹۹۲۹۳، كتاب الخلع، دار الفكر)

Allāh ta’ālā knows best.

¹ Majmū‘ah Qawānīn Islāmī: 181-183, Muslim Personal Law Board.
FASKH AND SEPARATION

Separation on account of husband not paying maintenance

Question:
A woman claims that her husband does not provide for the necessary expenses of the house. For example, he gives very little, making it difficult to survive. To make matters worse, he demands an account of all expenses and refuses to host his wife’s relatives. Arguments between the two have become a daily occurrence. The wife is in a very dire situation and does not want to live with her husband. It is also difficult for her to make khula’ with him because of the oppressive demands which he is making. Can an ‘ālim effect a separation between the two? Bear in mind that they are already separated according to the judicial courts.

Answer:
If the husband does not provide for his wife, and there is no alternative to separation because of the severe hardships she has to endure, then in such a situation, the Ḥanafī ‘ulamā’ issue a fatwā on the basis of the Mālikī madh-hab. In other words, when there is no way of reconciliation, khula’, etc. the woman has the choice to present her case before a qādī or jam’īyyatul ‘ulamā’ and have herself separated.

Al-Hilah an-Nājizah:
If a husband does not provide for his wife despite being able to do so, then the first step she should take is to convince him to agree to a khula’. If, despite making many efforts in this regard, she can find no solution, there is leeway to practise on the Mālikī madh-hab provided there is a severe compulsion to do so. There are two forms of severe compulsion:

1. No arrangements can be made for the expenses of the woman. In other words, neither can anyone arrange to see to her needs nor can she earn a living while preserving her honour and dignity.

2. Although arrangements can be made for her expenses – whether easily or with difficulty – there is a strong possibility of falling into sin if she were to live separately from her husband.

The manner of obtaining a separation is as follows:
The woman must present her case to a qādī or Muslim ruler. In the absence of both, she will present it before a jamā’at Muslimīn (e.g. 221
The latter must then do a full investigation through Shar'ah-approved testimonies. If the claim of the woman is correct – that her husband is not providing for her despite having the means – the husband will be instructed to fulfil his wife’s rights or divorce her. If not, we [judge, ruler, ‘ulamā’ body] will effect a formal separation. If the oppressive husband still does not adhere to any of the courses of action, the qādī or his Shar’ī representative will apply a divorce. The Mālikī scholars concur that there is no need to give the husband a waiting period or a respite.

If the jamā’at Muslimīn does an investigation as described above and passes a verdict, it will be valid and promulgated.

Prerequisites for the jamā’at Muslimīn:

It is necessary for the jamā’at Muslimīn to observe the following points:

1. The Mālikī fatwā uses the words Jam‘at al-Muslimn al-‘Adl. The word ‘adl refers to a Muslim who is not a fāsiq – a flagrant sinner.

2. If the matter is referred to a jamā’at, it must not be a local body of village elders or any similar group. In other words, they must all be ‘ulamā’ or there must be at least one ‘ālim who has knowledge of the issue.

3. The jamā’at must consist of at least three members.

4. If the above-described jamā’at issues a verdict of separation, it will be valid. However, it is essential for the verdict of separation to be unanimous. If there are differences of opinion among the members, the case will be thrown out.¹

Observe the fatwā of the Mālikī madh-hab:

¹ Abridged from al-‘ijālah an-Najizah, p. 135.
The verdict of a non-Muslim judge is not considered

If a non-Muslim judge passes a verdict on divorce and other related matters, it will not be considered by the Sharī'ah. His verdict of divorce will not apply to the woman and she will not be freed from the marriage. ‘Allāmah Shāmī ṭālimullāh makes reference to this issue as follows:

لم ينفذ حكمة الكافر على المسلم، وينفذ للمسلم على الذي.

Allāh ta’ālā knows best.

Separation because of a prolonged imprisonment of the husband

Question:
If the wife of an imprisoned husband cannot live a life of chastity but arrangements for her maintenance have been made, can she ask a qādī...
or 'ulamā' body for separation? Bear in mind that the husband is to be imprisoned for a long time.

**Answer:**

In the case of extreme necessity and to save one’s self from adultery, it will not be wrong to issue a fatwā on the verdict of Imām Mālik rājihmahullāh. According to the Mālikī madh-hab, abstaining from sexual intercourse is a cause for separation. The woman can therefore present her case to a qādi or the jam‘iyatul 'ulamā’ by stating: “Such and such person is my husband. He is in prison and has a long term to serve. It is beyond me to wait for so long. I have a severe need to get married. I have a fear of falling into sin.” The qādi or jam‘iyatul 'ulamā’ will undertake a formal investigation and see to what extent the woman is true in her claims. If her explanation is established as the truth, they must send an order to the husband stating: “Fulfil the rights of your wife, call her to you or make some type of arrangement. If not, give her a divorce. If you do not accept any of these options, we will enact a separation.” If the husband still does not accept, the qādi will order the wife to wait one more month. If, during this period, there is no means for the man’s release or reduction of his sentence, the qādi or jam‘iyatul 'ulamā’ will separate the man from the marriage. The woman will observe the ‘iddah and she may marry someone else.

*Majm‘ah Qawānīn Islām:*

Abstaining from sexual intercourse and leaving the wife in suspension is one of the causes for separation. It is obligatory to fulfil marital obligations. It is an act of oppression to abstain from fulfilling marital obligations and leaving the wife in suspension. It is a duty of a qādi to remove oppression. Moreover, in this case, there is the possibility of the woman falling into sin. It is the duty of a qādi to shut off such possibilities. If the woman presents the above-described complaint to a qādi, the latter will have to investigate the matter. It will be his duty to remove oppression and provide opportunities to safeguard against sin. The Mālikī madh-hab also states that abstaining from sexual intercourse is a cause for separation.1

وإذا ثبت لها التطبيق بذلك فخشيها الزنا أولى، لأن ضرر ترك الوطع أشد من ضرر عدم النفقة، ألا ترى أن إسقاط النفقة يلزمها، وإن أسقطت حقها

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1 *Majm‘ah Qawānīn Islām:* 192, register 73.
Al-Hilah an-Najizah:

The Ḥanafī standpoint on this issue is extremely strong and based on absolute precaution. However, bearing in mind the precariousness and tribulations of the time, the latter Ḥanafī jurists issue a fatwā based on the Mālikī madh-hab. For example, 'Allāmah Shāmī rahimahullāh quotes the statement of Qahāstānī from ad-Durar al-Muntaqa:

لَوْ أَفْتِي بِهِ فِي مَوْضِعَ الْضِرْرَةِ لَا بَأْسٌ بِهِ عَلَى مَا أَذَنَّ (فَتاوَى الشَّاعِرِ، مَشتَرِبُ اللَّيْلِ، سَعِيدٌ)

Almost all the muftīs of India and beyond have been issuing verdicts on this opinion since quite some time. To some extent, this verdict has been included in Ḥanafī jurisprudence. However, as long as the woman can exercise patience, it will be essential for her to practise on the original Ḥanafī verdict. When there is a severe need for maintenance and other arrangements for it cannot be made, or the woman fears falling into sin; then there will be no harm in practising on the Mālikī view. The present fatwā has been compiled for situations of this nature.

Kitāb al-Faskh wa at-Tafrīq:

If the woman has the right to ask for a separation in the case where the husband does not provide for her, she will have even more right for a separation in the case where she fears committing adultery. This is because the harm of abstaining from sexual intercourse is worse than the harm of not providing maintenance for one’s wife. The other reason is that it is possible to obtain maintenance through taking a loan and asking for assistance, but this is not possible in the case of sexual intercourse.

Hadrat Muftī Muḥammad Shafī’ Sāḥib writes:

Kitāb al-Faskh wa at-Tafrīq, p. 73.
It will be best for the woman to obtain a divorce. If the husband refuses, she should offer him money and get him to agree to khula’. If this too cannot be realized, she must present her case to a Muslim judge. The latter must compel the imprisoned husband to issue a divorce. If he refuses, the ruler must himself issue an order of divorce. The order of the ruler will take the place of a divorce provided he is a Muslim.

وإذا في الأصل مذبب الإمام مالك إلا أن علماً هنا، فأنه أخترا عليه لكون
الضرورة الشديدة. (ملخص أز امداد المفتين: جلد دوم: 276، دار الأشاعت، كرائي)

Fatāwā Dār al-‘Ulām Deoband:

The gist of the question is that Zayd has been issued with a 30-year sentence of imprisonment because of a crime which he committed. Three years have passed and twenty seven years remain. His wife says: “I cannot exercise patience without a husband for such a long time. I want my marriage to be annulled.” Zayd is refusing to issue a divorce. He wants his wife to stay with some of his relatives who live very far away. The wife is not happy about it. She has an overriding feeling of falling into dishonour. What is the ruling of the Sharī’ah? Can the marriage be annulled by force?

Answer: The original view of the Hanafī madh-hab is that the marriage cannot be annulled in such a situation. The woman cannot enter into a new marriage without obtaining a divorce from her husband. However, some of the other Imāms permit the annulment of a marriage in a situation of this nature. It is permissible for Hanafīs to practise on it at the time of necessity. In a situation of necessity, a Hanafī scholar has the leeway to separate husband and wife, and to issue a fatwā of permissibility for entering into a new marriage after she completes her ‘iddah.¹

Furthermore, Hanafī jurists say that if a husband who made zihār does not pay the kaffārah and leaves his wife in suspension, she can present her case to a qādī who will then issue a verdict of removing the woman from harm.

Annulment of marriage when the husband is classified a lunatic

Question:

How can separation be effected if the husband is a lunatic? Bear in mind that the wife was aware of his lunacy. But now it is a matter of honour, and she is also fearful of him.

Answer:

If a husband is a lunatic, oblivious to the world, does not even know about the fulfilment of the rights of his wife – although the wife was aware of his lunacy from before – but now finds it difficult to live with him, in fact, she even considers it dangerous, furthermore, the day-to-day running expenses are difficult for her, and it is beyond her to live a life of chastity and purity; then in all these situations, the wife must go to a Sharī‘ah judge, or to a jam‘iyatul ‘ulamā’ in the absence of the former, and present her case. Once the jam‘iyat verifies her claims, it will give the husband one year’s respite to get himself treated. If he does not recover by one year, the woman will present her case once again to the same jam‘iyat. The latter will then formalize a separation between the two. Once her ‘iddah expires, she may enter into another marriage.¹


Allāh ta’ālā knows best.

Majmū‘ah Qawānīn Islāmīyya

If the husband’s lunacy could pose a danger to the wife’s body and life, then this lunacy is a basis for separation. However, the qādī will give the husband one year to get himself treated. If he still does not recover and the wife wants a separation, the judge will effect it.
The above text does not define temporary lunacy nor could we find it anywhere else. Consequently, the full definition of a permanent lunacy cannot be explained clearly. As for the other places which explain the two [permanent and temporary lunacy] by comparing one to the other – it will be careless to apply it here. Therefore, caution demands that we disregard the definition and say that in each condition [whether permanent or temporary lunacy], the husband must be given one year’s respite and a verdict passed thereafter.¹

For further details refer to Kitāb al-Faskh wa at-Tafriq, pp. 113-115 of Maulānā 'Abd as-Samād Raḥmānī, deputy head of Shari'at Bihār and Oriissah. And al-Hilah an-Nājīzah, pp. 41, 48.

Separation can also be declared if it becomes difficult for the wife to obtain her daily household expenses.

If the husband cannot fulfil the conjugal relations, and it becomes difficult for the wife to live a life of chastity and purity – in fact, there is a strong possibility of her falling into sin – she may submit her case to a qāḍī or jam‘īyyat and have a separation formalized.

Refer to Kitāb al-Faskh wa at-Tafriq, p. 73 and al-Hilah an-Nājīzah as mentioned previously.

Allāh ta’állā knows best.

When the husband is diagnosed with Aids

Question:

Can a marriage be annulled because of Aids? Bear in mind that a Hadith states:

¹ Al-Hilah an-Nājīzah, pp. 62-63 as quoted from Majm‘ah Qawānīn Islāmī: 195, register 76.
Imām Abū Ḥanīfah and Imām Abū Yūsuf are of the view that a woman does not have the right to annul a marriage on account of any illness. Imām Mūhammad is of the view that she does have the right of annulment if the husband suffers from lunacy, leprosy, etc. In our present age, Aids has proven to be a dangerously destructive illness and is also generally contagious. Therefore, while issuing a verdict on the view of Imām Mūhammad, a woman will have the right to present her case to a qā'ī or jam'iyyatul 'ulamā'. They will investigate the matter and, once it is verified, they will have the authority to effect a separation.

الدر المختار:
ولا ينتخِب أحد الزوجين بعيب الآخر ولَو فاحشاً كجنون وبرص ورقن، وخلاف محمد في الثلاثة الأول وخلاف الأئمة الثلاثة في الجمة.
وفي حاشية الطحطاوي: قول وخلاف محمد في الثلاثة الأول بي الجنون والرقص والرقص، وألحق به القيسائي كل عيب لا يمكنها المقام معه إلا بضرر، ونقل المؤلف في شرح الملتقى. (حاشية الطحطاوي على الدر المختار: ٣٠٢/٢، كونته).

الهداية:
وإذا كان بالزوج جنون أو برص أو جذام فلا خيار لها عند أبي حنيفة وأبي يوسف، وقال محمد: لبنا الخيار دفعًا للضرر عنها كما في الحب والزينة.
وفي العناية في شرح البداية: لبنا الخيار لأن تعذر عليها الوصول إلى حقها لمعنٍ فيها فكان بمثلة الحب والزينة، فتخير دفعًا للضرر حيث لا طريق لها سواء. (العناية في شرح البداية مع البداية على باب مفتتح القدر: ٣/٥، ط: دار الفكر)
الفتاوى الهندية:

قال محمد: إن كان الجنون حادثاً يوجد سنة كاملاً، ثم يخير المرأة بعد الحال.
إذا لم يبرى، وإن كان الجنون مطلقاً فهو للحجاب، ويبعثن اخبار، كما في الحاوي القدسي. (الفتاوى الهندية: 576)

بيدائع الصنائع:

وأما خلو الزوج عما سوى هذه العيوب الخمسة من الحجاب والعنة والتآخذ والخصاء والخنوذة في جلوش لزوم النكاح، قال أبو حنيفة وأبو يوسف ليس بشرط ولا يفسخ النكاح، وقال محمد: خلوه من كل عيب لا يمكنها المقام معه إلا يضرر كالمجنون والجذام والبرص شرط لزوم النكاح حتى يفسخ النكاح، لأن هذه العيوب في إلحاق الضرر بها فوق تلك، لأنها من الأدوار المتعددة عادة، فلما ثبت الخيار بتلك فإن ثبت بهذه أولى. (بيدائع الصنائع: 372، شروط لزوم النكاح)

الموسوعة الفقهية الكويتية:

جاءت هذه العيوب بصيغة التمثيل، بدأ إلى جانب أن نصوص الفقهاء عامة كانت تتعلق النفقة للعبيد بالضرر الفاحش والعدوى، وعدم القدرة على الوطع، ويواظب في جواز القياس عليها.

وعلى أساس قال: وترى اللجنة أن هذه العيوب المنصوص عليها ليست للحصر وإنما بي للتمثيل، ولذلك فإن يلحق كل ما كان في معتنباً أو زاد عليها، كالايدز وما شابه من الأمراض التي تفوق بعض ما ذكر. (الموسوعة الفقهية الكويتية مع التعليقات: 29/299، التفسير للعبيد، ط: وزارة الأوقاف بالكويت)

Jadid Fiqhi Mas’ail:
The view of Imām Muhammad on this issue is closer to the spirit of the Sharī‘ah and in line with general wellbeing. This is why the Hanafi jurists issued the fatwā on his view.¹

*Jadīd Fiqhī Mabāhīth:*

Zaylā‘ī said:

وَقَالَ مُحَمَّدُ: تَرَدَّى الْمَرَأَةُ إِذَا كَانَ الْرَّجُلُ عَيْبًا فَأُحِبَّ بِهِ مَلِئًا كَمَا تَطْطِقُ المَقَامُ مَعْهُ، لأَنَّهَا تَعَزَّرُ عَلَيْهَا الْوَلَءُ إِلَى حَقِّيْهَا فِي كَلْجِبٍ وَالْعَنَةِ، (تَبِينُ الْحَقَائِقُ: ۳/۵۵۵، بَابُ الْعَنَى وَغَيْرِهِ مَلَتَانِ)

Based on the above, Imām Muhammad is of the view that a wife can ask for a separation for any illness which is contagious and a cause of abhorrence. This view is in line with the spirit and temperament of the Sharī‘ah. Its principles and objectives concur with the spirit of the rules.

When we ponder in the light of these details, then in addition to the three Imāms, even Hānafis are of the view that AIDS is from among those illnesses based on which a woman can acquire a separation. This is because it is more abhorrent than leprosy and elephantitis, and it is also contagious. Furthermore, because sexual relations is a major reason for its transmission, a husband who has AIDS will be classified as an impotent person vis-à-vis the rights of his wife. Because of the fear of its contagiousness, she will not be able to fulfil the desires of her self from this man.²

*Tībī Akhlāqiyyūt:*

If a man has AIDS but marries a woman without disclosing his illness, the woman will have a right of annulment of the marriage. If the man contracts it after marriage, and it reaches a dangerous level, the woman will have the right of annulment.³

Allāh ta‘ālā knows best.

¹ *Jadīd Fiqhī Masā’il,* vol. 3, p. 177.
² *Jadīd Fiqhī Mabāhīth,* vol. 10, p. 120.
Reconciling contagious diseases with Aḥādīth

There are two types of Aḥādīth which make reference to contagious diseases. Some of them reject contagiousness while others affirm such a possibility.

The Hadīth:

لا عدو ولا طيرة... الخ (رواه البخاري: ١٥٤٨٨، باب الجذام)

There is no such a thing as a contagious disease nor of divining birds...

Shows that a disease is not contagious.

While the following Hadīth shows that it can be contagious:

فر من المتجهم فرارك من الأسد. (رواه البخاري: ١٥٤٨٨، باب الجذام)

Flee from a leper as you would from a lion.

A sick camel should not be taken near a healthy camel.

Furthermore, when accepting a pledge of allegiance from a leper, Rasūlullāh sallallāhu ‘alayhi wa sallam did not touch his hand. Instead, he accepted his pledge from a distance. In another incident, Rasūlullāh sallallāhu ‘alayhi wa sallam had a meal with a leper and said:

ثقة بالله وتوكل عليه. (رواه أبو داود في الطبرة. والترمذي في باب ما جاء في الأكل مع المجهم. وابن ماجه في باب الجذام)

I place my trust and reliance on Allāh ta’ālā.

The Hadīth experts reconciled these Aḥādīth in various ways. An easily understood explanation is that some illnesses are contagious, but their contagiousness is by the order of Allāh ta’ālā. People in pre-Islamic times believed that certain things had their own direct effect, and that the order of Allāh ta’ālā had nothing to do with it. For example, they believed that stars influenced their fate and did not believe in the
necessity of Allāh’s order. The Ḥadīth “There is no such a thing as a contagious disease...” rejects such a belief. That is, the contagiousness of an illness is not by its self but by Allāh’s order. This is why when a Bedouin heard this Ḥadīth, he said: “But when we allow a mangy camel to go near a healthy one, the latter also becomes mangy.” Rasūlullāh ﷺ asked: “Who caused the first one to become mangy?” (Ṣaḥīḥ Būkhārī, vol. 2, p. 852). In other words, if the second one became mangy by being close to the first one, but it became mangy by Allāh’s order just as the first one had become mangy by Allāh’s order.

In our times, we literally see and experience the contagiousness of many illnesses. It would therefore be correct to say that they are transmitted through germs, but these too are one of the means from among the many means of transmission. Apart from this, the birth of an illness is neither dependent on being in contact with someone nor does it mean intermingling with a sick person will necessarily bring upon that sickness on the one who was in contact with him. Yes, to be affected or unaffected by the means is subject to the will and decree of Allāh ta’ālā. A single leaf on a tree cannot move without the order of Allāh ta’ālā.

Detailed proofs can be found in the following:

Annulment on account of mutual discord

Question:
The essence and gist of the question and objections is as follows:

If the claims of the wife and her family are true, then the gist of their complaints are as follows, and due to which she and her family want an annulment.

1. The husband has not been speaking to his wife for several days. This is causing her mental anguish.

2. Although the husband permitted her to go [to her family’s house], he is not providing maintenance for her.
3. The desire for children is a natural one and also promoted by the Sharia. For example, a Hadith states: “Marry a woman who is loving and child-bearing.” The Qur'an states: “Your women are your tillage.” (2: 223) The Prophets 'alayhimus salam are reported to have made du'a for children. There are many other explicit texts in support of the desire for children. Despite this, the husband considers having children to be burdensome. He is making efforts to prevent having children or expressing his disapproval in this regard.

4. The husband is totally aloof from his wife. He is not even prepared to maintain ties with his wife's family. This has caused the wife to become detached from him. This is why she wants to live away from him.

5. The husband wants to divorce his wife for her aloofness, but because of his natural greed or for the sake of constricting her, he is demanding a payment of two million. This is obviously an outrageous demand.

6. The husband is so stubborn that he even refused to visit his own father. And when the latter died, he did not attend his funeral.

**Answer:**

I request the Jam'iyat to investigate these complaints and if they are really true, then it is my view that if the husband is neither prepared to issue a divorce nor make khula' with the amount which was given as dowry; then the Jam'iyat can annul this marriage. The muftis state that if a husband is accusatory and vulgar to his wife, it could be a cause for separation. Abstaining from speaking with one's wife is even more hurtful and offensive.

**Majmu'ah Qawânîn Islâmî:**

If the husband speaks offensively to the wife, is vulgar and abusive to her or beats her severely then she will have the right of separation.
Do not retain them to harass them so that you may oppress them. Whoever does this shall indeed harm his own self.¹

Now what can be worse than beating the wife severely and abusing her verbally!?²

Similarly, if there is mutual discord between husband and wife, and there is no way of resolving it, then it could be a basis for separation.

An investigation into the word *shiqāq*

The word *shiqāq* means discord, enmity and antagonism. Because it is a verbal noun of the scale *muf'alah*, it will mean mutual *shiqāq*. That is, the two are on completely opposite ends. In other words, the *shiqāq* (discord, enmity, antagonism) between two people has reached its peak. Imām Rāghib rahimahullāh explains this as follows:

When there is mutual discord between husband and wife, the order of the Sharī‘ah is as described in the Qur’ān:

> وإن خلقتم شقاق بينهما فأتعبوا حكمًا من أهلها وحكمًا من أهلها. إن بيدنا إصلاحًا يوفق الله بينهما. إن الله كان عليمًا

If you fear that they harbour mutual enmity, set up an arbiter from his family and an arbiter from her family. If these two resolve to set things right, Allāh will bring about reconciliation between the two. Surely Allāh is all-knowing, aware.³

The discord is general in meaning. It could be for any of the following reasons:

1. Antagonism which develops on account of the husband beating his wife.

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¹ Sūrah al-Baqarah, 2: 231.
² Ṣūrah al-Nisā’, 4: 35.
³ Majmū‘ah Qawānīn Islāmī, p. 199, register 81.
2. Unlawful utilizing of the possessions and belongings of the wife.

3. The husband imposing on the wife to not observe purdah and to follow modern fashion trends.

4. The husband imposing other unlawful actions on the wife.

5. The husband stopping his wife from carrying out obligations of Islam.

6. Any other similar reason.

No matter what the reason, the Qur’ān instructs the appointment of two arbiters who will try to remove the discord.¹

Dr. Tanzil ar-Rahmān Sāhib writes in Majm‘ah Qawānīn Islām:

The literal meaning of shiqāq is “discord”. It is derived from shiq which means “one side”. Because the mutual discord results in the husband and wife becoming two opposing sides, the Qur’ān refers to such a situation as shiqāq.²

‘Allāmah Nasafī raḥimahullāh writes:


‘Allāmah Ālī raḥimahullāh writes:

والشقاق: الخلاف والعداوة، واشتتاق من الشق، وبو الحجاب، لأن كلاً من المتخالفين في شق غير شق الآخر. (روح المعاني: 5/32)

وفي أيضاً، واجتنب خلاف في أنهما (أي الحكمين) بل يليان الجمع والتفريق إن رأيا ذلك؟ فقيل: ليهما، وبو المروي عن علي كرم الله وجهه وابن عباس رضي الله عنهما، وإحدى الروابط عن ابن جبير، إما قال الشعبي، فقد أخرج الشافعي

¹ Kitb al-Faskh wa at-Tafriq, p. 152.
² Majm‘ah Qawānīn Islām, vol. 2, p. 644, as quoted in Islāmī Qānūn Nikāh wa Ṣalāq of Maulānā Ya‘qūb Qāsimī, p. 133.
في الأم والبيهيقي في السنن وغيرهما عن عبيدة السلماني قال: جاء رجل وأمرة إلى علي كرم الله وجعل ومع كل واحد منها فناء من الناس، فأمر عليهم كرم الله وجعل أن يبئس حدكما من أبلا وحكما من أبلا، ثم قال للحكمين: تدرى ما عليكم؟ عليكمما إن رأيتما أن تجعا أن تجعا، وإن رأيتما أن تفرقتا أن تفرقا، قالت المرأة: رضيت بجنب الله تعالى بما علي فيه ولي، وقال الرجل: أما الفرقة فلا، فقال علي كرم الله وجعل: كذبت والله حتى تقر بمثل الذي أقرت به. (روح المعاني: 36/2)

**At-Tafsîr al-Mazhari:**

وفي التفسير المظري: فقال مالك: يجوز حكّم الزوج أن يطلق المرأة بدون رضا الزوج، وحكّم المرأة أن يختلع بدون رضا المرأة، ويدفع عليها المال إذا رأى الصلاح في ذلك حيث ملك علي الحكمين الجمع والتفرق، وكدب الزوج على نفي الفرقة... الخ. (التفسير المظري: 2/101، بلوجستان)

**Majmû‘ah Qawânin Islâmî:**

If intense hatred develops between husband and wife, and it seems impossible to continue their marital life while upholding the orders of Allah ta’âlâ, then in such a case:

1. The qâdî will appoint two arbiters who will seek to reconcile the two.

2. If, despite the efforts for reconciliation, there is no way that the two can agree to a separation; then the qâdî will separate the two on the basis of the mutual discord and the demand of the wife.

Explanation:

If intense hatred develops between husband and wife to the extent that there is no room for them to live amicably and it seems impossible to continue their marital life while upholding the orders of Allah ta’âlâ, then the first step will be to try and reconcile the two. Two arbiters will be appointed for this purpose. They will strive to remove the discord or for husband and wife to separate by mutual agreement. If they still fail to do this, separation will be effected

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through a qādī. It must be clear that Allāh ta‘ālā orders sound and amicable living. Mutual love is essential for this. The possibilities of living amicably will cease when husband and wife start hating each other. Even if one partner hates the other, it will be classified as shiqq because there has to be love on both sides. The absence of love in one partner is sufficient to put an end to amicable living. Thus, if both hate each other or the wife hates her husband intensely, the qādī must appoint two arbiters who will try to resolve their issues. If they still cannot effect peace and the marriage becomes devoid of its objectives – i.e. it becomes extremely difficult to retain the wife with kindness – it becomes the duty of the husband to release her in a good way. If he refuses, the qādī will assume the role of the husband and effect a separation.¹

*Majmū‘ah Qawānīn Islām:*

If the court (or jam‘iyatul ‘ulamā’) effects a separation between husband and wife because of oppression or mutual discord, then the separation will be equal to a ṭalāq-e-bā‘īn (irrevocable divorce).

والفراق في ذلك طلاق بائئٍ.²

Prerequisites for the arbiters

When appointing arbiters, the following conditions will have to be adhered to. The Mālikī madh-hab considers it essential to abide by these conditions.

ويشترط في الحكمين عندم أربعة شروط: وبي الذكورة، والعدالة، والشد، والعلم بما بوب يسبيل، فلا يجوز تحكيم النساء ولا الصبيان ولا العبيد ولا المجانين ولا الكفار ولا الفسق ولا السعفاء، ولا من لا علم عندم بأحكام النشور والصلح. ثم إن وجد حكمان من أبل الزوجين وأمسكن تحكيمهما وجب تحكيمهما، ولم يجز للقاضي أن يبعث أجنبين. ويدنب كون الحكمين

¹ Majmū‘ah Qawānīn Islām: 200, 202, register 82, Muslim Personal Law Board.

² Dr. Tanzīl ar-Rahmān: Majmū‘ah Qawānīn Islām, vol. 2, p. 675 as quoted in Islāmi Qānūn Nikāh wa Ṭalāq, p. 133.
The Mālikīs state that it is essential for the following four conditions to be found in an arbiter:

1. Has to be a male.
2. Has to be just.
3. Has to be upright.
4. Has to know the rules and regulations with regard to the task for which he is being appointed.

Thus, it is not permissible to appoint a woman, a child, a lunatic, an unbeliever, a flagrant sinner and a foolish person. Similarly, a person who does not know the rules related to reconciliation and discord cannot be appointed as an arbiter.

If there are two arbiters from the families of both partners and it is possible to appoint both of them, it will be obligatory to appoint them. It will not be permissible for the qādī to appoint outsiders. It is preferable for both arbiters to be neighbours of the husband and wife. It is not a prerequisite for both partners to agree with the verdict of the arbiters.\(^1\)

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\(^1\) Abridged from Kitāb al-Faskh wa at-Tafrīq, p. 157.
Annulment because of the husband humiliating and beating his wife

Question:
Two women left their husbands and went to their fathers’ house. The husband of the first wife had been beating her severely. It became painfully difficult for her to continue living with him. The husband of the second wife had been humiliating and insulting her verbally. He constantly ridiculed her and hurled verbal abuses at her. She says that it is very hard to live with him.

Are these actions included in the definition of *nushūz* (antagonism)? Is the husband obliged to pay for the maintenance of his wife for the period which she left him? If they have young children, is the husband obliged to pay for their maintenance as well? Can these offences be furnished as reasons for wanting an annulment? In other words, do these women have grounds for asking for a separation?

Answer:
When a husband beats his wife severely, inflicts other tyrannies on her, ridicules and abuses her verbally, and uses harsh words against her to the extent that it becomes difficult for her to preserve her dignity; then all these actions are included in *nushūz*. Both women will have the right to present their cases before a qādī or jam‘īyyatul ‘ulamā’ and ask for an annulment. The ‘ulamā’ will investigate the matter and then have the right to annul both marriages.

Both women went to their fathers’ houses because of the oppressions of their husbands. They will therefore not be classified as *nāshizah* (recalcitrant). They will be eligible for maintenance. It is the responsibility of the husband to pay for the maintenance of the children who have not reached the age of puberty. He will therefore pay for it for the duration of the wife’s absence.

*Kitāb al-Faskh wa at-Tafrīq*:
Islam most certainly does not permit the beating of a wife in this manner. If a husband is guilty of such behaviour, the woman has the right to present her case before a qādī and ask him to restrain the husband. This is the view of Ḥanafi jurists. Mālikī jurists are of the view that the woman has the right to ask for a divorce.
If the beating goes beyond the limits, and the woman is fed-up and therefore asks for a separation; the Ḥanafī qādī must investigate the matter. After conducting his investigations and obtaining evidence, if he is convinced that the woman is true in her claims, then he may issue a verdict in line with the Mālikī jurisprudence.

The statements of the Mālikī jurists are as follows:

ومذيب الخلافة أن الزوج إذا كان يضاير زوجته بالضرب وخوه كالإكراه على فعل أمر حرام كان لها أن ترفع أمرها إلى القاضي، وكان لها أن تطلب من القاضي تأديب وزوجها ليكفي أذان عنها كما أن تطلبه التطبيق منه، فإن طلبته من القاضي كفده عنها وعظ أول الأمر فين له ما يجب على الزوج من حسن تعاشر زوجته. وما عسّى أن يتزبد على سوء العشرة من التفريق الشامل وضياع الولد إن كان؛ فإن أجدت الوعظة فيها، وإن جائته، ثانية تخدره أنه لم ينتمي ضرب، فإن استمر الأشكال بينهما عتب حكيمين، يجب على حكيمين أن يسعيا في إصلاح ذات بينهما وتأليف قلبهما على المودة وحسن المعاشرة، فإن تعذر عليهما ذلك نظرا فين تجيز الإساءة من جبهة إلى صاحب؛ فإن كانت الإساءة تأتي من قبل الزوج طلقا الزوجة عليه بغير عوض.

(الأحوال الشخصية ص: ۲۴۹، بحوارـ "كتاب الفسخ والتفريق": ۱۴۹)
If the husband speaks offensively to the wife, is vulgar and abusive to her or beats her severely then she will have the right of separation.

Do not retain them to harass them so that you may oppress them. Whoever does this shall indeed harm his own self.¹

Now what can be worse than beating the wife severely and abusing her verbally? Rasûlullâh sallallahu 'alayhi wa sallam prohibited us from striking in a manner which leaves marks on the body. Beating, abusing verbally, etc. are actions which are against the accepted principles of Islam (Neither harm nor transgression is permitted in

¹ Sûrah al-Baqarah, 2: 231.
Islam). In such a situation, the woman has the right to present her case before a qādī. Once the latter investigates the matter, he will issue a verdict by convincing the woman to continue living with her husband, obtaining a guarantee from the husband that he will desist from harming her, or separating the two.¹

*Kifāyatul Muftī*

If the tyrannies of the husband are unbearable and he refuses to issue a divorce, and the woman fears for her chastity and dignity, she may go to a Muslim court and have her marriage annulled. Once she obtains an annulment and completes her 'iddah, she may marry someone else.²

الأمر المختار:

لا نفقة لأحد عشر... وخارجة من بيتها لغير حق ببي الناشئة. وفي الشامية: قوله "بغير حق" ذكر محترز بقوله: مخالف ما خرجت الخ، وكذا ببو اختيار عمما لو خرجت حتى يدفع لها المهر، ولها الخروج في مواضع مرت في المهر.

(الدر المختار مع الشاي: ٣/١٧٥ باب النفقة، ط: سعيد)

البيهار الرائق:

قوله (ولو مانعة نفسها للمهر) أي يجب عليه النفقة ولو كانت المرأة مانعة نفسها بحق كالمنع لقبض مهره، والمراد عند المعجل إما نصاً أو عرفًا كما أسلفنا، لأن منع بحق، فإن كان قوت الاحتياط لمعنى من قبل، فجعل كلاً فائت.

(البيهار الرائق: ٨٩/٤ باب النفقة. وكذا في مجمع الانهر: ٤٨٩/٤، والفتاوي الهندية: ٥٤/٤، باب في النفقة)

¹ Majm‘ah Qawānīn Islāmī, p. 199, register 81.
² Kifāyatul Muftī, vol. 6, p. 152.
**Fatāwā Rahīmīyyah:**

It is the husband’s responsibility to provide for his children’s maintenance. If the wife is breastfeeding the child, she can ask her husband for compensation.¹

Allāh ta’ālā knows best.

**When a Shi‘ah husband leaves his wife**

**Question:**

A Sunnī woman married a Shi‘ah man. After one night’s marriage, he said to her: “Enough! I am gone. I am not coming back.” What must she do?

**Answer:**

The verdict of the ’ulamā’ is that in the light of his beliefs, a Shi‘ah is not a Muslim. He believes in the distortion of the Qur‘ān, vilifying the Sahābah, the concept of imāmat, etc. – all of which are blasphemous beliefs. Therefore, in this case, the marriage was not even valid in the first place. However, because an external form of marriage was realized, she must annul her marriage through the jam‘īyyatul ‘ulamā’. She may marry someone else after the expiry of her ‘iddah.

The proofs for this ruling can be found in volume three, page 598 of Fatāwā Dār al-‘Ulām Zakariyya.

Allāh ta’ālā knows best.

**When a husband does not inquire about his wife for a long period of time**

**Question:**

A woman has been married for about fourteen years and she also has children. However, her husband has not been bothering about her and the children for the past nine years. He did not make any arrangements for their maintenance and has given up coming to the house. What is the ruling of the Sharī‘ah in this regard?

**Answer:**

When a husband does not inquire about his wife and children for a long time, does not make arrangements for their maintenance, and gives up coming to the house; then the wife has a Sharī‘ah-bestowed right to present her case to a Sharī‘ah judge or jam‘īyyatul ‘ulamā’.

After investigating the matter, they will compel the husband to make arrangements for his family’s maintenance. If he refuses, they will instruct him to divorce his wife. If he still refuses, they must annul the marriage. Once the woman completes her ‘iddah, she may marry someone else.

فتاوى الشافى:

قال في غرار الأذكار: ثم أعلم أن مشايخنا استحسنوا أن ينصب القاضي الحنفي نائباً من مدبر التفريق بينهما إذا كان الزوج حاضراً أو في عن الإطلاق، لأن دفع الحاجة الدائمة لا يتيسر إلا بالاستدانة، إذ الظاهر أنها لا تجد من يقرضها وغني الزوج مالاً أمن متوم، فالتفريق ضروري إذا طلبت، والحاصل أن التفريق بالعجز عن النفقة جائز عند الشافعي حال حضره الزوج، وكذا حال غيابه مطلقاً. نعم يصح الثاني عند أحمد كما ذكره في كتب مذهب وعليه يحمل ما في فتاوى قاري البداية حيث سأل عن غاب زوجها، ولم يترك لها نفقة فأجاب: إذا قامت بيئة سأل ذلك وطلبت فسخ النكاح من قاض يراه ففسخ نفذ وبو فضاء على الغائب، وفي نفاد القضاء على الغائب رويتان عندنا، فعل القول بنفاده يسوع للحديث أن يزوجها من الغير بعد العدة. (فتاوى الشافى: 2/65، مطلب في فسخ النكاح، سعيد)

Observe the fatwā of `Allāmah Sa’īd ibn Siddīq Fūlātī Mālikī:

أما الحجواب عن المتبرع المتمتع عن الإنفاق ففي مجموع الأمير ما نصه: إن منعبا نفقة الحال فله القيام، فإن لم يثبت عسره أنفق أو طلق، وإلا طلق عليه. قال محليش: قول. وإلا طلق أي طلق عليه الحاسم من غير تلمي إلى أن قال: وإن تطوع بالنفقة قريب أو أجنبي... قال ابن عبد الرحمن: لا مجال لله، لأن سبب الفراق بو عدم النفقة قد انتهى. (الحيلة الناجرة: ص 119، ط: دار الإشاعت، ديوان)
If a husband does not pay for the maintenance of his wife despite having the means, and the wife cannot make her own arrangements for earning a living while preserving her dignity and chastity, and there is no one else to see to her day-to-day needs; or, she can make arrangements after much difficulty but she has a strong fear of falling into sin in the case where she lives away from her husband, and the husband does not agree to khula’ or divorce – then in the presence of such a dire situation, she can make a request to a qādī to effect a separation. The qādī will undertake a full investigation, call up witnesses, etc.. If her claims are true, the qādī will instruct the husband to fulfil the rights of his wife or divorce her; if not, he will personally effect a separation. If the husband does not accept any of the options, the qādī will separate the two. This separation will be classified as a revocable divorce.¹

Further reading: al-Ḥilah an-Nājizah, p. 63; Kitāb al-Faskh wa at-Tafrīq, p. 89; Kifāyatul Mufti, vol. 6, p. 117.

Allāh ta’ālā knows best.

A husband who is perpetually ill

Question:
A woman married a man and lived for some time with him. Subsequently, her husband fell critically ill. Blood and pus flows constantly from his body. The husband is not impotent but because of his weakness and constant illness, he cannot engage in conjugal relations. If he does, it causes him immense discomfort and pain. There is no shortage on the part of the husband in paying for the daily expenses [and running of the house]. However, the wife does not want to continue living with him. She wants to have the marriage annulled. Is this possible?

Answer:
The husband is perpetually ill, he cannot fulfil the rights of his young wife, she cannot exercise patience, and there is a strong possibility of her falling into sin. Because of the fear of her falling into sin and committing adultery, the ‘ulamā’ have permitted annulment in cases of this nature. The wife must present her case to a qādī or jam’iyyatul ‘ulamā’. After investigating the matter, they will give the husband a respite of one lunar year to get himself treated. If he still does not

¹ Majmū‘ah Qawānīn Islāmī, p. 198, register 79.
recover, the wife will present her case again and ask for a separation. The qāḍī or jam‘īyyatul ‘ulamā’ will then have the authority to annul the marriage.

*Majmū‘ah Qawānīn Islāmī:*

The husband’s inability to engage in sexual intercourse could take several forms. For example:

1. He is castrated.
2. His private part is too small, and therefore cannot engage in intercourse.
3. He has a private part but does not have the ability to engage in intercourse because of some illness.

In all these cases, the wife has the right to have the marriage annulled via a qāḍī. In the first and second cases, the qāḍī will annul the marriage immediately. In the third case, he will give the husband a respite of one lunar year to have himself treated. If he still cannot engage in sexual intercourse after one year, then upon the request of the wife, the qāḍī will annul the marriage immediately.

If, after getting married, a husband falls critically ill, and the wife requests an annulment; the qāḍī will investigate the matter. Once he obtains Sharī‘ah evidence, he will give the husband a respite of one lunar year to get himself treated. If he still does not recover, and the wife asks for an annulment again, the qāḍī will separate the two.


Allāh ta‘ālā knows best.

**When the husband is lost in battle**

**Question:**

There was a war situation in a certain country and certain people went missing. Several years have passed and their whereabouts are still not known. There is no information as to whether they are living or dead. Can they be classified as *mafqūd al-khabar* (one whose whereabouts are unknown)?

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1 *Majmū‘ah Qawānīn Islāmī*, p. 193, register 74.
2 *Majmū‘ah Qawānīn Islāmī*, p. 194, register 75.
Answer:

Such people are undoubtedly classified as mafaqūd al-khabar. The Hanafi jurists pass a verdict on such people in line with the verdict of the Mālikī jurists. According to the Mālikīs, the qādi will give a respite of four years with certain other conditions. He will then declare such a person to be dead and permit the woman to enter into another marriage.

Hadrat Muftī Muhammad Shafi’ Saḥīb ṭabaḥmahullāh said:

Once the qādi determines through circumstantial evidence that these people have gone missing in war and that they are not alive, he will declare them to be dead. Their wives will be permitted to enter into new marriages after the verdict of the qādi. (In the absence of a Shari‘ah judge, the jam‘iyatul ‘ulamā’ will investigate the matter, declare the missing person to be dead, and then permit the woman to enter into a new marriage).

Majmū‘ah Qawānin Islāmī:

The order to wait for four additional years for a missing husband is unanimously declared as essential if the woman is able to live a life of patience, forbearance and chastity during this period. If this is not possible – i.e. if the woman expresses the possibility of falling into sin, and she has already waited for a long time before making such a request and cannot wait any longer – then there is leeway to reduce the four-year waiting period as per the verdict of the Mālikī madh-hab. If the woman has an overriding fear of falling into sin, the Mālikīs say she must wait for at least one year, after which it will be permitted to effect a separation. This separation will be a revocable divorce. In such a case, the woman will observe the ‘iddah of divorce and not the ‘iddah of death.


Allāh ta‘ālā knows best.

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2 Majmū‘ah Qawānin Islāmī, p. 196 as quoted from al-Ḥilah an-Nājizah, pp. 69-80.
When the husband is absent most of the time

Question:
Five months after they got married, the husband left his wife and disappeared. He neither informed his wife where he was going nor anyone else. He returned after many days. He lived with his wife for a few days and disappeared again without informing anyone. He returned after some time. He does not give any reasonable reason for his absence. It has become his habit to disappear. He is not working anywhere nor is he occupied in any business. Whatever assistance the wife was receiving, she had been giving some of it to her husband. On one occasion he lost a large amount of money after taking it on the pretext of starting a business. He also stole items belonging to the wife and sold them. He neither provided a house for his wife nor did he make arrangements for her expenses. People are of the view that he will not mend his ways. Bearing in mind this situation, does the wife have the right to request an annulment of the marriage? What is the ruling of the Sharī'ah in this regard?

Answer:
If the situation is as described by the wife, she has the right to present her case to the jam'iyyat ul-umā. They will investigate the matter and if the claims of the wife are proven to be true, they will instruct the husband to fulfil the rights of his wife. If he refuses, they will compel him to issue a divorce. If the oppressive husband is not prepared to accept any of the options, the jam'iyyat ul-umā will give him one month's respite. After that, acting on the request of the wife, they will have the authority to separate the two. The wife will then observe the 'iddah and she may enter into a new marriage.

*Majmū'ah Qawānīn Islāmī:

A person is known to be alive but his whereabouts are unknown, or they are known but he neither comes to his wife nor calls her to him, and he does not provide for her maintenance – if these issues are causing immense distress to the wife, then she can apply for a separation to a qādī. After receiving her application:

a) The qādī will instruct the wife to present two witnesses who will state under oath about the absence of her husband and the fact that he did not leave anything with her through which she could support herself, did not send anything to her, and did not make any arrangements in this regard. She will also state that she has not pardoned him for these injustices.
b) After establishing that they are married and that the husband is obliged to maintain her, the qādi will send an order to the husband to either present himself and fulfil the rights of his wife or he must call her to himself (as long as there is no danger to her going to that place). Alternatively, he must make arrangements from wherever he is or he must issue a divorce to her. If he refuses to accept any of these options, the qādi will separate the two.

If the husband complies with the orders of the qādi, well and good. If not, the qādi will grant him one month’s reprieve or a few more days if he considers it suitable, after which, acting on the request of the wife, he will separate the two. This separation will be classified as a revocable divorce.¹

Observe the fatwā of Muftī Alfā Hāshim Mālikī:

Further reading: *al-Ḥilah an-Najīzah*, p. 192; *Kitāb al-Faskh wa at-Tafrīq*, pp. 75-77.

Allāh ta’ālā knows best.

**When a husband has an extra-marital affair**

**Question:**

A woman claims that her husband is having an extra-marital affair with a married woman. Consequently, he pays no attention at all to his house and children. He spends most of his free time with the other woman. He also abuses his wife physically, mentally and psychologically. He does not give her the full amount for the running of the house. Rather, it is her father who gives her most of the money.

¹ *Majmū’ah Qawānīn Islāmī*, p. 198, register 78.
The husband does not pay for the medical expenses of the children. In the light of these issues, can she ask for an annulment?

**Answer:**

If her claims are proven true, she will have a right to ask for a divorce. If the husband refuses, she must present her case to the jam‘iyyatul ‘ulamā‘ who in turn will investigate the matter. If the husband does not fulfill her rights and does not give up his extra-marital affairs, the jam‘iyyatul ‘ulamā‘ will have the authority to annul the marriage.

*Majmū‘ah Qawānīn Islāmī:*

If the husband speaks offensively to the wife, is vulgar and abusive to her or beats her severely then she will have the right of separation.

وَلَا تَسْمِكْهُمْ صِرَارًا لِّتَفْعَدُوا، وَمِنْ يَفْعَلُ ذَلِكَ فَقُدْ فَلَمْ تُنَفِّسَنَّ

Do not retain them to harass them so that you may oppress them. Whoever does this shall indeed harm his own self.¹

Now what can be worse than beating the wife severely and abusing her verbally!?²

It is stated further on:

If intense hatred develops between husband and wife, and it seems impossible to continue their marital life while upholding the orders of Allāh ta‘ālā, then in such a case:

1. The qādi‘ will appoint two arbiters who will seek to reconcile the two.

2. If, despite the efforts for reconciliation, there is no way that the two can agree to a separation; then the qādi‘ will separate the two on the basis of the mutual discord and the demand of the wife.³

Allāh ta‘ālā knows best.

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¹ Sūrah al-Baqarah, 2: 231.
² *Majmū‘ah Qawānīn Islāmī*, p. 199, register 81.
³ *Majmū‘ah Qawānīn Islāmī*, p. 200, register 82.
When a Maulānā effects a separation

Question:
A woman was married to a certain man. Discord developed between them. She left him and began living with her parents. The husband demanded that if the children are handed over to him as per the rule of the Shari‘ah, he will issue a divorce. The wife does not want to hand over the children to him. The wife got a Maulānā to issue a separation between the two without the husband’s knowledge. She then got married to someone else.

1. Is the annulment valid?
2. If the annulment is invalid, what is the status of the children born from the second marriage?
3. If the second husband passes away, will this woman inherit from him?

Answer:

(1)
The annulment is invalid because it has to be done by a Shari‘ah qāḍī. In the absence of the latter, it can be annulled through a jam‘īyyatul ‘ulamā’ or two arbiters. Even for this, there are certain rules and regulations which have to be followed. Therefore, annulment by just one ‘ālim is not possible. Based on this, the second marriage was invalid. The woman is still in the marriage of the first husband.

Al-Ḥilah an-Nājizah:
In all forms of a woman’s release from a marriage, it is unanimously agreed that neither she nor her guardians enjoy self-determination. Rather, the verdict of a qāḍī is a prerequisite. In other words, it is necessary for a woman to present her case before a qāḍī who will then undertake a formal Shari‘ah investigation. Only after that can he issue a verdict of separation or whatever else. In the absence of a Shari‘ah qāḍī, a group of Muslims will take the place of a qāḍī. This is how it will be done: The religious and influential Muslims of a place will make up a group consisting of no less than three individuals. The woman will present her case to them. They will investigate the matter and then issue a verdict in line with the Shari‘ah.¹

¹ Al-Ḥilah an-Nājizah, p. 248. Also, Chand Aham Fiqhī Masā’il, p. 60.
Note: Preconditions for the group of Muslims and arbiters were listed previously. A more detailed discussion will be presented towards the end of this chapter.

(2)

Since the marriage was not annulled, the second marriage is invalid. However, the children which are born from the second marriage will be legitimate.

(3)

The woman will be eligible for inheritance on the death of the first husband because she is in his marriage. She will not be eligible for inheritance from the estate of the second husband.

‘Allāmah Shāmī ṭaḥāmahullāh writes:

When a woman becomes an apostate

Question:
A woman is fed-up with her husband and he refuses to divorce her. Someone showed her a leeway by saying that – Allāh forbid – she must become an apostate and her marriage will break automatically. She must then become a Muslim after that. She did as advised. Did the woman’s marriage break? After becoming a Muslim again, can she marry any man other than her previous husband?

Answer:

Our seniors went into much details on this issue in their verdicts. Ḥadrat Muftī Muḥammad Shafi’ ṭālīb rahimahullāh went into considerable detail in ḳimdād al-Muḥfīyyīn – i.e. the old edition of Fatāwā Dār al-’Ulām Deoband. He quotes the texts of the jurists from pages 570

After quoting their statements, he writes:

If a woman becomes an apostate while her husband is a Muslim, then although this marriage will be annulled, she cannot marry another person. Rather, she is compelled by the Sharî‘ah that after she renews her Islam, she must renew her marriage with the same man. The dowry for this marriage will be less than normal. In this renewed marriage, the approval or disapproval of the woman is not considered. Instead, her new marriage will be valid by the order of a qâdî even if she disapproves. This is the fatwâ of the jurists of Bukhârâ. It is also the zâhir ar-riwâyah which is quoted in the various books and commentaries...

He writes in reply to another question that the Hanâfi madh-hâb has three views on this issue:

1. The marriage is annulled but the qâdî will compel the woman into renewing the marriage, and force her to get married to the same husband. This is the zâhir ar-riwâyah as found in the texts in general.

2. The marriage is not annulled, as is the verdict of many of the jurists of Balkh and Bukhârâ. *Ad-Durr al-Mukhtar* states that it is permissible to issue a fatwa on this view. Shâmî also quotes this fatwâ from *Nahr Fâ’iq*. The same fatwâ is to be found in *Fatwâ Qunyah*.

3. A narration of Nawâdir states that the woman will be classified as a slave and placed under her husband. This is mentioned in *ad-Durr al-Mukhtar* and other books.

The above three views are detailed in *Fatwâ Qâdî Khân*, *Fath al-Qadîr*, Qunyah, *ad-Durr al-Mukhtar* and *Shâmî*. All three views concur that after a woman becomes an apostate, she can never come out of the control of her husband. Instead, as per the first view, she will be compelled to renew her marriage after she renews her Islam. As per the third view, she will be placed under the husband’s authority as a slave. However, in the present situation in India, Muslims will not be able to apply these two views. The verdict will therefore have to be issued on the fatwâ of the jurists of Bukhârâ.

Therefore, in the case under question, the marriage of the woman has not been annulled. However, as a precaution, the husband should not have conjugal relations with her before renewing the marriage. No
matter what, it will be permissible for him to keep her in his possession. Allâh ta’âlâ knows best.¹

The jam‘iyyatul ‘ulamâ’ and other ‘ulamâ’ bodies of non-Muslim countries need to think earnestly on this issue. If a woman is really suffering abuses and these could be used as reasons for annulment, they should – as far as possible – hasten to make arrangements for the annulment of the marriage in the light of details in al-‘Ilah an-Nâjizah and other books so that the door to apostasy is shut.

Allâh ta’âlâ knows best.

**Separation on the verdict of a non-Muslim judge**

**Question:**
A woman in America went to court and presented a case for a divorce. She wanted a divorce through the court and this was done against her husband. Is the divorce valid, bearing in mind that the husband does not approve?

**Answer:**
The verdict of separation and divorce by the non-Muslim judge is invalid. The woman is still in the marriage of this man. Although the marriage has terminated in the government register, the Islamic marriage is still in-tact.

**Al-‘Ilah an-Nâjizah:**

In the absence of a Shar‘i‘ah qâ‘dî, if a government-appointed magistrate or judge who has the right to divorce is a Muslim, and he passes a verdict in line with Shar‘i‘ah rules, his verdict takes the place of a Shar‘i‘ah qâ‘dî. However, if he is a non-Muslim, his verdict is certainly not considered. Annulment, etc. can never be effected by his order.²

² Al-‘Ilah an-Nâjizah, p. 23.
Annulment in non-Muslim courts

Question:
Are the verdicts of divorce, annulment and separation passed by non-Muslim courts valid? Muslims are currently residing permanently in non-Muslim countries and they are faced with situations of this nature. Furthermore, in certain countries it is incumbent to go to court for such matters. If their verdicts are not valid, are there alternatives for their validity? Are there any alternative steps which could be adopted?

Answer:
There are situations in which the verdict of a non-Muslim judge can be in line with the Sharī‘ah ruling.

(1)

The husband presents a case in court to divorce his wife. The non-Muslim judge passes a verdict of divorce between the two after following legal procedures.

\[1\] Fatāwā Raḥīmīyyah, vol. 8, p. 377.

\[2\] Kišiyatul Muftī, vol. 6, p. 132.
According to the Sharī'ah, this verdict will be valid because although the Sharī'ah has given full right of divorce to the husband, in this case, the husband himself made an application to the court and made the non-Muslim judge his representative. The judge will dissolve the marriage as a representative of the husband. Therefore, the said marriage will be dissolved.

The marriage will break and one irrevocable divorce (tālāq-e-bā'in) will apply. This is because it is permissible to appoint a non-Muslim representative to do this. The 'iddah will be counted from the date of the decree.

(2)

The wife makes an application to the governmental court and asks for a separation. The non-Muslim judge passes a verdict of separation (divorce) between the two. In such a case, the verdict and the separation will be as follows:

a) The legal procedures were initiated and the husband received a notice from the judge. The husband gave a formal permission to the judge to continue with the proceedings. Divorce will apply in such a case.

b) The legal procedures were initiated. When the husband received the notice from the judge, he went to his lawyer who advised him that challenging the case will result in nothing but delays and expenses. The verdict of separation will be passed by the court. After obtaining the approval of the husband, the lawyer records that the two can be separated, or the husband himself signed his approval on the divorce papers. A Sharī'ah divorce will apply.

إذا قال الرجل طلق امرأتي كان توكيلًا ولم يقتصر على المجلس. (الفتاوى الهندية: 1/40)

When the husband says: “Issue a divorce to my wife”, it will be a representation for divorce.

من قال لامرأته انطلقي إلى فلان حتى يطلفك فذبت فطلفاها فلان وصير فلان توكيلًا بالتطبيق وإن لم يعلم بوكالته.

A man said to his wife: “Go to such and such person, he will issue a divorce to you.” She went to that person (judge) and he issued the divorce. The divorce will be valid. The one who issued the divorce (the
judge) will be classified as a representative for issuing the divorce even if he did not have knowledge of such an appointment.

c) The woman made an application for divorce. The judge sent a notice to the husband. He rejected it and did not express his approval. Despite this, the judge passed a verdict of divorce by the law.

d) The husband acknowledged his wrongs and convinced the court that he will fulfil his marital obligations in the future. Despite this, the judge passed a verdict of divorce.

e) The husband did not initiate any divorce procedures nor did he do anything to demonstrate his approval. Despite this, the judge passed a verdict of divorce.

f) The husband refused to challenge the application but explicitly refused to issue a divorce. Despite this, the judge passed a verdict of divorce.

In the last four cases (c, d, e, f), the marriage will be dissolved according to the court, but according to the Shari'ah, the marriage will still be in-tact. The woman cannot marry anyone else. However, she has the right to refer her case to a Shari'ah body which will investigate the matter. If the claims of the woman are true, it will have the authority to separate husband and wife.

According to the new British law of 2004, one additional question – among many others – is posed to the husband:

Do you consent to the decree being granted?

If the husband writes “yes”, it is as though the husband appointed the non-Muslim judge as his representative for the issuing of a divorce. The non-Muslim judge then issues a divorce to the woman as a representative of the husband. In such a case, an Islamic divorce also applies because it is not necessary for a representative to be a Muslim. A divorce via a non-Muslim representative is valid.1 (Condensed from İslâmî Qânûn Nikâh wa Talâq under the heading “The British law of divorce”, pp. 140-143.

Proofs:

1 Condensed from İslâmî Qânûn Nikâh wa Talâq under the heading “The British law of divorce”, pp. 140-143, by Maulâna Ya’qûb Qâsimî Şâhîb.
Another form of divorce

Question:

The challenges faced by women because of the absence of Sharī’ah judges do not need to be explained. Sometimes, the husband is oppressive and does not fulfil his wife’s rights. He neither provides for her nor does he divorce her. Furthermore, the conflict between the old and modern concepts of marriage is becoming quite common. Consequently, incidents of divorce are increasing. To avoid these issues and challenges, the man is asked to sign an agreement at the time of the marriage. Based on this agreement, if the need arises, the
woman has the right to apply a divorce to herself. Does the Sharī'ah permit such an agreement?

**Answer:**

An agreement of this nature wherein the woman is given the right of divorce, and which she exercises cautiously when needed, will be permissible and valid.

An agreement which is simple for the masses and beneficial to women is provided below.¹

ٓسَمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

RIGHT TO DIVORCE

I…………………………………….., resident of ……………………………………………………..write this right to divorce while I am fully in my senses, not under the influence of any intoxicants nor under any pressure or coercion, and do so willingly, that if my wife ……………………………………………………………………………….experiences any situation whereby I harm or hurt her in any way, do not fulfil her Sharī'ah rights, or cause her any mental anguish, then I give ……………………………………………………………………………….the right that if he receives any information of abuse from my wife ………………………………………………………………………………, he will consult a qualified and expert muftī. Through the latter’s guidance, he will issue an irrevocable divorce immediately or after some time to my wife and separate her from my marriage.

I have read this right of divorce, understood it, accepted it and signed it.

Signature: ………………………………….

Mr. ………………………………………………..read the above agreement and accepted it willingly in our presence. We are witnesses thereof:

Witness (1): ……………………………………………..

Witness (2): ……………………………………………….

ٓسَمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

AGREEMENT

I, ........................ reside in : Province: ................................................................., City: ................................................................., Town: ............................................................... . My nikāh was performed with ............................ , daughter of ................................................................. , with ....................... as my mahr, in the presence of a number of people. It was agreed that ................................................................. would come to stay with me as my wife only after my reaching South Africa/U.K. Both the parties have started the procedure for my entry into South Africa/U.K., and I have trust in Allāh that I will succeed. In case I fail to get an entry visa or leave to stay permanently in South Africa/U.K., the said will be in a difficult situation. So for the satisfaction of .......................... ................................. , I am signing the following agreement in my full senses, willingly without any pressure or coercion.

The agreement is that, if I enter into nikāh with .......................... , daughter of ................................................................., and thereafter fail to obtain an entry visa or leave to stay permanently in South Africa/U.K. in two years time, and if .......... ................................., father of ................................................................., thinks it proper to exercise one talaq-e-bā’in and free her from my nikāh, he will have full right to do so. I accept this agreement, and after going through it and understanding it I put my signature here ................................... .

Mr. ................................................................. read the above agreement, willingly accepted and signed it, in our presence. We are witnesses thereof:

1......................................................
2......................................................

Allāh ta’ālā knows best.
THE PRINCIPLES OF ANNULMENT AND SEPARATION

The meaning of annulment and separation, and the woman’s right to end a marriage

Question:
The Sharī‘ah gave full right of divorce to the man. A woman does not have the right to divorce herself. Is there any way a woman could put an end to a marriage by herself? If there is, kindly provide details.

Answer:
If, after marriage, the happy marital life between husband and wife crosses the boundaries and becomes intolerable; and it becomes impossible for husband and wife to live together, then the Sharī‘ah has given the husband the right to terminate the marriage through divorce, but while remaining within the limits of the Sharī‘ah. In like manner, the wife has the right to terminate the marriage through khula’ or annulment and separation.

At the same time, the Sharī‘ah warns against misuse of this law of separation over trivial arguments. Rasūlullāh sallallāhu ‘alayhi wa sallam said:

Any woman who separates herself from her husband through khula’ without any justifiable cause will not get the fragrance of Paradise.

Rasūlullāh sallallāhu ‘alayhi wa sallam said:

Any woman who asks her husband for a divorce without justifiable cause will have the fragrance of Paradise prohibited to her.

Yes, if there is no other way out, the wife will have the right to ask for an annulment.

Tafrīq (separation) refers to the termination of the marriage. There are two types of separation:
(1) In which the verdict of a qāḍī is a prerequisite.
(2) In which the verdict of a qāḍī is not a prerequisite.

Separation on the verdict of a qāḍī is a prerequisite in the following cases:

1. When the marriage was to a person who is not a kufū (compatible).
2. When the marriage was performed with a ridiculously low dowry.
3. When a minor girl is given the right of choice upon reaching the age of puberty.
4. When the husband does not fulfil his marital obligations.
5. When the husband cannot engage in sexual intercourse.
6. When the husband succumbs to leprosy, elephantiasis, Aids or any other similar harmful ailment.
7. When the husband is a lunatic.
8. When the whereabouts of the husband are unknown.
9. When the husband disappears.
10. When the husband does not pay for his wife’s maintenance despite having the means.
11. When the husband is incapable of paying for his wife’s maintenance.
12. When the husband is abusive to his wife.
13. When there is discord between husband and wife.
14. When the man deceives the woman about his condition and then marries her.
15. Separation because of prohibition by relationship by marriage (ḥurmat-e-mugāharat). If husband and wife decide to separate from each other on their own accord, the verdict of a qāḍī is not required. If not, it is obligatory.
16. Separation because of an invalid marriage. If husband and wife decide to separate from each other on their own accord, the verdict of a qāḍī is not required. If not, it is obligatory.

Separation on the verdict of a qāḍī is not a prerequisite in the following cases:
1. If the husband decides to leave the wife once relationship by marriage is confirmed, it will suffice for the termination of the marriage.

2. In the case of an invalid marriage, when either of the two decide to separate, it will suffice for the termination of the marriage.

3. Separation because of 'ilā‘ (refer to the chapter on 'ilā‘ for details).

4. Separation because of the husband becoming an apostate.

For further details refer to:

Majmū‘ah Qawānīn Islāmī, pp. 187-208; Kitāb al-Fashk wa at-Tafrīq of Maulānā ’Abd as-Šamad Raḥmānī; al-Ḥilah an-Nājizah, part two; Jadīd Fiqhī Masā’il, volume two; Tībbī Akhlāqiyyāt of Qādī Mujāhidul Islām.

Prerequisites for the qadā‘ or injunctions for the jamī‘yātul ‘ulamā‘

The verdict of a qādī is a prerequisite in most cases of annulment and separation. In the absence of a qādī, the verdict of a jamī‘yātul ‘ulamā‘ or jamā‘atul Muslimīn suffices. However, there are certain prerequisites, rules and regulations which have to be adhered to. Furthermore, all and sundry do not have the qualifications for issuing verdicts. There are certain conditions. Observe the following:

The post of qadā‘ (justice):

Qadā‘ is defined as passing verdicts on the disputes of people in line with the law revealed by Allāh ta‘ālā.

The verdict of a qādī cannot be against ijma‘.

The verdict of a qādī is not merely a piece of information but an order.

Prerequisites for the eligibility to the post of qadā‘:

1. The person must be of sound mind. A lunatic or one who is not in his senses is not qualified for this post.

2. The person must have reached the age of puberty. The appointment of an immature person is invalid.

3. The person must be a Muslim. A non-Muslim cannot be appointed as a qādī. If he is a non-Muslim, his verdict will not be promulgated.

4. The person has to be a free person.
5. The person must have eyesight. A blind person cannot be appointed as a qādi.
6. The person must neither be dumb nor deaf.
7. The person must not have been punished for slander.

Attributes of a qādi:

1. He must be a person of knowledge and virtue. He must have knowledge of the lawful and the prohibited, and other necessary injunctions.
2. He must have knowledge of the Qur‘ān and Sunnat, and the manner of ijtihād so that he can pass decisions correctly on various incidents and episodes.
3. He must have sufficient knowledge of the Arabic language, its different modes of expression, and terms and phrases.
4. He must have knowledge of the language, society, societal norms, expressions and vocabulary of the region or country in which he is a qādi.
5. He must not be averse to consulting the ‘ulamā’.
6. He must possess the quality of justice. In the definition of the jurists, a just person is one who abstains from major sins and does not persist in committing minor sins.
7. His good actions must supersede his minor sins.
8. He must abstain from places and situations of accusation.
9. He must not have a hasty temperament.
10. He must not be of bad character.
11. He must be firm in his character, intelligent, wise and righteous.

Prerequisites for the Jamā‘atul Muslimīn

Certain conditions have to be fulfilled for this group to take the place of a qādi. If these conditions are not found in a group, it will not be recognized by the Sharī‘ah.

1. It must comprise of a minimum of three people. The verdict of one or two person is not considered.

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1 Condensed from İslām ‘Adlāt of Qādi Mujāhidul İslām Qāsimī and İdāh an-Nawādir of Muftī Shabbīr Ahmad Qāsimī.
2. All members of this group have to be classified as 'ādil (just). An 'ādil person is one who abstains from major sins, does not persist in minor sins; and if he happens to commit a sin, he repents immediately. Therefore, the following persons cannot be members of this group: one who accepts usury, one who accepts bribes, one who shaves his beard, one who speaks lies, one who does not perform galāh. (If influential people of a certain place are not religious, they must give the right to a few religious people so that the decision is passed by a group which is accepted as religious by the Sharī'ah. The influential people will obtain the reward for their efforts in this regard).

3. The inclusion of 'ulamā' is a prerequisite. A group comprising of only laymen cannot take the place of a qādī. Therefore, efforts should first be made to have all members who are 'ulamā'. If this is not possible, at least one 'ālim who has an understanding of the issue should certainly be appointed as a member. Other members must understand all angles of the issue through the 'ālim and then voice their opinions. If this too is not possible, members of the group must consult the 'ulamā' on every aspect. They must then give their verdict in the light of the fatwā given by the 'ulamā'. If they do not do this, and pass their decision merely on their own opinions, the verdict will not be promulgated. It will be disregarded totally even though it may be in line with the Sharī'ah.

4. All members of the group must give a unanimous decision. If their opinions differ, and they want to pass a verdict on the majority view, it will not be considered. If differences of opinion persist, the case will be overruled.

If the verdict of separation could not be given because of differences of opinion among members, the application [by the woman] will not be declined perpetually. Rather, if the situation changes or the need for separation intensifies, she will have the right to present her request a second time. If the members concur on a verdict, separation will be effected.¹

Prerequisites for arbiters

According to the Mālikī madh-hab, arbiters have the right of separation. However, the majority of 'ulamā' are of the view that arbiters do not have such a right.

Because the Hanafis issued the fatwâ on the Mālikī view as regards annulment and separation, Hanafis also say that arbiters can effect a separation. Some details in this regard were given under the chapter on shiqāq (discord) together with the prerequisites for arbiters. Kindly refer to them.

Observe another text in this regard:

والحكام: حران مسلمان ذكران عدلان مكلفان فقيحان عالمان بالجمع والتفرقة لأن التحكيم يفتقر إلى الرأي والنظر، ويحوز أن يحكموا من غير أبلهما، والأول أن يحكموا من أبلهما، لأن القرابة ليست شرطاً في الحكيم ولا الوكالة. وينبغي لهما أن ينونوا الإصلاح لقوله تعالى: "إن بريداً إصلاحاً يوفق الله بينهما". وأن يلطفا القول، وأن ينصفاً، وبرغبا ويخففاً، ولا يخسوا بذلك أحد الزوجين دون الآخر، ليكون أقرب للتوفيق بينهما.

وينفذ عند المالكية تصرف الحكيمين في أمر الزوجين بما رأياه من تطليق أو خلع، من غير إذن الزوج ولا موافقة الحاكم، بعد أن يعجز عن الإصلاح بينهما، وإذا حكما بالفراق فهي طلقة بائنة. (الفقه الإسلامي وأدعه: 207-341، دار الفكر).

Allâh ta’âlā knows best.
‘IDDAH

The meaning of ‘iddah in the Shari‘ah

The extent of time which the Shari‘ah prescribed to put an end to the effects of marriage is named ‘iddah.

(بدائع الصنائع في ترتيب الشريعة: 198/2، سعيد)

Prerequisites for the obligation of ‘iddah

If after a valid marriage, separation takes place before sexual intercourse or privacy between spouses, then an ‘iddah is not obligatory. However, if the husband passes away, ‘iddah is obligatory. The mere fact that the spouses were in privacy causes ‘iddah to become obligatory irrespective of whether the privacy was valid or not.

والدورة المختار:

وبسبب وجوبي عقد النكاح المتآخذ بالتسليم وما جرى مجزأ من موته أو خلوء أي صحية فلا عدة بخلوئ الرتقاء وشرطها الفرقة.


The period of ‘iddah

1. The ‘iddah after death of the husband is four months and ten days according to the lunar calendar. If the woman is pregnant, her ‘iddah will be until delivery of the child.

2. The ‘iddah for a divorced woman is three complete menstrual cycles. If she does not experience menses
either because of being too young or too old, her 'iddah will be three lunar months. If the divorced woman is pregnant, her 'iddah will be until delivery of the child.

The commencement of 'iddah

'Iddah commences after separation, divorce, khula', mutual separation or death. This is irrespective of whether the woman was aware of any of these things or not.
If the 'iddah is not starting on the first of the lunar month, each month will be counted as thirty days. In such a case, the 'iddah of death will total one hundred and thirty days. And in the case of divorce and separation, the 'iddah for a minor or old woman will be ninety days.
Allāh taʾālā knows best.

ʻIddah because of privacy with an immature husband

Question:
A boy and girl who hadn’t reached the age of puberty got married. They were also in privacy with each other. After puberty, the boy divorced the girl. Is ʻiddah obligatory on her, bearing in mind that they were not in privacy after reaching puberty?

Answer:
When husband and wife go into privacy after marriage in a way that there is no fear of anyone else coming there, then ʻiddah becomes obligatory on the woman even if this meeting was before the age of puberty. Therefore, in this case, ʻiddah is obligatory.

لا فرق بين أن يكون الزوج أو الزوجة أو كل منهما صغيرًا، قال في البحر: وفي خلوة الصغير الذي لا يقدر على الجماع قولان، وجزم قضيضان بعدم الصحة فكان بwoo المعتمد ولذا قد في الذخبرة بالمرابق، وتجب العدة خلوته. وإن كانت فاسدة، لأن تصريحهم بوجوبها بالخلوة الفاسدة شامل خلوة الصبي.

(فتوى الشافعی: 51/15، باب الم heirs، أحكام الخلوة، ط: سعيد)

Allāh taʾālā knows best.

ʻIddah because of privacy with an impotent husband

Question:
A man got married but cannot engage in sexual intercourse because of impotence. He divorced his wife. Does she have to observe ʻiddah?

They spent a few days together.

Answer:
Since they spent few days together – i.e. they were in privacy - ‘iddah is obligatory even though the husband was not able to have conjugal relations. Whether privacy is valid or not, ‘iddah becomes obligatory.
Allāh ta’ālā knows best.

**Spending one night with a menstruating woman and then divorcing her**

**Question:**

A man married a woman. They spent the first night together but the woman was in her menses. This is why they could not have sexual intercourse. He then divorced her and paid the dowry. Is it obligatory on her to observe the ‘iddah?

**Answer:**

‘Iddah will be obligatory on her even though their time of privacy was not valid. ‘Iddah is obligatory even with an invalid privacy.

**البحر الرائق:**

قوله: "عدة الحرة للطلاق أو الفسخ ثلاثة أقراء ولم يقيد بالدخول بناء على أن الأصل في النكاح الدخل ولا بد منه حقيقة أو حكماً حتى تجب على مطلقة بعد الخلع ولو فاسدة. (البحر الرائق: 4/238، ط: كوشة)"
البداية:

لا يمكن أن يكون أحد من منحة أو كان صانعاً في رمضان أو محرماً بمجيء فرض أو نقل
أو بعضهما أو كانت حائضاً فليس تحت الحلوة صحيحة... إلى قوله وعليها العدة في
جميع هذه المسائل احتياطًا واستحسانًا لتوت الشغل والعدة حق الشرع.

البداية: ۳۲۳/۲، (باب المهر)


*Allāh ta‘ālā* knows best.

**When the woman is unable to have intercourse**

**Question:**

After getting married, the husband learnt that his wife is unable to have intercourse because of some illness or impediment. This resulted in divorce. Does she have to observe 'iddah?

**Answer:**

Husband and wife got together after the marriage, and the divorce was after that. 'Iddah will be obligatory even though the woman was not in a position to have intercourse. The obligation of 'iddah will not fall off.

الدر المختار:

والحلوة... بلال مانع حسبا كمرض لأحدهما يمنع الوطام ومن الحسي رتق...التلامح وقرن عظم وعفل غدة. وفي الشائ: قوله: عظم في البحر عن المغرب: القرن في الفرج مانع يمنع من سلول الذكر فيه إما غدة غليظة أو حم أو عظمواب امرأة رتفها بها ذلك ومقتضاه ترافد القرن والرتق. قوله: عفل غدة، أي في خارج الفرج، فقى القاموس: أن شيء خرج من قبل المرأة شيء بالأدرة للرجل... وتحب العدة... وإن كانت فاسدة، فإن تصريحهم بوجوبها بالحلوة الفاسدة. (الدر المختار مع رد المختار: ۳/۲۱۳، باب المهر، أحكام الحلوة)

*Allāh ta‘ālā* knows best.
**When the husband becomes an apostate**

**Question:**
The moment the husband becomes an apostate, his wife comes out of his marriage automatically. Can she enter into another marriage, or does she have to observe the 'iddah?

**Answer:**
The moment the husband becomes an apostate, his wife comes out of his marriage automatically. However, for her to marry a Muslim, she will have to observe the 'iddah. Marriage will not be valid without observing the 'iddah. The time of 'iddah will commence from the time her husband becomes an apostate.

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1 Majmūʿah Qawānīn Islāmī, p. 208.
'iddah. She can enter into a new marriage after the 'iddah. The commencement of 'iddah will be counted from the time her husband became an apostate.\textsuperscript{1}

The obligation of 'iddah because of mistaken sexual intercourse

Question:
A man had intercourse with someone else’s wife on the assumption that she was his own wife. He then learnt that she was not his wife. Does the other woman have to observe 'iddah? What is the ruling as regards 'iddah in an invalid marriage? If a child is conceived, what is the status of the child?

Answer:
'Iddah is obligatory in both cases – after a mistaken intercourse and an invalid marriage after penetration. The 'iddah is three menstrual periods. If the woman does not experience menses because she is either too young or too old, her 'iddah will be three lunar months. If she is pregnant, her 'iddah will expire with the delivery of the child. The child which is born from the mistaken intercourse is not illegitimate. The child belongs to the one who engaged in intercourse mistakenly.

الفتاوى الهندية:
إذا دخل الرجل بالمرأة على وجه شبهة أو نسج فاش فعال المهر وعليها العدة ثلاث حيض إن كانت حرة، فإن كانت لا تحيض من صغر أو كبر فعدة الحرة ثلاثة أشهر. (الفتاوى الهندية: ٢٩١، وكدما في بدائع الصنائع: ٣٩٣/٣، سعيد.
والدر المختار: ٣٥٥، سعيد)

Allāh ta’ālā knows best.

The obligation of 'iddah on a minor girl

Question:
A mature man got married to a minor girl. Divorce took place after being in privacy with each other. Does she have to observe 'iddah?

\textsuperscript{1} Fatāwā Dār al-‘Ulām Deoband, vol. 10, p. 333.

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Answer:
The mature husband was in a valid privacy with a minor girl. He then divorced her. 'Iddah is obligatory even if they did not engage in sexual intercourse. Privacy between husband and wife is sufficient for the obligation of 'iddah.

Question:
A man issued an irrevocable divorce or three divorces to his wife. While she was observing her 'iddah, he mistakenly had intercourse with her. Does she have to restart her 'iddah or must she continue with the present 'iddah?

Answer:
If a person has intercourse mistakenly while she is observing her 'iddah, it will be obligatory on her to restart it. The two 'iddahs will be interlinked. In other words, after completing her first 'iddah, she must observe the remaining days of the second 'iddah. It is not necessary to observe each one separately. However, when a new divorce is issued, the first 'iddah is counted for the sake of maintenance (nafaqah) of the wife.
بدائع الصنائع:

العُدَّةن إذا وجبناً أن نستَّدِخلان سواء كانتا من جنس واحد أو من جنسين
وصورة الجنس الواحد المطلقة إذا تزوجت في عدبتها فوطِّينها الزوج ثم تثارَكا
حتى وجبت عليها عدة أخرى فإن العُدَّتين يستَدِخلان عندنا وصورة الجنسين
المختلفين المتوافقة عنها زوجها إذا وُلدت ببشرية تداخلت أيضاً وَعَيَدَت بما رأت
من الحيض في الأشهر من عدة الوطء عندنا. (بدائع الصنائع: 198, باب
العدة ط: سعيد)

الفتاوى الهندية:

إذا طلقتا بتطليقة بائنة أو بتطليقتيين بائنتين ثم وطبتا في العدة مع الإقرار
بالحرمة كان علينا أن تستقبل العدة استقبلاً بيسكل وطأة وتَدَخل مع الأولى
إلا أن تنقضى الأول إذا انقضت الأولى ويقيت الثانية والعائلة كان الثانية
والعائلة عدة الوطء حتى لو طلقتا في هذه الحالة لا يقع طلاق آخر الفضل أن
المعتدة بعدة الطلاق يلحقها الطلاق والمعددة بعدة الوطء لا يلحقها الطلاق
وأما المطلقة ثلاثاً إذا جمعها زوجها في العدة وادعى الشبيبة بأن قال طلنت
أنها نحلت لي تستأنف العدة بيسكل وطأة وتَدَخل مع الأولى إلا أن تنقضى
الأولى إذا انقضت الأولى ويقيت الثانية والعائلة كان بعدها عدة لوطء لا
تستحق النفقة في هذه الحالة. (الفتاوى الهندية: 33/1, باب العدة. وكذا في
الفتاوى النباتار خانة: 6/36)

Allāh ta‘ālā knows best.
The issue of 'iddah when a woman is divorced before she goes over to her husband

Question:
A man got married. His wife hadn't left her parents house to go over to him as yet, and he divorced her. Does the woman have to observe 'iddah?

Answer:
If after the marriage there was no type of privacy or meeting between husband and wife, there is no 'iddah. But if the two met in privacy, 'iddah will be obligatory even if the private meeting was invalid.

قال الله تعالى: ثم طلقتمومن قبل أن تمسومن فما حكم عليين من عدة. (سورة الأحزاب: الآية: 49)

فتح القدير:
أن الطلاق قبل الدخول لا تجب فيه العدة، قال الله تعالى: "إذا تسقط المؤمنات ثم طلقتمومن قبل أن تمسومن فما حكم عليين من عدة تغدوهنبا. (فتح القدير: 4/308، باب العدة، دار الفكر)

فتاوى فاضيكان:
إذا كان الفساد بعجره عن الوطاء حقيقة لا يجب عليها العدة وكذا لو طلقتها قبل الخروج. (فتاوى فاضيكان على ناشئة الهندية: 49/1)

البحر الرائق:
وأما سبب ووجبها فكل نوع منها سبب فعدة الأفراد لوجبها أسباب منها الفرقة في النكاح الصحيح سواء كانت طلاق أو بغير طلاق بعد وطأ أو خروج. (البحر الرائق: 138/4)

وفي الدر المختار: وسبب ووجبها عقد النكاح المتتأكد بالتسليم أي بالوطاء وما جرى من موت أو خروج أي صحيحه، قال الشافعي في نظره، فإن الذي
We learn from the above that the reason for the obligation of 'iddah is privacy or intercourse. If divorce takes place without intercourse or privacy, 'iddah will not be obligatory.

_Fatwā Mahmūdiyyah:_

If the husband neither had intercourse with the woman nor were the two in privacy, and he divorced her, 'iddah is not obligatory on the woman. She may marry whenever she wants.¹

_allāh ta‘ālā knows best._

_‘Iddah for a minor girl who is not old enough for intercourse_

**Question:**

A man got married to a minor who cannot have intercourse. He divorced her some time after that. Does she have to observe ‘iddah?

**Answer:**

If a girl is so young that she cannot have intercourse, and the man divorced her after being in privacy with her, she has to observe the ‘iddah.

¹ _Fatwā Mahmūdiyyah, vol. 13, p. 381._
Fatāwā Dār al-ʿUlūm Deoband:

Question: If Hindah who is a minor lived with her husband but cannot engage in intercourse [because of her young age], will she have to observe the 'iddah of divorce?

Answer: 'Iddah becomes obligatory once husband and wife are in privacy, even if intercourse does not take place. As stated by Shāmī. ¹

Allāh taʿālā knows best.

‘Iddah for a non-Muslim woman

Question:
A non-Muslim woman was married to a non-Muslim man. The man then died. Can this woman marry a Muslim man without having observed the 'iddah?

Answer:
When a non-Muslim man dies, his non-Muslim wife does not have to observe 'iddah. She can marry any Muslim man immediately. Yes, the new Muslim husband cannot have intercourse with her immediately after the marriage. Rather, he can only have intercourse after she completes one menstrual cycle. However, if she is pregnant, she will have to observe the 'iddah until she delivers the child.

Allāh ta’ālā knows best.

‘Iddah for a new Muslim

Question:
A non-Muslim woman was married to a non-Muslim man. The latter then died. The woman embraced Islam after that. Does she have to observe ‘iddah?

Answer:
If there are still days of ‘iddah remaining [after embracing Islam], she will have to observe it. This is because she becomes obliged to follow the injunctions of Islam once she becomes a Muslim. And ‘iddah is one of the injunctions of Islam.

الفتاوى الهندية:
لو أسلمت الكافرة في العدة لزمها الإحداد فيما بقي من العدة كما في الجويره
الشیرة. (الفتاوى الهندية: ۱/۳۴) ۱۹۱/۳

بدائع الصنائع:
إذ فأن أسلمت الكتابية في العدة لزمها فيما بقي من العدة ما يلزم المسلم بان
المانع من الزوم بو السكرر وقل زال بالإسلام. (بدائع الصنائع: ۱۰۸/۳، أحكام
العدة، ط: سعيد)
It is stated in *Fatāwā Dār al-‘Ulām Deoband* (vol. 10, p. 308) that it is permissible to marry a woman immediately after she embraces Islam. However, we cannot understand this ruling in the light of the above proofs.

Allāh ta‘ālā knows best.

**The method of observing ‘iddah in a Sunnah divorce**

**Question:**
A man issued one divorce to his wife while she was in a state of purity. He issued another divorce in the next time of purity, and a third divorce in the third time of purity. How will she observe the ‘iddah? After the third divorce, will she count three menstrual cycles or just one?

**Answer:**
After the two divorces, two menstrual cycles of the ‘iddah have passed. Therefore, after the third divorce, she will have to wait for just one menstrual cycle. Once the menstrual cycle ends, her ‘iddah will be over. It is not necessary to wait for three menstrual cycles after the three divorces.

Observe the following narration in *Ibn Mājah*:

عن عبد الله بن مسعود رضي الله تعالى عنه قال في طلاق السنة: يطلقا عند كل طهر تطليقة، فإذا طهرت الثالثة طلقنها وعليها بعد ذلك حيضة. (رواه ابن ماجه: 145/1)
Calculating the ‘iddah by months

Question:
The following is stated in the Family Laws Ordinance of Pakistan: When a woman is divorced, she must observe the ‘iddah for ninety days. She can then enter into another marriage. What is the ruling according to the Shar’ah? Is it three menstrual cycles, three periods of purity or three months?

Answer:
As per the Book of Allāh and the Sunnah of Rasūlullāh ṣallallāhu ‘alayhi wa sallam, a woman who experiences menstruation will observe an ‘iddah of three menstrual cycles. This is according to the Ḥanafī madh-hab. Observing three months is not enough. Only after completing three menstrual cycles will a woman be permitted to enter into another marriage.

A few proofs from the Qur’ān and Ḥadīth are quoted below:

وَلَيْنَطِلْنَّ بِكَلَّمَةٍ ثَلَاثَةَ نَسُوءٍ ثَلَاثَةَ فَرَوْءَٰٓؤُوٓ

The divorced women shall keep themselves in waiting for three menstrual periods.¹

Ḥadrat Muftī Muḥammad Shafī’ Ṣāḥib rahimahullāh writes:

¹ Sūrah al-Baqarah, 2: 228.
Divorced women (with whom the husband was in privacy or had intercourse, experiences menstruation, is a free woman, i.e. not a slave as defined by the Sharī'ah) must desist (from marriage) until (the completion of) three menstrual cycles. (This is known as ‘iddah).

The word *qurū‘* (plural of *qar‘*) in the above verse refers to menstruation. The proofs for this are as follows:

1. "...when you experience menstruation, you must not perform salāḥ. This Hadith clearly shows that the word *qar‘* refers to menstruation.

2. A mustahādah will abstain from salāḥ during her days of menstruation. Here too, the word *qurū‘* means menstruation.

3. "...

4.

عن عائشة رضي الله تعالى عنها أن أم حبيبة رضي الله تعالى عنها استحيضت... قال: لتنظر قدر قوءها التي كانت تحيض لها. (سنن النساء: 6/25. ومسند الإمام أحمد بن حنبل: 1352/6).

In the above narration, Ḥadīth Umm Ḥabībah raddiyyallāhu 'anāhā experienced istihbād, so Rasūlullāh sallallāhu 'alayhi wa sallam said to her: “Wait equal to the number of days of menstruation.” He used the word qar’ to refer to menstruation.

Furthermore, there are many narrations which show that ‘iddah is calculated according to the menstrual cycle. Observe the following Ahādīth:

1.

عن ابن عباس رضي الله تعالى عنهما أن امرأة ثابت بن قيس اختلطت من زوجها عل عبد رسول الله صلى الله عليه وسلم، فأمرها النبي صلى الله عليه وسلم أن تعت بحيضها. (روأه الترمذي: 432، وابو داود: 352، والحاكم وصححه، ووافقه النجبي: 484، 516/281/6).

2.


ولن شابد من حديث عائشة رضي الله تعالى عنها، انظر: أبو داود: 318، سنة طلاق العدو، والترمذي: 944/1، طلاق الامة تطليقتان، والسنت الكبرى

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(3)
عن عبد الله رضي الله تعالى عنه قال في طلاق السنة: يطلقها عند كل طهر تطليقة، فإذا طهرت الطالفة طلقيها، عليها بعد ذلك حيضة. (سنن ابن ماجة: 155/1)

(4)
عن عائشة رضي الله تعالى عنها قالت: أميت بريرة أن تعتمد بثلاث حيض. (سنن ابن ماجة: 1/150 و مصنف عبد الرزاق: 7/65)

(5)
عن ابن عمر رضي الله تعالى عنهما في الأمة تحكون تحت الحر: تبين بتطليقتين وتعتمد حيضتيما، وإذا كانت الحرية تحت العبده بانت بتطليقتين وتعتمد ثلاث حيض. (السنن الكبرى للنبي: 7/369 و سنن الدارقطني: 29/4)

Note: In the above narration, the husband who is a slave is taken into consideration. This is probably the view of Ibn 'Umar radhiyallahu 'anhu.

(6)
عن عطاء بن أبي رباح أن مارية اعتدت بثلاث حيض بعد النبي صلى الله عليه وسلم يعني أم إبراهيم. (السنن الكبرى: 7/448)

(7)
سئل عمر رضي الله عنه عن رجل غاب عن امرأته، فبلغها أن مات فتزوجت ثم جاء الزوج الأول، فقال عمر رضي الله تعالى عنه: يختر الزوج الأول بين الصداق وامرأته، فإن اختار الصداق تركها مع الزوج الآخر، وإن شاء اختار امرأته، وقال علي رضي الله تعالى عنه: لبنا الصداق بما استحل الآخر من
There are several narrations in Musannaf Ibn Abi Shaybah, Musannaf ‘Abd ar-Razzāq and Sharh Ma‘ānī al-Āthār from which it is learnt that the ‘iddah is calculated through the menstrual cycles.

The Muftī of Baghdad, ‘Allāmah Ālīṣī rahimahullāh writes:

Allāh ta‘ālā knows best.

‘Iddah for a woman in perpetual purity

Question:
A divorced woman is presently suckling an infant and is in perpetual purity. How will she observe the ‘iddah? Also, if a woman does not experience menses for long periods of time, how will she observe the ‘iddah? Will she wait for the menses or calculate the ‘iddah according to the number of months?

Answer:
Generally, a breastfeeding woman is not perpetually pure. Instead, in most cases she experiences menses within a few months. She will therefore have to observe ‘iddah according to her menses. Yes, if a woman is certainly perpetually pure that waiting for so long will make it unbearable for her to observe the ‘iddah, she must seek medical treatment for experiencing menses. If the medical treatment fails to do this and there is a strong fear of falling into sin, she must obtain a fatwā from a Mālikī muftī who will rule that she must observe ‘iddah for nine months or one year. Alternatively, she must consult a Sharī’ah body and act on its verdict.
البحر الرائق:

في الفتوى البيزانية: بلغت فرأت يومًا دماً ثم انقطع ومضى حول ثم طلقت فعدتها بالحيض وراء ثلاثة أيام وانقطع ومضى سنة أو أكثر ثم طلقت فعدتها بالحيض إلى أن تبلغ حد الإياس وبو حمس وخمسون سنة في المختار، انة مالك للإياس قسمة أشهر نسباً لاستمرار الرحم وثلاثة أشهر للعودة، قال العلامة والفتوى في زمانا على قول مالك في عدة الآية.

(الفتوى البيزانية على بامش الهندية: 456/4، العام في العدة)

وفي الفتوى البيزانية: بلغت فرأت يومًا دماً ثم انقطع ومضى حول ثم طلقت فعدتها بالحيض وراء ثلاثة أيام وانقطع ومضى سنة أو أكثر ثم طلقت فعدتها بالحيض إلى أن تبلغ حد الإياس وبو حمس وخمسون سنة في المختار، انة مالك للإياس قسمة أشهر نسباً لاستمرار الرحم وثلاثة أشهر للعودة، قال العلامة والفتوى في زمانها على قول مالك في عدة الآية.

(البحر الرائق: 456/41، باب العدة، كونته، وفتاوى الشأي: 297/4، باب العدة، كونته، وفتاوى الشأي: 297/4)

عدد الحرة للطلاق أو الفسخ ثلاثة قروء وثلاثة أشهر إن لم تتعش أي عدد الحرة إن لم تتعش من ذوات الحيض صغير أو كبير... وخرج يقول إن لم تتعش الشابة المبتد طبعا فلا تعبد بالأشهر، وصورة إذا رأت ثلاثة أيام

وانقطع ومضى سنة أو أكثر ثم طلقت فعدتها بالحيض إلى أن تبلغ إلى حد الإياس وبو حمس وخمسون سنة في المختار، كذا في البيزانية ومن الغريب ما في البيزانية: قال العلامة والفتوى في زمانها على قول مالك في عدة الآية، ولو قضى فاض بانقضاء عدد المبتد طبعا بعد مضي قسمة أشهر نفذ كما في جامع الفصولين ونقل في المجيب إن مالك يقول إن عدها تنقضي يتماً حول وفي شرح المنظومة إن عدد المبتد طبعا تنقضي بقسمة أشهر كما في الذبيرة معرباً إلى حيض منها الشريعة ونقل مثله عن ابن عم رضي الله عنه قال، وهذه المسألة يجب حفظها لأنها كثيرة الوقوع وذكر الزادي وقد كان بعض أصحابنا يفقرون يقولون مالك في هذه المسألة للضرورة خصوصاً الإمام والدي.
According to Hanafis, the 'iddah of a perpetually pure woman will be completed through her menses until she reaches the age of despair. However, İmam Mālik rahimahullāh gives the verdict of observing 'iddah for nine months or one year for a woman who does not experience menses. If there is a severe need and a danger that if she does not enter into a second marriage, she will fall into harām; she may obtain a fatwā from a Mālikī jurist and act accordingly.1

If a woman does not experience menses from the very beginning, she will be classified an āyisah (a woman who despairs of experiencing menses) when she turns thirty. If she experiences menses in the beginning but subsequently it ceases totally or she experiences it after long periods of time, she will be classified as an āyisah when she reaches the age of fifty five. The 'iddah of both these women is three months. However, in the second case, the prerequisite is that she must not have experienced menses for at least six months. If this six-month period passed before she reaches the age of fifty five, it will also be considered. In other words, when she passes the age of fifty five, her 'iddah will end after three months. In both cases, if these women experience menses before the completion of three months, they will have to restart the 'iddah and calculate it according to three menses.

If a woman has to observe 'iddah before the age of āyās (despair), she must seek medical treatment to experience menses, and then observe three menstrual periods. If medical treatment does not enable her to experience menses, and there is a need, she may refer to a Mālikī qādī and obtain a verdict of 'iddah for one year. If a Mālikī qādī cannot be

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1 Kifāyatul Mufti, vol. 6, p. 401.
accessed and she has a severe need, a fatwā of one year can be issued without a qāḍī.¹


Allāh ta’ālā knows best.

*Iddah when the husband passes away before the wife can go over to her husband*

**Question:**
A girl got married but she was not handed over to her husband as yet. Neither were the two in privacy. The husband passed away. Does she have to observe 'iddah?

**Answer:**
A woman whose husband passes away has to observe 'iddah under all conditions. This is irrespective of whether she went over to her husband or not, whether they were in privacy or not. It is essential to observe the 'iddah of four months and ten days. If she is pregnant, her 'iddah will be until she gives birth.

 وأما الذي يجب أصلاً بنفسه فهو عدة الوفاة وسبب وجوبا الوفاة، قال الله تعالى: "والذين يتوفون منكم ويذرون أزواجاً يترضى بألباس أربعة أشهر وعشراءً" وإنها تجب لإظهار الحزن بفوت نعمتا النكاح إذ النكاح كان نعمة عظيمة في حقها فإن الزوج كان سبب صيانتها وعقافها وإيفادها بالشفقة والكسبا والمسنن فوجب عليها العدة إظهاراً للحزن بفوت النعمة تعريفاً لقدرها وشرط وجوبا النكاح الصحيح فقط فنجب بهذا العدة على المواقي عنها زوجها سواء كانت مدخولاً بها أو غير مدخولاً بها وسواء كانت من تحيض أو من لا تحيض لعوم قولع عر وجل (ببدائع الصنائع: ۲۳۸/۲ سعيد، والفتاوى الهندية: ۵۹/۲، والدر المختار مع الشاولي: ۵۹/۵۷، باب العدة، سعيد):

Allāh ta’ālā knows best.

¹ *Aḥsan al-Fatāwā*, vol. 5, p. 435.
When information of the husband’s death is received after the period of 'iddah

Question:
A man passed away but his wife did not receive the news of his death immediately; she received it after a long time. Does she have to observe 'iddah bearing in mind that four months and ten days have passed since his death? In fact, more than that time has passed. Or will she start observing 'iddah from the time she received the news?

Answer:
The 'iddah commenced from the day her husband passed away and ended the moment four months and ten days passed. There is no need to observe 'iddah after having received the news of his death after the passage of such a long time. The reason for this is that 'iddah is dependent on death; not on receiving information of death. Therefore, 'iddah commences even if she does not receive news of her husband’s death.

Allâh ta'âlâ knows best.
I'ddah of death during I'ddah of divorce

Question:
A man divorced his wife. She was observing the I'ddah of divorce when her husband passed away. Must she complete the I'ddah of divorce or must she start the I'ddah of death? Or must she observe two separate I'ddahs?

Answer:
There are three scenarios with respect to a husband passing away while the wife is observing the I'ddah for divorce, and there is a separate ruling for each one.

1. If the woman is pregnant, her I'ddah will be until delivery of the child. Both I'ddahs will end with the birth of the child even if this happens a few moments after.

2. If the woman is not pregnant and the I'ddah is for a revocable divorce (talāq-e-raj'i), the first one will be cancelled and she will observe the I'ddah for death.

3. If the I'ddah is for an irrevocable divorce (talāq-e-bā'in), then she will observe the I'ddah which is the longer of the two. If one finishes first, she will observe the remaining days of the second I'ddah. In this way, both I'ddahs will be completed.¹

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'Iddah of death during 'iddah of divorce

Question:
A man divorced his wife. She was observing the 'iddah of divorce when her husband passed away. Must she complete the 'iddah of divorce or must she start the 'iddah of death? Or must she observe two separate 'iddahs?

Answer:
There are three scenarios with respect to a husband passing away while the wife is observing the 'iddah for divorce, and there is a separate ruling for each one.

1. If the woman is pregnant, her 'iddah will be until delivery of the child. Both 'iddahs will end with the birth of the child even if this happens a few moments after.

2. If the woman is not pregnant and the 'iddah is for a revocable divorce (talāq-e-raj'i), the first one will be cancelled and she will observe the 'iddah for death.

3. If the 'iddah is for an irrevocable divorce (talāq-e-bā'in), then she will observe the 'iddah which is the longer of the two. If one finishes first, she will observe the remaining days of the second 'iddah. In this way, both 'iddahs will be completed.¹

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¹ Āp Ke Mas'ā'il, vol. 5, p. 413.
Allāh ta’ālā knows best.

‘Iddah for a woman whose child dies in her womb

**Question:**
A pregnant woman was observing ‘iddah when the child in her womb passed away suddenly. How will she complete her ‘iddah?

**Answer:**
The womb will be cleansed through medication or an operation. If she had been pregnant for four months or more, her ‘iddah has ended. If she was pregnant for a lesser period, her ‘iddah will end after three menstrual periods.

Also refer to *Aḥsan al-Fatāwā*, vol. 5, p. 429.
Allāh ta‘ālā knows best.

‘Iddah when the pregnancy becomes dry

Question:
A woman’s husband passed away while she was pregnant. Her pregnancy became dry. How will she observe the ‘iddah?

Answer:
If the pregnancy of such a woman is confirmed, her ‘iddah is until delivery of the child. If her pregnancy is not confirmed, or it was confirmed but turned dry, her ‘iddah will be four months and ten days.

وَأَوَلَّاتُ الْأَخْتَامُ أَعْلَهُنَّ أَنْ يَضْعَفُنَّ خَلْفَهُنَّ.

As for those who are pregnant, their waiting period is that they deliver their burden.¹

وَالَّذِينَ يَتَوَقُّونَ مَنْصُورًا وَيَدُورُونَ أَزْوَاجًا يُبَرَّضُونَ بِأَنْفَضَهُنَّ أَرْبَعَةَ أَشْهُرَ وَعَشَرَاءَ.

Those of you who die and leave behind their wives, those wives should keep themselves in waiting for four months and ten days.²

الفتاوى الهندية:

عدة الحرة في الوفاة أربعة أشهر وعشرة أيام سواء كانت مدحولًا بها أو لا مسلمة أو كنائبة تحت مسلم صغيرة أو كبيرة أو آبى و الزوجة حري أو عبد حاضر في هذه المدة أو لم ترض ولم يظهر بيلها كذا في فتح القدير. (الفتاوى الهندية: 599/1)

¹ Sūrah at-Tālāq, 65: 4.
² Sūrah al-Baqarah, 2: 234.
When the child becomes dry in the womb, the Sharī'ah will not consider the woman to be pregnant. Her 'iddah will be four months and ten days like a non-pregnant woman...thus, when reference is made to a pregnant woman, it refers to one whose pregnancy has been established and confirmed. Once her pregnancy turns dry, it does not remain confirmed.1

Allāh ta'ālā knows best.

‘Iddah when a woman has an abortion

Question:
What is the 'iddah for a woman who has an abortion? Will the 'iddah end with the abortion or will she have to observe three menstrual periods?

Answer:
If she has an abortion after four months of the pregnancy had passed, her 'iddah has ended. There is no need for a new 'iddah. If her pregnancy was less than four months, her 'iddah will end after three menstrual periods. It will not end solely by the abortion. However, it is a sin and not permissible to have an abortion after four months of pregnancy without any strong Sharī'ah reason.

If the pregnancy is four months or more, the 'iddah will end with the abortion. If not, it will end after three menstrual periods. It is not permissible to have an abortion after four months. There is difference of opinion on the permissibility of abortion before four months. The preferred view is that it is also impermissible unless there is a compelling reason. There is no harm in the 'iddah until birth.\(^1\)

Allāh ta’ālā knows best.

‘Iddah when divorce is issued two years after separation

Question:

A man has two children from his wife, but because of some discord between the spouses, the woman has been living away from him for the last two years. They did not meet during this period. The man now issued a divorce to her. Some people say that ‘iddah is prescribed to ascertain the emptiness of the womb. Since this has been ascertained from before, she does not have to observe the ‘iddah. What is the ruling of the Sharī‘ah? What are the wisdoms behind ‘iddah?

Answer:

If a woman is divorced two years after being separated from her husband, it is essential for her to observe the ‘iddah. In addition to

\(^1\) Akṣan al-Fatāwā, vol. 5, p. 432; Fatāwā Ḥalīmīyāh, vol. 8, p. 404.
ascertaining the emptiness of the womb, 'iddah is prescribed to display sorrow and grief over the termination of the marriage relationship. In other words, it is out of consideration to the sanctity of marriage. This is why 'iddah is also obligatory on women who have not reached puberty and those who have reached the age of menopause. This, notwithstanding the fact that a woman cannot fall pregnant before puberty and after menopause; and there cannot be confusion about lineage. Despite this, the Sharī'ah made 'iddah obligatory on such women.

It is stated in *Fatwā Dār al-'Ulm* Deoband that 'iddah is obligatory even if husband and wife remain separated for five years after the husband had intercourse with her or was in privacy with her.

Further reading: *Fatwā Rahimiyah*, vol. 8, p. 413.

Allāh ta'ālā knows best.

**The wisdom behind the obligation of ‘iddah**

From the above discussion, it becomes clear that there are two wisdoms being the promulgation of 'iddah:

1. An act of God and there is no way for the husband to prevent the wife from being pregnant.
2. As an act of God, there is no way for the husband to prevent the wife from being pregnant.
1. To ascertain the emptiness of the womb. This ensures preservation of the lineage.

2. To express sorrow over the termination of the bond of marriage.

The wisdom behind 'iddah is to express grief over separation from the husband. And in the case where he passes away, to mourn his death. The other wisdom of 'iddah is to be fully satisfied that the womb is completely empty of the husband’s semen. If the woman enters into another marriage, there will be no fear of the lineage getting mixed up and doubting who the child belongs to.¹

Further reading: Kitāb al-Fatwā, vol. 5, p. 140; Islāmī Fiqh, vol. 2, p. 188.

Objection:

One objection comes to mind at this point. 'Iddah is necessary over the loss of the bounty of marriage. In such a case, it ought to be obligatory even when divorce takes place before intercourse and privacy between husband and wife. Whereas we learn from the statements of the jurists that there is no 'iddah if divorce is issued before intercourse and privacy. What is the answer to this?

Answer:

The answer to this is that the bounty of marriage was not fortified before intercourse and privacy. In other words, the woman did not taste the joy of love and affection. The bounty is incomplete so 'iddah is not obligatory.

Ibn Ḥumām rahīmahullāh writes:

وَقَدَ أَفْادَ المُصْنَفَ فِي مَا سِيَاتِي أَنَّا أَيْضَّاً تَجْبُ لِفَضْاءِ حَقَّ النَّكَاحِ بِإِظْهَارِ الأَسْفِ عَلَيْهِ... بِخَلافِ غَيْرِ المُتَأَكَّدِ وَبِوَلَا قَبْلِ الدَّخُولِ لَا يُؤَهِّلُ عَلَيْهِ إِذْ لَا أَلْفُ وَلَا مَوْدَةٌ فِيهِ. (البداية مع فتح العدّة: ط ۴/۳۰۸، باب الزهيد: دار الفكر)

Allāh ta’ālā knows best.

¹ Maulānā Ya’qūb Qāsimī: Islāmī Qināan Nikāḥ Wa Ṭalāq, p. 167.

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Washing one’s hair, taking a bath and applying oil while in ‘iddah

Question:
Is it permissible to wash one’s hair, take a bath and apply oil while in ‘iddah?

Answer:
It is permissible to wash one’s hair, take a bath and apply oil while in ‘iddah. However, these should not be done with the intention of beautification. These actions can be done out of habit or if one fears a headache or discomfort if these actions are not done.

البداية:
وعلى الممتوطة والمتوافقة عنها زوجها إذا كانت باللغة مسلمة الحداد والحدود أن تترك الطبيب والزينة والكلح والدين المطيب وغير المطيب إلا من عذر وفي الجامع الصغير إلا من وقع... والدين لا يعترى عن نوع طبيب وفية زينة الشعر ولهذا يمنع المحرم عند قال إلا من عذر لأن فيه ضرورة والمراد الدواء لا الزينة ولو اعتادت الدين فخافت وجأ فإن كان ذلك أمراً ظابراً يباح لها لأن الغالب كالأقاليم. (البداية: 2/47، فصل في الحداد)

الفتاوى الهندية:
على الممتوطة والمتوافقة عنها زوجها إذا كانت باللغة مسلمة الحداد في عدتها كذا في الكافي والحدود الاجتناب عن الطبيب والدين والكلح والحناء والحضاب... وإنما يلزمها الاجتناب في حالة الاختيار أما في حالة الاضطرار فلا بأس بها إن اشتكى رأسها أو عينها فصبت عليها أو اكتملت لأجل المعالجة فلا بأس به ولهما لا تقصص به الزينة كذا في المحيط، لو اعتادت الدين فخافت وجأ يحل بها لو لم تفعل فلا بأس به إذا كانت الغالب بو الحدل كذا في الكافي.
There is no harm in taking a bath, and keeping the body and clothes clean.\(^1\) Allāh ta‘ālā knows best.

**Permissible actions during ‘iddah**

1. To take a bath, wash one’s head, and keep one’s body and clothes clean.\(^2\)
2. To apply oil to the head when needed. It is also permissible to comb one’s hair. For example, when there is the possibility of lice in one’s hair.\(^3\)
3. It is not necessary to remain in a particular part of the house. The woman may remain in whichever part of the house she likes. It is also permissible for her to move around in her house.
4. She is permitted to carry out domestic tasks. There is no prohibition in this regard.
5. If there is a need, she may go for a check-up to a doctor. However, as far as possible, she should get the doctor to come to her house. If there is a need to be hospitalized, she is permitted to do that.\(^4\)
6. If she has no source of income after the death of her husband, she is permitted to leave the house for employment provided she observes the rules of ḥijāb. However, she will have to return to her house by nightfall and spend the night at home. Even during the day, once she completes her work, she must

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\(^1\) *Islāmī Fiqh*, vol. 2, p. 187.
\(^2\) *Āp Ke Mas‘īl*, vol. 5, p. 410.
\(^3\) *Aḥsan al-Fatwā*, vol. 5, p. 442.
\(^4\) *Āp Ke Mas‘īl*, vol. 5, p. 410; *Aḥsan al-Fatwā*, vol. 5, p. 443.
return home immediately. It is not permissible for her to remain out of the house unnecessarily.  

7. The woman may go to a court for any of the following reasons: (1) To testify before a judge. (2) To sign necessary documents. (3) For claiming maintenance for her children. She must return to her house the moment she completes the work for which she left.  

8. She is permitted to go to collect her pension if it is necessary for her to go.  

9. If the woman needs to buy essentials for the house and there is no one who could go for her, she is permitted to leave the house to the extent of necessity. She must return to her house the moment she completes buying whatever is needed.  

10. A woman is permitted to move to the nearest house available in any of the following cases: (1) There is the danger of the house falling in. (2) She fears loss to her belongings or danger to her life. (3) She is living in a rented house and she cannot pay the rent. (4) The house is to be distributed as part of an estate, and the part which comes in her share is insufficient, or she feels terrified at living in it. In the case where she is observing 'iddah for divorce, she will move to a house approved of by her husband. In the case of 'iddah for death, she will move to a nearby house which she finds suitable.  

11. If a woman is observing 'iddah for a revocable divorce, she is permitted to consume betel-leaf.  

Allāh ta‘ālā knows best.  

**Impermissible actions during ‘iddah**  
1. To wear silky or exotic garments as a way of beautification.  
2. To wear jewellery.  

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3. To wear bangles.
4. To apply perfume, scents, creams and lotions, powder, etc.
5. To apply antimony as a way of beautification. If it is applied at night because of discomfort in the eyes, it will be permissible.
6. To redden the tongue with betel-leaf or to apply make-up.
7. To apply henna.
8. To apply oil to the head for the sake of beautification.
9. To comb one’s hair for the sake of beautification.
10. To undertake a journey.
11. To attend happy and sad functions (weddings and funerals).
12. To get married.
13. To spend the night out of the house.
14. To leave the house to see one’s parents or husband. (This is permitted at the time of necessity. Details in this regard are to be found further on).
15. To converse unnecessarily with non-mahārim (strange men) over the telephone and other forms of contact. When there is a need to do this, it will be permissible. This rule is not restricted to the ‘iddah period. Rather, it applies to all situations and conditions.
الفتح: فلا تخضر عمل، ولا تتجر فيه، قول كرميت خالص أي من الطيب، والشجر والسمان وغير ذلك، لأن بُلَّين الشعر فيكون زينة زيلع، ويبدو أن المنوع استعمال على وجه يضمن فيه زينة، فلا تمنع من مسم بيد لعصر أو بيج أو أكل كما أفاده الرحمي (والكحل) والظاهر أن المراد ما تحصل به الزينة كالأسود وغيره، بخلاف الأبيض مالم يمكن مطباً (الجناه وليس المعصر والمزعرفر) أي لبس الغوب المصبوغ بالعصر والزعفران، والمراد بالتهب ما كان جديداً تقع به الزينة ولا فلا تأب به، لأن لا يقصد به إلا ستر العورة والأحكام تبتني على المقصود كما في المحيط وقيساني، إلا بعد راجع للجميع، إذ الضرورات تصبح المحظورات فإن كان وقع بالعين فتكحل أو حكة فتليلس الحرير أو تشتيكي رأسها فتدب وتمشيط بالأسنان الغليظة المباعدة من غير إراده الزينة لأن هذا ما لا زينة. قلت: وقيد بعض الشفاعة الاقتحال للعذر بتكوين ليلًا ثم نزعت نياراً كما ورد في الحديث، وأخرج الحديث في الفتح أيضاً، ولم أر من قيد بذلك من علمائنا، وكأن معلوم من قاعدة أن الضرورات تنقيد بقدرية، لسند إن كفاحا الليل أو النبار أقتصرت على الليل ولا تعكس لأن الليل أخفى زينة الكحل ويوم محلل الحديث، والله سبحانه أعلم. (الدر المختار مع رد المختار: 3/30، 00، 50030، جزء في الحداد، سعيد.

وأيضاً فيه: ولا تختر معتدة رجعي وبائين بأي فرحة كانت على ما في الظهورية ولو مخلعبة على صفقة عدتها في الأسح... مكثف من بيتها أصلاً لا ليلًا ولا نباراً ولا إلى صحن دار فيها منازل يغمره ولو باذن أنه حق الله تعالى. وفي الشامية: قول في الأصح: لأنها بي التي اختارت إبطال حقها فلا يبطل بحق عليها ومقابل، ما قبل أنها تخرج نباراً لأنها قد تحتاج كالنور عبدها.
Leaving one’s house on the death of one’s parents during ‘iddah

Question:
A woman is observing the ‘iddah of death or divorce. Her father or mother passes away during this period. If she does not go to see either of the two, she will spend the rest of her life grieving over this, and she will also have to hear criticism from people. Can she go to see either of the two for a short while? Bear in mind that it is extremely difficult to bring the deceased to her.

Answer:
If either of her parents dies while she is in ‘iddah and she does not go, she will spend the rest of her life in grief and sorrow. There is also the strong possibility of her having to hear accusations and criticism from people. In such a case, due to necessity, she will be permitted to go. The jurists permit a woman whose husband has passed away to leave her house at the time of necessity. Furthermore, a narration of Sunan ibn Mājah states that the maternal aunt of Ḥadrat Jābir raḍiyyallāhu ‘anhu was divorced. She wanted to leave her house to break dates from
her date tree. Someone stopped her. She came to Rasūlullāh sallallāhu ālāyhi wa sallam and related this to him. He said: “You may harvest the dates. Perhaps you will give in charity or do some other good action.”

We learn from this Hadīth that a woman in 'iddah may leave her home at the time of necessity. This, despite the fact that the necessity in this Hadīth was not of such a nature that an alternative could not be found. However, because it was causing distress to the woman, she was given permission. This permission does not mean that a woman can leave her house and move around in the name of visiting the sick, and thereby spoil her 'iddah.

The permission to leave the house at the time of necessity is the same for a woman in 'iddah of death and the one in 'iddah of divorce.

رجل جاء عبد الله رضي الله عنه قال: طلقت خالتي فأرادت أن تجد
فلها فرج لرسول الله صل الله عليه وسلم فقال: بل
فجئي فأنتك عسي أن تصدق أو تفعل معرففاً. (ابن ماجه: ص ۶۴، باب: بل تخرج المرأة في عدتها)

وأما الخروج للضرورة فلا فرق فيه بينهما كما نصوا عليه فيما يأتي. ولا
يجريان منه إلا أن تخرج أو يتهدم المنزل و نحو ذلك من الضرورات الأخ (الدر
المختار مع الشابي: ۶۳۶/۵۳۵، سعيد)

الفتاوى الهندية:

إن اضطرت إلى الخروج من بيتها فلا باس عند ذلك أن تنتقل. (الفتاوى
الهندية: ۱۵/۵۳۵)

فتاوى قاضيخان:

الحرية المسلمة في عادة طلاق أو فرقة سوى الموت لا تخرج ليلًا ولا نبئًا إلا
لضرورة... والمنب ونفية زوجها تخرج بالنبيها لاجتها إلى النفق و لا بيت إلا
It becomes clear from the above texts that it is permissible for a woman in 'iddah to leave her house when necessary. At the same time, we have to know the limits of necessity. The following is stated in Jadil Fiqhi Mas'il:

The root word of ďarurah (necessity) is ďarr or ďurr. Both pronunciations are reported. Some linguists do not differentiate between the two. Others are of the view that it is a noun when pronounced as ďurr and a verbal noun when pronounced as ďarr. It comes in the meaning of loss. It is the opposite of profit. All the words which are derived from this root word bear this meaning. (Maulâna Khâlid Sayfullâh Rahmânî). It includes the following meanings: severe distress, terrible loss, severe restriction.

Imâm Shâtîbî rahimahullâh defines it as follows in his al-Muwafaqât:

وفى الآخرة فوت النجاة والتعيم والرجل بالخسران المبين. (المواقف: ۳/۴)

Other scholars are a bit more lenient in the definition of ďarurah. They include all matters which interfere with the general system of life and which would therefore result in harm. The above-quoted definition of Imâm Shâtîbî rahimahullâh lends to this meaning. The definitions of Shaykh Abî Zuhrâh, Shaykh 'Abd al-Wâhhab Khalîf and other scholars are also inclined to the definition of Imâm Shâtîbî.

According to Ḥadrât Maulâna Khâlid Sayfullâh Rahmânî Sâhib, ďarurah does not only refer to a feeling of anxiety. Rather, it covers all the fundamentals of the various departments of life and their preservation. Permanent and temporary rulings will be included in ďarurah.¹

Qâmûs al-Fiqh:

The Sharî'ah has five fundamental objectives: (1) preservation of Dîn, (2) preservation of life (this includes one’s life, honour, dignity, rank), (3) preservation of lineage, (4) preservation of wealth, (5) preservation

of the intellect. Whatever is dependent on the acquisition and continued existence of these five objectives is defined as ġarūrah. In the same way, ġarūrah is not confined to saving one’s life. Rather, it includes all the fundamentals of the various departments of life.\footnote{Qāmūs al-Fiqh, vol. 4, p. 313.}

We learn from the above texts that ġarūrah is not confined to the preservation of life. Therefore, a woman in 'iddah – whether for divorce or death – has the leeway of leaving her house to see the face of her parent who passes away. If she does not go, there is the possibility of regretting for the rest of her life.

Allāh ta’ālā knows best.

**An old woman observing 'iddah in her son’s house**

**Question:**

A woman whose husband passed away spent some time in 'iddah in her own house. However, due to loneliness and old-age, she would like to observe the remaining 'iddah in her son’s house. Is she permitted to do this? Will she have to restart her 'iddah?

**Answer:**

It is permissible for a woman to observe 'iddah in her son’s house if it is because of loneliness and old-age. There is no need to restart the 'iddah. She merely has to complete the remaining days.

وتعتدان أي معتدة طلاق وموت في بيت وجبت فيه ولا يخرجان منه إلا أن تخرج أو يتهم المنزل أو تخاف انهدامه أو تلف مالها أو لا تجد كراء البيت و نحو ذلك من الضرورات فتخرج لأقرب موضع إليه. قوله نحو ذلك، ومن ما في الظهيرة: لو خافت بالليل من أمر الميت والموت ولا أحد معها ليا التحول والخوف شديد والال فلا. (الدر المختار مع الشائ: 336، فصل في الحداد) وفي الطهطاوي على الد: قوله نحو ذلك من الضرورات كما إذا لم يسحت معها أحد في البيت وقبلها يخفت ليالا من أمر الميت والموت خوفاً شديداً فلا
If there is a danger to her life or wealth because she is living alone, or she feels terrified at having to live alone, she may observe the 'iddah in another nearby house.\(^1\) Allāh ta‘ālā knows best.

**Husband and wife living in the same house**

**Question:**
What is the ruling with regard to husband and wife living in the same house during the period of 'iddah?

**Answer:**
If a woman has been issued with three divorces, she must live in a place where there is no interaction with her husband. If, by living in the same house, there is no strong possibility of their meeting each other and falling into sin and there are seniors in the house who could stop them, then it is not forbidden for them to live in the same house.

\(^1\) *Aḥsan al-Fatāwā*, vol. 5, p. 440.
الكامل وحسن أن يجعل القاضي بينهما امرأة ثقة قادرة على الحيلولة بينهما 
وفي المجتهد الأفضل الحيلولة بستر ولو فاسقاً فيمارة. في الشعائر: فإن السترة 
لا بد منها كما عبر المصنف تبعاً لبداية وبو الظاهر لله خرومة الخلوة بالاجنبية.

(الدر المختار مع رد المختار: 3/273، فصل في الحداد، سعيد)

Ahsan al-Fatāwā:

The woman may live in the same house but it is essential to have a barrier between husband and wife so that the two are not in privacy with each other. If there is the fear of falling into sin by living in the same house, there should be another senior woman who has the power of keeping the two separate from each other. If this is not possible, it is obligatory on the husband to leave that house until the end of the 'iddah. He must live in some other place. If he cannot be compelled to move out, the woman must leave the house and observe 'iddah somewhere else.¹

Allāh ta‘ālā knows best.

**Living together after three divorces**

**Question:**

Can husband and wife live together after three divorces on the basis that they are old and they need to assist each other?

**Answer:**

The jurists permit husband and wife to live together if they are old and need to assist and serve each other. Similarly, if a woman does not have anyone to support her and it is difficult to make arrangements for her boarding and lodging, and there is no fear of falling into temptation, then it is permissible for them to live together and to assist each other. However, they must not live as husband and wife.

قال: ولهم أن يسكنوا بعد الثلاث في بيت واحد إذا لم يلتقا القاء الأزواج، ولم يسكن في خوف فتنة إنهدي. وس.pixel2d.png

¹ Ahsan al-Fatāwā, vol. 5, p. 447.
It is permissible for them to assist each other due to old-age and illness provided they do not live as husband and wife. If there is the slightest danger of being tempted into anything unlawful, it will be obligatory on them to live completely separately. It will not be permissible for them to live in the same house.\(^1\)

\(^1\) Aḥṣan al-Fatāwā, vol. 5, p. 163.
The second marriage took place during her 'iddah period. The blood which she saw from the 17th to 26th of March cannot be the blood of menstruation because the minimum period of purity of fifteen days after the first menstruation was not realized. Marriage to someone else during this period is invalid. It is essential for the husband to leave this woman. If he refuses, the woman must have her marriage annulled through the jam'iyyatul 'ulamā'. She must then observe 'iddah as a precautionary measure. She will then be free and she can marry someone else if she wants.

After quoting the Arabic text, Hadrat Thānwī rahimahullāh writes in Imdād al-Fatāwā:

It is gauged from the narrations that marriage during the 'iddah is invalid. Furthermore, there is difference of opinion with regard to observing the 'iddah again. Caution demands that it be re-observed.¹

Majmū‘ah Qawānīn Islāmī:

In the case of an invalid marriage, it is essential for the spouses to separate from each other. If they do not separate themselves, the qādī will effect a separation.²

Since there is no qādī here, the jam'iyyatul 'ulamā' will take his place. It will have the power to annul the marriage.

Allāh ta‘ālā knows best.

² Majmū‘ah Qawānīn Islāmī, p. 206.
**LEGITIMACY OF LINEAGE**

**Legitimacy of lineage after marrying an adulteress**

**Question:**
A man had an illicit relationship with a woman and she fell pregnant. He then married her. Will the lineage of the child which is born be legitimate?

**Answer:**
If the child is born six months after the marriage, its lineage will be legitimate. If it is born six months before, its lineage will not be legitimate. If the husband considers the child to be his own, it will be considered to be as such. Because there is no law of li’ān in this country, the lineage cannot be denied through it. However, on the basis of religious integrity, it is not permissible for the husband to make claims to the lineage of a child which is born six months before the marriage. It is also possible that the two may have entered into a secret marriage before this.

\[
\text{لو نصحها الزاني حل له وطُوِّب اتفاقاً والولد له أَي إن جاءت بعد النكاح لستة أشهر مخترات النوابز، فلو لأقل من ستة أشهر من وقت النكاح، لا يثبت النسب، ولا يرث من، إلا أن يقول: هذا الولد مبني، ولا يقول من الزني خاتي، والظاهر أن بهذا من حيث القضاء، أما من حيث الديانة فلا يجوز له أن يدعى لأن الشرع قطع نسب منه، فلا يجعل له استثناءه، ولا لو صرح بأنه من الزني لا يثبت قضية أيضاً وإنما يثبت له لم يصرح لاحتمال كونه بعدد سابق أو نشبيه حملها خال المسلم على الصلاح، وكذا ثبوت مطلقاً إذا جاءت به لستة أشهر من النكاح لاحتمال علوقة، بعد العقد وأن ما قبل العقد كان انتفاخاً لا حمله ويحتاط في إثبات النسب ما أمست. (الدر المختار مع فتاوى الشأى: ۹۴/۳، فصل في المحرمات، سعيد) }
\]

وفي الطحطاوى على الدر المختار: قوله: والولد له أَي إن تثبت نسب منه ولا يحرم عليه إلحاق به بما ما يعطيه ظابره ولم ينظروا فيه إلى وقت العلوقة والإلا.
Allāh ta‘ālā knows best.

When a person marries a Hindu woman

Question:
A person married a Hindu woman. Will the child that is born be legitimate?

Answer:
Because marriage to a Hindu woman is not valid, the children born from this “marriage” will be illegitimate.

Imdād al-Fatāwā:
Lineage is not affirmed in an invalid marriage.

Note: Details with regard to an invalid and baseless marriage were given in volume three. Please refer to it.
A few principles related to legitimacy of lineage

(1)
If after a valid marriage, a child is born before six months, its lineage to the father will not be affirmed. If a child is born six months or more after the marriage, it will be legitimate. A claim of the husband is not required for the legitimacy of the lineage. If the husband rejects being the father of the child, its affiliation to him will not be severed without li‘ân. The minimum period of pregnancy is six months and the maximum is two years.

Hadrat ‘Ā’ishah radīyyallāhu ‘anhhā says:

(2)
If a person engages in intercourse with a woman mistakenly, and a child is born six months or more after that, the child will be illegitimate for as long as the one who had intercourse with her does not state that the child is his.

(3)
If a woman who is observing ‘iddah for a revocable divorce gives birth to a child before she admits to the termination of her ‘iddah, the child will be legitimate even if it is born two years after that. If the woman admits to the termination of her ‘iddah and the child is born less than
six months after her admission, it will still be legitimate. If not, it will be illegitimate.

If a woman was issued an irrevocable divorce or three divorces, and she gives birth to a child within six months of the divorce, the child will be legitimate. If the child is born after six months but before two years, and the woman did not admit to the termination of her ‘iddah, the child will still be legitimate. If the child is born after two years or more, and the woman did not admit to the termination of her ‘iddah, and the husband claims the child to be his, it will be legitimate. If he does not claim the child to be his, it will be illegitimate.
If a child is born within six months after the death of the husband, the child will be legitimate. If it is born within two years of his death, and the woman did not admit to the termination of her ‘iddah, or she admitted to it but the child was born within six months from the time of her admission, the child will still be legitimate. If not, it will not be legitimate.

Further reading: Majmū‘ah Qawānīn Islāmī, pp. 221-224.

Allāh ta’ālā knows best.

**Legitimacy of a child which is born after a lengthy separation**

**Question:**
A man was away from home for a few years. His wife gave birth to a child in his absence. Will the child’s lineage be affirmed in his favour?

**Answer:**
A marriage bond is sufficient for the legitimacy of a child. Thus, if the two are married and the woman gives birth to a child, it will be legitimate. Therefore, in this case too, since the marriage is still intact, separation between husband and wife is not considered. The child’s lineage to the father will be affirmed. Yes, the husband can reject its legitimacy through li‘ān. However, since the law of li‘ān is not promulgated in this country, it is not possible to reject its legitimacy through li‘ān.

قال رسول الله صلى الله عليه وسلم: الولد للقشاة وللعابر الحجر. (رواى البخاري 2: 999، باب الولد للقشاة وللعابر الحجر)
Lineage of children whose mother is gone missing

Question:
A man duped a married woman into living with him. He kept her under his control for quite some time. She gave birth to children during this period. However, her husband has not issued a divorce to her as yet. Will the children’s lineage be legitimate?
Answer:
If a person dupes a woman who is married to someone else and has sexual relations with her, then this is adultery. Lineage cannot be legitimated through adultery. Therefore, the children’s lineage will be affirmed in favour of the original husband.

قال رسول الله صلى الله عليه وسلم: الولد للفراش وللعبير الحجري (رواة البخاري: 999، باب الولد للفراش وللعبير الحجري).

الدر المختار:

الفتاوى الهندية:
أما أن قال: إنه ممن من الزنا فلا يثبت نسبه ولا يرث منه كذا في النيابي.

الفتاوي الهندية: 504، باب ثبوت النسب).


Allāh ta'ālā knows best.

The lineage of test-tube babies

Question:
We are married for the last six years but do not have any children. Nowdays, there are several artificial means for falling pregnant. I need a fatwā with respect to three methods. Is it permissible to seek treatment and acquire children through these three methods? Will the children be legitimate? The methods are:
1. Artificial insemination. The sperm of the husband is conveyed to his wife’s womb through an injection. This is done when the husband – due to physical weakness or some other ailment – cannot convey his sperm into his wife’s womb.

2. In vitro fertilisation. The sperm and ovum of husband and wife are obtained, placed in a tube [in a laboratory] for a certain period of time. It is then transferred into the woman’s womb. This type of method is adopted for a woman whose passage-way through which the sperm has to pass is shut off. Consequently, she cannot fall pregnant. This is known as a test tube baby.

3. Gamete intrafallopian transfer. Eggs are removed from a woman’s ovaries and placed in one of the fallopian tubes along with the man’s sperm. This method is adopted only for that woman who has at least one fallopian tube which is normal and functioning.

Answer:

In all of the above methods, the sperm and ovum of husband and wife are mixed together. They do not belong to a third person. It will therefore be permissible to acquire children and have one’s self treated in this manner at the time of necessity. Yes, one ought to abstain from these methods if there is no need. Furthermore, at the time of need, only the sperm and ovum of husband and wife will be permitted to be mixed together. There is absolutely no permission to place the sperm of a third person in the womb. If any of these methods are adopted and a child is born, it will be legitimately attributed to the husband and wife.

Maulāna Khālid Sayfullāh Raḥmānī Śāhīb writes in Jadīd Fiqhī Masā’il:

1. The sperm of the husband is conveyed into the womb of the wife via an injection or through other means.

2. The sperm and ovum of husband and wife are obtained and placed in a tube until a certain period of time. It is then transferred into the woman’s womb.

3. The sperm and ovum of husband and wife are obtained and this mixture is placed in the womb of the husband’s second wife because his first wife cannot bear a pregnancy or cannot fall pregnant because of medical reasons.

We will first have to ponder over whether it is permissible to do this. The jurists who say that it is impermissible have the following reservations:
1. The husband will have to masturbate to obtain the sperm; and masturbation is unlawful.

2. The husband and wife, or at least the wife, will have to expose their bodies. It is not permissible to expose one’s body even before a doctor unless there is a severe need.

3. This method is unnatural. The general attitude of the Sharī'ah is to prohibit actions or methods which are unnatural.

Answers to the above objections

(1)

The jurists prohibit masturbation in normal situations but permit it at the time of necessity. 'Abd ar-Rashīd Tāhir Bukhārī writes:

إذا عالج ذكره حتى أمني... ولا يحمل هذا الفعل خارج رمضان إن قصد قضاء الشهوة و إن قصد تسكن شهوة أرجو أن لا يحسن عليه وبال. (خُلاصة الفتاوى: ٦٣٦، الفصل الثالث فيما يفسد الصوم، المكتبة الرشيدية)

Sperm is wasted when a person masturbates. However, when this action is resorted to for the sake of artificial insemination, the sperm is used to produce a life. This form of masturbation is therefore not from among the unlawful forms.

(2)

This method entails exposing one’s body without any dire necessity. The answer to this is that there are situations in which the jurists tolerated exposing of the body. Although there is no severe illness, it could result in a severe illness. For example, not having children could cause severe illnesses. 'Allāmah Sarakhsī raḥimahullāh writes:

وقد روى عن أبي يوسف أنه إذا كان ببزال فاحش وقيل له إنه الحفنة تزيل ما بكت من البزال فلا يأس بأن يبدئ ذلك الموضوع للمختص وينا صحيح فإن البزال الفاحش نوع مرض يعكون آخره الدق والسل. (المبسوط للامام السرخسي: ١٠٥/٦٥، كتاب الاستحسان، النظر إلى العورة)

Let alone necessity, the Sharī'ah has permitted exposing the private parts – which is normally unlawful – for the fulfilment of a Sunnah or lawful action. For example, circumcision for a man is Sunnah and lawful for a woman. Despite this, the jurists include these occasions as
necessities and valid excuses, and permit the exposure of the private part. 'Allāmah 'Alā‘ ad-Dīn Samarqandī writes:

OLA يبَح النظر والمس إلى ما بين السرة والركبة إلا في حالة الضرورة بأن كانت المرأة ختانت تختن النساء. (تحفة الفقهاء: 3/333، كتاب الاستحسان)

Obesity is neither a need nor a necessity. Despite this, the jurists permit the administration of an enema for this purpose.

لا يأس بالحقنة لأجل السمن بكذا روی عن أبي يوسف. (خلاصة الفتوى: 4/333، كتاب الكرابية، الفصل الخامس في الأكل ط: المكتبة الرشيدية)

Resorting to a test-tube is essentially a means of treatment. The jurists have undoubtedly divided human issues into three categories: necessity, need, desirability. Prohibitions are only made lawful when necessity or need demand them. When we examine juridical issues, we notice that the jurists have been a bit more lenient in matters related to medical treatment. A couple's desire for children is a natural desire, and for it, a man exposing his body before a male doctor and a woman exposing her body to a female doctor can be tolerated.

The third objection is that it is an unnatural method. An answer to this is that it will be permissible to fulfil a natural desire (having children) through an unnatural way which is not explicitly forbidden. For example, the original manner of giving birth to a child is through the private part of a woman. But when there is a need, it could be done through a caesarean section. Here too, an unnatural method ought to be permitted at the time of need.

Legitimacy of the lineage

The woman falling pregnant by her husband’s sperm is sufficient for the legitimacy of the lineage. It is not necessary for the man to engage in physical sexual intercourse with her. Therefore, the lineage of the child will be legitimate even without sexual intercourse. A parallel to this is as follows:

رجل وهي جارية في ما دون الفرج فأنزل فأخذت الجارية ماءه في شيء فاستخلت في فرجها فعلقت، عند أبي حنيفة أن الولد ولده وتصير الجارية أم
The ruling with regard to the third method

Who will the real mother be if the sperm and ovum of husband and wife are placed in the womb of the husband’s second wife? The scholars differ in this regard. Nonetheless, the sensible ruling will be for both to be classified as the child’s real mothers for the sake of future marriage of the child and other related issues. As for maintenance, inheritance, etc. the woman who bore the pains of pregnancy and gave birth to the child should be classified as the child’s real mother. Allâh ta’âlâ states:

Their only mothers are those who gave birth to them.¹

We also find certain examples from the statements of the jurists where a single child is attributed to two fathers.

Lineage to the first wife is affirmed because the ovum was obtained from her. The child will be like a part of her. The lineage and its inviolability is based on this relationship [of being a part of the mother]. While discussing the issue of ḥurmat muṣāharat on account of adultery, the author of al-Hidâyah writes:

As for the reason behind the affirmation of lineage to the husband’s second wife in whose womb the child developed, it is because the woman who bears the discomfort of giving birth to a child and the one in whose womb the child develops has the greatest testimony in her

¹ Sûrah al-Mujâdalah, 58: 2.
favour from the Qur’ān when it refers to such women as: “...those who gave birth to them.” The child then becomes a part of the womb of this woman and develops in it.¹


Allāh ta’ālā knows best.

**Lineage of a child when the sperm is obtained from a stranger**

**Question:**

A common practice nowadays is that if the husband cannot beget children for whatever reason, the sperm of a stranger is obtained and conveyed into the womb of his wife. To whom will the child that is born be attributed? To the woman’s husband or to the stranger whose sperm was used?

**Answer:**

The method described by yourself – i.e. administering the sperm of a stranger into the womb of a woman – is absolutely prohibited and in total conflict with Islamic principles. Nonetheless, if the child is born, its lineage will be to the husband and not to the stranger.

قال رسول الله صلى الله عليه وسلم: الولد للفراش وللعابر الحجر. (رواه البخاري: 4999، باب الولد للفراش وللعابر الحجر)

**Jadīd Fiqhī Masā’il:**

All methods which entail the mixing of the sperm and ovum of strange men and women are sinful, and classified as adultery... if a woman falls pregnant through the sperm of a stranger while she is married to her husband, the lineage of the child will be attributed to the woman's husband.²

If a child is born as described above, its lineage will be affirmed and the rules of inheritance, breastfeeding, etc. will apply. The natural way of sexual intercourse is not necessary for the establishment of lineage. If the sperm is conveyed to the womb of a woman in some other way,

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¹ Condensed from Jadīd Fiqhī Masā’il, vol. 5, pp. 151-163.
² Jadīd Fiqhī Masā’il, vol. 5, p. 152.
the lineage will be affirmed. References to this are to be found in some of the statements of the jurists.

A person has intercourse with a virgin girl outside her private part, and she falls pregnant by the entry of semen into her private part. When the time of delivery of the child approaches, her hymen is broken with an egg or the edge of a dirham [coin].

The above method is undoubtedly adultery. However, the Shar’a punishment of adultery cannot be promulgated in Islamic countries. The punishment is not for an unlawful pregnancy alone, but for the enjoyment which the two experienced.¹

Allāh ta’ālā knows best.

When the sperm and ovum of husband and wife are placed in the womb of a strange woman

Question:

One of the modern methods of reproduction is when the sperm and ovum of husband and wife are placed in the womb of a strange woman – whether married or unmarried. The foetus develops in her womb and the child is born from her. To whom will the child’s lineage be attributed? What will be the status of this strange woman?

Answer:

The method described above is harām and unlawful. Nonetheless, when the child is born, its real mother is the woman who bore the pains of pregnancy and childbirth. Further details in this regard are as follows:

¹’Aqr-e-Hādir Ke Fiqhī Mas’īl:

It should be clear that the Shar’ī mother of the child is the one who gave birth to it even if the ovum of another woman was used. Allāh ta’ālā clearly states:

¹ Jadīd Fiqhī Mas’īl, vol. 1, p. 151.
Their only mothers are those who gave birth to them.¹

If the sperm of another man is used and the child is born from a married woman, the lineage of the child will be to the woman’s actual husband. As for the man whose sperm was used, he will be classified as an adulterer. Rasûlullâh sallallâhu ‘alayhi wa sallam said:

قال رسول الله صلى الله عليه وسلم: الوَلَدُ للفِرَاشِ وَلِلنَّعَابِ

The child will belong to the lawful husband while the adulterer will be stoned to death.

If the child is born as described above to an unmarried woman, the child will not be attributed to the man whose sperm was used even if his identity is known. The child will be attributed to the mother because – according to the Sharî‘ah - a person cannot acquire a noble lineage from an immoral woman.

There is a strange opinion on this subject as expressed by Dr. Muṣṭafâ Āḥmad az-Zarqâ’. The real mother of the child will be the one whose ovum was mixed with the man’s sperm. As for the woman who gave birth to the child, she will be like a foster mother. Inheritance and other related matters will be linked to the first woman. The emphatic manner in which the Qur’ān states that “their only mothers are those who gave birth to them” leaves no room for such an opinion.

The al-Majma’ al-Fiqh of Saudi Arabia based its verdict on the opinion of Dr. Muṣṭafâ Āḥmad az-Zarqâ’. He is undoubtedly a reputed scholar and jurist but this view of his does not look right. The criticism of his co-countryman and classmate, Shaykh ‘Alî Tāntâwî, seems to be correct. The latter rejects the view of Dr. Muṣṭafâ vociferously and in no uncertain terms. We believe his view to be correct.²


¹ Sûrah al-Mujâdalâh, 58: 2.
Allāh ta’ālā knows best.
CUSTODIANSHIP

The mother has the most right over custody

Question:
Who has the right of custody over a child if the woman is divorced or husband and wife are separated? Who is responsible for the maintenance? What is the sequence of custodianship?

Answer:
The mother is responsible to supervise the upbringing of children. If she has been divorced, she still has the right to keep her son with her until he reaches the age of seven; and her daughter until she reaches the age of nine. The expenses for the upbringing of the child will be borne by the father. The father cannot take away his child during this period. However, if, after the divorce, the mother willingly hands over the child to the father or gets married somewhere else, the father will have to take care of the child. The father cannot compel the divorced mother to see to the child.

If – Allāh forbid – the woman becomes an apostate, the child will not be given to her for supervision and upbringing. Similarly, if she is ill-mannered and immoral – e.g. has faults such as committing adultery, stealing, singing and dancing, etc. which could corrupt the Dīn and character of the child – the child cannot be given over to her.

Sequence for custodianship

If the mother is not eligible for the upbringing of the child, i.e. she is a flagrant sinner and an immoral woman, she refuses to see to the child, or she marries someone, then the next person who will be most eligible for the custody of the child will be her mother. That is, the child’s maternal grandmother. In the latter’s absence, it will the child’s great maternal grandmother. In her absence it will be the child’s paternal grandmother and then the great paternal grandmother. Then it will be the blood sister [of the mother], then the foster sister, then the sister from the same father (consanguine sister), then the maternal aunt, followed by the paternal aunt.

Prerequisites for custodianship

The woman in whose custody the child is given will have to possess the above-mentioned qualities, viz. she must be of sound character. For example, if the child has two maternal aunts or two paternal aunts, it will be given in the custody of the aunt who is more righteous.
Period of custodianship

The period of custody for a boy is seven years, and nine years for a girl. Some scholars are of the view that it is until the girl experiences her menses. The mother will be responsible for the upbringing of the child during this period. The expenses for the mother and child will be borne by the father.

The importance of education

The responsibility of custody and upbringing of the child is not restricted to physical upbringing. Rather, together with its physical upbringing, the mental and moral rectification of the child is also obligatory. The Sharī’ah emphasises both types of upbringing. The Qur’ān and Hadith stress the religious training and education of the child.

وإذا وقعت الفرقة بين الزوجين فالأم أحق بالولد لما روي أن امرأة قالت: يا رسول الله إن ابني هذا كان ناعم ومنيف ونور للدنيا ونور للجنة ونعم الأم زوجة مني فوالله نحن نعتذر عليه السلام، أنت أحق بما لم تتروجو، ولأن الأم أشفق وأقدر على الحضانة فكان الدفع إليها أنظر وإليه أشار الصديق ربي، خير له من شهد وعسل عندك يا عم، قال حين وقعت الفرقة بينه وبين أمرأته والصحابية حاضرون متوافرون، والشفقة على الأب على ما نذكره ولا تجبر الأم عليها لأنها عست تتعجر عن الحضانة فإن لم تحقق له أم فأم الأم أولى من أم الأب وإن بدت لأن هذه الولاية تستفاد من قبل الأمينات، فإن لم تحقق أم الأم فأم الأب أولى من الأخوات لأنها من الأمينات فإن لم تحقق له جدة فالأخوات أولى من العمة والأخوات (البداية: 3/43، باب حضانة الولد ومن أحق به)

الدر المختار مع فتاوى الشافعی

الحضانة تربوية الولد تثبت للأم النسبية بعد الفرقة إلا أن تكون مرتدة فتحى تسلم لأنها تحب أو فاجرة فجورا يضع الولد بكونها وغناه وسرقة ونباحة كما في البحر والنبال ببأث. قال المصنف: الذي يظهر العمل بإطلاقهم كما بو
The son will live with his father after he turns seven

**Question:**

The son will remain with his mother until he turns seven. Is the father permitted to see and meet his son during this period? With whom will he live after he turns seven? Is the father permitted to take him away?

**Answer:**

The son will remain with his mother until he turns seven. This is the right of the mother. During this period, the father and his family members are permitted to meet the child. To make things easy, the two families must agree on the days and times so that it does not create a situation of conflict. The right of the father is established when the son turns seven. Yes, if the father’s attitude is not correct, he has been careless in the past, he has entered into a new marriage from which he has his own children; then there is the possibility of the child suffering offences at the hands of the second wife. The nurturing and affection of the child will be in doubt. In such a situation, the father cannot take the child away. However, if he is prepared to nurture the child in the correct Islamic way and is desirous of this, then the child will be given over to the father when he turns seven. In the case of a daughter, the father can take her under his wing when she turns nine. Some scholars say that the right of the mother over a daughter extends until she reaches the age of puberty.


Allāh ta‘álā knows best.
الدر المختار مع الشاي:


على تأديته وتعليمه. (الدر المختار مع الشاي: ٣٠٦٦، سعيد)

الفتاوى الهندية:

وبعد ما استغني العظام بلغت الجارية فالعصبة أولى، يقدم الأقرب للأقرب.

كذا في فتاوى قاضي خان. (الفتاوى الهندية: ٤٩). كذا في فتاوى الشايار: ٣٠٦٦٧، باب الحضانة، سعيد.

تبيين الحقائق:

وإنما كان للأب أن يأخذ إذا بلغ هذا الحيد، لأن يتتابع إلى التأدب والتحلى بأخلاق الرجال وآدابهم، والأب أقدر على التأدب والتحليق (تبيين الحقائق: ٤٨٨/٣).
If the father wants to meet his child during the period of the mother’s custody, he must be given the opportunity. After all, the child is also his. It is oppressive to deny him this opportunity.  

Allah ta’alla knows best.

**Denying the father the opportunity to meet his child daily**

**Question:**

After husband and wife were separated, the child came under the custody of the mother; as per the order of the Sharī’ah. Does the husband have the right to meet the child during this period? Does the mother have the right to deny him visitation? What is the ruling with regard to meeting the child daily?

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1 *Fatāwā Raḥīmīyyah*, vol. 8, p. 458.
Answer:
Although the child is under the custody of the mother, it is oppressive to deny the father an opportunity to meet his child. He should therefore be given a time to visit his child. The days and times must be agreed upon mutually. In fact, the father can visit the child daily if he wants.

The jurist, Abul Layth rahimahullah writes in Khazānah al-Fīqh that if it is possible for the father to visit his child daily, he can do so.

We learn from the above text that it is permissible for the father to visit his child daily. He can spend some time which is generally spent in that society with the child.

Äp Ke Masî’il:
The father can meet his child whenever he wants. If there is no danger of the father taking the child away and separating him from his mother, then it is oppressive to deny him visitation rights. However, if such a danger exists, steps should be taken against it.
Fatāwā Rāhīmīyyah:

If the father wants to meet his child during the period of the mother's custody, he must be given the opportunity. After all, the child is also his. It is oppressive to deny him this opportunity.¹

Allāh ta'ālā knows best.

The right of custody after seven years

Question:

When parents are separated and the child reaches the age of seven, he is handed over to his father. Does the child have a right to choose who he wants to live with? Is it necessary for him to live with his father?

Answer:

The child does not have the right to choose after he turns seven. Rather, his father has more right over him as regards his education and training. Yes, if a muftī or qādī sees any wisdom in keeping the child with his mother, the child can live with her on the basis of his [muftī’s or qādī’s] enlightened opinion.


Allāh ta’ālā knows best.

¹ Fatāwā Rāhīmīyyah, vol. 8, p. 458.
The maternal grandmother has more right of custody than the paternal aunt

Question:
Husband and wife passed away in an accident. They left behind a six year old son, a nine year old daughter, and another daughter who is still a baby. The deceased man has a mother and sister, but the mother has refused to take care of the children. The deceased woman has a mother. The man’s sister and the woman’s mother want to take care of the children. From the two, the woman’s mother [maternal grandmother to the children] is more pious and honourable. Which of the two, according to the Sharī’ah, will be more eligible for the custody of the children?

Answer:
The maternal grandmother of the children will be more eligible. By the order of the Sharī’ah, the children will be given over to their maternal grandmother. In the presence of the maternal grandmother, the paternal aunt is not eligible.

الفتاوي الهندية:
وإن لم يعكش لآء أم تستحق الحضانة بأن كانت غير أب للحضانة أو متزوجة
بغير محروم أو ماتت فأم الأم أولى من كل واحدة وإن علمت. (الفتاوى الهندية: 1/410، باب الحضانة)
الفتاوي التغتارخانية:
فإن ماتت الأم فأم الأم أولى بحضانة الولد وتعبد، وفي الخلاصة والخانية: وإذا بطل حق الأم كانت الحضانة للجدة من قبل الأم وإن علمت. (الفتاوى التغتارخانية: 69/4، حكم الولد عند افتراق الزوجين. والدر المختار: 53/3، سعيد. والبداية: 436/2)

Allāh ta’ālā knows best.
In the presence of the maternal grandmother, paternal grandparents do not have the right of custody

Question:
What do the 'ulamā’ and muftis say with regard to the following:
My daughter has been widowed. When her husband passed away, she brought her children and began living with me. If she enters into a new marriage, do the children’s paternal grandparents have the right to take the children away by force from their mother? Bear in mind that the maternal grandparents are prepared to keep the children under their wing. If my daughter does not remarry, until when can her children live with her? She has one son and one daughter.

Answer:
If the woman enters into a new marriage, and her new husband is a non-mahram to the children, the maternal grandmother will have the right of custody over the children. Therefore, in the presence of the maternal grandmother, the paternal grandparents do not have the right of custody.
Fatāwā Rāḥimīyyah:

When a woman marries a non-maḥrām of her children, she loses the right of custody. The right then goes to the children’s maternal grandmother, etc. according to the sequence laid down by the Shari’ah. The mother cannot take her children by force.


Allāh ta’ālā knows best.

When the period of custody expires

Question:

A woman was divorced. She has children who are over seven and nine years of age. The muftī or qādī believes that it is better for the mother to keep the children in her custody. Can such a fatwā be issued?

Answer:

The upbringing and nurturing of children is dependent on what is most beneficial for them. If the father does not possess qualities and mannerisms which would ensure the correct upbringing of the children, and there is a strong possibility of the children’s character being corrupted, and a muftī or qādī believes that it would be more advantageous for the children to remain with their mother; he will issue a verdict to this end. This, notwithstanding the fact that the father’s right of custody has been established after the son reaches seven years and the daughter, nine years of age.
When children are in the mother’s custody and she intends remarrying

Question:
The mother of an immature girl was issued a divorce. The daughter is under the mother’s care. Can the mother get her married to someone whom she considers suitable? The father of the girl is apparently not happy with his daughter getting married.

Answer:
The mother has the first right of custody of an immature girl. When she turns nine, then – as per the order of the Sharī‘ah – the right of the father is established. This is because the father can have her educated and trained in the proper manner. Furthermore, the father also has the right of guardianship in matters related to marriage. However, if, for some reason, the father is not reliable and the daughter remains under the care of her mother even after reaching the age of maturity; and the father has no sense of responsibility and there is the fear of her character becoming corrupted if she were to live with him, the mother can maintain her under her wing, and get her married to a suitable person after she reaches the age of maturity.
الصغيرة إذا لم تكن مشتبهًا ولا زوج لا يسقط حق الأم في حضانتها ما دامت لا تصلح للمرجال. (البحر الرائق: 4/79، باب الحضانة، كونه) 

الفتاوي الهندية: 

لا حق لغير المحرم في حضانة الجارية، ولا للعصبة الفاسق على الصغيرة. كذا في الكفائة. (الفتاوي الهندية: 42/1) 

البداية: 

وأخرجوا أن الأقرب إذا عضل تنتقل الولاية إلى الأبعد، كذا في الخلافة. غاب الولي أو عضل أو كان الأب أو الجد فاسقاً فلمتقاضى أن يزوجها من كفيفة. كذا في الوصي للكرادي. (الفتاوي الهندية: 37/2) 

الفتاوي الشامي: 

ينبغي للمفتي أن يكون ذا بصيرة لبراعي الأصصل لولد، فإنه قد يكون له قريب مغض ليدمئ موته، فإذا علم المفتي أو الفاضي شيئاً من ذلك لا يجل له نزعة من أمم، لأن مدار أمر الحضانة على نفع الولد. وقدمنا في العديد عن الفتاح عند قوله: إن المختلعة لا تخرج من بيتها في الأصح، أن الحق أن على المفتي أن ينظر في خصوص الوقائع. (فتاوي الشامي: 3/55، باب الحضانة، سعيد). 

Allâh ta’âlâ knows best.
Phoning one’s son and taking him during the holidays

Question:
The child is in the mother’s custody and she can exercise her right over her son until the age of seven. During this period, can the father speak to his son over the telephone?

Answer:
If the child is in the mother’s custody and the father wishes to speak to him over the phone or to visit him, he has the right to do this. Furthermore, he can take him for a drive within the city [in which he is living with his mother]. The father is not permitted to take him out of the boundaries of the city.

Allāh ta‘ālā knows best.
MAINTENANCE

When a woman issued with an irrevocable divorce spends her ‘iddah at her parents’ home

Question:
A man issued a bā’in (irrevocable) divorce or mughallaz (three divorces) to his wife. The woman is not prepared to observe her ‘iddah at her husband’s house. Is she eligible for maintenance? Kindly explain what maintenance entails.

Answer:
If a divorced woman refuses to observe ‘iddah in her husband’s house without any Shar‘i reason, she will be classified as a nāshizah (recalcitrant). A husband is not obliged to pay for the maintenance of a nāshizah. Nonetheless, if he provides for her expenses out of his kindness, there is no harm in it.

الدر المختار:
لا نفقة لأحد عشر... وخارجة من بيته بغير حق وبي الناشترا حتى تعود، ولو بعد سفره. وفي الشامية: (قوله بغير حق) احترام عما لو خرجت حتى يدفع لها المهر. ولها الخروج في موضع مرت في المهر. (قوله وبي الناشترا) أي بالمعنى الشرعي، أما في اللغة فهي العاصبة على الزوج المبغضة له. (الدر المختار، رد: لـ: ٦٧٥، باب النفقة، ط: سعيد)

الفتاوى الهندية:
ولو وجبت العدة على المرأة، ثم حسبت بحق عليها تسقط النفقة، والمغدة إذا كانت لا تلزم بيت العدة، بل تستحق زماناً وتبرز زماناً لا تستحق النفقة، كما في الظهرية. (الفتاوى الهندية: ٨٥٨/١، فصل في نفقة المغدة)
الفتاوى البازرية:

والناشرة التي لا تستحق النفقة بي الخارجة عن منزله بل إذا إن بل حق
(الفتاوى البازرية على بابش الهنديه: ٤/٥٥٩٩، التاسع عشر في النفقات، وكذا في
البحر الرائق: ٤/٥٩٩، كونته)

Ahsan al-Fatāwā:

It was obligatory on Zaynab to go immediately to Zayd’s house after she was issued a divorce by him, and to observe her 'iddah there. Since she is not observing her 'iddah in her husband's house, she no longer has any claim to maintenance. Zayd will not be sinning if he refuses to give her money for her expenses.¹

Fatāwā Raḥīmīyyah:

If the wife leaves against the wishes of her husband without a valid reason and without a Shar’ī basis, she is not eligible for maintenance. The following is stated in Fatāwā As‘ādīyyah:

اعلم أن المرأة إذا طلقت فإنها تعيد في البيت الذي كانت فيه ساكنة من قبل، ويجب عليه النفقة والسكنى، وإن خرجت باختيارها فهي ناشزة لا تجب لبها

شفا ‘Abd al-‘Azīz Muḥaddith Dehlawī raḥimahullāh writes:

The payment for the wife’s expenses is in lieu of her living with her husband. If she leaves his house without his approval, it is no longer obligatory on him to pay for her food, clothing and lodging. The juridical principle is that maintenance is in lieu of her remaining confined to the husband’s house. (Majmū‘ah Fatāwā ‘Azīzī, vol. 1, p. 13)²

Details related to maintenance

The reality of maintenance

The expense which the Sharī‘ah considers essential for the continued existence of a person is known as nafaqah or maintenance. Man’s nafaqah is his food and drink, clothing and shelter.

² Fatāwā Raḥīmīyyah, vol. 8, p. 432.
The causes for the obligation of maintenance

Three causes make maintenance obligatory:

1. Marriage.
2. Ties of kinship.
3. Ownership.

It is obligatory on the husband to maintain his wife on the basis of being his wife. Similarly, he has to pay for the maintenance of his expected heirs [e.g. children]. Moreover, children have to pay for maintenance of parents and vice versa.

Every item which is owned by a person, whether a house, a vehicle or anything else. It is obligatory on the owner to maintain these items whenever necessary to keep them in working and usable order.

Maintenance of the wife becomes obligatory because of marriage. This is irrespective of whether the wife is a Muslim, from the People of the Book, wealthy or poor, healthy or ill. It is the duty of the husband to pay for her maintenance.

Maintenance becomes obligatory through a valid marriage. Maintenance is not obligatory in the case of an invalid marriage.

A woman who is observing 'iddah is eligible for maintenance. She becomes a stranger to the man upon the expiry of her 'iddah. Therefore, once she completes her 'iddah, the one who divorced her is not liable to pay for her maintenance.
ثم نفقة الغير تجب على الغير بأسباب: الزوجية، والقرابة، والملك. (فتح القدر: ۴۳۸/۳، ط: دار الفكر، وكذا في البحر الرايق: ۴۳۷، ط: كونته)

وفي الدر المختار: نفقة الغير تجب على الغير بأسباب ثلاثة: زوجية، وقرابة، وملك. وفي الشامية: قول وملك) شامل لنفقة الملوك من بني آدم والحيوانات والعقار كما في الدر المنتفق، لسورة في الأخر لا تجب قضاء وفي الغذي خلاف. (الدر المختار مع رد المختار: ۳۷۳/۳، باب النفقة، ط: سعيد)

توجب على الرجل نفقة أمه، المسلمة والمسلمة، والدته، والزوجة، والملاك، ودخل بها أو لم يدخل، كبيرة كانت المرأة أو صغيرة، يجمع مثلها، كما في فتوى قاضي خان، سواء كانت حرة أو مكانتها، كما في الجوابية، كل من وطئت بسبحة فلا نفقة لها، كما في الخلافة. قال: ولا نفقة في النكاح الفاسد ولا في العدة منه. (الفتاوى الهندية: ۴۴۷/۱)

وإذا طلق الرجل أمرأته، فلنفها النكبة والسكنى في عدتها رجعباً كان أو بائناً... لأن النفقة جزء احتباس علي ما ذكرنا، والاحتباس قائم في حق حكم مقصود بالنكاح وموال الولد، إذا العدة واجبة لصيانة الولد فتجب النفقة، وليست كان لها السكنى بالإجماع، وصار مما إذا كانت حامل أوكونت، وحديث، فأطمة بنت قيس رضي الله عنده، فإن قال: لا ندع كتاب، وسنن نبينا بقول امرأة لا تدري أصدقت أم كنت، حظنت أم كنت، سمعت رسول الله صلى الله عليه وسلم يقول: لسلطنة الثلاثة النكبة والسكنى، ودامت في العدة، ورد أيضاً زيد بن ثابت وأسامة بن زيد وجابر وعائشة رضي الله تعالى عليهم أجمعين، (البداية: ۴۴۳/۴)
Allāh ta‘ālā knows best.

**Maintenance of a six-year old child**

**Question:**
A man divorced his wife. They have a six-year old son. He is presently under his mother’s custody. Whose responsibility is it to pay for his maintenance? What items should be paid for?

**Answer:**
The mother is responsible for the custody and upbringing of a six-year old child. Maintenance of the child is the father’s responsibility. Maintenance includes all essentials such as food and drink, clothing, shelter, medical expenses, school fees, etc.
Maintenance of a divorced, pregnant and recalcitrant woman

Question:
A pregnant woman ran away from her house in May. Her husband issued one divorce to her in August. Will she be eligible for maintenance from May to August, and from August until she gives birth?

Answer:
If a woman runs away from her husband’s house without a valid reason, she is classified as a nāshīḥah (recalcitrant). A nāshīḥah forfeits her right to maintenance. In this case, she lost her right to maintenance from May – i.e. from the moment she ran away from her husband’s house, and this will continue until she gives birth. Yes, her 'iddah commenced in August, so during her 'iddah she will be eligible for shelter only. In other words, she will be eligible for shelter from August until she gives birth.

Allāh ta’ālā knows best.
فتاوى الشام:

قوله: (غير حق) ذكر محتزه بقوله: مخالف ما لو خرجت الخ، وكذا بيو احتراز

أما لو خرجت حتى يدفع لها المهر، ولها الخروج في مواضع مرت في المهر

قوله: (وهي الناشرة) أي بالمعنى الشرعي، أمها في اللغة فهي العاصية على الزوجة

المغضة لها. (فتاوى الشام: 1/327، باب النفقة: ط: سعيد)

الفتاوى الهندية:

وإن نشرت فلا نفقة لها حتى تعود إلى منزل، والناشرة بي الخارج زوجها، المانعة نفسها منه، مخالف ما لو امتنعت عن المحسن في بيت الزوج، لأن الاحتباس قائم. (الفتاوى الهندية: 1/540، في نفقة الزوجة)

رد المختار:

قوله: (وذهب لمطلقة الرجع، والبائين) كان عليه إبدال المطلقة بالمعدة، لأن

النفقة تابعة للعدة... وفي المجتي: نفقة العدة كلفقة النكاح. وفي النخبرة:

وتقطع بالنشور وتعود بالعود، وأطلق فشل الحامل وغيره، والبائين بثلاث أو

أقل، كما في الحادية. قال في البحر: فالحاصل أن الفرقة إما من قبل أو من

قبلها، فلو من قبل، فلها النفقة مطلقة، سواء كانت بمعصية أو لا، طلاقًا أو

فسخًا، وإن كانت من قبلها فإن كانت بمعصية فلا نفقة لها، ولها السكن في

جميع الصور (رد المختار: 3/293، باب النفقة: ط: سعيد)

حاشية الطحاوي:

الأصل أن الفرقة حتى كانت من جهة الزوج فلها النفقة، وإن كانت من جهة

المرأة إن كانت بحق لها النفقة، وإن كانت بمعصية لا نفقة لها. (حاشية

الطحاوي على الدر المختار: 2/373، ط: كونه)
Fatāwā Raḥmānīyyah:

There is no Sharī‘ī reprehensibility in spending the 'iddah in the husband’s house. If the woman still wants to observe her 'iddah in her parents’ home, then she cannot demand for maintenance during this period. Nonetheless, if he gives it voluntarily it will be better.


Allāh ta‘ālā knows best.

Medical expenses

Question:
Is the husband responsible to pay for his wife's medical expenses? What is the ruling with regard to hospital expenses in the case of her being pregnant?

Answer:
Medical expenses, medical treatment, etc. are obligatory on the husband on the basis of religious integrity even though they may not be obligatory by judicial decree. Furthermore, societal norms are taken into consideration. Generally, the husband pays happily for expenses of this nature. Therefore, he ought to pay for them.

Islāmī Fiqh:

Some jurists have stated that it is not obligatory on the husband to pay for medical expenses. He is only obliged for boarding and lodging. If he pays for medical expenses, it will be an act of kindness on his part. I
am of the view that medicine, medical expenses, medical treatment, etc. – especially in these times – are not any less than the basic needs such as oil, a comb, soap, etc. Since the jurists state that it is obligatory on the husband to pay for these basic needs for the wellness and cleanliness of the wife’s body, why should medicine and medical treatment not be obligatory? The jurists also state that it is not obligatory on the father to pay for the maintenance of his mature sons. However, when such a son falls ill, it becomes necessary for his father to pay for his medical treatment. This is with regard to one’s own son. The jurists went one step further and said that even a mudārib will be eligible for medical expenses because without proper medical treatment, he will not be able to work. Thus, bearing in mind the benefits which are obtained from a wife, why should consideration not be given to her and why should the payment of her medical expenses not be obligatory on the husband? If a woman does not place this burden on her husband out of her own will, it will be a favour from her. Furthermore, the importance of seeing to her medical treatment and medical expenses is gauged from the statement of Rasūllullāh َاللَّهُ عَلَيْهِ وَرَحْمَتُهُ  himself. In the light of such a statement, paying for the wife’s medical expenses ought to be made an obligatory duty on the husband.

The jurists state that when the services of a midwife are obtained at the time of childbirth, her fees will be borne by the one who called her. If the wife calls for the midwife on her own, she will bear the expenses. If the husband calls for her, he will bear the expenses. It is my view that this too ought to be the responsibility of the husband under all situations. Since the child is his, and since it is obligatory on him to pay for its milk and other expenses, why should all the expenses which are incurred at the time of childbirth not be obligatory on him? This is
further emphasised when we consider the precarious condition in which mother and infant find themselves in at the time of childbirth. There is the danger of both or one of them succumbing to death. The following statement made by Ibn ʿAbidin rahimahullāh ought to be applied in all the above-discussed situations. He says:

ويبن له ترحيب الأول، لأن نفع القابلة معظم، يعود إلى الولد، فيكون على أبيه. (رد المختار: 3/293، ط: سعيد)

The entire benefit of medical treatment for the wife will be enjoyed by the husband.

Moreover, just imagine how heartless it will be that we derive benefit from her when she is sound and healthy, and abandon her at the time when she requires medical treatment!? Or place the responsibility on the shoulders of her parents!? The era in which the jurists presented this view was neither faced with so many complex ailments as we have today nor was medical treatment considered to be an essential of life. The Shar'ī issue is related to societal norms and situations. And the situation has obviously changed today.1

وفي الدر المختار: وفي أجرة القابلة على من استأجرها من زوجة وزوج. ولو جائزة بلا استئجار قبل: عليها، وقيل: عليها. وفي الشامية: (قوله: قيل عليه) عبارة البحر عن الخلاصة: فلفائل أن يقول: عليه لأنه مؤنة الجماعة... ويبن له ترحيب الأول، لأن نفع القابلة معظم يعود إلى الولد، فيكون على أبيه. تأمل. (در المختار مع رد المختار: 3/279، باب النفقة، ط: سعيد)

قال الدكتور وليد الزحيلي في كتابه الفقه الإسلامي وأدلته: ويبن له أجرة المداواة لم تكن في الماضي حاجة أساسية، فلا يحتاج الإنسان غالبًا إلى العلاج، لأنه يلتزم قواعد الصحة والوقاية، فاجتهاد الفقهاء هم المحبين عن عرف قائم في عصرهم. أما الآن فقد أصبحت الحاجة إلى العلاج كالحاجة إلى الطعام والغذاء، بل أبى، لأن المريض يفضل غالبًا ما يتناول به على كل شيء، وبل

1 Islāmi Fiqh, vol. 2, pp. 118-119.
The father paying for the maintenance of a six-year old child

Question:
Husband and wife have been separated, and they have a child who is less than seven years old. The father did not have any bond with his son. Will it be obligatory on him to pay for this son’s expenses?

Answer:
It is obligatory on the father to pay for the maintenance and expenses of a child who is less than seven years old under all conditions and situations. The obligation remains irrespective of whether he had a bond with his child or not.

Allāh ta’ālā knows best.

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Allāh ta’ālā knows best.
When there is no possibility of the father being allowed to meet his child

Question:

The mother’s family refuses to allow the child’s father from seeing his child. Even when the child reaches the age of seven, there is no possibility whatsoever of the father being allowed to see his child. In such a situation, will the father still be obliged to pay for the child’s maintenance? For example, the father requests for his child to live with him for one day in the week, but the mother’s family refuses. What is the ruling in this regard?

Answer:

For as long as the child cannot eat and drink on his own, nor can he wash himself when he goes to the toilet – i.e. until he reaches the age of seven – the right of custody is with his mother. It is the responsibility of the father to pay for the child’s maintenance during this period. After the child turns seven and is able to eat, drink and relieve himself on his own; the right of the mother terminates. The child will now live with his father. If the mother and her family refuse to hand over the child without any valid Sharī‘i reason, the maintenance of the child will fall away. In other words, the father will no longer be responsible. Furthermore, while the child is in the mother’s custody, the father must be allowed to see and meet his child. It is oppressive to refuse him.
بالصلاة إذا بلغه، وإنما يكون ذلك إذا كان الولد عليه. (البحر الرائق: 4/290، ط: كونته)

الدر المختار:

(وجب) النفقة بأنواعها على الحر (لفظه) يعم الأثني والجمع (الفقيه) الحر.
وفي الشامية: (قوله بأنواعها) من الطعام والكسوة والسكرى. (قوله للفظ) بع
الولد حين يسقط من بطن أمه إلى أن يحكم. (قوله الفقيه) أي إن لم يبلغ حد
الكاسب. (الدر المختار مع رد المختار: 3/263، باب النفقة، سعيد)

الفتاوى التأريخانية

وفي الحاوي: الولد إذا كان عند أحد الأبوين لا يمنع الآخر عن النظر وعن
تعابده. (الفتاوى التأريخانية: 4/60، حكم الولد عند افترق الزوجين)

خزانت الفقه:

والملطلقة البائنة خرجت بولدها إلى موضع يقدر الزوج أن يزور ولده في يومه
لبها ذلك، وإن خرجت إلى موضع لم يقدر الزوج أن يزوره في يومه لم يجر
(خزانت الفقه، باب المقدار، ما زاد عم يوم واحد، ص 334، المكتبة الغفورية
العاصمية)

جامع أحكام الصغر:

إذا كان الغلام والجارية عند الأم فليس لها أن تمنع الأب من تعابد بما، وإن
صار إلى الأب فليس له أن يمنع الأم من تعابيدما والنظر إليهما. (جامع
أحكام الصغر: 10/106، وكذا في البحر الرائق مع الحاشية: 4/173)

Allâh ta’âlâ knows best.
When a mature girl insists on living with her mother

Question:
A man divorced his wife. He has a mature daughter who insists on living with her mother. She refuses to live with her father. Will the father be obliged to pay for her maintenance bearing in mind that she cannot make her own arrangements?

Answer:
It is the responsibility of the father to pay for the maintenance of his mature daughter. This is because fathers are responsible for their daughters under all conditions until they get married. Yes, if the daughter has her own money, she can spend on herself from it.

الفتاوى الهندية:
ونفقة الإناث واجبة على الآباء ما لم يتزوجن إذا لم يسكن لهن مال. كذا في الخلاصة. (الفتاوى الهندية: ٦٢٣/١)

فتح القدير:
والأولاد إما صغار وفإما كبار، فالأقسام أربعة: الأول أن يسكن الأب غنياً والأولاد كباراً، فإنما إناث أو ذكور، فالإناث عليه نفقتين إلى أن يتزوجن إذا لم يسكن لهن مال، وليس لهم أن يواجرون في عمل ولا خدمة وإن كان لهن قدرة، وإذا طلقت وانقضت عدتها عادت نفقتها على الأب. (فتح القدير: ٤٠١/٤، فصل في نفقة الأولاد الصغار. كذا في الفتاوى النافذة خانة: ٤٠/٩، نفقة ذوى الأرحام)

فتاوى قاضي خان:
ونفقة البنت البالغة في طابر الرواية تكون على الأب خاصة. (فتاوى قاضي خان: ٤٤٧/١)
Ahsan al-Fatāwā:

Maintenance of a daughter rests with the father until she gets married. However, if the girl is wealthy or has a source of income, her father is not liable to pay. The father is not responsible for the maintenance of his mature son. But if he cannot earn due to an illness or some other reason, or is still studying and does not have his own wealth, his father will be liable to pay for his expenses.¹

Allāh taʿālā knows best.

After a son gets married

Question:
Is the father responsible for paying for the wedding expenses of his son and for arranging a house for him?

Answer:
The father is not liable to pay for the expenses of his mature son. If he cannot earn due to an illness or some other reason, his father will be liable for his maintenance. Maintenance refers to food, drink, clothing and shelter. Once the son gets married, it is not the father’s responsibility to provide him with a separate house. Yes, if the father has the means, then it will be an act of generosity and a reward to provide his son with a house. This, even though he is not obligated to do this.

Ahsan al-Fatâwâ:

The father is not responsible for the maintenance of his mature son. But if he cannot earn due to an illness or some other reason, or is still studying and does not have his own wealth, his father will be liable to pay for his expenses. The father is not liable to pay for his son’s marriage expenses. As for a daughter, nothing is spent on her. Therefore, nothing is obligatory on the father for her marriage. Even her expenses are to be borne by her husband. However, expenses are incurred for a son’s marriage. From among these expenses, dowry and maintenance of the wife are obligatory; while the walima is Sunnah. None of these need to be paid by the father.¹

Allâh ta’âlâ knows best.

**Fulfilling all the needs of one’s wife**

**Question:**

Is the husband liable to fulfil all the needs of his wife? What is the extent and level of maintenance?

**Answer:**

If the husband is wealthy or he his income is considerably good, and his wife is also from a wealthy family, the husband will have to pay for her food, clothing and shelter in line with her standard of living. If the husband is wealthy or his income is good but his wife is from a poor family; the husband will maintain her according to his standard of living and not hers.

If the husband is poor and the wife also hails from a poor family, the husband will have to provide her with food, clothing and shelter according to his means. If the husband is poor while the wife is from an affluent family, the husband will have to look at his own status and also consider the status of his wife. At the same time, it is the moral duty of the wife not to demand more than what her husband can afford.

Items which are required for a woman’s wellbeing and cleanliness are included in her maintenance. It is the duty of the husband to provide those items. For example, oil, a comb, soap, water for wudâ’ and taking a bath. The husband is not liable to pay for items which are used solely for beautification or leisure, e.g. betel-leaf, tobacco, creams, powders, lipstick, etc. Refer to Islâmî Fiqh, vol. 2, p. 115 for further details.

What type of house should a husband provide? The jurists explain this as follows:

As far as possible, the wife must live amicably with the husband's family so that he does not have to bear unnecessary pain. Despite this, it will be more appropriate for the husband or his family to set aside a room or section of the house for his wife. In this way she will be able to store her belongings safely, she and her husband can live in this section without any formalities, and she does not end up having arguments with the rest of the family.

If the wife does not want to live with the rest of the family and asks for a separate house, it will be the husband's duty to provide her with a room of her own or at least one corner of the house which she could close and lock. The wife may permit or refuse whoever she wants from entering the room or section which has been set aside for her. The husband is not liable to provide anything else, e.g. a separate bathroom, toilet or kitchen. However, all this applies if the husband is not wealthy. If he is wealthy, he must provide his wife with a house which fulfils all her needs, e.g. a bathroom, toilet, kitchen, etc. Refer to Islam Fiqh, vol. 2, p. 121 for details.

وينبغي اعتماده في زماننا بناءًً مر أن الطعام والكَسْوَة يختلفان باختلاف الزمان والمكان. وأُبِي بلادنا الشامية لا يكونون في بيت من دار مشتغلة على أجانب، بل ينحدرون أشياءً فضلاً عن أشرافهم إلا أن تكون داراً مروثة بين إخوة مثلاً، فيسمع كل منهم في جهة مثلك مع الاشتراك في مراقبتها، فإذا تضررت زوجة أحدهم من أخاهها أو ضرتها، وأراد زوجها إسكانها في بيت منفرد من دار لجماعة أجانب في البيت مطيخ وخلاء يبعدون ذلك من أعظم العناصر، فبينيغ الفاتحة بلزوم دار من بابها. نعم ينبغي أن لا يلزم إسكانها في دار واسعة كدار أُبيها أو كداره التي بُو ساكن فيها، لأن كثيراً من الأبواب والأشراف يسكنون الدار الصغيرة. وهذا موفق لما قدمه عن الملتقط من قوله اعتبراً في السكنى بالمعروف، إذ لا شك أن المعروف يختلف باختلاف الزمان والمكان، فعلى المفتى أن ينظر إلى حال أهل زمانه وبلده، إذ
If the wife is wealthy, it is obligatory on the husband to provide her with a separate house. If she is from a middle-class family, then in addition to providing her with her own room, it is necessary to provide her with a separate kitchen, bathroom and toilet. If she is poor, a room will suffice. It will be okay if the kitchen, toilet and bathroom are shared.¹

In the case where there are arguments and disputes or the relatives of the husband visiting regularly, the wife can ask for a separate house. Allāh ta‘ālā knows best.

Household goods

Question:
Husband and wife were living in the same house and they got divorced. What is the ruling with regard to the goods in the house? Who is more entitled to them? For example, a clock, bed-linen, etc. Will the wife keep these or does she have to return them to her husband?

Answer:
Items which are known with certainty to belong to the husband will be his. Those which are known with certainty to belong to the wife will be

hers. For example, items which the wife received from her parents will be hers. Or items which her relatives gave in her name at the time of her wedding will belong to her. Items which the wife bought with her own money or which her husband gave to her will also be hers. As for items whose ownership is unknown or disputed, and there is no proof or witness to them, then those which are normally used by males will belong to the husband and those which are normally used by females will belong to the wife. Those which are used by both, the husband will take an oath that they belong to him and he will take them. If it is known that the clock or any other item belongs to the husband, it is necessary to give it to him.

وقد فيما يصح لِبمَا: أي القول لِكَي ينص على الرجل، فالقول في الدعاوى لصاحب اليد، خلاف ما يختص بها لأنه بعارض ظاهر أقوى منه، ولا فرق بين ما إذا كان الاختلاف حال قيام النكاح أو بعد ما واعت الفرق، وما يصح لِبمَا: الفرش والأثاثة والأثاثة والآثاثة وال منزل والعقار والموارد والنقود كما في الكافي، وبع علم أن البيت لِلزوج إلا أن يكون لها بيئة وعزاد في خزانة الأكمل إلى الإمام الأعظم، وفي الحانة: ولأغاما البيت يقض بِبينتها، لأنها خارجة معنى. (البحر الرائق: 7/333، باب التحالف، كوثو)

وفي أيضاً: (ولن اختلاف الزوجان في متنا البين، لِلقول لكل واحد منها فيما يصح لِهِ): لأن الظاهر شاب له، والمنغير لغة: كل ما ينتفع به كالطعام والبر وأثر البيت، وأصل ما ينتفع به من الزاد...قالوا: والصالح لِ العمامة والقباء والغسل والطبس والطبس والملبس والملبس والمنطقة والكتب والكراس والدرع الحديد، فالقول في ذلك لم يمن به، وما يصح لِهِ: الحمار والدرع والعصا والأساور وخواتم النساء والخيل والملح والجبان، فالقول لِها فيما مع البين، قالوا: إلا إذا كان الزوج يبيع ما يصح لِهِ فالقول لِلتعارض الظاهر، وهذا إذا كانت تبيع ما يصح لِهِ: لا يقبل قول مما ذكرنا. (البحر الرائق: 7/358، باب التحالف)
Utilizing the wealth of a person who goes missing

Question:
The whereabouts of Zayd are unknown. He has a wife and children. Some of the children are minors while others are majors. The family belongs to a noble background. One of the children is a mature boy who wants to pursue secular knowledge. Can he use his father’s money to pay for his studies?

Answer:
A person who goes missing is like one who is absent. The mature children of an absent person can be given maintenance provided they are unable to earn, it will be a taint against them if they were to go out to work, or they are studying Dīnī knowledge and do not have the time to earn. However, the wealth of an absent person cannot be used for the payment of secular and Western education. Firstly because the seeking of knowledge refers to Dīnī knowledge. Secondly, what guarantee do we have that the children’s education will be completed in this way or their wishes fulfilled? Thirdly because the one wanting to pursue higher studies can easily obtain loans from relatives or friends. Based on these reasons, the wealth of a missing person will not be spent for the payment of such knowledge.
Allāh ta‘ālā knows best.

Maintenance of an old and needy father

Question:

A man is old and needy. He has one son and one daughter. Both children are relatively wealthy. Are they both equally responsible to see to his needs and serve him, or is it only the son’s duty? What if both children or one of them is needy?
In the case where children are wealthy, it is the duty of both to see to the needs of their father and to serve him. If the children are themselves needy, they are not liable to pay for his maintenance. By wealthy we mean that the person owns that amount of wealth due to which it becomes prohibited for him to accept charity. If there is a glaring difference between the affluence of the two, it will be necessary for them to pay for his maintenance in proportion to their wealth.

**الفتاوي الهندية:**

قال: يجزي الولد الموسر على نفقة الوالدين المعسرين، مسلمين كانا أو ذميين قدرا على الكسب أو لم يقدروا.. اليسار مقدر بالنصاب فيما روى عن أبي يوسف رحمه الله تعالى، وعليه الفتوى. والنصاب نصاب حران الصدقه، بكذا في البداية. وإذا اختلطت الذكور والإناث فنفقة الأبين عليها على السوية في ظاهر الرواة، وبأخذ الفقيه أبو الليث، وبه يفتي. كذا في الوجيز للكردي. قال الشيخ الإمام شمس الأئمة: قال محدثنا رحمهم الله تعالى: إنما تكون النفقة عليها من السواء إذا تفاوتنا في اليسار تفاوتاً يسيراً، وأما إذا تفاوتنا تفاوتاً فاحشاً فيجبان أن يتفاوتا في قدر النفقة، كذا في الذكيرة.

(الفتاوي الهندية: ۱/۱۵۸، فصل في نفقة ذوي الأرحام)

**فتاوي الشامية:**

وفي فتاوى الشامية: (قول: يسار الفطرة على الأرجح) أي بآن يملك ما يجرم به أخذ الزكاة، وهو نصاب ولو غير نام، فاضل عن حوائجه الأصلية، وبدأ قول أبي يوسف. وفي البداية: وعليه الفتوى. صحيح في الدخبرة، ومنه على في متن الملتقي، وفي البحر: أنه الأرجح، وفي الخلاصة: أنه نصاب الزكاة، وبه يفتي. واختاره الوالدي: ثم أعلم أن ما ذكره المصنف من اشتراف اليسار في نفقة الأصول صرح به في كافي الحاسوم والدرر والتفاوت والفتوى والمثبت، والملتفي، والمؤاب.
Sisters paying for the maintenance of their needy brother

Question:

There is a man who is excused and poor. He has a mother, a blood sister, a uterine sister, and a consanguine sister. Who will be responsible for the payment of his needs? All of his siblings are wealthy.

Answer:

All of the above will be liable to pay for the excused and poor person in proportion to their share of inheritance. In other words, each one will have to pay for his maintenance in proportion to whatever share each of them would have received in the case of this person passing away. This is based on the principles:

"وعل الوارث مثل ذلك" و "العمر بالغم".
The Shar‘ah shares of each one is as follows:


Each of them will pay for his maintenance in the above proportion.
Maintenance in the presence of a father and children

Question:
A man is weak and ill. He has a son, a daughter and a father. Who will be liable for his maintenance?

Answer:
In this case, the maintenance of a sick and weak man will be borne equally by his son and daughter. The man’s father is not liable to pay for anything. This is because children are closer in relationship. In the presence of both ascendants and descendents, the closer one and the one who is a part of the other is taken into consideration.

Allah ta’alā knows best.
Maintenance of mature children

Question:
If mature children are excused (blind, paralysed, etc.), and both their parents are wealthy, then who is liable to pay for their maintenance; both parents or the father alone? If both are liable, then on what proportion?

Answer:
According to the ṣāhīr ar-riwāyah, maintenance of excused children is the sole responsibility of the father. The mother is not liable to pay for anything. The fatwā is issued on this view.

Allāh ta‘ālā knows best.

_Allāh ta‘ālā knows best._

**Maintenance of non-Muslim parents**

**Question:**

A person has non-Muslim parents. Is he liable to pay for their maintenance?

**Answer:**

It is obligatory and necessary for the son to pay for the maintenance of his non-Muslim parents provided they are not classified as *harbī.*

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1 A person who is at war with a Muslim state.
Parents accepting maintenance from an apostate son

Question:
Can Muslim parents accept maintenance from their apostate son? They have no other source of income.

Answer:
If an apostate does not revert to Islam, he has to be killed. However, this punishment cannot be promulgated in non-Muslim countries. An apostate will therefore be classified as an unbeliever, and it is
permissible to accept a gift from an unbeliever. Nonetheless, he has to be boycotted and monetary help from him should not be accepted. It is the duty of other Muslims to make arrangements for the maintenance of these parents.

معلّن محمد يوسف لودين ورحمة الله عليه says:

It is permissible to share a meal with a non-Muslim but not with an apostate.\(^1\)

It is permissible to accept a gift from a non-Muslim provided it is not impure.\(^2\)

Allah ta’ala knows best.

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\(^{1}\) *Ap Ke Mas‘īl Aur Oen Kā Ḥull*, vol. 1, p. 69.

\(^{2}\) Ibid. p. 67.
Five breastfeeds

Question:

Some modernists make an objection by saying that a narration of *Saḥīḥ Muslim* states that when Rasūlullāh ʿalayhi wa sallam passed away, a verse making reference to five breastfeeds was recited, whereas there is no reference anywhere in the Qurʾān about this.

The narration of *Saḥīḥ Muslim* reads as follows:

كان فيما أنزل من القرآن عشر رضاعات، معلومات يحرم من، ثم نسخ بمساءة

This narration seems to blemish the Qurʾān because where did this verse go after Rasūlullāh ʿalayhi wa sallam passed away? Whereas we know that the Qurʾān is preserved in its pristine purity.

It is We Ourselves who revealed this admonition, and We are its protectors.¹

لا يأتيِ الباطل من نبينَ تدُّنيهُ وَلا من خالقِه، تدُّنيهُ من حكِيمٍ حميدٍ.

No falsehood can ever attain to it – neither from in front of it nor from its rear. A revelation from the all-wise, worthy of all praise.²

بل هو آياتُ نبينٌ في صدورُ الذين أوتوا العلمَ.

Rather, this [Qurʾān is a collection of] clear verses in the hearts of those who have been given knowledge.³

¹ Sūrah al-Ḥijr, 15: 9.
² Sūrah Ḥā Mim Sajdah, 41: 42.
What is the reply to the above objection?

**Answer:**

1. A short solution to this objection is that the words “ten breast-feeds have been abrogated by five” are found in all the narrations. As for the words “when Rasūlullāh ʿalayhi wa sallam passed away, they were from among the words of the Qur’ān which were recited”, from the students of ʿUmrah, it is only ʿAbdullāh ibn Abī Bakr who relates them. The other students of ʿUmrah, viz. Yahyā ibn Saʿīd Aḥbārī whose narration is found in Sahih Muslim (vol. 1, p. 469) and Qāsim ibn Muhāmmad whose narration is found in vol. 1, p. 321, do not quote these words. We conclude that the correct and preferred narration is only this: “ten breast-feeds have been abrogated by five”. As for the words “when Rasūlullāh ʿalayhi wa sallam passed away, they were from among the words of the Qur’ān which were recited”, these are classified as shadh (rare). This is because Qāsim ibn Muhāmmad and Yahyā ibn Saʿīd Qattān are superior in rank to ʿAbdullāh ibn Abī Bakr; and the former do not narrate these words.

2. It is possible that the verse making reference to five breast-feeds was abrogated towards the end of the life of Rasūlullāh ʿalayhi wa sallam. Some Sahabah raḍīallāhu ‘anhum may have not known about its abrogation and this is why they continued reciting it. If this verse was not abrogated, it would have been included in the Qur’ān; but it is not to be found in it.

ʿAllāmah Tāhāwī rahimahullāh writes:

 حدثنا يونس بن عبد الأعلى قال أها ابن أبي بكر عن عمرة أبنته عبد الرحمن عن عائشة أم المؤمنين رضي الله عنها أنها قالت: كان فيما أنزل من القرآن "عشر رضاوات معلومات بحرون" ثم نسخة بخمس معلومات فتوفي رسول الله صلى الله عليه وسلم وبوهما فيما يقرأ من القرآن.

قال أبو جعفر: وبدأ ممن لا نعلم أحداً رواه كما ذكرنا غير عبد الله بن أبي بكر، وبوهندنا وبوه منده، أعني ما فيه مما حكاه عن عائشة رضي الله عنها

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1 Sūrah al-ʿAnkabūt, 29: 49.
"أن رسول الله صلى الله عليه وسلم توفي، وربما فيما يقرأ من القرآن، لأن ذلك لو كان كذلك لكان كسائر القرآن، وجاز أن يقرأ في الصلاة، وحاشا الله أن يكون كذلك، أو تكون قد بقي من القرآن ما ليس في المصافح التي قامت بها الحجة علينا، وكان من صفقة محرف مما فيها كافراً، ولكن لو بقي من القرآن غير ما فيها جاز أن يكون ما فيها منسوخاً لا يجب العمل به، وما ليس فيها ناسخ يجب العمل به، وفي ذلك ارتفاع ووجوب العمل بما في آيدينا مما بع القرآن عندنا، ونعود بالله من هذا القول ومن يقول.

ولمكن حقيقة هذا الحديث عندنا - والله أعلم - ما قد رواه من أول العلم عن عمرة عن عائشة رضي الله تعالى عنها من مقدار، في العلم وضبط، لم فوق مقدار عبد الله بن أبي بكر، وبو القاسم بن محمد بن أبي بكر الصديق رضي الله عنه كما حدثنا محمد بن خزيمة قال لنا حجاج بن منهال قال لنا حماد بن سلمة عن عبد الرحمن بن القاسم عن القاسم بن محمد عن عمرة عن عائشة رضي الله عنها قالت: كان مما نزل من القرآن ثم سقط أن لا يحرم من الرضاع إلا عشر رضاعات ثم نزل بعد "أو خمس رضاعات". في هذا الحديث أول من الحديث الذي ذكرنا قيله، وفيه أنه نزل من القرآن ثم سقط، فدل ذلك أنهما أخرج من القرآن نسخاً له، كما أخرج من سواء من القرآن مما يقدم ذكرنا له وأعيد إلى السنة.

وقد تابع القاسم بن محمد على إسقاط ما في حديث عبد الله بن أبي بكر "أن رسول الله صلى الله عليه وسلم توفي، وأن ذلك مما يقرأ من القرآن، إمامة زمنه، وبو جحي بن سعيد الأنصاري كما حدثنا محمد بن خزيمة قال لنا حجاج بن منهال قال لنا حماد بن سلمة عن يحيى بن سعيد عن عمرة عن عائشة رضي الله عنها قالت: نزل من القرآن، لا يحرم إلا عشر رضاعات" ثم نزل بعد "أو خمس رضاعات". كما حدثنا روح بن الفرج قال لنا يحيى بن
After mentioning the gist of the above explanation of Imam Tahawi rahimahullah, Hadrat Muft Muhammad Taqi 'Uthmani Sahib writes in Takmilah Fath al-Mulhim:

قال العبد الضعيف: ومهم حكم على هذه الزيادة بالويل: القاضي أبو بصير بن العربي في عارضة الأحاديث (93/5) حيث يقول: "وقد قيل: إن بدء وبم منه، وإن الحديث الصحيح ما رواه القاسم دون ذكر بناء فيكون من نسخ" وموا يؤيد أنه عبد الرزاق أخرج عن عائشة ما يدل على نسخ ثالثة خمس رضاعات

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أيضًا، قائلًا: أنا ابن جريج قال: سمعت نافعًا يحدث أن سالم بن عبد الله حدث أن عائشة زوج النبي صلى الله عليه وسلم أرسلت به إلى أختها أم كلثوم ابنته. فأغبر لترضع عشر رضاعات قبل عليها إذا كبرت. فأرضعت ثلاث مرات، ثم مرضت. فلم يكن سالم يلجل عليها. قال: زعموا أن عائشة رضي عنها. قال: لقد كان في كتاب الله عز وجل عشر رضاعات تم رد ذلك إلى خمس، ولكن من كتاب الله ما قضى مع النبي صلى الله عليه وسلم. (أي قبل وفاته) بقليل. (مصنف عبد الرزاق: 7/170)

فهذه الرواية من عائشة رضي الله عنها تكاد تعني عنها تكاد تكون صريحة في أن خمس رضاعات قد نسخ تلاوتها قبل أن يقضى النبي صلى الله عليه وسلم.

(تكملة فتح المهم: 1/152)

From the statement of 'Allâmah Nawawî rahimahullâh as well, we conclude that some Sahâbah radîyallâhu 'anhum did not have knowledge about the abrogation:

وَبِئِن فِي مَا بَقَرَ مِن الْقُرْآنِ وَمَعْنَاهُ أَن النُّسْخَ خَمْسَ رَضَايَاتِ تَأْخُرُ إنْزَالُهُ جَدًّا، حَتَّى أَن النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمُ تَوَفَّى وَبَعْضُ النَّاسِ يَقْرَرُ "خَمْسَ رَضَايَاتِ" وَيُجَلَّدُ قُرَآنًا مَّتِلَوًا لَّكُونَهُ مِنَ النُّسْخِ لِقُرْبِ عِبَادِهِ، فَلَمَا بَلَغَ النُّسْخُ بَعْدَ ذَلِكَ رَجُعَوْا عَن ذَلِكَ، وَأَجْمَعُوا عَلَى أَن بَنَادِ لا يَتَّلَى. (شرح الإمام النووي على مسلم: 48/1)

Objection

What if someone submits the objection that only the words have been abrogated while the ruling is still valid? Therefore, five breast-feeds ought to obligate hurmat (impermissibility).

Reply

A narration of Sunan Ibn Mâjah clearly states that ten breast-feeds and five breast-feeds have been abrogated. Moreover, we also conclude from the previously-quoted narration of Musannaf 'Abd ar-Razzâq that both five breast-feeds and ten have been abrogated.
Observe the narration of Sunan Ibn Mājah:

**وَأَمْهَاتُكُمُ اللَّهُ ﻋَلَى ﺗُرَاعُكُمْ.**

...and your mothers who breast-fed you.¹

A Hadith clearly states that the prohibition applies irrespective of the amount. The following narration appears in Jāmī’ al-Masnūd:

أُبُو حَنِيفَةُ عَنْ الحَجَّامِ بْنِ عَتْيَبةِ عَنِ الْقَالِمِ بْنِ مَهْرَاءَةَ عِنْ شَرِيحِ بْنِ بَذَّٰذِ عن

عَلَيْ بْنِ أَبِ طَالِبِ رَضِيَ اللَّهُ عَنْهُ عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ:

يَحْرُمُ مِنَ الرَّضَايَ مَا يَحْرُمُ مِنَ النَّسْبِ، قَلِيلًةٍ وَكَثِيرَةٍ. (جَامِعُ الْمَسَايِدِ لِلْإِلَّامَاءُ

مُحَمَّدُ بْنُ مُحَمَّدٍ الأَخْوَازِيٍّ، ٢/٤٧٠، دَارَ الْبَاذِرَةَ، مِكَّةُ الْمُكْرَمَةُ)

The statements and practices of the Sahābah rādiyallāhu ‘anhum also show that ḥurmat is established irrespective of the amount – whether a little or a lot.

¹ سَرَاحُ عَلَى الْنِسآ، ٤: ٢٣.
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A narration of Sahih Bukhari also shows that hurmat is established by breastfeeding irrespective of the amount.

Allah ta’ala knows best.
Foster relationship is established with one’s maternal cousin if one drinks the milk of one’s maternal grandmother

**Question:**
A child drank the milk of his maternal grandmother. He now wants to marry his maternal aunt’s daughter. Is this permissible?

**Answer:**
He cannot marry his maternal aunt’s daughter because his maternal grandmother has become his foster mother while his maternal aunt has become his foster sister. The maternal aunt’s daughter has become his foster niece.

A Hadīth states:

قال النبي صلى الله عليه وسلم: “يحرم من الرضاع ما يحرم من النسب” (رواه البخاري).

Whoever is prohibited in marriage on account of blood relationship is prohibited on account of foster-hood.

There is a well-known couplet which lays down this principle:

All relatives have become mahārīm through the foster-mother. In other words, the wet-nurse has become one’s mother, her husband has become one’s father, her sister has become one’s maternal aunt, her sons and daughters have become one’s brothers and sisters. The relationship of the one who was suckled by the wet-nurse will be restricted to the spouses and children. In other words, if the suckled child is a male, his wife will be prohibited to the husband of the wet-nurse. If the suckled child is a female, her husband will be prohibited to the wet-nurse.

Allāh ta’ālā knows best.

**When one breastfeeds a child before marriage**

**Question:**
An unmarried woman breastfed someone’s daughter. She then married a man. Does her husband become a foster father of the girl?

**Answer:**
If her husband had conjugal relations with his wife or was in a valid privacy with her, then the girl is classified as a rabībah. She becomes a mahram to the man and marriage with him is prohibited. If the man
divorced his wife before conjugal relations or privacy with her, it will be permissible for him to marry this girl.

**Marrying the sister of one’s foster son**

**Question:**
A woman breastfed a boy. This boy has an elder sister from the same father (in other words, the boy and his elder sister are from one father but different mothers). The woman who breastfed the boy passes away. Her husband wants to marry the boy’s elder sister. Is it permissible?

**Answer:**
The elder sister of the foster son is not the wet-nurse’s daughter. The man can therefore marry her.
When a child is 27 months old

Question:
A boy was two years and three months old when he drank the milk of a woman named Āminah. He was about to get married to this woman’s daughter when some people said that he cannot marry her because the period of suckling according to Imām Abū Ḥanīfah rahimahullāh is two and half years. Others are saying that he can marry her because the period of suckling according to Imām Muḥammad and Imām Abū Yūsuf is two years. What is your fatwā in this regard?

Answer:
This marriage is permissible because the fatwā on this issue is based on the verdict of Imām Muḥammad and Imām Abū Yūsuf.

Allāh ta’ālā knows best.
Ibn ’Abbās ra'diyyallāhu 'anhu said: There is no breastfeeding after two years.

The accurate translation, however, is: There is no breastfeeding after two years.

And the most accurate translation is: There is no breastfeeding after two years. However, the breastfeeding should be continued after two years if needed.

Ibn Humām rahimahullāh writes:

Fakān al-ahsdh qolve alam, waw hukm al-ikhwa. (Ftah al-kidār: 3/444, Dar al-fikr)

Majmu’ al-anbār:

His remaining in the womb and his weaning are in thirty months.¹

¹ Sūrah al-Aḥqāf, 46: 15.
The verdict of the majority is that the period of breastfeeding is two years.¹

Allāh ta‘ālā knows best.

**Marrying the divorced wife of one’s foster son**

**Question:**
A man’s foster son divorces his wife. Can this man now marry this woman?

**Answer:**
It is not permissible to marry the divorced wife of one’s foster son. The Mufti of Baghdad, 'Allāmah ʿAlīṣā rahimullāh writes:

"وَحَلَائِلِ ابْنَائِكُمُ الَّذِينَ لَا أَصِلَابُكُمْ ...وَذَكَرَ إِسْقَاطَ حَلِيلَةِ المَتَنَبِّيَّةِ. وَعِنْ عُطَاءٍ: أَنْبَا نَزَّلَتْ حِينَ تَزَوَّجَ النَّبِيّ صَلِّي الله عَلَيْهِ وَسَلَّمَ امْرَأَةً زِيَادٍ بْنُ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ، فَقَالَ المَشْرَكُونَ فِي ذَلِكَ، وَلَسْ بِالْمُقْصُودِ مِنْ ذَلِكَ إِسْقَاطٌ حَلِيلَةِ الابْنِ مِنَ الرَّضَاعَ، فَإِنَّهَا حِرَامَ أَيْضًا كَحَلِيلَةِ الابْنِ مِنَ النِّسْبِ. (تَفْسِيرٌ رُوحٌ المَعْنَى: ٤/۶٤)

**تَفْسِيرُ النَّسْفِي:**

وَفِي تَفْسِيرِ النَّسْفِي: "الَّذِينَ لَا أَصِلَابُكُمْ" دُونَ مِنْ تَبْنِيَمَ، فَقَدْ تَزَوَّجَ النَّبِيّ صَلِّي الله عَلَيْهِ وَسَلَّمَ زِيَادَ بْنَ ثَابِتٍ، فَأَفْقَرَ فِي ذَلِكَ، وَلَسْ بِالْمُقْصُودِ مِنْ ذَلِكَ إِسْقَاطٌ حَلِيلَةِ الابْنِ مِنَ الرَّضَاعَ. (تَفْسِيرُ النَّسْفِي: ٦٢/٨١)

**الفَتْسِيرُ الْمُظْهِرِي:**

وَفِي التَّفْسِيرِ الْمُظْهِرِي: "وَأَمَّا الابْنِ بِالرَّضَاعَ وَفِرْوعٍ فَلَمْ يَنْخَرُجَا بِهِذَا الْفَيْدِ، لَمْ يَقُلْ حُرِّمَةُ حَلَائِلِهِمْ ثَبِيتٌ نَصِ الحَدِيثِ، أَعْيُنَ قُولَ صَلِّي الله عَلَيْهِ".

¹ Bayān al-Qur‘ān, vol. 1, p. 139.
A man sucked on his wife’s breast and drank her milk. Will this establish foster-hood? If it does not, why not?

Answer:
Foster-hood will not be established between husband and wife because for it to be established, the milk will have to be consumed during the suckling period. As per the promulgated verdict, the suckling period is two years. A husband is generally more than two years old. Therefore, if he drinks his wife’s milk, foster-hood will not be established. Yes, if a woman has a husband who is under two years old, and he drinks her milk, foster-hood will be established and his wife will become unlawful to him.

Notwithstanding the fact that foster-hood will not be established in such a situation, it is prohibited for a husband to drink his wife’s milk. He must abstain completely from doing this.
Child-bearing women shall suckle their children for two full years...

The Mufti of Baghdad, 'Allāmah Ālūṣī Baghdādī Ḥanafī rahimahullāh writes in his commentary to the above verse:

"... and the children shall be suckled by their mothers up to two full years...

The Mufti of Baghdad, 'Allāmah Ālūṣī Baghdādī Ḥanafī rahimahullāh writes in his commentary to the above verse:

"... and the children shall be suckled by their mothers up to two full years...

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Allah ta’alā knows best.

**When a barren woman produces milk**

**Question:**
A woman is barren. Many years have passed without bearing any children. She took over a young girl with the purpose of training and tutoring her. She offered her breast to the girl periodically. After some
time, milk started to flow from her breasts. Does the woman’s husband become the foster father of this girl? If her husband has a son from another wife, can this girl [whom the woman breastfed] marry that boy?

**Answer:**

The woman’s husband cannot marry the girl because she is classified as a *rabībah*. Marriage with her is unlawful based on the following verse:

\[
ورزِبْتُكمُ آليَ في خَجْورُكمُ
\]

...and their daughters who are under your care.¹

Unless the man did not have conjugal relations or was never in privacy with the mother of the *rabībah*. In such a case, marriage will be permissible.

As for the girl marrying the husband’s son from another wife, there is no reason for prohibition. The son was not born from the mother of the *rabībah*, but from a previous wife. Also, the mother of the *rabībah* did not produce milk on account of her husband.

**فتاوى الشامي:**

قوله "طلق ذات لين" أي من بآي ولدت منه، لأن د لتزوج امرأة ولم تلد منه، فت ولد لها لين وأرضعت ولداً لا يكون الزوج أباً للولد، لأن نسبته إليه بسبب الولادة منه، وإذا انفتت انتفت النسبة فكان كل النكر، ولها لو ولد للزوج فنزل لها لين فأرضعت به ثم جف لبها ثم ذر أرضعته صبي، وإن لابن زوج المرضعة التزوج بهذه الصبي، ولو كان صبياً كان لزوج بأولاد باب الرجل من غير المرضعة. (فتاوى الشامي: 3/31, باب الرضاعط سعيد)

¹ Sūrah an-Nisā’, 4: 23.

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When a woman produces milk through medication or an injection

Question:
A woman is bringing up a young girl. The woman does not produce milk. What if she starts producing milk after taking some medication and then feeds it to this young girl? Will foster-hood be established? Will the woman’s husband become the foster father to this girl?

Answer:
If a woman produces milk through medication and feeds it to the young girl, foster-hood will be established. In other words, the woman who breastfed her will become her foster mother. However, the woman’s husband will not become a foster father to this girl because he was not the cause of the milk-flow. Yes, if the husband had conjugal relations with his wife then the girl will be classified as a rabībah, and marriage to her will be unlawful. If the husband divorced his wife before conjugal relations or a valid privacy, it will be permissible for him to marry the girl.

الفتاوي الهندية:

يذكر في تزوج لّي نزل لها بن فأرضعته صبياً صاراماً للصبي وثبتت جميع أحكام الرضاع بينهما حتى لو تزوجت البكر رجلاً ثم طلقتها قبل الدخول بها كان لهذا الزوج أن يتزوج الصبية، وإن طلقتها بعد الدخول لا يكون له أن

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When milk is adulterated

Question:
A woman mixed her milk with water and fed it to a one and half year old child. Will foster-hood be established by doing this?

Answer:
When water is added to milk, we will have to check the proportion. If the water was more than the milk, foster-hood will not be established. If the milk was more, foster-hood will be established. If both were equal in amount, foster-hood will be established.

When we speak of changes in liquids, it means that either one of its two qualities – colour or taste – changes or becomes apparent. If the woman’s milk is added to food, foster-hood will not be established.
البداية:

وإذا اختلط اللبن بالماء واللبن بع الغالب يتعلق بـ التحريم، وإن غلب الماء لم يتعلق بـ التحريم. وتخليق المغلوب غير موجود حكماً حتى لا يظهر بمقابلة الغالب. (البداية: 35/3، كتاب الرضا)

الاختيار:

وإذا اختلط اللبن خلاف جنسه كالماء والدبن والدبن والدواء ولم يبالا فالمخال للفالب. (الاختيار لتعليل المختار: 34/3، بيوتروت)

البحر الرائق:

"ويعتبر الغالب لبما... أي لو اختلط اللبن بما ذكر يعتبر الغالب، فإن كان الغالب الماء لا يثبت التحريم كما إذا حلف لا يشرب لن يبحث بشرب الماء الذي فيه أجزاء اللبن. (البحر الرائق: 348/3، كوفته)

وكذا في بدع الصنائع: 9/5. سعيد، وخريطة الفقه ص 6/5، المكتبة الغنورية والفقه الإسلامي وأدلة: 77/7. وشرح المائدة: 2/05. والنقاية: 27/7. والبنية للعيني: 175/7. مكتبة رشيدية.

الدر المختار:

ومخلوط بباء أو دواء أو لبن أخرى أو لبن شاة إذا غلب لبن الماء، وكذا إذا استوبيا إجماعاً لعدم الأولوية. وفي الشامية: قول "إذا غلب لبن المرأة أياً على أحد المذكورات، وفسر للغلبة في أيام الخانة من حيث الأجزاء. وقال بناء: فسيرة محمد في الدواء بأن يخبره عن كونه لبناء، وقال الآخر: إن غير الطعام واللبن، لا إن غير أحببنا نبر. ونحوه في البحر. ووفق في البحر المنتقى فقال: تعتبر الغلبة بالأجزاء في الجنس، وفي غيره يغير طعم أو لون أو ريح كما روي

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Question:

Very often, one person’s blood is infused into the body of another for medical reasons. Will this affect the lineage and foster-hood of the two? I am asking this question based on the jurists’ verdict of foster-hood on the basis of breast milk.
Answer:

When blood is infused for medical reasons, it does not establish foster-hood. The establishment of foster-hood due to breastfeeding is evidenced through textual evidence. Other elements cannot be based on it. Moreover, a suckling infant is breastfed for his or her nourishment and growth; not for medical reasons. On the other hand, blood is infused for medical reasons. This is why foster-hood is not established after the period of suckling, viz. the age of two. If a child who is older than two years is given the milk of a woman for medical reasons, foster-hood will not be established.

When milk is fed in an unnatural way

Question:

The natural way of breastfeeding is for an infant to drink directly from the breast. What if milk is expressed and then fed to the infant through the mouth or nose, or through any other unnatural way? Will foster-hood be established?
Answer:

If milk is expressed from the breast and fed to an infant through its mouth or nose, then foster-hood will be established provided it is done within the period of suckling. Imām Muhammad raḥimahullāh is of the view that foster-hood will be established even if the milk is given via an injection.


Allāh ta’ālā knows best.
THE RIGHTS OF SPOUSES

Details on the rights of spouses

Question:
What are the rights of spouses to each other? Is the wife like a slave who is under the orders of her master?

Answer:
The pure Sharī`ah laid down legal and moral guidelines for the maintenance of the marriage bond. It explained the rights and responsibilities of husband and wife so that this bond may remain harmonious and pleasant. The husband is appointed as the qawwāmn – the one who protects, supervises and oversees. He has been accorded a level above the wife. At the same time, it makes it clear that the relationship between husband and wife is not one of a master and slave. Rather, their fundamental rights are the same.

Women also have rights just as the men have rights over them in accordance with the norm. And the men have superiority over women.1

The rights which women enjoy are the obligations of the husband, and the rights which men enjoy are the obligations of the wife.

The obligations of the husband can be summarized as follows

1. He must pay the dowry.
2. He must provide boarding and lodging. (Details in this regard were given in the chapter under maintenance).
3. He must treat his wife with kindness.
4. He must abstain from oppression, transgression and offence.
5. He must abstain from disregarding the wife’s rights even if it is because of religious works.
6. He must establish justice and equality if he has more than one wife.

1 Sūrah al-Baqarah, 2: 228.
7. He must ensure the academic and religious education of the wife and children.
8. He must adopt the middle path in one’s self-respect. In other words, he must not be over suspicious of his wife nor must he be totally heedless.
9. He must abstain from miserliness and extravagance when spending on the wife.
10. He must abstain from issuing a divorce unnecessarily.
11. He must permit her to meet her mahārim (father, brothers, uncles, etc.) and relatives.

The obligations of the wife can be summarized as follows
1. She must protect and safeguard her chastity.
2. She must protect her husband’s wealth.
3. She must obey her husband in every righteous deed.
4. She must be reasonable when asking for necessities of life.
5. She must be forever grateful to her husband.
6. She must suckle her children.
7. She must not permit anyone into the house without her husband’s permission.
8. She must not leave the house without his permission.
9. She must not give anything from his wealth without his permission.
10. She must not scorn him on account of his poverty or ugliness.
11. If she sees him breaking an order of the Sharī‘ah, she must stop him respectfully.
12. She must not call him by his name.
13. She must not complain about her husband to anyone.
14. She must abstain from impudence and loquaciousness (being excessively talkative).
15. She must not be insulting to her husband’s family.

Mutual rights and obligations
1. They must express sound character.
2. They must tolerate the offences of each other with moderation.

3. They must interact with empathy.

4. The marriage must not be for the sole purpose of fulfilling the desires of the self. Rather, the marriage bond must prove to be a solid structure through which both enjoy peace and comfort.

5. Establishing and upholding the limits of Allāh ta’ālā should be the objective.

6. They must have a desire for righteous and pious children.

7. Both must take a full part in the upbringing of their children.

8. In addition to fulfilling the physical needs of children, they must pay particular attention to their religious education and training.

The proofs for the above are as follows:

Women also have rights just as the men have rights over them in accordance with the norm. And the men have superiority over women.¹

Men are overseers of women.²

Rasūlullāh sallallāhu ‘alayhi wa sallam said: Your spouse has a right over you.

¹ Sūrah al-Baqarah, 2: 228.
² Sūrah an-Nisā’, 4: 34.
A man asked Rasūlullāh sallallāhu 'alayhi wa sallam: “What are the rights of the wife over the husband?” He replied: “You must feed her when you eat and clothe her when you do. Do not strike her on her face. Do not abuse her verbally and do not separate yourself from her unless it is within the house (i.e. do not abandon her to go and live in another house. You may sleep separately from her within the house).

Rasūlullāh sallallāhu 'alayhi wa sallam said: The best of you is the one who is the best to his family. And I am the best among you to my family.

Rasūlullāh sallallāhu 'alayhi wa sallam said: A woman is created from a rib. You will never be able to straighten it. If you take enjoyment from her, you will have to do it while there is this crookedness in her. If you
try to straighten her, you will break her. Breaking her entails divorcing her.

 وقال عليه الصلاة والسلام: لا يُجَّدَ أَحَدُهُم امرأة جلد العبد ثم يجمعها في آخر اليوم. (رواى البخاري: 4/278، باب ما يصعَّر من ضرب النساء) Rasūlullāh sallallāhu 'alayhi wa sallam said: A person should not strike his wife as he does his slave because he will have conjugal relations with her towards the end of the day.

 قال رسول الله صلى الله عليه وسلم: لَوْ كَانَ أَمَرًا أَحَدًا أَن يَسْجَدُ لَأُمَرْتُ لِلسَّجْدَةِ. (رواه الترمذي: 39/1، باب ما جاء في حق الزوج، وابن ماجة: 133) Rasūlullāh sallallāhu 'alayhi wa sallam said: If I were to order anyone to prostrate to another, I would have ordered the wife to prostrate to her husband.

 السر المختار:

 وَرَجَلٌ عَلَيْهِ أَنْ تَطْعَهُنَّ فِي كُلِّ مَيْتٍ بِأَمْرِهَا بِهِ وَلَدْ مَنْعَبًا مِنَ الْغَزْلِ وَمِن أَكْلِ مَا يَتَأْذَى مِن رَاحْطَةِ بَلْ مِنَ النَّجَنَةِ وَالْنَّفْقِ إِنْ تَأْذَى بِرَاحْطَةٍ نَّهْرٍ وَفَقَارٍ: قَالَ وَقَالَ: فُلْؤَادٌ بِكُلِّ مَيْتٍ أَمْرُهُ صَلِّي اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ تَأْذَى مَنْ يَأْتِي بِهِ بِأَيِّ رِقَابَةٍ كَأَمْرِ السَّلَطَانِ الرَّعِيَةِ بِهِ قَالَ وَفَقَارٍ وَمِنْ أَكْلِ مَا يَتَأْذَى بِهِ أَيِّ رِقَابَةٍ كَأَمْرِ السَّلَطَانِ الرَّعِيَةِ لَمْ يَنْتَفِعَهَا مِن شَرْبِهِ. (الدر المختار مع فتاوى الشاّي: 308/3، باب القسم، ط: سعيد) الأبحر الراقي:

 وَفِي الأَبْحَرِ الرَّأْقِ وَذَكَّرَ الْبَقَاعِي فِي الْمَنَاسِباتِ حَدِيثًا لَا يُسَالُ الرَّجُلُ فِيهِ ضَرْبًا زَوْجَتِهِ وَحَدِيثًا أَخَرَ أَنْ نَبِيَّةَ أُمَّةَ أَنْ تُشْكَوَ زَوْجَتِهَا. (البحر الراقي: 4/390، تتمة في حقوق الزوجين)
أما النكاح الصحيح فله أحكام... منها حل الوضوء إلا في حالة الحيض والنفاس والإجراء... ومنها حل النظر والملس من رأسها إلى قدميها في حالة الحياة، ومنها ملكة المتاع وبو اجتماع الزوج بمنافع بضعها وسائر أعضائها استماعاً... ومنها ملكة الحبس والقيد وبو صيرورتها ممنوعة عن الخروج والبروز. ومنها وجوب المهر على الزوج، ومنها ثبوت النسب. ومنها وجوب الناقة والسكس، ومنها حمزة المصادرة. ومنها الأرث من الجانبين جميعًا، ومنها وجوب العدل بين النساء في حقوقهن. ومنها وجوب طاعة الزوج على الزوجة. ومنها ولاية التأديب للزوج إذا لم تطع فيما يلزم طاعته. بأن كانت ناشئة فلم أن يؤد бюджет على الترتيب فيفعها أولاً على الرفق واللين. ومنها المعاشرة بالمعرف. وأنه مندوب إلها ومستحب، قال الله تعالى: "وعاشروين بالمعروف". قبل بي المعاشرة بالفضل والأحسان قولاً وفعلاً وخلقًا. وكذللك من جانبها بي مندوبة إلى المعاشرة الجميلة مع زوجها بالإحسان بالنساء والملطف في الكلام والقول المعروف الذي يطيب به نفس الزوج. (بدائع الصانع: 2/332-333، أحكام النكاح، ط: سعيد. وكذا في البحر الرائق: 3/3، تنم في حقوق الزوجين، كونته.)


Allâh ta’âlam knows best.

The responsibility of domestic chores

Question:
Is it necessary for the wife to carry out domestic chores?
Answer:

If a woman comes from a family where the women-folk do not do the housework themselves, or it is difficult for her to do it because of some valid reason such as illness, then it is not obligatory on the woman to do the housework. However, if the women-folk in her family normally carry out household chores or her husband’s income is not sufficient to pay for a domestic servant, then it is necessary for the wife to carry out domestic chores on the basis of religious integrity. In our society (South Africa), the women generally see to the cleaning of the house and the cooking of meals. Therefore, in this country, the Shari‘ah will make it essential on a woman to serve her husband and children, to cook the meals, etc. Unless, of course, they mutually agree that she will not do these chores.

Islāmī Fiqh:

If a woman comes from a family where the women-folk do not do the housework themselves but hire domestic aides for this purpose, or the woman is so weak or ill that she cannot do the work herself, then the husband cannot compel such a woman to carry out these chores. Instead, he will have to provide her with food and clothing without her having to do any work. If such a woman asks for a domestic servant for her personal work or for domestic chores, the husband will have to provide her with one if he can afford it. He will have to pay for one domestic servant. But if his income does not permit him to hire a domestic servant, or his wife used to do all these chores in her family house, she will have to do the same in her husband’s house. It will be the husband’s responsibility to carry out the chores which are related to outside the house. For example, he will have to go out to buy the food items, bring the firewood, water, etc. If the husband does not provide these items, the wife does not have to bear any of these responsibilities.

Some jurists say that it is not obligatory to see to the washing of the clothes. Rather, he merely has to provide the soap and water. The wife must then wash her clothes with her own hands. If the husband provides for a washer-man, it will be his favour on her. In other words, the wife does not have any legal right to demand this. However, this applies when the woman is accustomed to washing clothes in her family home or the husband provides for a washer-man despite not having the means. If the husband has the means or the wife is not accustomed to work of this nature, it will be her right to receive the services of someone to wash her clothes. If she can receive a servant,
she can certainly receive other items for the maintenance of her health and cleanliness.

If a wife does not place this burden on her husband, it will be an act of kindness on her part. The marriage bond demands that the two should not worry about legalities alone. Rather, they should consider moral obligations. In other words, they should be concerned about providing comfort to each other.¹

الفتاوى الهندية:

 وإن قالت: لا أطيع ولا أأخذ قال في الكتاب لا تجبر على الطبخ والحجز ولعل الزوج أن يأتينا بطعم مهيأ أو يأتينا بمن يسقيهما عمل الطبخ والجز، قال الفقيه أبو الليث رحمه الله تعالى: إن امتنعت المرأة عن الطبخ والحجز إما يجب على الزوج أن يأتينا بطعم مهيأ إذا كانت من بنات الأشراف لا تخدم بنفسها في أبائها أو لم تكن من بنات الأشراف لستن بها علة تمنعها من الطبخ والجز، أما إذا لم تكن كذلك فلا يجب على الزوج أن يأتينا بطعم مهيأ كما في الظاهرة. قالوا: إن هذه الأعمال واجبة عليها دينية وإن كانت لا يجبرها القاضي كذا في البحر الرائق. (الفتاوى الهندية: 88/4، باب النفقة)

الدر المختار:

أنه عليه الصلاة والسلام قسم الأعمال بين علي رضي الله تعالى عليه، وفاطمة رضي الله تعالى عليها، فجعل أعمال الداخل على علي رضي الله تعالى عليه والداخل على فاطمة رضي الله تعالى عليها مع أنها سيدة نساء العالمين بجر. (الدر المختار: 97/3، باب النفقة، ط: سعيد)

وفي الطحاوي: قول: قسم الأعمال أي أعمال المعيشة، قول: فجعل أعمال الخارج أي خارج البيت كأتيان الحطب والملاء وتحصيل النفقة، قول: الداخل

¹ İslami Fiqh, vol. 2, p. 117.
Maternity expenses

Question:
The jurists say that the husband is not liable to pay for the wife's medical expenses. What about the expenses which are incurred at the time of giving birth? After all, this is not the result of the action of the wife alone. Rather, the husband is also a partner to it.

Answer:
First of all, it is not verified that the husband is not liable for the wife's medical expenses. The jurists had written this point on the basis of their societal norms. In their time, the paying of medical expenses was not considered to be a fundamental need. When we look at the present conditions and societal norms, medical treatment has become a fundamental need. It therefore ought to be the husband's responsibility. Some details in this regard were given in the chapter on “Maintenance”.

As for expenses incurred during the wife’s pregnancy and delivery (pre-natal and post-natal expenses), the jurists state that if the husband calls for a midwife, he will be liable to pay her for her services. And if the wife calls for the midwife, she will be liable. If the midwife comes on her own, then some jurists say that the husband will have to pay while others say that the wife will have to pay. However, ‘Allāmah Shāmī rahimahullāh has given preference to the view that the husband will bear all expenses because the major benefit goes to the child, and the father is responsible for the maintenance of his children.

In our times, pre-natal and post-natal expenses have become a fundamental necessity. Therefore, all expenses in this regard will be borne by the husband. At the same time, the wife must be mindful of her husband's financial position before making a decision. If he is not well-off while the wife comes from a wealthy family, and her parents are happy to bear the expenses, then there is no problem. In fact, it will be a praiseworthy deed.
The husband compelling his wife to live somewhere else

Question:
Can the husband compel his wife to live somewhere else without her approval? For example, can he relocate with her from Johannesburg to Durban?

Answer:
If the husband wants to take his wife to a house within the city and he has already paid the dowry, then he has the right to do this and the wife cannot refuse. If he did not pay the dowry, she has the right to refuse. If he wants to take her to a different city or country, and the wife refuses, the husband cannot compel her to undertake the journey.

In these corrupt times we have come across many incidents where the husband takes his wife to another city or country, and then oppresses and ill-treats her. And the woman has no relatives or well-wishers to fend for her. This is why the jurists have stated that the wife will have the right to refuse to travel.
The wife going to visit her parents

Question:
How often can a woman go to visit and meet her parents?
Delineating how often a woman can visit her parents is dependent on societal norms. Nonetheless, in line with our societal norms, if the parents live nearby, she may visit them every week. If they live far away, she may visit them once a month. If they live very far away, she ought to be permitted to visit them two or three times in a year.
Allāh ta’ālā knows best.

**Visiting non-Muslim parents**

**Question:**
A woman in our locality embraced Islam and married a Muslim man. Can she visit her non-Muslim parents if they fall ill? If any of her maḥārīm pass away, can she attend the funeral?

**Answer:**
A woman is permitted to visit her parents irrespective of whether they are Muslims or not. Allāh ta’ālā says:

وَصَلِّيْنَّهُمَا في الدُّنْيَا مَعْرُوفًا.

Support them in this world according to the norm.\(^1\)

Asmā’ bint Abī Bakr raḍīy Allāhu ‘anhā relates: My mother who was still a polytheist came to visit me in the era of Rasūlullāh sallallāhu ‘alayhi wa sallam. So I asked him: “She would like to visit me. Can I maintain contacts with her?” He replied: “Yes. You must continue maintaining ties with your mother.”

It is also permissible to visit other maḥārīm who are non-Muslims. In the same way, if one of them dies, it is permissible to pay one’s respects. However, she should abstain from attending the funeral.

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\(^1\) Sūrah Luqmān, 31: 15.
الدر المختار:

ولا يمنعها من الخروج إلى الوالدين في كل جمعة إن لم يقدرا على إتيانها... ولو كافراً وإن أبي الزوج، فتح. وفي الشامية: قوله: ولو كافراً لأن ذلك من المصاحبة بالمعروف لأمورهما. قوله: وإن أبي الزوج لرجحان حق الوالد. (الدر المختار مع الشامي: ۳/۰۶۵، باب النفقة، ط: سعيد)

الفتاوى الهندية:

إذا كان لرجل أو لمراة والدان كافران عليهم نفقتهما وبريمهما وخدمتهما وزيارةهما فإن خاف أن يجلباه إلى السكء إن زارهما جاز له أن لا يزورهما كذا في الخلاصة... وإذا مات الكافر قال لوالده أو قريبه في تعزية: أخلف الله عليك خيراً، وأصلحك أي أصلحك بالإسلام ورزقك ولاذًا مسلاً لأن الخبرة به تظهر كذا في التبيين. (الفتاوى الهندية: ۵/۳۴۸، باب Abel الندة)

Allāh ta‘ālā knows best.

Visiting one’s mahārim

Question:
In addition to her parents, can a woman visit her other mahārim?

Answer:
A woman ought to be permitted to visit her other mahārim once a year. It will also be permissible to visit more often if husband and wife agree to it.
البحر الرائق:
قالوا الصحيح أن لا يمنعها من الخروج إلى الوالدين ولا يمنعهما من الدخول عليها في كل جمعة وفي غيرهما من المحارم في كل سنة... وفي الخلاصة معنىً إلى مجموع النوازل يجوز للرجل أن يأذن لها بالخروج إلى سبعة مواقف زيارة الأرواح وعيادتهم وتعزيتهم أو أحدهما زيارة المحارم. (البحر الرائق: ۴/۵۹۵، باب الطاقة، ط: كوثه)
الفتاوى الهندية:
وبل يمنع غير الأرواح من زيارة قال بعضهم: لا يمنع المحرم من الزيارة في كل شهر وقال مشايخ بلغ: في كل سنة وعلى الفتاوى، كذا لا أرادت المرأة أن تخرج لزيارة المحارم كالأمر والاختمبر على هذه الأقوال كذا في فتاوى قاضيخان. (الFTAوي الهندية: ۵۷/۵۵ باب الطاقة، الفصل الثاني في السكن)
Allāh ta’ālā knows best.

Husband and wife sleeping separately

Question:
How did husband and wife sleep in the time of Rasūlullāh ṣallallāhu 'alayhi wa sallam and the Ṣahābah ra'diyallāhu 'anhum? Did they have separate beds or did they sleep on the same bed for the entire night? What do the jurists say in this regard?

Answer:
From the Ahādīth and texts of the jurists we learn that in normal situations, husband and wife used to sleep on the same bed. However, there are some Ahādīth and juridical texts which indicate that husband and wife should sleep separately when the wife is in her menses. This is especially for young couples who cannot control their desires and there is a strong possibility of falling into sin. Furthermore, this issue differs with differences in societal norms and habits. For example, in some regions, once a couple get children or after their children reach an age of understanding, they spend a major
portion of the night sleeping on separate beds. In this country [South Africa], each member of the household has a room of his own. Husband and wife also have their own bedroom, and they spend their entire lives sleeping on the same bed. Therefore, if they can control themselves during the wife’s special days [menses, post-natal bleeding, etc.], then there will be leeway to sleep on the same bed.

Umm Salamah raḍiyyallāhu 'anhā narrates: While I was lying next to Rasūlullāh sallallāhu 'alayhi wa sallam under the same blanket, I got my periods; so I moved away from him.

'Ā'ishah raḍiyyallāhu 'anhā narrates: I was lying down with Rasūlullāh sallallāhu 'alayhi wa sallam under the same duvet, and I then moved away from him. He asked: “What is the matter?”

'Ā’ishah raḍiyyallāhu 'anhā narrates: One night, I realized that Rasūlullāh sallallāhu 'alayhi wa sallam was not next to me. I moved my hand around and touched him.

وفي السن الكبري للبيهقي: عن أم المؤمنين عائشة بنت أبي بكر ː فقْدَتْ رَسُولُ اللَّهِ صُلِّي اللَّهُ عَلَيْهِ وَسَلَّمُ دُفُّها فَلَمْ يُسَتمِّسَهُ فَفَوْقَتَ بِهِ (المصنف لأبي شيبة: 576/706، المجلة العلمي)
Rasūlullāh ᵡallallāhu 'alayhi wa sallam had been sleeping with me on my bed when I realized that he was not next to me. I then found him in prostration.

'Ā'ishah rađiyallāhu 'anāh narrates: One night, I looked for Rasūlullāh ᵡallallāhu 'alayhi wa sallam on my bed but did not find him...

...Rasūlullāh ᵡallallāhu 'alayhi wa sallam used to perform salāh while 'Ā'ishah rađiyallāhu 'anāh used to be lying across in front of him on the bed on which both of them used to sleep.

Abdullāh ibn 'Abbās rađiyallāhu 'anhu relates that he slept one night with Maymūnah rađiyallāhu 'anāh who was the wife of Rasūlullāh ᵡallallāhu 'alayhi wa sallam and she was his maternal aunt. She lied down along the width of the cushion while Rasūlullāh ᵡallallāhu 'alayhi wa sallam and he lied along the length of the cushion. Rasūlullāh ᵡallallāhu 'alayhi wa sallam then fell asleep.

In meeting the hadith from the hadith from Allah, may He bless His prophet, about the sleeping of Rasūlullāh ᵡallallāhu 'alayhi wa sallam in my bed, I looked for him but did not find him until I found him in prostration...
While describing the demise of Ḥadīrat Abū Bakr radiyallāhu 'anhu, 'Ā'ishah radiyallāhu 'anhu said...he was carried on the bed of Rasūlullāh ṣallallāhu 'alayhi wa sallam. It was also the bed of 'A'ishah radiyallāhu 'anah which she used to sleep.

And Ṭabākhat al-Bukhārī relates: In the narration of 'Umar ibn al-Khaṭīb he]...In the narration of Ibn Sīrīn relates: I asked 'Ubaydah: “What should a man do when his wife is in her menses?” He replied: “They may sleep on the same bed, but they must have separate duvets...it is related that Rasūlullāh ṣallallāhu 'alayhi wa sallam used to sleep with his menstruating wife when he had only one bed. But when Allāh ta'ālā made him richer, he used to sleep away from his wives when they were in their menses.
وقال المنواري: إن السنة أن يبيت الرجل مع أبنته في فراش واحد ولا يجري على
سنين الأعجام من كونهم لا يضاجعون نسائهما بل لكل واحد من الزوجين
فراش فإذا احتاجها باتيها أوئها. (فيض القدير: 393/1)
وقيفا أيضا: أن الأحب أن يبيت الرجل مع زوجته في فراش واحد. (فيض
القدير: 393/2)
وأخبر مسلم وأبو داود والنسائي عن جابر بن عبد الله رضي الله تعالى عنه
أن رسول الله صلى الله عليه وسلم قال له: فراش الرجل وفراشلزم
والثالث للضيف، والرابع للشيطان. (مسلم شريف: 393/2، اللباس، كربة ما
زاء على الحاجة، وأبو داود شريف: 393/2، اللباس، باب في الفراش. وسنن
النسائي: 393/3، باب الفراش)
وقال الإمام النووي في شرح هذا الحديث:
وأما تحديد الفراش للزوج والزوجة فلا ينص به، لأن من حق التجتاج كل واحد
منهما إلى فراش عند المرض ونحوه وغير ذلك، واستدل بعضهم بهذا على أنه لا
يلزم النوم مع أمرأتي وإن له الانفراد عنها بفراش، والاستدلأل به في هذا
ضغيف، لأن المراد بعد هذا وقت الحاجة كالمرض وغيره كما ذكرنا، وإن كان النوم
مع الزوجة ليس واجباً، لكنه بدليل آخر والصواب في النوم مع الزوجة إذا لم
يكن لواحد منهما عذر في الانفراد فاجتمعهما في فراش واحد أفضل، وبو
ظام فرع رسول الله صلى الله عليه وسلم على قيام الليل فينام معها فإذا أراد
القيام لوظفته، قام وتركها فجمع بين وظفته وقضاء حقها المندوب، وعشرتها
 بالمعرف لا سيما إن عرف من حالها حرمه على بعض ثم أنه لا يلزم من النوم
معها الجوامع. (شرح النووي على الصحيح لسلم: 393/2)

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The statements of the jurists

We learn from certain juristical texts that husband and wife should sleep separately when there is a need for it.
A woman being naked in front of her husband

Question:
Is it permissible for a woman to be naked in front of her husband or to remove her clothes in front of him?

Answer:
It is permissible for husband and wife to look at each other's bodies, but it is not good for them to look at each other's private parts.

Allāh ta’ālā knows best.
 وعن عائشة رضي الله عنها تعالى عنها قالت: ما رأيت من رسول الله صلى الله عليه وسلم ولا رأي مني مع طول صحبتي إياها (أخرج ابن ماجة في النكاف، باب التستر عند الجماع).

'A'ishah radhiyallahu 'anha narrates: I never saw the private part of Rasūlullāh sallallahu 'alayhi wa sallam nor did he ever see my private part even though I lived with him for so long.

أما نظر الرجل إلى زوجته، ومملوكه: فهو حال من فرقيا إلى قدمي عن شهوة وبغير شهوة، وهذا ظاهر، إلا أن الأولي أن لا ينظر كل واحد منهما إلى عورة صاحب، قالت عائشة رضي الله تعالى عنها: ما رأيت من رسول الله صلى الله عليه وسلم ولا رأي مني مع طول صحبتي إياها، وقال عليه السلام: إذا أتي أحدكم أبل فليس التماست، ولا ينجردان تجرد البعير، وكان ابن عمر رضي الله تعالى عنه يقول: الأول أن ننظر الرجل إلى فرج امرأته. وقت الوقائع ليكون أبلغ في تحصيل معنى اللذة، وعن أبي يوسف في الأماقي قال: سألت أبا حنيفة رحمه الله تعالى عن الرجل يمس فرج امرأته، أو يمس بي فرج لته砺ك عليها، بل ترى بذلك بأس؟ قال: أرجو أن يعظم الأجر.

(المحيط البياني: ۴۴، كتاب الاستحسان والكرابية، الفصل التاسع، مكتبة رشيدية).

وكذا في البحر الرائق والعناية في شرح البداية، والفتاويا الهندية: ۶۶۴، الباب الثامن، وفتوى الشائ: ۶۶۷/۶، فصل في النظر والمس. ومعارف القرآن: ۶/۸۳۷.

فأما نظره إلى زوجته ومملوكه فهو حال من فرقيا إلى قدمي عن شهوة أو عن غير شهوة لحديث أبي بكر رضي الله تعالى عنه قال غض بصرك إلا عن زوجتك وأمتلك وقالت عائشة رضي الله عنها: كنت أغسل أنا ورسول الله صلى الله عليه وسلم من إنا واحد و كنت أقول: بقلي وله يقول: بقلي وله.
Husband and wife looking at each other’s private parts

Question:

Is it permissible for a couple to look at each other’s private parts? Is it true that when a man looks at his wife’s private part then the children which are born are malformed?

Answer:

Since it is permissible for husband and wife to look at each other’s entire bodies, it will also be permissible to look at each other’s private parts. However, based on the narration of Hadrat A’ishah radhiyallahu ‘anha, it is not the ideal thing to do.

Although there are certain narrations which state when husband and wife look at each other’s private parts, their children are born malformed, the Hadith experts believe that these narrations are not authentic. In fact, Ibn Jauzirahimullah and others classify them as fabricated narrations.

No matter what, it is not a good thing to look at the private part whether one’s own or whether of one’s wife. It has medical harms. For example, it causes loss of memory. It is therefore best to abstain from this. Nonetheless, it is neither unlawful nor disliked (makruh).

Allah ta’alaa knows best.
'Ā'ishah radiyallāhu 'anāh narrates: “I never looked at or
I never saw the private part of Rasūlullāh sallallāhu
'alayhi wa sallam.” Another narration states: Rasūlullāh
sallallāhu 'alayhi wa sallam said: “When any of you goes
to his wife, he should cover his private part. He should
not expose himself like a camel.”

الخبير

قوله روي أن صلى الله عليه وسلم قال: النظر في الفرج بورث الطمس. رواه
ابن حبان في الضعفاء من طريق بقية عن ابن جريج عن عطاء عن ابن عباس
بغير "إذا جامع الرجل زوجته. فلا ينظر إلى فرجها فإن ذلك بورث العشا".
قال: وهذا يمكن أن يكون بقية سمع عن بعض شيوخ الضعفاء عن ابن
جريج فدلل. وقال ابن أبي حاتم في الصل الحدأ أبي عند فقوق
بقية مفسدة. وذكر ابن قطان في كتاب أحكام النظر أن بقي بن محمد رواه عن
بشام بن خالد عن بقية قال: أنا ابن جريج وذكره رواه ابن عدي عن ابن
قيمة عن بشام فيما بقي فيه إلا التسوية. وقد ذكر ابن الجوزي في الموضوعات
وذكر ابن الصلاح قال: إن جيد الإسناد كذا قال وفيه نظر. (الخبير
الخبير في تخرج أحاديث الرافع الكبير: 1/3689، ط: دار الكتب
العلمية)

الموضوعات:

عن ابن جريج عن عطاء عن ابن عباس قال: قال رسول الله صلى الله عليه وسلم:
"إذا جامع أحدهكم زوجته أو جارته. فلا ينظر إلى فرجها فإن ذلك بورث
العمى." قال أبو حاتم ابن حبان: كنا بقية يروي عن كذا بين وفاة ويدل،
وكان له أصحاب يسقطون الضعفاء من حديث ويسوون فيه شب. إن يسمع
سمع بما من بعض الضعفاء عن ابن جريج ثم يدلس عنه، والترق به، وبدأ
موضوع. (الموضوعات لابن الجوزي: 2/377)
Conversing while having conjugal relations

Question
What is the ruling with regard to conversing while having conjugal relations? Is it makrūh or permissible?

Answer
It is not makrūh for husband and wife to converse with each other in the course of conjugal relations. Yes, it is makrūh to speak to a third person.

Hadrat Muftī Muḥammad Shafi’ī ṣāḥib rahīmahullāh writes in Ḥimād al-Muftīyīn:
It is makrūh to talk while having conjugal relations:

However, this applies when speaking to a third person. There is no harm in speaking to one’s wife.¹

Allāh ta’ālā knows best.

Oral sex

Question

Is it permissible for the wife to take her husband’s private part in her mouth, or is it permissible for the husband to insert his private part in his wife’s mouth?

Answer

One should abstain from such an action. The mouth has been created for eating, drinking, lawful things and Allāh’s remembrance. It is not the place for the private part. Furthermore, there is a strong possibility of pre-coital fluid flowing out of the private part when inserting it in the mouth. Pre-coital fluid is impure. This action is therefore unnatural and reprehensible.

After quoting the above text of al-Fatāwā al-Hindīyyah, the following is stated in Ahṣan al-Fatwā:

אقول: המביח מיהול מنكגר, قول: מרוד שرعاً وعقلأً. (אحسن الفتוא: 85/8)

Fatāwā Raḥīmīyyah:

The surface of the man’s private part is undoubtedly pure. However, this does not mean that every pure thing can be touched by the mouth, taken into the mouth, kissed or sucked. Mucus in the nose is pure. Does it mean that the tongue can now be inserted into the nostril? Can taking the mucus of the nose into the mouth be a pleasant action? Can it be permitted? The surface of the anus is not impure; it is pure. Will it now be permitted to kiss it? Certainly not. In the same way, it is not permissible to kiss a woman’s private part or to touch it with one’s tongue. It is severely reprehensible and a sin. It is comparable to the practice of dogs, goats and other animals.¹

Allāh ta’ālā knows best.

¹ Fatāwā Raḥīmīyyah, vol. 6, p. 270.
Inserting one’s finger in the wife’s private part

Question
Can a man use his finger while fondling his wife?

Answer
When fondling one’s wife, a man may use his finger to the extent of touching and caressing her private part. He is not permitted to insert his finger into her private part.

Asking one’s wife to play with one’s private part

Question
Can a man ask his wife to play with his private part if she is in her menses?

Answer
Permission to ask one’s wife to play with one’s private part until ejaculation will only be given when there is the danger of the husband having intercourse with her when she is in her menses. It will not be permitted in normal conditions. Furthermore, there is a danger of the man falling into this habit. A man who cannot control himself when his wife is in her menses should rather stay far from her.
To ask one’s wife to play with one’s private part until ejaculation at the time of need is permissible without any reprehensibility. For example, she is in her menses or post-natal bleeding so he cannot have intercourse with her and it is difficult for him to control himself because of an overriding desire and passion. If he asks her to do this without any real need, it will be makrûh.¹


Allāh ta‘ālā knows best.

Augmenting one’s breasts

Question
Can a woman augment her breasts for her husband’s pleasure?

Answer
Augmenting one’s breasts entails altering the creation of Allāh ta‘ālā. A Ḥadîth states:

لا طاعة لمخلوق في معصية الخالق.

Obedience to the creation is not permitted if it entails disobedience to the Creator.

Therefore, it is not permissible to augment one’s breasts for the husband’s pleasure.

Maulānā Khālid Sayfullāh Rahmānī Sāhîb writes in Jadīd Fiqhī Masā‘îl:
The Islamic standpoint is that the body is a trust from Allāh ta‘ālā and a manifestation of Allāh’s creation. Therefore, any self-formulated changes cannot be made to it without a Sharī‘i and natural need. This is

why Rasūlullāh sallallāhu ‘alayhi wa sallam prohibited wearing false hair (wigs), and to create a gap between the teeth solely for beautification purposes. He said that it earns the curse of Allāh ta’ālā and entails altering His creation. Therefore, any operation or alteration to the body for the sake of beautification and fashion will certainly be prohibited. For example, as is done nowadays to the nose, breasts, etc.

Allāh ta’ālā curses the women who tattoo, have themselves tattooed, and create a gap between their teeth.

Rasūlullāh sallallāhu ‘alayhi wa sallam prohibited creating a gap between the teeth.

Yes, if a body part is unnaturally more, e.g. a person has six fingers instead of five, the extra finger could be removed through an operation.

If a person wants to cut an extra finger or something else, then the extra should be cut off. If the extra part is cut off, and the extra part is needed for survival, then it is permissible.

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1 Jadīd Fiqhī Masā‘īl, vol. 1, p. 312.
Giving in charity without the husband’s consent

Question
My husband is a real miser. We are married for about twenty years but he never gives away his old clothes and footwear even if they are tattered and torn. He will buy new items but he will never give away his old ones. Therefore, on one occasion I took some of his old clothes, shoes, etc. and gave them to some poor people without his knowledge. Later on I learnt that I was not permitted to do that because those items did not belong to me. If I were to inform my husband now, he will go into a rage because he is hot-tempered by nature. How can I atone for my mistake?

Answer
Insignificant and valueless items can be given in charity without the husband’s consent. The ruling in this regard is based on societal norms. If in a certain society people give insignificant items in charity without the husband’s consent and the husband does not disapprove, it will be permissible. There is no need for you to inform your husband because it could lead to arguments and fights. If you want to practise on the side of precaution, estimate the value of those old clothes and give that amount or some other item to your husband. However, be mindful about this in the future. If you fear arguments and discord, then do not give any of his belongings in charity. Instead, encourage him to be charitable.

Allāh ta’ālā knows best.
الدر المختار:
ولا بأس للمرأة أن تتصدق من بيت سيدا أو زوجها باليسير كرغيف ونحوه ملتقي ولو علم منه عدم الرضا لم يجوز، وفي الشامية: قول كرغيف لأن ذلك غير ممثوم عند في العادة، بدأه، بقي لو كان في بيتهم في مواقف المرأة كحاجب وغلام، نقل ابن الشحنة عن ابن وبيان أن لم يره في كلامهم وأنه ينبغي أن يجوز فيجايا عليهم ثم نقل عنه أن لم كانت الزوجة ممثوما من التصرف في بيتها تأكل معد بالف्रض ولا يمكنها من طعامه، والتصرف في شيء من ماله ينبغي أن لا يجوز لها الصدقة، واعترض بأنه، جرى العرف بالتصدق بذلك مطلقاً
تأمل. (الدر المختار مع فتاوى الشافعي: 6/230، ط: سعيد)

شرح منظومة ابن وبيان:
قلت: الذي ينبغي تحكيم العرف والأعدة في ذلك وقد جرى العرف بالتصدق بذلك مطلقاً سواء كانت تأكل بالفروض أو لا. (شرح منظومة ابن وبيان: 2/3، فصل من كتاب المذون، ط: الوقف المدني ديواند)
قال: والزوجة وفتاة البيت، وب الأمة إذا تصدقت بالطعام لا بأس بذلك إذا كان على الرسم للعروف وإن لم يكن بإذن الزوج والمولى، وقدره في البداية بالرغيف ونحوه. (شرح منظومة ابن وبيان: 3/20، فصل من كتاب المذون، ط: الوقف المدني ديواند. وكذا في حاشية الطخطاوي على الدر المختار: 4/90، ط: كوشت)

الفتاوى الهندية:
ولا بأس للمرأة أن تتصدق من بيت زوجها بشيء يسر كرغيف ونحوه بدون استطلاع رأي الزوج كما في الكافي. قال رضي الله عنه وفي عرفنا المرأة والأمة
Allâh ta’âlâ knows best.

Maintaining equality between two wives

Question

A man brings fruit as a gift for his wife daily after 'asr. He does not do the same for his other wife, or he brings less. Is his action correct or does it need to be rectified?

Answer

It is essential to maintain equality in the act of gifting but the amount and nature of the gift does not have to be the same. If one wife hails from a wealthy family while the other is from a poor family, it is not necessary to maintain equality in maintaining them. There can be differences in the amount and nature of what one gives to them.
司法是不義的反面。换句话说，每一件事都必须以适合它的方法和与它的权利相符的方式处理。如果两个妻子在财富和贫穷方面处于同一水平，丈夫将不得不为她们的抚养费平均分配。如果不，他必须按照她的地位公平对待她们。如果一个人有超过一个妻子，平等的义务仅适用于同她们共度夜晚和保持关系，只要她们都是自由的妇女。在所有其他问题上，正义是必要的[如上定义]。

Allâh ta’âlâ knows best.

**When a husband prohibits his wife from observing hijâb**

**Question**

By the grace of Allâh ta’âlâ, a woman wants to practise on the injunctions of the Shar’îah by observing full hijâb, but her husband doesn’t want it and is prohibiting her. He asks her to accompany him out of the house without covering her face. What must she do?

**Answer**

The hijâb of a woman is encouraged and required by the Sharî’ah. The husband prohibiting her from it entails asking her to go against the Sharî’ah. The Sharî’ah does not permit this.

لا طاعة لمخلوق في معصية الحال.

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Obedience to the creation is not permitted if it entails disobedience to the Creator.

The wife should therefore not disregard the Sharī'ah. Instead, she must try to convince her husband while practising on the Sharī'ah. At the same time, she must not be stubborn and rebellious. She must not become ill-mannered towards her husband. She must not lag in fulfilling his rights. Allāh ta'ālā will soften her husband's heart and persuade him towards the Sharī'ah hijāb. In today’s times, a good way would be to encourage the husband to join the work of Tablīgh and to send him for some time. Inshā Allāh, when he returns, he will himself ask her to observe hijāb. Allāh ta’ālā says:

وَأَنَّا سَأَلْنُوهُنَّ مَثَانَّا فَسَأَلْنَهُنَّ مِنْ وَرَاءِ حَجَابٍ.

When you go to ask his wives anything that you need, ask them from behind a screen.\footnote{Sūrah al-Ahzāb, 33: 53.}

If there was no need to cover the face, there would be no need to say “from behind a screen”. Then there would be no harm in women coming in the presence of men.

Allāh ta’ālā knows best.

Leaving one’s wife for one year

Question

When students complete their studies, they generally go for one year in Jamā’at. This is irrespective of whether they are married or not. If the person has a wife and children, is it permissible for him to go for one year? Will it depend on the approval or disapproval of the wife?

Answer

Going for four months or one year is dependent on the mutual agreement between husband and wife. In many cases, it is agreed upon before the wedding that the boy will leave for one year immediately after getting married. The marriage is solemnized on this basis, and the wife is sent over to her husband after the one year.

Yes, if the wife has already started to live with her husband, then it will be necessary to obtain the wife’s approval to go for one year. If the wife is happy with it and there is no fear of temptation, then there is
no objection to going for one year. In fact, it is tremendously beneficial.

'Allāmah Ḥaḍrāt Ḥaškāfī ṭabīmahullāh said that conjugal relations are obligatory periodically on the basis of religious integrity. The period of 'ilā' (refer to the chapter on 'ilā' for an explanation) – i.e. four months – should not pass without having conjugal relations with one’s wife. But if the wife approves of it, then there is no objection.

Fatāwā Ḥaḍrātul-Dīnāyīyyah:

If the wife can bear it and the husband goes to her once a year with her permission, then – Allāh willing – he will not be sinning. If not, he will be committing the crime of not fulfilling her rights. He should not remain away from her for more than four months. As stated in Radd al-Muhtār.\(^1\)

If the wife is young, the husband should not leave her for more than four months. Because there is the possibility of temptation. If she can endure his absence and there is no fear of temptation, then there is no objection to leaving her for even one year.\(^2\)

In addition to the obligation of providing boarding and lodging for your wife, you have other obligations to her. What arrangements did you make for that? If she is young and cannot control her desires, you will be trampling on her rights. Yes, if she has control over her desires, gives you permission happily to be away for so long, and there is no danger of falling into sin; then you are permitted. If not, you will have to go to her once every four months.

In addition to the above, we could present a parallel ruling of the jurists. They give the wife of an impotent husband, one year’s respite; and four years respite to the wife of a husband who is gone missing.

\(^1\) Fatāwā Ḥaḍrātul-Dīnāyīyyah, vol. 18, p. 592.
\(^2\) Ibid.
\(^3\) Ibid. p. 594.
This, notwithstanding the fact that the possibility of temptation exists in these cases as well.

Allāh ta‘ālā knows best.

Using sex toys for sexual gratification

**Question**

A man does not engage in conjugal relations at all with his wife. Consequently, she is displeased with him. He is a normal healthy man. Can she resort to sex toys to fulfil her desires? Does the Sharī‘ah permit this?

**Answer**

While the Sharī‘ah permits the fulfilment of sexual desires, it shows man the natural way of doing this so that together with sexual gratification, the proliferation of one’s lineage continues. Any form of sexual gratification which is against this natural way will not only be prohibited by the Sharī‘ah but together with it being unnatural, it will become a cause of moral degeneration. The Sharī‘ah therefore explicitly states that where the natural way of sexual gratification is not available, the person must abstain from unnatural ways so as to preserve their chastity and purity.

It is mentioned in the Ḥadīth that some Sahābah radīyallāhu ‘anhum asked Rasūlullāh sallallāhu ‘alayhi wa sallam about what should they do when they are young and do not have the means to get married as yet. He instructed them to fast regularly. We learn from this that as long as sexual desires cannot be fulfilled in the natural way, one is not permitted to resort to unnatural ways. Rather, it is essential for one to maintain one’s chastity and purity.

Therefore, in this case, the woman will not be permitted by the Sharī‘ah to use any type of sex toys while resorting to an unnatural way of sexual gratification. Instead, she should endeavour to convince her husband to fulfil his obligations.

Allāh ta‘ālā knows best.

A woman having more than one husband in her life-time

**Question**

A woman had more than one husband – one after the other – in this world. Which husband will she receive in Paradise?
The scholars have two views in this regard:

1. She will receive her last husband.

2. She will be given a choice to choose whichever one she wants.

We could reconcile both views in this way: If both husbands were on the same level of sound character, she will receive the latter husband. If they were different in character, she will receive the one with better character.
قِلَتْ: وَبِذَا إِسْنَادٍ رَجَالُ ثَقاَت مَعْرُوفٍ فِي الْعَبَاسٍ بُنَيْنَهَا رُوِاهُ أَبُو
الْحَسَنُ رَجُلٌ، ثَقَالُ الْعَبَاسِ. وَإِسْمَاعِيْلٌ بْنُ زَرَارَةَ قَالَ: ثُمَّ أَبُو المِلَّاحِ الرَّقَب، مُقْتَصِرًا عَلَى الْمَرْفُوعٍ فَقْطٍ، وَبِذَا إِسْنَادٍ
صَحِيحٍ، رَجَالُ ثَقاَت مَعْرُوفٍ فِي الْجُوُهرِي، قَالَ أَبُو الْحَسَنُ رَجُلٌ: ثَقَالُ
الْحَدِيثِ، فَنِمَ حَسَنٌ حَدِيثٍ، ثُمَّ سَاقَ لِأَحَادِيثٍ بُنَايَٰتِهَا. وَبِالْحَدِيثِ فِي الْحَدِيثِ مِنْ مَجْمُوعٍ الْطَرَفِينَ قَوِيٌّ، وَمَرْفُوعٌ صَحِيحٌ، وَلَدَ طُرَقٍ
أَخَرَى مَرْفُوعٍ، وَمَوْقُوفٍ عَنْ دِينَةِ أَبِنِ عَسَاقِرِ (١٩٣٨١٩) عَنْ أَبِي الْجَرَاءِ رَضِي الْحَمْلِ
رُكْنِ الْحَمْلِ وَلَدْ شَابَّانِ مَوْقُوفًا.
الأولِ: عَنْ أَبِي بَشَكْرِ رَضِي الْحَمْلِ عَنْهُ، بِرُوِيَ بِنِعْمَةِ أَبِنِ عَسَاقِرِ (١٩٣٨١٩) مِنْ
طُرِقَ كَثِيرَ بُشْامَ عَنْ أَبِي بَشَكْرِ رَضِي الْحَمْلِ عَنْهُ، قَالَ: أَنَّ أَسْمَاءَ بَنُو أَبِي بَشَكْرِ رَضِي الْحَمْلِ عَنْهُ، كَانَتْ تَحْتَ الزِّبَّرِ بِبَنِي الْعَوَامِ
رضِي الْحَمْلِ عَنْهُ، كَانَ شَكِيدًا عَلَيْهَا، فَقَدْ أَبَاهَا فَشَكَتَ ذَلِكَ إِلَيْهِ، فَقَالَ:
بَنَتَةُ أَصِيرِي، فَإِنَّ الْمَرَأَةَ إِذَا كَانَتْ لِيَ زَوْجٌ صَالِحٌ، ثُمَّ مَاتَ عَنْهَا، فَلَمْ تُرْجِعَ
بَعْدَهُ عِنْدَهُ بِبَنِيَّةٍ، وَرَجَالُ ثَقاَت عَلَى أَنُّ قُلْنَا لَكُمْ لَعْبَّةً عَنْ أَسْمَاءَ بَنُو أَبِي
بَشَكْرِ رَضِي الْحَمْلِ عَنْهُ، وَلَّاهُ أَعْلَمُ.
وَالآخِرُ: عَنْ عَبْسِيِّ بْنِ عَبْدِ الْرَّحْمَنِ السَّلِيمِيِّ عَنْ أَبِي إِسْحَاقِ عَنْ صَلَاةٍ عَن
حَذِيفَةِ رَضِي الْحَمْلِ عَنْهُ، قَالَ لَمْ أَرْمَأَتُهُ: "إِنْ شَئْتَ أَنْ تَكُنْيَ زَوَاتِي فِي
الْجَنِّيْنِ فَلَا تُرْجِعِي بَعْدِي، فَإِنَّ الْمَرَأَةَ فِي الْجَنِّيْنِ لَأَخْرُ أَزْوَاجِهَا فِي الْدُّنْيَا، فَفَذْلِكَ
حَرِمُ اللَّهِ عَلَى أَزْوَاجِهَا صَلِّ اللَّهُ عَلَيْهِ وَسَلِمُ أَنْ يَنْكَحَنَ برَاءَةٍ لَّانِبِينَ
أَزْوَاجًا فِي الْجَنِّيْنِ. أَخْرِجَ الْبَيْعَيْنِ فِي الْسَّلَامِ (٧٦٩٧)". ١٤٩
The following is stated in the marginalia of *Fayd al-Qadir*:

ويمكن الجمع بين الأحاديث الثلاثة بأنها تكون لآخر أزواجها إذا تساويا في الخلق، وإلا فتفتخار أحسمهم خلقاً، والله أعلم. (حاشية فيض الفدير لأحمد عبد السلام: 986/311، دار الكتب العلمية بيروت)

والمزيد أنظر: مجموعة الفتوى للعلامة عبد الحي الكنوى، مطهرات، 915/1، كتاب القرآن، باب الفتوى، وفتوى محمود: 991/1، ميوب ومربت.

Allah ta’alā knows best.

**Husband and wife calling each other by their names**

**Question**

Can husband and wife call each other by their names? We hear that women in this country often call their husbands by their names. Is there any reprehensibility in this?

**Answer**

It is disrespectful and reprehensible for a woman to address her husband by his name. She must address him with respectful and reverential names while maintaining his honour and respect. She may address him by resorting to agnomens such as, Abū Muḥammad, Abū Fāṭimah, etc.

The husband can address his wife by her name. There are many *Ahādīth* in which we see Rasūlullāh ﷺ addressing his wives by their names.

On one occasion Ḥadīrath ‘Ā’ishah rađiyallāhu ‘anhah addressed Rasūlullāh ﷺ in the plural, and this is normally an indication of respect.

عن أم عطية قالت: بعث إلى رسول الله صل الله عليه وسلم يشأ من الصدقة فبعثت إلى عائشة رضي الله عليها معاً منها. نبلى جاء رسول الله صل
It is disrespectful to address one’s husband by his name. A son may not address his father by his name, nor should a wife address her husband by his name. The jurists say that it is makrūh. There is no objection to addressing him in the third person. The husband can address his wife by her name. There is no harm in it. Rasūllullah ʿallāhu ʾalayhi wa sallam addressed his wives by their names. If, out of humility and in the presence of others, the wife is addressed by attributing one of the children’s name to her, then there is no harm in it [e.g. addressing her as Umm Yūsuf, Umm Maryam, etc.].  

Allāh taʿālā knows best.

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1 *Kitāb al-Fatāwā*, vol. 4, p. 410.
OATHS AND VOWS

Taking an oath in the name of anyone other than Allāh

Question

Rasūlullāh sallallāhu 'alayhi wa sallam prohibited taking an oath in the name of anyone other than Allāh ta'ālā and in the name of one’s father. Several Ahādīth make reference to this. For example:

قال رسول الله صلى الله عليه وسلم: لا تحلفوا بأبا نعكم. (رواه البخاري: 2628/623)

Rasūlullāh sallallāhu 'alayhi wa sallam said: Do not take an oath in the names of your fathers.

ألا إن الله ينهكم أن تحلفوا بأبا نعكم. من كان حالفًا فليحلف بالله أو ليصمت. (رواه البخاري: 3/624/623)

Rasūlullāh sallallāhu 'alayhi wa sallam said: Listen! Allāh prohibits you from taking an oath in the names of your fathers. Anyone wanting to take an oath should do so in Allāh’s name or he should keep silent.

On the other hand, a Hadīth of Sahīh Muslim contains the words:

والفتح وأبيه.

By his father, he has certainly succeeded.

How can these be reconciled? Also, what is the answer to the Hadīth: “By his father, he has certainly succeeded”?

Answer

There are three types of oaths:

1. To take an oath in the name of someone out of reverence to him and while believing that he has full control and authority.

2. To take an oath merely for the sake of testimony. For example:

ووالين ووالدتي وننتمو.

Al-Mutanabbī says:
Arabic and Urdu poetry is replete with oaths of this nature.

3. To take an oath as an invocation for blessings. For example, the Qur'ān states:


al-umrak ‘anhum ʿanhum yu’umhun.

By your life! They are intoxicated in their mischief.¹

The third type is intended in the words “By his father, he has certainly succeeded.” In other words, may Allāh ta’ālā place worldly and other-worldly blessings in the progeny of your father.

In short, it is prohibited to take an oath in the name of anyone other than Allāh with reverence while believing the former to have full control and authority. Where this is found, it is for the sake of invoking blessings and is not included in the prohibited form of taking an oath.

Reconciling the two types of Ahādīth

The commentators of Hadīth have reconciled the two in several ways. The reconciliation of the majority of scholars falls within the following ten. Observe them:

1. The word رأبته ُأبَهِ is not found in Sahīh Bukhārī, and this collection is given precedence over other Hadīth collections.

2. In reality, an oath was not intended. Rather, the word رأبته ُأبَهِ was habitually uttered by the Arabs.

3. It is abrogated. In other words, it is from one of the incidents which occurred in the beginning of Islam and was subsequently abrogated.

4. The oath in the name of someone other than Allāh ta’ālā was due to slip-of-the-tongue.

5. This oath was peculiar and specific to Rasūlullāh ُسُلَمَّ ُعَلِيٍّ وَإِلَيْهِ وَسَلَّمَ.

6. It was due to a slip-of-the-pen in certain narrations.

¹ Sūrah al-Hījr, 15: 62.
7. The word وأبّه is not preserved. The authentic narrations contain the word “wallâhi”.

8. The word Rabb is understood before the word وأبّه. The words ورّب أبّه are actually meant.

9. This oath is used to demonstrate astonishment.

10. This oath is used solely for emphasis, and the reality is not meant.

The above explanations can be found in the following sources:

Observe the following details with regard to narrations in which an oath has been taken in others apart from Allâh ta’âlâ:

1. جاء رجل إلى رسول الله صلى الله عليه وسلم من أهل نجد ثائر الرأس...فقال رسول الله صلى الله عليه وسلم: أفلح وأبّه إن صدق أو دخل الجنة وأبّه إن صدق (مسلم شريف: 338، فيصل).

2. قال رجل يا رسول الله، من أحق الناس مسجح الصحبة، فقال: نعم وأبّك لنتبأن، قال: أمك ثم أمك ثم أمك ثم أمك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم Аبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّك ثم أبّк
4. On Abu al-Ashrā' on the authority of his father: Weak. Observe the following:

The word رأبه is not mentioned in the narration of Sunan Dārīmī. Refer to Sunan Dārīmī, 2/113/1972.


The narration of Abū al-'Ashrā' on the authority of his father is weak. Observe the following:

وقال الخطيبي: وضعه هذا الحديث لأنه من رواية مجهول وأبو العشاء الداري لا يدرى من أبوه. ولم يرو عنه غير حماد بن سلمة. (فتح المتنان شرح وتحقيق كتاب الداري: 89/5، باب في ذيجة المتري في البتر).

5. An ASR of the Prophet صل الله عليه وسلم the first time he brought food from his house and said: ناولني من الشراء. فقال: وأبيك لو سكت ما زلت أناول منها ذراعًا ما دعوت به. وقال شعبة الأرناؤوط في تحقيق هذا الحديث: قصة الشراء واسنادها ضعيف. (مصنف أحمد: 16/113).

6. And Al-Juwayrī ابن جرير عن ابن عباس رضي الله عنه قال: لما مرض أبو طالب خدل عليه رهط من قريش فيهم أبو جهل... وكتب رسول الله صلى الله عليه وسلم فقال: يا عم! إن أبي ابردهم على كلمة واحدة يقلونها تدين لهم بها العرب وتأديها بهما العجم الجرية. ففزعوا لكلمة ولقوله، فقال القوم: كلمة واحدة، تعلم وأبيك عشرا. الحديث. وهكذا رواه الإمام أحمد والنسائي وابن أبي حاتم وابن جرير كلهم في تفسيرهم، ورواه الترمذي وقال حسن. كذا في
To sum up, there are many narrations in which the word أبيك is mentioned. Those who have an affinity with Hadith collections are fully aware of them. These few were quoted to serve as examples.

Allāh ta’ālā knows best.

An oath becomes binding when it is taken

**Question**

Zayd came to me and I offered him to join me in the meal. He declined. I said to him: “I take an oath in Allāh’s name, you will have to eat now.” He still did not eat. What is the ruling in this regard? Is the kaffārah binding on Zayd, on me or on no one?

**Answer**

If someone says: “By Allāh, you will have to do this”, and he had no intention or he himself had an intention of an oath, then if the person who was addressed does not carry out the action, the one who uttered it will be a hānith (a violator of his oath). If his objective was that you must take an oath that you will carry out this task (in other words, he wanted him to take an oath), and the addressee did not take an oath but carried out the task, then neither will be a hānith. In the question...
under review, the order to take an oath was intended so neither one is a ḥānith and there is no kaffārah.

إعلاه السنن:


فتاوي تأثار خانية:

وفي الخانية: رجل قال لآخر: عليك لنتفعل كذا، ولا نية له فهذا استحلافي فلا شيء عن واحد منهما إلا أن ينوي فيكون يمينا وكذا لو قال: والله. فإذا لم يفعل ذلك حنث المبتدي... (الفتاوي التأثار خانية: ٤١٧٧)。

فتاوي قاضي خان:

رجل قال لآخر والله لنتفعل كذا وكذا ولم ينو استحلافي المخاطب ولا مباشرة اليمين على نفسه فلا شيء على واحد منهما إذا لم يفعل المخاطب ذلك وإن نوى القائل الحلف بذلك يحكم حالفا وكذا لو قال: والله لنتفعل كذا وكذا. ولو قال: والله لنتفعل كذا وكذا ولم ينو شيئا فهو الحالف، وإن أراد الاستحلافي فهو استحلافي ولا شيء على واحد منهم... (فتاوي قاضي خان)
Taking an oath of giving up an evil action

Question

A person had the evil habit of masturbation. One day he fell into a certain calamity so he took an oath saying: “If this calamity is removed, then by Allâh, I will never commit this vile act.” The calamity was removed but he reverted to his old habit and committed it several times.

A man took an oath saying: “I will never watch television.” Subsequently, he watched television on several occasions.

Similarly, a youngster was caught not performing salâh. He took an oath: “By Allâh, I will never leave out a salâh in the future.” But after that, he missed many salâhs.

What punishment does the Sharî'ah impose on such people?

Answer

The person took an oath of giving up an action, but did it later on. He is therefore a violator of his oath. When a person breaks an oath, the Sharî'ah imposes kaffârah on him. Therefore, each of the above will have to pay the kaffârah for breaking an oath. One kaffârah will be obligatory on each person. Details in this regard will be given in the third chapter – tadâkhul-e-kaffârah.
The kaffārah which becomes obligatory is as follows:

1. To feed ten poor people with two meals – in the morning and evening.
2. To give clothing to ten poor people.
3. If a person is unable to fulfil either of the above two, he must keep three consecutive fasts.

Allāh ta’ālā knows best.
Taking an oath on the Qur’ān

Question
A person said: “By the oath of the Qur’ān, I will not talk to you.” Subsequently, he began speaking to the person. Does kaffārah become obligatory? Is it permissible to take an oath on the Qur’ān? Is an oath on the Qur’ān included in taking an oath in the name of anything apart from Allāh ta’ālā?

Answer
We learn from the Hadith collections that it is forbidden to take an oath in the name of anything or anyone apart from Allāh ta’ālā. However, the latter day jurists state that it is permissible to take an oath on the Qur’ān on the basis of societal norms. Therefore, in this case, the oath is valid and when he broke it, kaffārah becomes obligatory. Furthermore, the Qur’ān is the speech of Allāh ta’ālā and His attribute.

الدر المختار:

الفتاوى الهندية:
قال محمد في الأصل: لو قال والقرآن لا يكون بينا ذكره مطلقا.. وقد قيل هذا في زمانه، أما في زماننا فيكون بينا ويه نأخذ ونأمر. (الفتاوى الهندية: ٣٣. وكدأ في البحر الراق: ٤٨٦، كوتته).
Hadrat Maulānā Zafar Aḥmad ʿUthmānī raḥimahullāh writes in Ḥimdād al-Aḥkām:

If a person takes an oath on the Qurʾān and violates his oath, kaffārah is obligatory.¹

Maulānā Khālid Sayfullāh Raḥmān writes in Qāmūs al-Fiqh:

As regards taking an oath on the Qurʾān, the original view of Hanafi jurists is that the oath is not applied. The other three Imāms are of the view that it is applied. Ibn Humām raḥimahullāh says that the author of al-Hiḍāyah and other jurists say that an oath on the Qurʾān is incorrect because it is not common practice to take such an oath. However, in our times it has become common practice to take an oath on the Qurʾān. Therefore, such an oath will be applicable and valid.²


Allāh taʿālā knows best.

An immediate oath

Question

Zayd invited ʿUmar for tea. At the time, ʿUmar was quite angry at Zayd so he said: “By Allāh, I will not drink.” The next day, the two reconciled and ʿUmar went to Zayd’s house and had a meal with him. Is ʿUmar liable to pay kaffārah?

Answer

The jurists classify this as a yamīn al-faur – an immediate oath. The ruling in this regard is that the action for which he had taken an oath will be prohibited to him for that particular time. If he carries out that action after some time, there will be no harm in it. In the present case, he carried out the action the next day so he is not liable to pay kaffārah.

Taking an oath in which the lawful is made prohibited

Question
Khālid invited 'Abdullāh to his house. They were having a discussion on religious issues. Their discussion turned into a debate and argument, and 'Abdullāh said: “The food of your house is hārām on me.” Does an oath apply by making such a statement? Is kaffārah obligatory on him?

Answer
An oath is applicable and valid when the lawful is made prohibited. In this case, the oath is applicable. If 'Abdullāh eats at Khālid’s house, he will have to pay kaffārah.

Allāh ta’ālā knows best.
When a person takes an oath that he is an unbeliever

Question
A person said: “If I carry out this action, I will be an unbeliever or a Jew.” He then carries out that action. Is the oath valid? Is kaffārah obligatory on him?

Answer
The oath is valid and kaffārah will be obligatory when he breaks it.

Qāmūs al-Fiqh:
A person takes an oath saying: “If I do not carry out such and such action, I will be a Jew.” Will this be considered to be an oath?

Hānafi and Ḥambalī jurists are of the view that an oath will be applied. If the person does not carry out the oath, kaffārah will be obligatory. Mālikī and Shāfi‘ī scholars say that an oath will not be applied.1

Allāh ta‘ālā knows best.

1 Qāmūs al-Fiqh, vol. 5, p. 357.
When “wallāh, billāh” is said as an expletive

Question

When a person is offered tea or food, he has the habit of saying: “By Allāh, I will not drink.” “By Allāh, I will not eat.” He then comes in and drinks the tea or eats the food. He is not even conscious of the oath. Is he liable to pay kaffārah in such a case?

It is gauged from the writing of Ḥadrat Maulānā Ashraf ’Alī Thānwī rahimahullāh that this is a futile oath and there is no kaffārah for it. He writes in his commentary to this verse:

لا يؤخذ لكم الله باللغو في أيمانكم

Allāh does not take you to task for your foolish oaths.¹

A futile (laghw) oath can have two meanings. A false oath is taken unintentionally over something which has passed or, although it was uttered intentionally, he assumed it was correct. Alternatively, an oath of this type is uttered for something related to the future in the sense that he intended saying something but he utters an oath unwittingly. There is no sin in this...One is even more not liable for kaffārah in the meaning of laghw as explained here...

The following is stated in Bayān al-Qur’ān under the heading: "jurisprudence":"

اختالف الشافعی في معنى اللغو ودليله ما روي عن عائشة رضي الله عنه مرفعا أنه قول الرجل كلا والله وبل والله... ومعنى الحديث المرفع (عبد الحنفیة) حمله على الخاطر الذي سبق على لسانه من غير قصد كما في فتح القدير...الخ (بيان القرآن: 1031، تاج ببلشرز، دهلي).

Answer

When a person takes an oath as an expletive – without really intending it - with regard to the future, then the oath is applicable. Therefore, if the oath is broken, kaffārah will be obligatory.

¹ Sūrah al-Baqarah, 2: 225.
From the Ḥanafī jurists, the narration of Imām Muhammad raḥimahullāh in Kitāb al-Āthr is the basis for those who classify an unintentional oath to be a futility.

The view of the majority of the Ḥanafī jurists is in line with that of Imām Abū Ḥanīfah raḥimahullāh whose view was quoted above from Aujaz al-Masālik.

The following is stated in Badā‘i‘ as-San‘ā‘i‘:

وَأَمَّا رَجُلٌ أَخَذَ اللِّغُوَّ فَمَا يَا حَلَفُ عَلَى مَا أَخَذَهُ فَإِنَّهُ مَمْنُونٌ رَضِيَ اللَّهُ عَنْهَا، وَإِنَّهُ رَجُلٌ مَّجْرِمٌ وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ مَّجْرِمٌ، وَلَا مُؤَذِّنٌ. حَسَنَ مَا كَانَ مَا رَجُلٌ اِلَّا وَلَا مَمْنُنَّ بِاللَّهِ، فَإِنَّهُ رَجُلٌ М*
وَأَلْهَةَ ما كَلَّمَتْ رَبِّهَا وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا. وَأَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا، أَوْ أَلْهَةَ لَمْ يَكُنْ لَهُ مَسِيحًا. وَفِي غَيْبَةِ أَنْ لَمْ يَكُنْ لَهُ مَسِيحًا.
اللغو بذلك هو المذكور في المتن والهداية وشرحها، وهو التفسير المتفق عليه للفغو الذي لا كفارة فيه. لو لم يختلف فيه اثنان كما تقدم، فهذا مفرر محمد حديث عائشة رضي الله عنها، هذا في موطأ. فقال: وهذا نأخذ اللغو ما حلف عليه الرجل وهو يرى أنه حق فاستبان له بعد أنه على غير ذلك، فهذا من اللغو عندنا، فهو المذهب الحديث المرفوع وقول عائشة رضي الله عنها لا يختلفنا، بل يسمح ارجاعهما إليه كما ذكرنه. (إعلاء السنن: 331111، باب تفسير لغو العالمين، إداره القرآن).

منحة الخالق على البحر الرائق:

(قوله: وَعندنا ذلك لغو إلخ) إنما تقبله لأنه قول الإمام محمد وليس مراده أنه قول أئمنا لما علمت من أن قول أبي خليفة في اللغو هو ما عرّة إلى أصحابنا.

والحاصل أن قول أبي خليفة الذي قاله أصحابنا إن اليمين اللغو هي ما يستوع على النهاي، وأي الحال علي ظن أن المخبر به كما قال وهو يقلاه وأن قول محمد هو ما يجري بين الناس من قولهم: لا والله وطلي واللهم كما قال الشافعي. إلا أن الشافعي يقول إنها تستوع على الأثقيب بالليا وتحدد لا يقول بذلك في الاستقبال فصار حاصل الخلاف بيننا وبين الشافعي بناء على قول محمد في بينم لا يقصدها الخلاف في المستقبل، فعندها الشافعي هو لغو وعندنا أي عند محمد هي معقده وله الكفارة. هذا ما ظهر لي في تقرير كلام البدائع على وجه يدفع عنه المناقضات. (منحة الخالق على البحر الرائق: 479، كتاب الأيمان، كوته).

Allâh ta‘âlå knows best.

By Allâh, I will not listen to that Maulâna’s lecture

Question

Someone said to Zayd: “You must listen to the lecture of such and such Maulâna. It is filled with poison.” Zayd replied: “By Allâh, I will never
listen to his lecture.” Some days later, Zayd listened to the same Maulâna’s lecture over a cassette tape. Has his oath broken? Is he liable to pay kaffârah?

Answer

Listening to a lecture generally applies to listening to it directly and indirectly. Therefore, whether he listens to it directly or through a recording, he would have violated his oath and kaffârah for breaking the oath will be obligatory.

Furthermore, when Zayd took the oath, the purpose was to save himself from the poison which it contains. When he heard it via a recording, the purpose was not fulfilled. He has therefore broken his oath and the kaffârah has become obligatory on him.

Allâh ta’âlâ knows best.

If I come to your house, I will be a pig

Question

Zayd was having an argument with his in-laws. He said to them: “If I come to your house, I will be a pig.” Subsequently, he went to their house. Is he liable to pay kaffârah?

Answer

The oath did not apply. If he goes to his father-in-law’s house, he will not be liable to pay anything.
An oath for not setting foot in a house

Question

Zayd and Fārūq were having an argument. Zayd said to him: “By Allāh, I will not set foot in your house.” He neither pointed to any house nor did he say: “This house.” What is the ruling if he goes to another house belonging to Fārūq which the latter does not live in? Also, if the house is demolished and rebuilt, and he then enters it, then what is the ruling?

Answer

Zayd did not point to the house when he took the oath. Therefore, if he enters the other house of Fārūq, he will be violating his oath even though Fārūq does not live in it. Also, even when the house is rebuilt, and he enters it, he will be violating his oath.

1 Bahishti Zewar, p. 267.
Taking an oath while pointing at a certain thing

Question

Bakr had an argument with his cousin. In the course of the argument, Bakr said: “By Allâh, I will not enter this house of yours.” His cousin demolished the house and rebuilt it, or let’s assume he sold it. Will Bakr be violating his oath if he enters it?

Answer

In the case where the house is sold, or demolished and rebuilt; and Bakr enters the house, he will not be violating his oath.

الدر المختار:

وإن جعلت (الدار) بعد الانهدم بستانًا أو مسجداً أو حمامًا أو بيتًا أو غلب عليها الماء فصارت نهرا لا يحنث وإن بنيت بعد ذلك. كهذا البيت وكذا بيتاً بالأول فهدم أو بني بيتا آخر ولا ينقض الأول لزوال اسم البيت. وفي الشامية: قوله وإن بنيت بعد ذلك لأنه عاد اسم الدار بسبب جديد منزلة اسم آخر. (الدر المختار مع فتاوى الشافعي: 724، سعيد)
Question
Is an oath taken in the name of the Ka'bah valid? Is it permissible to take an oath on the Ka'bah?

Answer
The Shar'ah prohibits the taking of an oath in the name of anyone or anything apart from Allâh ta'âlâ. Taking an oath in the name of the Ka'bah is synonymous to taking an oath in the name of something apart from Allâh ta'âlâ. The oath will not apply. It is essential to abstain from such an oath.
Taking an oath on Lā Ilāha Illallāh

Question
A person said to an 'ālim: “We are having a jalsah on Sunday night, the 2nd of Rabī’ ath-Thani. You always defer our invitation. You must make a promise to come on this occasion.” The 'ālim replied: “Lā Ilāha Illallāh, I will certainly attend.” Is this an oath? Will he be liable to pay kaffārah in the event of his not attending?

Answer
If in the region where he lives, it is common practice to take an oath on the kalimah, then the oath has applied. If it is not a common practice, it will depend on the person’s intention. If he intended an oath, it will apply. If not, it will not apply.

"Allāmah Sarakhsī raḥimahullāh writes:

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The words Ḥāsha Lillāh are similar in meaning to Subḥānallāh. If it is common practice to take an oath in this manner, it will be an oath even if it was not intended. If it is not common practice, then it will be an oath if the person intended it to be such. The same rule applies to every attribute of Allāh ta’ālā.¹

Allāh ta’ālā knows best.

Taking an oath to cover the Ka’bah

Question

A person took an oath saying: “By Allāh, I will cover the Ka’bah with the ghilāf.” Is this oath valid?

Answer

Taking an oath to cover the Ka’bah with the ghilāf is correct and valid because it is an action which is possible. A person can join those who are carrying out this action. Once he takes such an oath, it becomes obligatory on him to fulfil it. If he does not fulfil it up to the last moments of his life, he would have violated his oath. It is necessary for him to make a bequest for the payment of kaffārah.

¹ Aḥsan al-Fatāwā, vol. 5, p. 488.
The meaning of “the oath is considered according to the intention of the one who is asked to take it”

Question

The jurists have a principle which states:

The oath is considered according to the intention of the one who is asked to take it.

What does this mean? Is there an example for it? Is there any difference in ruling for the oppressor and oppressed?

Answer

The meaning of this principle is that if the one taking the oath is an oppressor – i.e. he wants to forfeit the rights of a claimant wrongfully by taking an oath in Allāh’s name and wants to desecrate the blessed name of Allāh ta’ālā, then no matter what intention he makes, it will not be considered. Instead, the intention of the one who is asked to take it will be considered.

The author of al-Muhāṣṣ al-Burhānī explains it as follows:

Allāh ta’ālā knows best.

If I testify under a vow to a certain claimant who has been wronged, and I want to desecrate your blessed name, my intention will not be considered. Instead, the intention of the claimant who is asked to take the oath will be considered.
We gauge from the texts of the jurists that this principle is not general in nature. Rather, there are some details about it.

1. This principle applies to taking an oath over something which happened in the past.

قال في تهذيب القلاشني: اليمين على نية الحالف إن كان مظلمًا، فإن كان ظالما فعل نية المستحلف، وهذا على أمر في الماضي. (شرح الأشباه والنظائر: ۹۷۱).

2. It applies when the one taking the oath makes an intention different from that of the one who is asked to take it.

قال في الظهيرية: رجل حلف رجلا فحلف، ونوى غير ما أراد المستحلف، إن كان اليمين بالطلاق... وإن كان اليمين بالله عز وجل، فإن كان الحالف مظلمًا تعتبر نيته. (شرح الأشباه والنظائر: ۹۷۱).

3. The oath is related to Allāh’s blessed name; not for divorce, freeing of a slave, etc.

قال الشيخ الإمام الزاهد شيخ الإسلام المعروف محاهر زادة: وهذا الذي ذكرنا في اليمين بالله، فما إذا استحلف بالطلاق والعتاق... الخ. (المحيط البرهاني: ۴۳۸، المكتبة الرشيدية).

'Allāmah Ibn 'Abīdīn rahimullah writes:

وإن كانت اليمين بالله تعالى فإن كان الحالف مظلمًا كانت النية فيه إلى الحالف. (منحة الحالف على البحر الرأيق: ۴۳۷۳۴).
4. The one taking the oath must be the wrongdoer while the one asked must be the one who is wronged.

Allāh ta’ālā knows best.

**Specifying a time when taking an oath**

**Question**

A person took an oath: “By Allāh, I will observe a fast tomorrow.” He does not keep the fast the next day but on some other day. Will his oath be fulfilled?

**Answer**

His oath will not be fulfilled if he keeps a fast on some other day because he took an oath of observing a fast tomorrow. With the passing of tomorrow, he became a violator of his oath. This is because the word “tomorrow” cannot be taken to mean any time in the future. The meaning of an oath is taken on the basis of societal norms; and “tomorrow” is not taken to mean some time in the future [but the day after today].

قولي وإن حلف ليأتين البصرة... فأما يطلقها أو يوقتها بوقت مثل لأفعل غداً أو فيما بيني وبين يوم الجمعة... في المقيدة تتعلق بآخر الوقت، فلو مات قبل مضي الوقت ولم يفعل لم يحث. (فتح القدير: 121). قال الالتقائي: وأما التوقيت في الأتيان كقوله والله لآكلن هذا الرغيف اليوم فإنه لا يحث ما دام الحلف والمحلوف عليه قائمين، واليوم باق، أما إذا مضى
اليوم يحث وإن كانا قائمين لفوات الـبر ولفوات المعين...{(حاشية الشاشي على
تبيين الحقائق: 34-161).}

Qāmūs al-Fiqh:

If an oath is taken together with specifying a time for it, e.g. “I will
definitely eat this bread today”, then as long as the one who takes the
oath and the thing for which it is taken, and the specified time
remains, the person will not be a violator of his oath. Once the time
passes, and the two are still in existence, then the person is
unanimously classified as a violator of his oath.1

Allāh ta’ālā knows best.

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1 Qāmūs al-Fiqh, vol. 5, p 358.
VOWS

The necessity of a verbal utterance

Question
Is there a need for a verbal utterance for the application of a vow? Is a mere intention of the heart sufficient?

Answer
A verbal utterance is necessary. A vow will not be promulgated with a mere intention of the heart.

اقول: والنذر لا يكون إلا باللسان. ولو نذر بقلبه لا يلزم بهخلاف النية لأن النذر عمل اللسان، والنية عمل القلب. النية المشروعة انبعاث القلب على شأن أن يكون لله تعالى. كما في البزازية. (حاشية درر الحكم في شرح غرو الأحكام: ١١٢٤، باب الاعتكاف).

وكذا في البزازية على هامش الهندية: (١٥٠) .

فتاوي الشامى:
قال في شرح الملتقى: والنذر عمل اللسان... ولو نذر صوم الأيام المهنية أو صوم هذا السنة صح مطلقا. وسواء قصد ما تلفظ به أو لا. وهذا قال في الولاحية: رجل أراد أن يقول لله صفى صوم فجرى على لسانه صوم لشهر كان عليه صوم شهر محر. وكذا لو أراد أن يقول كلاما فجرى على لسانه النذر لزمه لأن هزل النذر كالمجدر كالطلاق. فتح. (فتاوي الشامى: ٣٣٣، وكذا: ٧٥٢٣، ٧٥٢٧).

Åp Ke Masā’il Aur Oen Kā Hull:
A vow is not considered solely by thinking about a certain thing. Rather, it has to be uttered by the tongue.¹

Allāh ta’āla knows best.


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Taking a vow with regard to a specific thing and then acting against it

Question
A person took a vow for a female goat but slaughtered a male one instead. Or he slaughtered an ewe instead of a ram. Will his vow be fulfilled? The same question is asked about a buffalo instead of a cow. Or, he took a vow that he will slaughter on Thursday but he slaughters on Friday.

Answer
It is permissible to slaughter a male goat in place of a female, an ewe instead of a ram or a buffalo instead of a cow...and so on. However, if there is a major difference in the value of the animal, consideration should be given to it. If he vowed to slaughter the animal on a Thursday, it is permissible for him to slaughter it on Friday.

Ahsan al-Fatāwā:
If a person takes a vow of charity by specifying a certain time, place or poor person; it is not necessary to uphold what he specified. His vow will be fulfilled if he gives the charity at a different time, place or to some other person. Similarly, if he specified a certain item for the vow, e.g. “I will give these particular items”, it is not necessary to give exactly those items. He could give a different item or cash money provided it is equal to the value of the item/s which he had specified.
Slaughtering seven goats instead of a camel which had been vowed

In such a case, the person has the choice of slaughtering seven goats and distributing their meat to the poor, or distributing money equal to the value of an average quality camel.


Allāh ta’ālā knows best.

Taking a vow to slaughter a goat

Question

A person took a vow: “If I am cured from this illness, I will slaughter a goat.” Is such a vow valid and applicable?

Answer

It is correct to vow to slaughter an animal. Once he recovers from his illness, it is obligatory on him to slaughter a goat and give it in charity.

1 Aḥsan al-Fatāwā, vol. 5, p. 480.
IMDĀD AL-FATĀWĀ:

The jurists state that slaughtering an animal on days other than the days of sacrifice is not an act of gaining proximity to Allāh ta‘ālā. They also state that the vowed item must be for the sake of gaining proximity. Therefore, if a vow is fulfilled solely by slaughtering, this would mean that the vowed item is not for the sake of proximity; and this is baseless. We learn from this that giving it in charity will be made obligatory so that when it is effected, the vow will be for the sake of gaining proximity. From this principle, we learn with certainty that giving it in charity will be obligatory. Furthermore, the objective of the one taking the vow to slaughter is certainly for the sake of giving it in charity. Thus, on the basis of societal norms, a vow to slaughter is used to vow the entire slaughtered animal and to give it in charity. It is this collective vow [to slaughter and to give in charity] regarding which the jurists state that the vow will be valid and applicable.¹

Allāh ta‘ālā knows best.

**Taking a vow to perform two rak’ats ṣalāh daily**

**Question**
A person took a vow that if a certain task is fulfilled, he will perform two rak’ats of optional ṣalāh daily. The task was fulfilled but after a few days, he could not remain steadfast on performing the two rak’ats of optional ṣalāh. Does he have to make qaḍā of the ṣalāh or does he have to pay kaffārah?

**Answer**
It is obligatory on him to make qaḍā of the ṣalāh because the suspended condition is found. This issue is similar to a missed ṣalāh. In other words, when a person misses a ṣalāh, he has to make qaḍā of it. It is only the time which has passed, while the obligation remains.

Rasūlullāh ﷺ said: Whoever takes a vow to obey Allāh ta‘ālā should obey Him.

لمن نذر نذرا مطلقا أو معقلا بشرط... ووجد الشرط المعلق به لزم النذر

حدث: من نذر وسما فعله الوفاء بما سئ، كصوم وصلاة... الخ. (الدر المختار من فتاوى الشامى: 735).

**تنوير الأبصر:**
ولو نذرته عبادة كصوم وصلاة في غد فحاضته فيه بلزمها قضاؤها لأنه يسمع الأداء لا الواجب، ولو نذرتها يوم حيضها لا، لأنه نذر بخصوصية. (تنوير الأبصر مع الدرا المختار: 434).
Fatāwā Dār al-'Ulūm Deoband:

A vow of this nature becomes obligatory and has to be fulfilled. The gālāh which is not performed at the time will have to be made up for.¹

Allāh ta'ālā knows best.

**Taking a vow to read durūd sharīf 1 000 times daily**

**Question**

A person took a vow of reading 1 000 durūd sharīf daily. Does this vow apply? What will he have to do if he does not fulfil this vow?

**Answer**

It is correct to make a vow of reading 1 000 durūd daily and the vow applies. It becomes obligatory on him to read 1 000 durūd daily. If he does not read it, he will have to pay kaffārah.

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¹ Fatāwā Dār al-'Ulūm Deoband, vol. 12, p. 108.
Taking an oath to commit a sin

Question

A person took an oath to commit a sin. For example: If my task is accomplished, I will sing and dance. I will slaughter a goat in the name of Shaykh 'Abd al-Qādir Jilānī rahimahullāh, I will cover a grave with a cloth, I will build a dome over a grave, I will observe fast on the day of 'Īd al-Fīr or 'Īd al-Adhā, or I will perform ṣalāh at the time of sunrise or sunset. What is the ruling in this regard?

Answer

There are two types of sin:

1. An intrinsic sin. For example, singing and dancing, slaughtering a goat in the name of Shaykh 'Abd al-Qādir Jilānī rahimahullāh, covering a grave with a cloth, placing a lamp on it, or building a dome over it. These are intrinsic sins. In other words, they are nothing but sins; there is no element of obedience or worship in them. In such a case, the vow will not apply and there will be no kaffārah. However, if the person includes an intention of an oath, then he will be liable to pay kaffārah.

2. A sin due to external factors. In other words, an action is permissible in itself but becomes prohibited because of external factors. For example, observing fast on the days of 'Īd or performing ṣalāh at the time of sunrise or sunset. Fasting and performing ṣalāh are essentially acts of worship, but they have become forbidden because of the forbidden times. In such a case, the vow will apply but the person will
be stopped from fasting and performing salāh, and it will be obligatory on him to break his vow. Kaffārah will be obligatory for breaking it. However, if he observes the fast on some other day or performs the salāh at some other time, kaffārah will not be obligatory.

عن عائشة زوج النبي صلى الله عليه وسلم أن النبي صلى الله عليه وسلم قال:

من نذر أن يطع الله فلا يطعه، ومن نذر أن يعصيه فلا يعصم. قال محمد رحمه الله: وبهذا تأخذ من نذر نذرا في معصية ولم يسم فلتبطع الله وليصفر عن يمينه، وهو قول أبي حنيفة رحمه الله.

وبهامش المؤط: إن ظاهر الحديث أن مراده صلى الله عليه وسلم الإطلاق

سي أو لم يسم (المؤطا للإمام محمد مع الحاشية: ص 327، قديمي).
However, from the texts of Imām Ṭahāwī and Imām Muḥammad rahimahumallāh, one gets the impression that kaffārah is obligatory in both cases – whether the sin is intrinsic or because of external factors.

قال محمد: ويقول ابن عباس: ضي الله عنه تأخذ وهذا مما وصفت لك أنه من حلف أو نذر نذرا في معصية فلا تغصين، وليست فين عن يمينه. (المطاف للإمام محمد: ص 328)

The text of Imām Ṭahāwī has been quoted by Ibn Humām in Fatḥ al-Qadr:

قال الطحاوي: إذا أضاف المذار إلى سائر المعاصي كله عل أنه أقتل فلانا كنا يمينا ولزمته الكفارة بالحند. (فتح القدير: 935، دار الفكر).

Muftī Taqī 'Uthmānī Ṣāḥib has given an excellent reply to it in Takmilah Fatḥ al-Mulhim. After providing some details in this regard, he sums up the discussion as follows:

 فالحاصل: أنه لا كفارة عند الحنفية إذا نذر الرجل فعلًا هو معصية بعينه، وأما إذا كان معصية لغيره كصوم يوم النحر، فإنه تلزم الكفارة إذا لم يقض صوما آخر مكانه، وأما إذا أراد بالنذر يمينا، فيلزم الحند والكفارة في الصوم كلما، فاغتنم هذا التحرير، والله الموفق. (تحكيلة فتح المهم: 1251، وكذا في الفقه الحنفي وأدلةه: 3، بيروت).

Ḥakīmul Ummat Maulānā Ashraf 'Alī Ṭāhāwī rahimahullāh writes:

A woman took a vow: “If a certain task of mine is fulfilled, I will observe a maulūd, cover a certain grave with a sheet, or observe the giyārbūr of the big shaykh [Shaykh 'Abd al-Qādir Jilānī].” This vow is not correct and she is not liable to do or pay anything.1

Fatāwā Ṣaḥīḥyyah:

Question: A person took the following vow: “O saint! If a certain task of mine is fulfilled, I will slaughter a goat in your name.” Is it permissible to take such a vow? Is it permissible to slaughter a goat at the grave?

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1 Dīn Kī Bāteī, p. 317.
Answer: The vow is incorrect because it is an act of disobedience. The vow itself did not apply and it is not permissible to carry it out. It is stated in *ad-Durr al-Mukhtār*:

أَنْ لَا يَسْتَحْيِى مَعْصِيَةُ لَذَٰلِكَ

Ḥadrāt Shāh Muḥammad Is-hāq Muḥaddith Dehlōwī raḥimahullāh writes:

The following is stated in *al-Fatāwā al-Hindīyyah*:

الأَصْلُ أَنَّ النَّذْرَ لَا يَصْحُ إِلَّا بِشَرْطٍ . . . إِلَى قُوَّةٍ . . . وَالرَّابِعُ: أَنْ لَا يَسْتَحْيِى مَحْرُونُ النَّذْر

*Fatāwā Maḥmūdīyyah*:

For a vow to be applicable, the thing which is vowed has to be an action through which Allāh’s proximity is intended. A mīlād assembly does not fall under this category. Therefore, in such a case, the vow did not apply and it is not obligatory to fulfil it.

To sum up: If a vow is taken to commit an intrinsic sin, then the original ruling is that kaffārah is not obligatory because the vow did not apply in the first place. But if the vow is taken with the intention of an oath, then kaffārah for the oath will be obligatory. If a vow is taken for something which becomes a sin due to external factors – e.g. fasting on the day of ʿĪd al-Ad-hā – and the person did not observe the fast on some other day, then kaffārah will be obligatory.

An objection and the answer to it

One objection remains. A woman came to Ḥadrāt ʿAbdullāh ibn ʿAbbās raḍīyallāhu ʿanhu and said: “I took a vow that I will make qurbān of my son.” He replied: “Do not make qurbān of your son, and pay the kaffārah for your oath.”


1 *Fatāwā Raḥmūyyah*, vol. 9, p. 23.
2 *Fatāwā Maḥmūdīyyah*, vol. 14, p. 61.
 وقال العلماء المكتوب في تعليقه: وفي رواية عن ابن عباس رضي الله عنه:
ينحر مائة من الإبل مقدار دية النفس، وروي عنه أيضاً: ينحر كبيشا أخذًا
من فداء إسماعيل على نبينا وعليه الصلاة والسلام. (التعليقات المجد علي
مؤطا محمد: 120)

‘Allāmah Shāmī rahimahullāh writes in reply to the above:

ولأبي حنيفة أن وجوب الشاة عليها خلاف القياس عرفناه استدلالا بقصة
الحليل. (فتاوى الشامي: 241، وكذا في الفقه الحنفي وأدلته: 138)

To sum up, on the basis of qiyyās, the person ought not to be liable to
pay anything because it is an intrinsic sin. However, Imām Abū Ḥanīfah rahimahullāh gave preference to it as a way of commendation
against qiyyās because Ḥadrat Ibrāhīm ‘alayhis salām slaughtered a
heavenly ram in place of his son, Ḥadrat Ismā‘īl ‘alayhis salām. This too
was an order from Allāh ta`ālā, against qiyyās.

Allāh ta`ālā knows best.

Removing a doubt on a vow to commit an intrinsic sin

Question

Ḥadrat Maulānā Khālid Sayfullāh Rahmānī Sāhib wrote in Qāmūs al-
Fiqh (vol. 5, p. 183) that when a vow to commit a sin is made, it is
obligatory to abandon the sin and forbidden to fulfil the vow.
However, it is obligatory to pay the kaffārah for the oath. On the other
hand, we learn from the statements of the jurists that kaffārah is not
obligatory. What is the answer to this?
The text of Hadrat Maulānā appears debatable. It does not seem correct in the light of the statements of the jurists. Hadrat Maulānā probably did not consider the two categories of vowing to commit a sin.

Observe the following text of Hadrat Maulānā:

If a vow is taken to commit a sin, e.g. to drink alcohol, then it is forbidden to fulfil that vow. It is obligatory to abandon it. The scholars concur on this issue. However, as we had mentioned previously, it becomes obligatory to pay kaffārah. Nowadays people take a vow to observe a milād. It is included in this ruling. It is not permissible to fulfil such a vow. In fact, the kaffārah for an oath will have to be paid and the person will have to repent from taking such vows in the future.¹

In the above text, Maulānā presents an example of an intrinsic sin and then notes the obligation of kaffārah. Whereas the texts of the jurists appear to be the opposite for such a sin. The correct and preferred view is that a vow for an intrinsic sin does not apply and kaffārah is not obligatory.

Allāh ta’ālā knows best.

Including the wealthy and the poor in a vow

Question

A student took a vow that if he passes the exam, he will feed all the students of the madrasah solely for Allāh’s sake. Does the vow apply? Is it necessary to take Allāh’s name in the vow?

Answer

Hadrat Maulānā Ashraf ‘Alī Thānwī raḥimahullāh wrote on this issue. He says that the vow will apply in favour of the poor students but not the wealthy ones. However, Hadrat Muftī Kifāyatullāh Sahib raḥimahullāh states that the vow is valid but not enforceable. There seems to be a dichotomy between the verdicts of these two scholars. The issue could be reconciled by saying that if the intention of the one who took the vow was for the poor students only, the vow will apply. But if he made the intention for all students – the wealthy and the poor – then the vow will not apply.

¹ Qānūs al-Fiqh, vol. 5, p. 183.
**Imdād al-Fatāwā:**

Question: A person said: “If a certain need of mine is fulfilled, I will slaughter a cow in Allāh’s name and feed the residents of my district.” The district is inhabited by wealthy and poor people. Will the vow be fulfilled?

Answer:

في الدار المختار: نذر التصدق على الأغنياء لم يصح ما لم ينو أبناء السبيل.
وفيه: ولو قال: إن برئت من مرضي هذا ذبحت شاة أو علي شاة أذبحها... الخ.

We learn from the above text that the vow was not valid in respect of the wealthy people, while it was valid in favour of the poor. It will be necessary for him to feed the poor. If the wealthy partook of the food, we will have to check if the meal which was prepared was sufficient for the poor or did he cook extra. In the first case, it is not permissible for the wealthy to eat of it. In the second case, it is permissible.¹

**Kifāyatul Muftī:**

A person by the name of Zayd fell seriously ill. He took a vow saying: “If the Curer of all [Allāh ta’ālā] blesses me with complete recovery, I will feed the congregants of such and such masjid.” Zayd decided to feed the congregants upon recovery or before he could fully recover. My question is, can the congregants which includes wealthy people partake of the meal?

Answer: If feeding all the congregants of a certain masjid is done as a gift or as an open invitation, then it is not classified as an act of worship which is done to gain proximity to Allāh ta’ālā. If it is done with the intention of charity, then because the congregants comprise of wealthy and poor people, and it is not correct to give charity to a wealthy person, this vow is invalid. In other words, it is not obligatory to fulfil. If he feeds the congregants, it will be a donation. If there is no intention of charity in this donation, it will be permissible for both – the poor and the wealthy – to partake of the food.

نذر التصدق على الأغنياء لم يصح ما لم ينو أبناء السبيل. (الدار المختار)

قلت: ولعل وجه عدم الصحة في الأول عدم كونها قربة، الخ. (رد المختار)

The vow in respect of the wealthy people does not apply. Therefore, it is not obligatory to fulfill it...it is valid with respect to the poor. It will be obligatory to fulfill it. It is not permissible for the wealthy to partake of that food.\footnote{Ah\isan al-Fat\aw\a, vol. 5, p. 490.}

\textit{All\mathit{h} ta\'\mathit{alla} knows best.}

\textbf{Mentioning the name of \textit{All\mathit{h}} in a vow}

\textit{“It is not necessary to mention the word ‘\textit{All\mathit{h}}’ in a vow.” We gauge from the explicit statements of the jurists that for a suspended vow to be applicable, it is not necessary to mention \textit{All\mathit{h}}’s name. Instead, a vow applies even when words of obligation are used. Yes, it is necessary to utter the words.}

\footnote{Kif\‘iyatul Mu\’ff\i, vol. 2, p. 246.}
A vow falls under the ruling of an oath. The word ـعلنـ is classified as an expression of oath in ad-Durr al-Mukhtar. Therefore, expressions which are not used in normal conversations will not be classified as oaths. The statement “it is my intention” is not an oath, whereas the statement “it is on us every month” is an oath.¹

Mufti Rashid Ahmad Sahib writes in Alqan al-Fatâwâ that a vow is applicable and valid when words which are used as oaths in normal conversations are uttered.²

Alláh ta’álâ knows best.

Taking a vow of sending someone for ـحجـ or for forty days

Question

A person said: “If Alláh blesses me with a son within the next one year, I will send Zayd for ـحجـ” or “I will send him for forty days.” Is the vow binding?

¹ Imdâd al-Fatâwâ, vol. 2, p. 552.
The vow is not binding because a vow applies through one's own action and not the action of someone else. A vow applies for an act of worship which is the objective in itself. Going for forty days is not such an act of worship.

Question: A person took this vow: “If Allâh ta’âlâ blesses me with a son, I will send him to the Ka’bah after twelve years.” The man was a wealthy person at the time when he took the vow. He is now poor. What must he do. Is it obligatory on him to fulfil the vow?

Answer: A vow is fulfilled through one’s own action and not of others. Therefore, this vow did not even apply.

Question: Zayd took this vow: “If a certain task of mine is fulfilled, I will send someone for hajj.” Zayd’s task was fulfilled. Is it obligatory on him to fulfil the vow?

Answer: A vow of this nature will only become obligatory if he says: “I will personally perform hajj.” If he says that he will send someone for hajj, it is not obligatory on him to fulfil it.

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Aḥsan al-Fatāwā:

Zayd took a vow that if his hand is cured, he will go for forty days in tablīgh. Is this vow valid? Is it obligatory on him to fulfil it? If it is not obligatory, is it permissible?

Answer: A prerequisite for the validity of a vow is that the thing which is vowed must be an act of worship in itself. Going in tablīgh is not classified as such a worship. Therefore, the vow did not even apply in the first place. It is not obligatory to fulfil it; but it is permissible.¹

Allāh ta’ālā knows best.

A specified but unconditional vow

Question

A man took a vow to observe fast on a certain Friday. Subsequently he had to travel on that Friday. He therefore observed a fast on Thursday with the intention of fulfilling his vow. Is his vow fulfilled?

Answer

His vow has been fulfilled by observing the fast on Thursday. There is no need for him to observe a fast again. This is because a specific but unconditional vow is not restricted to time and place. It is permissible to fulfil it before the specified time.

¹ Aḥsan al-Fatāwā, vol. 5, p. 491.
A specified and conditional vow

Question

A person took the following vow: “If Allâh ta’âlâ passes me in this exam, I will observe fast on Thursday.” Can he observe the fast on a day apart from Thursday?

Answer

When a conditional vow is taken, it is not permissible to bring it forward. In other words, it will be obligatory to observe the fast after the condition is fulfilled. If he observes the fast before it, it will be obligatory on him to repeat the fast. It is not necessary for him to observe it on Thursday. Once the condition is fulfilled, he can observe the fast on any day after that. This is what is gauged from the text of ‘Allâmah Shâmî rahimahullâh.

Allâh ta’âlâ knows best.
A vow to observe fast perpetually

Question

A person took this vow: “I will observe fast for as long as I live.” Or, “I will observe fast forever.” Now that he has gone old, he is unable to keep fasting. If he observes a fast, he finds it difficult. If he does not, he will be acting against his vow. What should he do?

Answer

In such a case, if he does not have the strength to keep fasting, he must continue paying fidyah. If he does not have the means to pay fidyah, he must continue seeking forgiveness.

Allāh ta’ālā knows best.
Ahsan al-Fatāwā:

Question: A person took a vow: “I will continue fasting until the last moments of my life.” Now that he is gone old and sick, he cannot observe the fast. What is the ruling?

Answer: He must continue paying fidyah. If he does not have the means, he must continue seeking forgiveness…¹

Allāh ta’ālā knows best.

Vowing to give food in charity, but then giving its value

Question

A person took this vow: “If Allāh ta’ālā blesses me with a son, I will feed two cauldrons of biryani.” When he is blessed with a son, can he give the value of two cauldrons of biryani or is it necessary for him to feed?

Once he is blessed with a son, he has the choice of doing either of the two. He can have two cauldrons of biryani prepared and distributed among the poor or he can distribute its value in cash. The vow will be fulfilled no matter what he chooses to do and he would have absolved himself. When it comes to vows, it is not obligatory on a person to fulfil the restrictions which he imposes on his self.

Answer

Once he is blessed with a son, he has the choice of doing either of the two. He can have two cauldrons of biryani prepared and distributed among the poor or he can distribute its value in cash. The vow will be fulfilled no matter what he chooses to do and he would have absolved himself. When it comes to vows, it is not obligatory on a person to fulfil the restrictions which he imposes on his self.
Ahsan al-Fatāwā:

If a person specified a certain thing in his vow, e.g., he says: “I will give such and such things”, then it is not necessary to give exactly those items. Instead, he can give anything else of equal value, either in cash or some other item.1

Allāh ta’ālā knows best.

A vow for progress in one’s business

Question

I took the following vow: “In whichever month of 1987 my business makes more than R30 000.00, I will observe one fast.” Subsequently, my father and brother joined in my business in June 1987 and October 1989 respectively. My father says: “Now that you have partners in your business, it is not necessary for you to observe the fast.”

Answer

Your intention was to observe a fast when your business increases. In other words, if Allāh ta’ālā gives blessings in your business and your total income in any month is more than R30 000.00, then you will observe a fast. If this was your intention, then in whichever month your business makes more than R30 000.00, you will have to observe a fast. Partners joining the business cannot negate this vow. Yes, if your intention was: “The month in which I receive a share of R30 000.00 as profit, I will observe one fast”, then after the joining of partners and a total income of R30 000.00, you are not obligated to observe a fast. Only when you receive R30 000.00 as a share of the profits will you have to observe a fast.

1 Ahsan al-Fatāwā, vol. 5, p. 480.
When a vow for children includes an illegitimate child

Question
A married woman made this vow: “If I get a child, I will take it with me for ‘umrah.” However, doctors were of the view that she cannot get children from her present husband. She then committed adultery and this resulted in her conceiving a child. Is it necessary for her to perform ‘umrah?

Answer
It is necessary for this woman to fulfil her vow by performing ‘umrah. This is because she took a vow for a child. The child was born and its lineage is affirmed. A Hadith states:

 قال رسول الله صلى الله عليه وسلم: الولد للفراش وللعار
 الحجر. (رواى البخاري: 999/2، باب الولد للفراش وللعار
 الحجر)

The child will belong to the lawful husband while the adulterer will be stoned to death.

It becomes obligatory to fulfil a vow when a conditional vow is made and the condition is fulfilled. Yes, the woman will certainly be sinful for committing this vile act. It is necessary for her to repent.
Taking a vow to slaughter an animal, then giving its value in charity

Question

A person took a vow to slaughter a goat and distribute its meat. He then thought to himself that this could cause the ire of his relatives because he is permitted to distribute the meat to the poor only. The remaining relatives will be disgruntled. He therefore felt that he should rather give the value of the goat secretly to the poor. Can he do this? When I reverted to the verdicts of our seniors, there seems to be a conflict in view.

Hadrat Maulānā Zafr Ahmad ‘Uthmānī Sāhib rahimahullāh states in Ḥiṣb al-Aḥkām that it is impermissible. He writes:

Question: A person makes an unspecified vow and gives the value of the animal in charity. Will his vow be fulfilled? What is better, to give the animal or its value?

Answer: If the vow was to slaughter an animal, it will be obligatory to slaughter one. Giving its value in charity will not suffice. If there was no intention of slaughtering an animal, it will suffice to give its value in charity.  

Hadrat Muftī Rashīd Ahmad Ludhaynī rahimahullāh says that it is permissible. His text reads as follows:

Apart from sacrificial animals (qurbānī), a vow to slaughter an animal is made with the intention of giving its meat in charity. A vow to solely slaughter an animal is not correct. This is because apart from sacrificial animals, slaughtering an animal is not an act of worship in itself…If slaughtering is not the objective, rather distributing its meat is, it means that it is not obligatory to slaughter an animal. Rather, the

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person has a choice. He may slaughter a goat and give its meat in charity, give a live goat in charity, gives its value in charity, or give some other item equal to its value in charity.

The man is now confused. Can he give the value of the goat instead of the goat itself?

**Answer**

We learn from the text of *al-Fatāwā al-Bazzāzīyyah* that the goat has to be slaughtered. This is why the person should practise on the verdict of Ḥadrat Maulānā Zafar Āḥmad ‘Uthmān rahimullāh. There is more caution in it and there is certainty in absolving himself from his responsibility. Furthermore, causing blood to flow from an animal is not a worship in itself apart from in the days of qurbānī. However, there is an act of worship which is similar to it [causing blood to flow], and that is qurbānī which is obligatory. When it is accompanied with the intention of giving the meat in charity, it becomes an act of worship.

**Allāh ta‘ālā knows best.**

**A clear proof that the objective of a vow to slaughter is to shed the blood of the animal**

A man took a vow that he will slaughter his son. The jurists say that he must slaughter a goat in its place.

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1 *Alḥsan al-Fatāwā*, vol. 5, p. 483.
If a person vows to give in charity if he breaks his repentance

**Question**

A man was a habitual alcoholic and was then inspired to repent. He said to himself: “If I consume alcohol again, I will give R10 000.00 to the poor as charity for Allah’s sake.” He happened to consume alcohol again. What is the ruling of the Sharī‘ah with respect to him? Is it obligatory on him to give R10 000.00 in charity or is it permissible for him to give something else in its place?

**Answer**

The man has the choice of giving R10 000.00 in charity or paying the kaffārah for breaking an oath.

Allah ta’ālā knows best.

A vow for a general charity

**Question**

A man’s daughter fell ill. He made this vow: “If my daughter is cured of her illness, I will give something in charity.” By the grace of Allah ta’ālā, his daughter was cured. How much charity does he have to give?
This person has to give the equivalent of ten șadaqah al-fitr or anything else to its value. In other words, if he gives wheat, he will have to give five șa’ or its equivalent in cash or any other item to that value. He can give it to one poor person or distribute it among several. If he does this, his vow will be fulfilled.

Note: As per modern weights, five șa’ equals approximately 16kg.

A vow was taken but the amount of charity was not specified. In such a case, it is obligatory to feed ten poor people. In other words, ten times the amount of șadaqah al-fitr of wheat, cash equal to its value, or any other item to its value. He can give it to one poor person or distribute it among several.1

Allâh ta’álá knows best.

Taking a vow to construct a madrasah

Question

A man took this vow: “If Allâh ta’álá cures my wife from this illness, I will construct a madrasah for students of Dîn.” Is this vow valid?

Answer

A vow to construct a madrasah is incorrect and invalid. The jurists clearly state that for a vow to be applicable, the thing which is vowed has to be an act of worship. Constructing a madrasah is not an act of worship in itself.

1 Al-șaâd al-Fátâwâ, vol. 5, p. 484.
Although it is obligatory to construct a masjid, it is not a worship which is an objective. Therefore, it is not obligatory to fulfil such a vow.


If a vow to construct a masjid is not valid, a vow to construct a madrasah will be even more invalid.

Allāh ta’ālā knows best.

**A vow to engage in Allāh’s remembrance**

**Question**

A person takes this vow: “If I pass my exam for my medical degree, I will engage in 100 000 dhikr of Allāh ta’ālā. Is this a valid vow? Can he read “Sub-hānallāh” and “al-Hamdulillāh” in place of Allāh’s name?

**Answer**

For a vow to be valid, it has to be an act of worship in itself and it must have a similar worship which is obligatory. In this case, the remembrance of Allāh ta’ālā is an act of worship. Acts which are similar to it are the takbīrāt-e-tashrīq, the talbiyah when in ḍarūrām or other forms of dhikr which take the place of the talbiyah. All these are obligatory forms of dhikr. Therefore, a vow to engage in Allāh’s remembrance is valid and correct. When he passes his exams, it will be obligatory on him to repeat the name of Allāh ta’ālā 100 000 times.

1 Aḥsan al-Fatāwā, vol. 5, p. 478.
Sub-hănallâh and al-Ḥamdulillâh are also forms of Allâh's remembrance, so his vow will be fulfilled if he reads them.

الفتاوى الناتارخانية:
والأنس في ذلك أن كل ما كان له أصل في الفروض لزم الناذر بنذره، وكل ما لم يحكم له أصل في الفروض لا يلزم الناذر بنذره. (الفتاوى الناتارخانية: ٤٠٥)

فتاوى الشام:
قوله ولو نذر التسبيحات... تكبير التشريق واجب على المفقه به وكذا تكبيرة الأحرام، وتكبيرات العيدين فينفي صحة النذر به بناء على أن المراد بالواجب هو المصطلح. (فتاوى الشام: ٧٣٨٠)

الفتاوى الهندية:
الباب الثالث في الإحرام... فاًكركن أن يوجد منه فعل من خصائص الحج وهو نوعان أحدهما قول بأن يقول: لبيك اللهُ وَلَيْبِك... الخ، وهي مرة شرط. ولو كان مكان البلاطية تسبيح أو تحميد أو تهليل أو تمجيد أو ما أشبه ذلك من ذكر الله تعالى ونوى به الإحرام صار محراً... (الفتاوى الهندية: ١٣٢٣)

مصنف ابن أبي شيبة:
أحب الكلام إلى الله أربع الله والحمد لله ولا إله إلا الله والله أكبر... (مصنف ابن أبي شيبة: ٤٠١٥)

صحيح البخاري:
كلمتان حبيتان إلى الرحمن، خفيتان على اللسان، ثقيلتان في الوزن: سبحان الله وبحمد سبحان الله العظيم. (صحيح البخاري: ١٣٩٣)

Allâh ta‘álâ knows best.
Taking a vow to take lamp oil to the Ka'bah

Question
A person takes a vow that he will take lamp oil for the Ka'bah or for a masjid. Is this vow applicable?

Answer
A vow to take lamp oil for the Ka'bah or a masjid is not valid. It is not necessary to fulfil it. This is because such an action is not an act of worship in itself nor is there any similar obligatory action to it.

Taking a vow to spend on students

Question
A man said: “From my salary I will spend R100 every month on the students of Dār al-'Ulūm.” Is a vow applicable with these words?

Answer
His statement does not contain any obligatory tense nor does it demonstrate an obligation. Therefore, a vow is not applicable with such a statement.

Fatwā Dār al-'Ulūm Deoband:

Question: A person made the following statement and he had a firm intention when he uttered it. He said: “From my income, I will continually give 1/40th to the poor and needy, and 1/20th to the masjid and 'Īd gāh.” The man is now saying: “I am finding it very
difficult to work out these percentages from my income. What should I do? How can I save myself from this sin?”

Answer: If the words which he used are exactly as quoted in the question, and he did not say: “If I get a job or if I get an income, then I will do this.” Also, he did not utter any words which indicate an obligation, e.g. “I will do this for Allâh’s sake”, “It is my responsibility to do this”, etc. then his statement is neither an oath nor a vow. He is not liable to give anything. He has the choice of giving any amount in charity, and whenever he wants. While explaining the tenses for a vow in his book *an-Nadhr bi ag-Sadaqah*, 'Allâmah Ibn Nujaym Mişrî ra'himahullâh writes:

أما الصيغة فلله وعلى ونذرت لله وأنا أفعل إن كان معطقا كنا أحج إن دخلت الدار بخلاف أنا أحج منجزا (آخر الأشياء والنظائر، طبع مصر، ص ٣٤).

The above text clearly states that even if the person had the intention of a vow, as long as words which demonstrate obligation are not uttered, the vow does not apply – irrespective of the intention.¹

*Fatâwâ Maḥmûdîyyah*:

A tense which demonstrates obligation is necessary for a vow to be applicable.²

Allâh ta‘âlâ knows best.

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Fasting as a kaffārah

Question
A person broke his oath at a time when he was wealthy and had the means. However, when he decided to pay the kaffārah for it, he was experiencing a life of poverty. He does not have any money or anything else to pay the kaffārah. Can he observe fast instead?

Answer
The time of payment of the kaffārah is considered [and the time when the oath was broken]. Since he is experiencing poverty at present, he has the concession of observing fast. In other words, he must keep three consecutive fasts. If he decides to wait until his financial situation improves, then this too is permissible.
Feeding madrasah students as kaffārah

Question
Is it permissible to feed madrasah students as a kaffārah for breaking an oath?

Answer
It is permissible to feed the poor and needy students of a madrasah, as a kaffārah. It is not permissible to feed the wealthy students.

Allāh ta’ālā knows best.

Giving several fidyahs to a single poor person

Question
A person is obliged to pay kaffārah. In other words, he has to feed sixty poor people. However, he gave the amount which would normally cost

to feed sixty persons to a single poor person. He said to the man: “You must use this to feed yourself for sixty days.” Is the kaffârah fulfilled?

**Answer**

It is not permissible to give a single poor person the entire amount for sixty days. The kaffârah will not be fulfilled. Yes, he may appoint a representative to give the same poor person for the next sixty days. But to give one poor person the entire amount of sixty days all at once – there are differences of opinion as regards its permissibility. Some scholars say it is permissible while others say it is not. Alâmah Shâmî ra[.]jimahullâh says that the correct view is that it is not permissible. This is because the actual aim is to fulfil the needs of a poor person; and his needs change with each approaching day.

**الهداية:**

وإذن أعطى مسكيناً واحداً ستين يوماً أجزاءً، وإن أعطاه في يوم واحد لم يجزه إلا عن يومه، لأن المقصود سد خلة الحاجة، والحاجة تجدد في كل يوم، فالدفع إليه في اليوم الثاني كالدفع إلى غيره، وهذا في الإباحة من غير خلاف. وأما التمليك من مسكين واحد في يوم واحد بدفعات فقد قيل: لا يستحق، وقد قيل: يستحق، لأن الحاجة إلى التمليك تجدد في يوم واحد، بخلاف ما إذا دفع بدفع واحد، لأن التفريق واجب بالنص. (الهداية: ١٥١٤)

**فتاوى الشامى:**

 قوله “عشرة مساكين” أي تحقيقاً أو تقديرًا، حتى لو أعطى مسكيناً واحداً في عشرة أيام كل يوم نصف صاع بجزء، ولو أعطاه في يوم واحد بدفعات في عشر ساعات قبل بجزء، وقيل: لا. وهو الصحيح، لأنه إنما جاز إعطاؤه في اليوم الثاني تنزلاء منزلة مسكيين آخر كتجدد الحاجة، من حاشية السيد أبي السعود. (فتاوى الشامى: ٢٧٥٣)
Question
A man took oaths several times, and broke them on many occasions. How many kaffārahs is he liable to pay? Will one suffice?

Answer
There are two opinions on the issue of several oaths and several kaffārahs.

1. ‘Allāmah Shāmī rahimahullāh quotes the view of interlinking of the kaffārahs.

2. The non-existence of interlocking is quoted in al-Hindīyah, at-Tahrīr al-Mukhtār li ar-Raffi‘. And al-Bahr quotes from Khulāṣah and Tajrid.

The first view is based on ease while the second is based on caution. When there is a need, there is leeway to act on the first view.
There are two views as regards multiple violations of oaths, viz. multiple kaffārah and a single kaffārah. The second view is easier while the first is preferred, more popular, and contains more caution.

Allāh ta'ālā knows best.

**Paying fidyah for a vowed fast**

**Question**

A person took a vow to fast. Can he give fidyah instead even if he has the strength and ability to fast?

**Answer**

In the case where a person vows to keep a fast but wants to pay fidyah instead, although he has the strength and ability to fast, then this is not permissible. It is necessary for him to keep the fast. Yes, if he does not have the strength to keep the fast, it will be permissible for him to pay fidyah.

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1 *Ahsan al-Fatāwā*, vol. 5, p. 496.
Ask him to make a bequest for the payment of fidyah after his death.


Allāh taʿālā knows best.

Paying fidyah when one is unable to observe a vowed fast

Question

A woman took a vow to fast for one year. She has now become considerably weak. She observed fasting for five months and is finding it difficult to keep the remaining seven months. What should she do?
Answer

Once the vow is applied, it becomes obligatory on her to fulfil it. It is therefore necessary for her to observe the fasts for the entire year. If she is unable to observe them due to some reason, illness, etc. and there is no real hope of recovering in the future, she will have to pay fidyah for each fast which she did not keep. If she passes away without observing the fasts, she will have to make a bequest for the payment of fidyah. The fidyah is equal to ُṣadaqatul fitr for each missed fast.

"حاشية الطخطاوي:
إذا نذر شيئاً من قريبات لزمه الوفاء به، والإجماع على وجوب الإيفاء به.
(حاشية الطخطاوي على مراقي الفلاح: ص 378).

الدر المختار:
نذر صوم رجب فدخل وهو مريض أقدر وقضي كرمضاً، أو صوم الأبد فضعف لاشتعاله بالمعيشة أقدر وكفر. وفي الشامية: ( قوله وكفر) أي فدى.
(الدر المختار مع فتاوى الشامى: 4382)

وفي الشامي: ( قوله فدى) أي لكل يوم نصف صاع من بر أو صاع من شعير.
وإن لم يقدر استغفر الله. (فتاوى الشامى: 741/3)

فتاوى قاضيخان:
ولو نذر أن يصوم أبداً فضعف عن الصوم لاشتعله بالمعيشة قال: له أن يفطر ويطبعم لكل يوم نصف صاع من الحنطة، لأنه استيقظ أنه لا يقدر على القضائه، فإن لم يقدر على ذلك لعسراه يستغفر الله... وقد نص على هذا في باب الاكتاف، إذا أوجب على نفسه اعتكافاً فمات قبل أن يعتكف يلزمها أن يوصي بذلك، ففطم عنه بعد موعده عن نفسه كل يوم نصف صاع من الحنطة، وإذا ثبت هذا في الاكتاف فكذلك في باب الصوم. (فتاوى قاضيخان: 1071)
An example of kaffārahs becoming interlinked

Question
A man – in his carelessness – took oaths and broke them. By the blessings of joining Tablīgh, he has come to his senses. How many kaffārahs must he pay for? Will one kaffārah suffice? He does not remember how many oaths he broke.

Answer
One kaffārah will suffice for all his oaths which he broke.


Allāh ta’ālā knows best.
THE ISLAMIC PENAL CODE AND THE LAW OF RETRIBUTION

البراهين الرفيعة لإثبات الرجم في الشريعة

The evidence for stoning and answers to objections

Question
Where is the evidence for stoning to death? Many so-called enlightened people make objections to it and claim that it is not proven from the Qur’ān. They say that it is against Islamic injunctions. What is the answer to this?

Answer
Rulings of the Sharī’ah are proven from the Qur’ān, the Sunnah of Rasūlullāh ﷺ, and Al-Salāh (consensus of the scholars). If a ruling is not proven explicitly from these three, we revert to the ijtihād and derivations of the jurists and Imāms. The issue of stoning to death is proven directly from the Qur’ān and evidence in its favor is found in the Sunnah as well. In the same way, there is ijmā’ for it. This means that there was consensus in favor of stoning from the first era of Islam – the era of the Sahābah rađi Allāh ṭanhum.

Proof from the Qur’ān:

Whoever commits indecency from among your women, produce against them four witnesses from among you. Then if they testify, confine those women in the houses until death takes them away or Allāh appoints for them a way.¹

The present verse issues an order with respect to women who commit adultery. Four Muslim males must testify against them. Once their crime is proven through the testimony, they are to be confined to

¹ Sūrah an-Nisā’, 4: 15.
their homes until an order is issued by Allāh ta’ālā. Rasūlullāh ﷺ then explained through divine revelation that the words “appoints for them a way” mean that if the adulterer is a married person, he or she will be stoned to death. If they are unmarried, they will be given one hundred lashes.

We learn from this Hadīth that expounding on the “way” was not done by human intellect but by Allāh ta’ālā via divine revelation. This is similar to Allāh ta’ālā instructing us in the Qur’ān about the performing of salah. But the meaning of salah and an explanation of it was given by Rasūlullāh ﷺ via divine revelation. It is also considered to be established from the Qur’ān. Anyone who claims that the nature and number of salahs is not proven from the Qur’ān will be classified as out of the fold of Islam.

Some scholars say that the ruling of one hundred lashes is present in the Qur’ān (Sūrah an-Nūr) and that the ruling for stoning was also in the Qur’ān but its recitation has been abrogated while the rule is still applicable. The verse reads as follows:

The above answer is supported by a sermon of Ḥadīrat ’Umar ra in which he said: Allāh ta’ālā revealed “stoning” in His Book. We read it and remember it. Its recitation is now abrogated but the rule remains valid. Rasūlullāh ﷺ practised on “stoning” and so did Ḥadīrat Abū Bakr ra after him. I am also applying this law. Had I not considered additions and subtractions to Allāh’s Book to be a crime, I would have certainly included this verse in the written copy of the Qur’ān. I fear there will be some people who will come later on and reject “stoning” because it
is not mentioned in the Qur‘ān. They will go astray because of their rejection and they will become unbelievers.

Objection
Some people object to the above narration by saying that the words shaykh and shaykhah are not known to refer to married people but to an old man and an old woman. What is the answer to this objection?

Answer
In Arabic colloquial usage, when the situation demands dispraise, then the lowest expression is used. And when the situation demands praise, then the highest expression is used. Take the following Hadith which is a situation of dispraise:

すると、彼はイエスを平手打ちにする

May Allāh’s curse be on the thief. He steals an egg and has his hand cut-off [because of it].

This is a situation of dispraise and a small item like an egg is used as an example. A similar narration states:

...or he steals a rope, and has his hand cut-off [because of it].

Another example:

Fear the Hell-fire even if it is on account of a piece of date.

Here too, the lowest level of a married person is mentioned. That is, a married person [male or female] who does not abstain from adultery even in old age.

Observe the following statement of Ḥadrat Abū Bakr raḍiyallahu ‘anhu:

وَللهِ لَوْ مَنْعُونِي عَنْ قِبَالَةَ كَانَ هُمَا يَدْوُنُهَا إِلَى رَسُولِ اللَّهِ صلى الله عليه وسلم لَفَتَلَّهُمُ النَّارُ (68/1)
By Allāh, if they withhold from me a small she-goat which they used to give to Rasūlullāh sallallāhu 'alayhi wa sallam I will fight them.

When the situation demands praise, the highest is mentioned. For example:

وَآتِيهم إِجْدَاهُم قَنْطَاراً

...if you were to give one of them a tremendous sum.

The above principle has been explained by Shāh 'Abd al-Ghanī Mujaddidī in his marginalia to Sunan Ibn Mājah, Kitāb al-Ḥudūd, p. 183.

A simple explanation in this context could be that the words shaykh and shaykhah are used as hyperboles.

The Ahādīth on the issue of “stoning” are so many that it is as though they are on the level of tawātur in meaning. The Muslim nation accepted them and the scholars reached concurrence on their application.

**Proofs for “stoning” from Ahādīth**

1. ".. a man came to Rasūlullāh sallallāhu 'alayhi wa sallam and informed him that he committed adultery. The man testified four times against his self. Rasūlullāh sallallāhu 'alayhi wa sallam then ordered for him to be stoned. He was a married man.

..."
Hadrat 'Umar radhiyallahu 'anhu said: I fear that when a considerable period of time passes, someone may say: “We do not find the order of stoning in the Book of Allâh.” People will then go astray on account of discarding an obligation which Allâh ta’âlâ revealed. Listen! Stoning is an obligation on a married person who commits adultery once the evidence against him is established, the woman falls pregnant, or there is admission of guilt.

وفي روايته قال: فجلس عمر رضي الله عنه على المنبر فلم سكت المؤذنين قام فأثنى على الله بما أبله ثم قال: أما بعد فإن قائل لحكم مقالة قد قدر لي أن أقولها لا بأس لي بل أقولها فمن فعلها ووعيضا فليحدث بها حيث انتهت بها راحلة ومن خشي أن لا يعقلها فلا أهل لأحد أن يكذب علي إن الله بعث مهداً صلى الله عليه وسلم بالحق وأنزل عليه الكتاب فكان مما نزل الله آية الرجم فقرأ أئمبا وعقولهم وعذاب الرجم رسول الله صلى الله عليه وسلم ورحمنا بعده فأختشي إن طال بالناس زمن أن يقول قائل والله ما نجد آية الرجم في كتاب الله فيضروا بترك فريضة أنزلها الله والرجم في كتاب الله حق على من زنى إذا أحساس من الرجال والنساء إذا قامت البيينة أو كان الحبل أو

Note: The word “Kitābullūh” in the above Hadith could refer to the Qur’ān or to the order of Allāh.


(١٦) عن أبي بكر رضي الله عنه أن أتى رجل من المسلمين رسول الله صل الله عليه وسلم وبو في المسجد فقال: يا رسول الله! إن زييت فأعرض عن فتني تلقاه وجهه فقال: يا رسول الله! إن زييت فأعرض عن حتى ثني ذلك عليه أربع مرات فلم يشهد على نفس أربع شهادات دعاء رسول الله صل الله عليه وسلم فقال: أبكر جنون؟ قال: لا، قال: فهل أهتمت؟ قال: نعم، فقال:
رسول الله صلى الله عليه وسلم: اذبروا به، فالجيوه، وفيه يقول جابر رضي الله عنه فكانت فيمن رحم الرحمن بالنص: (مسلم: 27/2، باب عبد الرحمن)  
(7) عن عبد الله بن بريدة عن أبيه قال: (فلمارجم ماعز بن مالك رضي الله عنه) فجاءت العادمية فقالت: يا رسول الله! إن رضي الله أنه قد زينت قطري واند ردا لما كان يقول أ人才 يا رسول الله لم تردفني لعلك أن تردني كما ردت ماعزا فوالله إنه لحبل قال: أما الآن فذاويبي حتى تلدي قال: فلما ولدت أنت بالصبي في خرقه قال: هذا قد ولدنت، قال: اذببي فارضعية حتى تتغذى، فلما فطنته أنت بالصبي في بده كسرة خبر، فقالت: هذا يا نبي الله قد فطنته. وقد أكل الطعام فدفع الصبي إلى رجل من المسلمين ثم أمر بها ففحى لها إلى صدري وأمر الناس فرجعوا فيقبل خالد بن الوليد بحجر فر كرآ بها فتتضح الدم على وجه خالد فسماها فسمع نبي الله صلى الله عليه وسلم سبب إيبان فقال: مهلا يا خالد فوالذي نفسي بده لقد تابت توبة لم تابها صاحب مكس لعفر له ثم أمر بها فصلى عليها ودفنت. (رواه مسلم: 1/28، باب حذ الزنة. وابو داود: 29/2)  
(8) عن عمران بن حصين رضي الله عنه أن امرأة من جهينة أن تتأ مل الله صلى الله عليه وسلم وبي حبل من الزنة، فقالت: يا نبي الله أصيبت حدا فأقم على فدعا نبي الله صلى الله عليه وسلم وبي، فقال: أحسن إليها فإذا وضعت فأكلت بها فعل فأمر بها نبي الله صلى الله عليه وسلم، فشهدت عليها طيدها ثم أمر بها فرجعت ثم صل عليها، فقال له عمر رضي الله عنه: تصل عليها يا نبي الله وقد زنت قال: لقد تابت توبة لو قست بين سبعين من أهل المدينة لوصعتهم، وبل وجدت توبة أفضل من أن جاءت بنفسها لله تعالى. (رواه مسلم: 29/2. وابو داود: 29/2)
(9) On the testimony of Ja'far ibn Abu Talib concerning a man who committed adultery with a woman. Rasūlullāh sallallāhu 'alayhi wa sallam ordered that he be lashed. He was then informed that he was a married man. So Rasūlullāh sallallāhu 'alayhi wa sallam ordered that he be stoned.

(10) On the testimony of 'Abd Allāh ibn Mas'ūd concerning a man who committed adultery, the Messenger of Allāh ordered that he be lashed. He was then informed that he was a married man, so Rasūlullāh sallallāhu 'alayhi wa sallam ordered that he be stoned.

Hadhrat 'Alī radhiyallāhu 'anhu stoned a woman on a Friday. He then said: I stoned her because it is a Sunnah of Rasūlullāh sallallāhu 'alayhi wa sallam.

(11) On the testimony of 'Abd Allāh ibn Mas'ūd concerning a man who committed adultery, the Messenger of Allāh ordered that he be lashed. He was then informed that he was a married man, so Rasūlullāh sallallāhu 'alayhi wa sallam ordered that he be stoned.

(12) On the testimony of 'Abd Allāh ibn Mas'ūd concerning a man who committed adultery, the Messenger of Allāh ordered that he be lashed. He was then informed that he was a married man, so Rasūlullāh sallallāhu 'alayhi wa sallam ordered that he be stoned.

Rasūlullāh sallallāhu 'alayhi wa sallam said: The blood of a person who testifies to the Oneness of Allāh and my Messenger-ship is sacrosanct except for one of the three reasons: An adulterer, a life for a life, a person who reneges from his Dīn and leaves the main body of Muslims.

...Rasūlullāh sallallāhu 'alayhi wa sallam said: The blood of a person who testifies to the Oneness of Allāh and my Messenger-ship is sacrosanct except for one of the three reasons: An adulterer, a life for a life, a person who reneges from his Dīn and leaves the main body of Muslims.

...Rasūlullāh sallallāhu 'alayhi wa sallam said: The blood of a person who testifies to the Oneness of Allāh and my Messenger-ship is sacrosanct except for one of the three reasons: An adulterer, a life for a life, a person who reneges from his Dīn and leaves the main body of Muslims.

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Haḍrat 'Umar raḍiyallāhu 'anhu said: “Rasūlullāh sallallāhu 'alayhi wa sallam practised stoning, so did Abū Bakr raḍiyallāhu 'anhu and I did the same. Had it not been for my fear of adding something to Allāh’s Book, I would have written it [the order to stone] in the Qur’ān. I fear people coming later on and not finding this rule in Allāh’s Book and then rejecting this order.”

Ijmā’ of the Sahābah and the Muslim nation

1. Hāfiz Ibn Hājar rahimahullāh writes in Fath al-Bārī:

قال ابن بطال: أجمع الصحابة وأئمة الأئمة على أن المحصن إذا زنى عابدًا عالماً مختارًا فعلمه الحج. واحتج الجمهور بأن النبي صلى الله عليه وسلم رجّم

وقد هذه الأئمة بعده. (فتح الباري: ۱۴/۸۱، باب رجم المحصن)

2. Ibn Rushd Mālik rahimahullāh writes in Bidayatul Mujtahid:

فأما فيب الأحرار المحصنون فإن المسلمين أجمعوا على أن حذم الرجم إلا فرقة من أهل الأبواء... عمدة الجمهور أن رسول الله صلى الله عليه وسلم رجّم ماعزاً ورجم امرأة من جبلة ورجم يهوديين وامرأة من عامر من الأزد، وكل ذلك مخرج في الصحاب. (بداية المجتهد: ٣/٣، الباب الثاني في أصناف الزنا)

3. Maulānā Khalīl Ahmad Sahāranpūrī rahimahullāh writes:

قال ابن المنذر أقسم النبي صلى الله عليه وسلم في العصيف أنه يقضي بختصب الله وخطب عمر رضي الله عنه بذلك على رؤوس الناس وعمل بها الخلفاء الراشدين فلم ينكرو أحد فكان إجماعاً. (بجل المجهود: ۱۳۹/۵)

4. Mullā 'Alī Qārī rahimahullāh writes in Mirqāṭ:

الرجم عليه إجماع الصحابة ومن تقديم من علماء المسلمين وإنكار الخوارج الرجم باطل لأنهم إن أنصروا حاجبة إجماع الصحابة فجعل مركب بالدليل بل هو إجماع قطعي وان أنصروا وقوع عن رسول الله صلى الله عليه وسلم
5. Ibn Hazm Andalūsī Hambalī rahimahullāh writes in Marāṭib al-ljmā:

انفقوا أنه إذا زئي كما ذكرنا وكان قد تزوج قبل ذلك وبو بالغ مسلم حايل.

حرة مسلمة بالغة عقلة نسحاً صحيحاً... أن عليه الرجم بالجحارة حتى

يموت. (مراتب الاجماع: ٢٣٩، كتاب الحدود، ملتان)

6. 'Allāmah Álūsī rahimahullāh writes in Rūh al-Ma‘ànī:

قد أجمع الصحابة ومن تقدم من السلف وعلماء الأمة وأئمة المسلمين على أن

المجوع بالجحارة حتى يموت... لأن ثبوت الرجم من على السلام

متوارر المعنى كشجاعة على رضا الله عنه ووجود حائتم. (روح المعاني: ٧٨/١٨

القابرة)

7. Qādī Thanā’ullāh Panīpatī rahimahullāh writes in Tafsīr al-Mazharī:

وإذا كان الزاني والزانية محصنين يرجمان بإجماع الصحابة ومن بعدم من

علماء النصيحة... وبقال علماء الفقه والحديث وقد جرى عمل الحلفاء

الراشدين بالرجم مبلغ حد التواتر. (التفسير المظيري: ٢٣٢/٦، بلوجستان)

8. The author of al-Hidayah writes:

وإذا وجب الحد وكان الزاني محصناً رجم باللحجارة حتى يموت لأنه عليه

السلام رجم ماعزاً وقد أحسن وقال في الحديث المعروف وزنا بعد إحسان

وعلى هذا إجماع الصحابة. (البداية: ٣/٥٠، فصل في كيفية الحد. وفتح القدر:

٥/٥٣، وتبين الحقائق: كتاب الحدود. ومجمع الأئم الشرّج ملتقى الأبحر: ١٥٤,

باب حد الزنا)

9. The famous jurist, 'Allāmah Ibn Qudāmah al-Hambalī states:
الرجم على الزاني المحصن نجلًا كان أو امرأة وهذا قول عامة أهل العلم من الصحابة والتابعين ومن بعدهم من علماء الأئمة في جميع الأعصار ولا نعلم فيه مخالفًا إلا الخوارج... وقد نص الرجم عن رسول الله صل الله عليه وسلم يقول وفعله في أخبار تشبه الموات وجمع علي الصب فالله عليه وسلم. (المغني لأبي قدامة الخليل: 10/30، وجب الرجم على الزاني المحصن، بيروت).

10. 'Allāmah Ibn Nujaym Migrī rahimahullāh writes:

قوله فإن كان محصناً رجح في قضاء حتى يموت لأنه عليه السلام رجح ماعزاً وقد كان أحصى وقال في الحديث المعروف وزنا بعد إحسان وكان بهذا إجماع الصحابة وإنصاف الخوارج الرجم باطل لأنهم إن أنصروا حاجية إجماع الصحابة فيجلب مشروع بالدليل بل يجلب إجماع قطعي وإن أنصروا وقوعه عن رسول الله صلى الله عليه وسلم وإنصافهم حاجية خبر الواحد فهو بعد بطلان بالدليل ليس مما يحق فيه لأن ثبوت الرجم عن رسول الله صلى الله عليه وسلم متوار الدمع. (البحر الراق: 5/89، كتاب الحدود، كونه).

11. 'Allāmah Ibn Amīr al-Hāj al-Halabī rahimahullāh writes in at-Taqrīr wa at-Tahbīr:

إن حكمه صلى الله عليه وسلم على الواحد حكمه على الجماعة (حتى حكموا على غير ماعز بما حكم به) النبي صلى الله عليه وسلم من الرجم (عليه) أي على ماعز رضي الله عنه حتى قال عمر رضي الله عنه خشيته أن يطول بالناس زمان حتى يقول قائل لا نجد الرجم في كتاب الله فيضلاو يترك فرصة أنزلوا الله أنزلوا الرجم على من زنى، وقد أحصى إذا قامت البيئة أو كان الحلي أو الاعتراف (رواة البخاري) وحكموا على ذلك إجماع الصحابة ومن بعدهم من يعد بإجماع. (التحرير والتحوير في أصول الفقه: 79/2، مسألة خطاب الواحد).
12. Imām Abū Bakr Jassās raḥimahullāh writes:

قال أبو بكر: لَمْ يَخْلُفَ السَّلَفُ فِي أَنْ حَدِّ الْعَرَائِسِ فِي أَوْلِ الْإِلَامِ، مَا قَالَ اللَّهُ ﻰ أَسْلَمُ: "وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نَسَائِهِ فَأُشْهِدُوا عَلَىٰهُنَّ أَرْبَعَةٌ مَّنْـهُمْ" إِلَى قُوْلُهُ، وَاللَّذِينَ يَأْتِيْنَهَا مَنْـهُمْ فَأُذُوْبَمَا... فَكَانَ حَدُّ الْمَرَأَةِ الْحَبَّسُ والأَذَى بالتعيير، وَكَانَ حَدُّ الْرَّجُلِ الْمَعْيَرُ فَمُشْدُوقًا عَنْ غَيْرِ الْمُحْصُنِ بِقَوْلُهُ. تَعَالَانِ: "الرَّأْيسَةُ وَالْرَّانِيَةُ فَأَهْلَدُوا كَلِّ وَاحِدٍ مِنْهَا مَائَةٌ جَلَّةٌ" وَنُسِخُ عَنِ الْمُحْصُنِ بِالرَّجُلِ وَذَلِكَ لِأَنَّهُ حُدُّ عَبَادَةَ بَنِ الصَّخْتُ رَضِيَ اللَّهُ عَنْهُ عَنْ النَّبِيِّ صَلِّ اللَّهُ عَلَيْهِ وَسَلَّمُ خَذْهَا عَنْهُ. حَيَّرَ النَّبِيُّ صَلِّ اللَّهُ عَلَيْهِ وَسَلَّمُ وَبِنَانَ الشَّرِّ إِلَى عُنْبِ أَلْيَاءَ الْبَكْرِ بَالْبَيْكِرِ جَلَّةَ مَائَةٌ وَتَخْرِيبَ عَامٍ وَالْبَيْكِرِ الجَلَدُ وَالرَّجُلُ فَكَانَ ذَلِكَ عَقِيبَ الحَبَّسِ والأَذى المَذْكُورِينَ فِي قُوْلُهُ: "اللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نَسَائِهِ" إِلَى قُوْلُهُ، "أَوْ يَجْعَلَ اللَّهُ عَلَيْهَا سَبِيلًا". (أَحَكَامُ الْقُرْآنِ لِلْحَجَّاصِ: 3/559، سُورَةُ النُّورُ، سِلْبِ أَكْذِبِ). From the above quoted texts and proofs, the rule of “stoning” becomes absolutely clear. These leave no room for rejection. If any individual, group or advisory committee rejects it, it will be a serious deviation.

Rejection of “stoning” entails deviation
Objections and answers

First Objection

The rejecters of stoning claim that it was a practice of Jews which Muslims adopted. What is the answer to this?

Answer

Rasūlullāh sallallāhu 'alayhi wa sallam did not promulgate stoning solely on the basis of it being an order in the Taurāh. Rather, the Qur’ān endorsed it and it became an order of Allāh ta‘ālā. When Allāh ta‘ālā sends an order in line with previous Sharī‘ahs, endorses it or Rasūlullāh sallallāhu 'alayhi wa sallam endorses it; then it becomes our Sharī‘ah. Therefore, this order does not remain of the Taurāh alone but has become an order of our Sharī‘ah. Yes, when Rasūlullāh sallallāhu 'alayhi wa sallam asked about its ruling in the Taurāh, then it was to complete his evidence.

Rasūlullāh sallallāhu 'alayhi wa sallam did not confine himself to practising on the order of stoning. Rather, he promulgated it verbally as well. Consequently, it became a rule of the Sharī‘ah. (His verbal Aḥādīth in this regard were quoted above).

The order of stoning was a general one in the Taurāh. It did not contain prerequisites and guidelines. Rasūlullāh sallallāhu 'alayhi wa sallam explained them. For example, there is no stoning for an unmarried person. Instead, one hundred lashes are promulgated. Rasūlullāh sallallāhu 'alayhi wa sallam laid down these guidelines in
the light of divine instructions. No matter what, it is incorrect to allege that stoning is a way of the Jews.

Second Objection

The objectors to stoning claim that it is an animalistic practice and a travesty of human rights. Furthermore, it is not even possible for four witnesses to observe the act.

Answer

Whichever incidents came to the fore among the Muslims during the era of Rasūlullāh sallallāhu 'alayhi wa sallam were on account of the criminals confessing their crime on their own. Because it is extremely difficult, if not impossible, for four witnesses to be present at the time when the sexual act is taking place. It is as an Arabic maxim goes:

كامل في المكحلة.

Trying to see the dip-stick which is in the container of antimony (surmah).

Yes, the incident related to the Jews was ascertained through the testimony of four witnesses. Shaykh Muḥammad Zakarīyyā Kāndhlawī rahīmahullāh writes in this regard:

أنه عليه الصلاة والسلام رجم يهوديين زنبا بشهادة أربعة منهم (الأبواب) والترجم، ص ١٨٩

This is why when a man and woman are seen lying down together, the punishment is not established. Instead, they will only be eligible for a reprimand. Furthermore, even in the case where a person confessed the crime, Rasūlullāh sallallāhu 'alayhi wa sallam deferred it so that the person may retract. And the punishment falls away when a person retracts. From this also we learn that the Sharī'ah gives sufficient respite and leeway to the criminal on the issue of stoning.

I think it would be appropriate to quote an incident which would untie many of the knots in the mind.

The Islamic Penal Code and the Islamic Law of Retribution (Ḥudūd wa Qisās) were passed in Pakistan during the rule of General Dīyā’ al-Haqq. Although the Ḥudūd laws have not been applied to this day, many objections and criticisms were made against them. Several erudite scholars from the Arab and non-Arab world were brought together to examine and explore this law. Some of them made the objection that the law of "stoning" is not suited to the conditions in
the world. Instead, the one guilty of adultery should rather be shot with a bullet.

Hadrat Muftī Mahmūd Sāhib Pākistānī rahimahullāh was ill during that time and he was being treated in a hospital. A few members of the delegation visited him in the hospital and asked him for his opinion. They presented the view to him that the objective is to kill the married adulterer, so it would be better to kill him with a gun. Hadrat Muftī Sāhib said: “The Sharī‘ah is saving him but you want to kill him!?” They asked: “What do you mean?” Hadrat Muftī Sāhib said: “Nowhere in history was adultery proven through witnesses because man and woman are like:

\[
\text{کاملہ فی المصلة.}
\]

Trying to see the dip-stick which is in the container of antimony (surmah).

It is virtually impossible to give such a testimony. Therefore, the incidents of adultery [which we read about in the Ahādīths] were on the basis of admission of guilt. The incidents of Hadrat Mā‘īz radīyallāhu ‘anhu, Hadrat Ghāmidiyah radīyallāhu ‘anhā and the Jews were established through admission of guilt. When an adulterer is being stoned and he or she experiences pain, and he or she says: ‘I did not do anything, I did not commit adultery’, you have to leave them immediately. In this way, they are saved from death. If you are going to put a bullet to their head, how will they be saved?”

The members of the delegation were quite pleased with this answer and were convinced by it.

I heard this personally from Hadrat Muftī Sāhib, and it is related in the introduction to Fatwā Muftī Mahmūd, pp. 110-112. (Note: When Hadrat Muftī Sāhib said: “Nowhere in history was adultery proven through witnesses”, it refers to Muslims. The incident related to the Jews – as quoted previously – was established through a testimony).

Observe the following Hadīth from Sahīh Bukhārī:

> عن ابن عباس رضي الله عنه قال: لما أتى ماعز بن مالك رضي الله عنه النبي صلى الله عليه وسلم قال له: لعلك قابلت أو غمرت أو نظرت قال: لا يا رسول الله. قال: أنصحني يا حمزة لبعد ذلك أمر برحم. وفي رواية له عن أبي بكر رضي الله عنه قال: أتى رسول الله صلى الله عليه وسلم رجل
Third Objection

Some people claim that – Allah forbid – Hadrat Mā‘iz radīyallāhu ‘anhu and Hadrat Ghāmidiyah radīyallāhu ‘anhā were immoral people who always looked for opportunities to commit adultery. The punishment of stoning was therefore inflicted as a castigation and not as a Ḥadd. They present a Hadith to support their claim:

فَرَجَهَا لَشَقَّ وَجَدَ اللَّهُ نَجِيَّةً صَلِّ اللَّهُ عَلَيْهِ وَسَلَّمَ الَّذِي أَعْرَضَ عَنَّهُ فَلَمْ تَشْهِدَ عَلَى نَفْسِهِ أَرْعَى يَدَاءَاتٍ دَعَاءَ النَّبِيِّ صَلِّ اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَبُوك جَنُونَ قَالَ فَلَا يَا رَسُولُ اللَّهِ فَقَالَ أُحْشَسْتُ قَالَ تُنِبَّأُ يَا رَسُولُ اللَّهِ قَالَ اذْتَبِبُوا بِفَارِجِهَا (رواية البخاري: 2/88).

وفي رواية الترمذي: قال: فلما وجد مس الحجارة فرشد حتى مرتجل معم، لحي حمل فضفاضاً وضرب الناس حتى مات فذكروا ذلك لرسول الله صلى الله عليه وسلم... فقال: فلا تركنهوا (رواية الترمذي: 2/61).
Rasūlullāh ﷺ said: “Whenever we go out for jihād, a person will continue bleating like a goat. He will give a little milk and carry on. By Allāh, if I get hold of him, I will inflict an admonitory punishment on him.”

It is said that (Allāh forbid) Hadrat Mā’īz ḥanūf was as described. What is the answer to this objection?

**Answer**

The purpose of such a statement is to present a general ruling. Muftī Taqī ‘Uthmān Sahib writes in Takmilah Fath al-Mulhim:

A clear similarity to the above can be found in the Qur’ān. Allāh ta’ālā says with reference to Hadrat Dāwūd alayhis salām:

O Dāwūd! We have made you a vicegerent on earth, so rule with justice among the people and do not follow the desire of the self or else it would lead you astray from the path of Allāh. Surely those who go astray from the path of Allah, for them is a severe punishment.¹

This verse also aims to explain a general ruling. It does not mean that (Allāh forbid) Hadrat Dāwūd alayhis salām had gone astray.

In the same way, in the previously-quoted Hadīth, Rasūlullāh ﷺ is issuing a warning about the future – that no one should do such a thing. The proof for it is in the word ﷺ.

¹ Sūrah Sād, 38: 26.
which is in the future tense. Other narrations contain the word ﻧﺒث. The words ﺧﻞﻒ and ﻫﻨﻒ are certainly in the past tense, but when they are preceded by the word ﻣﺎ, the meaning of continuity is conveyed.

The other proof is that the same Hadith contains the words “if I get hold of him”. This shows that the culprit hasn’t been caught as yet. And Rasûlullâh ﷺ said: “Had I been in the same condition as you are now, I would have stoned the culprit to death.” Therefore, Hadrat Ma‘ïz ra‘diyallâhu ‘anhu is not meant.

Furthermore, the king or ruler imposes the punishment after establishing that the criminal is obstinate and unrepentant. On the other hand, Hadrat Ma‘ïz ra‘diyallâhu ‘anhu and Hadrat Ghâmidiyah ra‘diyallâhu ‘anhu were good people and they committed the crime incidentally.

Proof that they were good people is that when Rasûlullâh ﷺ asked the tribe members of Hadrat Ma‘ïz ra‘diyallâhu ‘anhu about him, they replied:

(...we do not know of him committing any wrong. Yes, he did do this.

Another narration states:

...we know him to be a sound-minded person. As far as we know, he is a righteous person from among us.

If he was so evil and immoral, why did he come on his own and admit his crime four times?

Rasûlullâh ﷺ said with reference to him:

(Let him who is so evil and immoral seek my forgiveness, and I will forgive him. (Riwa‘ah Mâ‘ṣûm: 28/2, Bab Had al-aznâ, Fîshl)
His repentance was so genuine that if it were to be distributed among an entire nation, it would suffice them.

Rasūlullāh sallallāhu ‘alayhi wa sallam said with reference to Ḥadrat Ghāmidīyyah raḍiyallāhu ‘anāhā:

لقد تابت توبة لو تابها صاحب مكس لغفر له. (رواه مسلم: 2/88، باب حد الزنا، فيصل)

Her repentance was so genuine that if an oppressive tax-collector were to repent like that, he would be pardoned.

Rasūlullāh sallallāhu ‘alayhi wa sallam said with reference to Ḥadrat Mā’īz raḍiyallāhu ‘anhu:

أنت أي ماعز رضي الله عنه الآن لغي أنها الحجة ينحس فيها. (ابو داود شريف: 628، باب في الوجم)

He – Ḥadrat Mā’īz raḍiyallāhu ‘anhu – is presently diving in the rivers of Paradise.

Do you think Rasūlullāh sallallāhu ‘alayhi wa sallam will make such a statement about an immoral person?!

In the same way, Ḥadrat Ghāmidīyyah raḍiyallāhu ‘anāhā came by herself and admitted her crime. Rasūlullāh sallallāhu ‘alayhi wa sallam gave her a respite because she was pregnant. After delivering her child, she came of her own accord to Rasūlullāh sallallāhu ‘alayhi wa sallam. Observe the following in Takmilah Fath al-Mulhim:

جاءت بنفسها دون أن يطلبها أحد، على رغم أنها صارت أماً ولده رضيع وكم يحكم خاطرا قد تعلق بهذا المولد؟ وكم تكون عواطف الإشفاق عليه قد عرضت في سبيلها. (تكميلة فتح المليم: 2/43، الفرق بين الحد والتعزير)

Fourth Objection

Some of those who reject “stoning” claim that all incidents related to stoning took place before the revelation of Sūrah an-Nūr. The verse in Sūrah an-Nūr which makes reference to “lashing” then abrogated the rule of “stoning”. They present the following as proof for their view:
Answer

Hadrat 'Abdullah ibn Abī Aufā radiyallāhu 'anhu did not say that these incidents occurred before the revelation of Sūrah an-Nūr. Rather, he is expressing his lack of knowledge on this issue. The principle is:

\[
\text{ اليقين لا يزول بالشك.}
\]

Certainty cannot be removed by doubt. Therefore, the ruling of stoning which is established with certainty will not be abrogated by this doubt.

Furthermore, Sūrah an-Nūr was revealed with reference to the incident of I′f which took place on the Muslims' return from the Bānī Mustaliq expedition. The historians differ on the year in which this expedition took place. Some say that it took place in 3 A.H. while others say it took place in 5 A.H. or 6 A.H. However, Mūsā ibn 'Uqbah and Wāqidi are of the view that it took place in 5 A.H. This is the preferred view which is also chosen by Hāfiz Ibn Hājur rahimullāh and Hāfiz Tsā rahimahullāh. Refer to Fath al-Mulhim, vol. 2, p. 425.

The first incident was the one with the Jews. It took place after the Conquest of Makkah in 8 A.H. The Musnad of Bazzār and Tābarānī quote a narration in which Hadrat 'Abdullāh ibn Hārith said:

\[
\text{فكنتم فيمن رحميماً (رواه البخاري والطبراني كما في مجمع الزوائد: ۳۸/۶)}
\]

Hadrat 'Abdullāh ibn Hārith embraced Islam after the Conquest of Makkah.

Moreover, in his commentary to Sūrah al-Mā‘īdah, Ibn Jarīr rahimahullāh quotes the following statement of Hadrat Abū Hurayrah radiyallāhu 'anhu:

\[
\text{ كنت جالساً عند رسول الله صلى الله عليه وسلم إذ جاء رجل من اليهود...الخ (سورة المائدة: ۳۵/۶)}
\]

Hadrat Abū Hurayrah radiyallāhu 'anhu embraced Islam in 7 A.H.
The Jews [of this incident] were residents of Fidak. The Musnad of Humaydī contains the following narration:

عن جابر بن عبد الله رضي الله عنه قال: زى رجل من أهل فدک فكتب أهل فدک إلى أساس من اليهود بالمدينة أن سلوا مختارا عن ذلك... (مسند الجمیدی: ۱۳۵۴)۲

A peace treaty with the Jews of Fidak was signed after the expedition to Khaybar in 7 A.H.

Maulānā Idrīs Ṣāhib Kāndhlawī rahimahullāh writes in Sirātul Muṣṭafā:

When the people of Fidak learnt that the Jews of Khaybar made peace with the Muslims on these conditions, they sent a message to Rasūlullāh sallallahu 'alayhi wa sallam requesting him to guarantee them their lives...Rasūlullāh sallallahu 'alayhi wa sallam accepted their request. Muhāyshah ibn Mas‘ūd radīyallāhu 'anhu was appointed as a mediator and Fidak came under the Muslims without any military operations.¹

However, there could be an objection to this. From the two famous Jewish tribes of Madīnah – the Banū Naqīr was banished from the city in 4 A.H. while the Banū Qurayzah was killed in 5 A.H. So from where did Jews come to Madīnah when we gauge from the narration of Musnad Humaydī that there were Jews in Madīnah at the time of “stoning”?

An answer to this is that the Jews were not put to a complete end after the killing of the Banū Qurayzah. There were some remnant Jews in the city. A proof for this is that at the time when Rasūlullāh sallallahu 'alayhi wa sallam passed away, his shield was mortgaged with a Jew. (Ṣaḥīḥ Bukhārī)

From a narration of Mustadrak of Ḥākim, we learn that Ḥadhrat ʿAbdullāh ibn ‘Abbās rađiyallāhu 'anhu was present on the occasion of the stoning of Ḥadhrat Mā’īz rađiyallāhu 'anhu. Ḥāfīz ibn Ḥajar rahimahullāh clearly states that Ḥadhrat ʿAbdullāh ibn ‘Abbās rađiyallāhu 'anhu came to Madīnah with his mother in 9 A.H. This narration further supports the view that the incident of the stoning of Ḥadhrat Mā’īz rađiyallāhu 'anhu took place in 9 A.H. or after. (Although the narration of Ḥākim is weak, it has been presented as supporting evidence).

Hadrat Khālid ibn Walīd radiyallāhu ‘anhu was present on the occasion of the stoning of Hadrat Ghāmidyyah radiyallāhu ‘anāhā, and we know that Hadrat Khālid radiyallāhu ‘anhu embraced Islam in 8 A.H. and came to Madīnah.1

The above incidents and evidences clearly show that all the incidents related to stoning took place after the revelation of Sūrah an-Nūr and that the order of stoning is not abrogated.

Fifth Objection

Some people claim that there is confusion about the punishment of stoning. If a married person commits adultery, is the punishment stoning only or is it with lashing as well?

روى عامر الشعبي أن علياً جلد شراحة البسمانية يوم الخميس ورجمها يوم الجمعه وقال: جلدتها بستاب الله ورجمتها بسنة رسول الله صلى الله عليه وسلم. (أخترج البخاري والنسائي والدارقطني كما في فتح الباري: 3/199/119).

(تعملة فتح المليم: 2/10)

خذوا عني...الثاب بالثاب جلد مائة والرجم. (رواه مسلم: 2/35/65)

Answer

First of all, this argument does not benefit the rejecters of “stoning” because irrespective of whether a married person is punished by stoning only or lashing and stoning, what is certain is that he is stoned.

Secondly, Hāfīz ibn Ḥajar rahimahullāh, ‘Allāmah Nawawī rahimahullāh and others say that the narration of Hadrat ‘Ubādah ibn as-Sāmīt radiyallāhu ‘anhu is abrogated. It has been abrogated by the narration of the sheikh or the other incidents which mention the punishment of stoning alone.

Other scholars say that there are two types of a thayyib: (1) thayyib muhsan, (2) thayyib ghayr muhsan, e.g. from the People of the Book. The narration under discussion mentions the punishment for both. Stoning for the thayyib muhsan and one hundred lashes for the thayyib ghayr muhsan.

As for the incident of Ḥadhrat ʿAlī ῥaḍīyallāhu ‘anhu, some scholars reply to it by saying that he did not know with certainty whether she was married or unmarried. This is why he lashed her. But when he learnt that she was a married woman, he had her stoned.

Furthermore, a similar incident took place in the time of Rasūlullāh ṣallallāhu ‘alayhi wa sallam:

ٍرﺟﻼ ٔان ر اﷲ ﻋﻨﻪ ﺟﺎﺑﺮ ﻋﻦ

Z

ٍر ةٔﺑﺎ

ﷲ ا رﺳﻮل ﻧ ﻓﺎ

وﺳﻠﻢ ﮧﻴﻋﻠﷲ ا ﺻ

ٔاﻧﮧ ٔاﺧ? ﺛﻢ ا

ô

ﺑﮧ ٔﻓﺎ

ا man committed adultery with a woman so Rasūlullāh ṣallallāhu ‘alayhi wa sallam ordered that he be lashed. He was then informed that the man was a married man, so he ordered that he be stoned.

However, there is an objection to this explanation because some of the narrations state that before Ḥadhrat ʿAlī ῥaḍīyallāhu ‘anhu could lash the woman, he asked her:

لمع زوجك من عدونا. قالت: لا.

“Perhaps your husband is our enemy?” She replied: “No.”

This shows that Ḥadhrat ʿAlī ῥaḍīyallāhu ‘anhu knew that she was married and a Muslim.

A reply to this objection could be that this was the creed of Ḥadhrat ʿAlī ῥaḍīyallāhu ‘anhu because this is a contentious issue. Ḥāfiz ibn Ḥajar rahimahullāh attributes this view to Ḥadhrat Ubayy ibn Ka’b ῥaḍīyallāhu ‘anhu and Imām Ahmad ibn Ḥambal rahimahullāh. Refer to Fath al-Bārī, vol. 12, p. 119.

Ḥadhrat Shāh Wali Allāh rahimahullāh writes:

الظابر عندي أن يجوز للإمام أن يجمع بين الرجم والجلد و يستحب له أن يقتصر على الرجم... والجلد زيادة عقوبة رخص في تركها. (المسوى شرح الموط: ١٣٥)

Muftī Taqīʿ Uthmānī Sāhib gives preference to this reply. After quoting it, he writes:
Sixth Objection

The incident related to the stoning of Ḥadrat Mā‘īz Aṣlām ra‘yallahu ‘anhu is well-known. This is why the rejecters of stoning have tried to prove that the narration is dubious. They ask: “How many times did Rasūlullāh sallallahu ‘alayhi wa sallam send Ḥadrat Mā‘īz ra‘yallahu ‘anhu back?”

One narration states:

فأعرض عنه حتى ثي ذلك عليه أربع مرات.

He turned away from him four times.

Sa‘īd ibn Jubayr raḥimahullāh said:

أنه رده أربع مرات.

He sent him back four times.

Some narrations state:

فرده مرتين. فرده مرتين أو ثلاثاً.

He sent him back two times. He sent him back two or three times.

Another narration states:

فأعترف بالزنا ثلاث مرات.

He admitted adultery three times.

The above narrations are from Sahīh Muslim, vol. 2, pp. 66-67.

Answer

Mufti Taqī ‘Uthmānī Sahīb gives an answer to this:
The gist of the above is that differences among the narrators does not damage the status of the Hadith because they often try to establish the incident without bothering about its details. The correct view is that Rasūlullāh ґllayhi wa sallam sent him back three times. On the fourth time, he asked him about the nature of the adultery. When he explained it correctly, Rasūlullāh ґllayhi wa sallam ordered for him to be stoned.

Seventh Objection

Some narrations state that ґadrat Mā’īz radīllāhu ґanhu went to Rasūlullāh ґllayhi wa sallam on his own accord and admitted his guilt. Other narrations say that he was brought to Rasūlullāh ґllayhi wa sallam and he only admitted after Rasūlullāh ґllayhi wa sallam questioned him.

The narrations read as follows:

وفي رواية لمسلم عن جابر بن سمرة رضي الله عنه قال: رأيت ماعز بن مالك رضي الله عنه حين جئ به إلى النبي صلى الله عليه وسلم. و المسلم (رواية مسلم: 2/36)


(رواية مسلم: 2/36)

Answer
The 'ulamā' say that there is no contradiction between the narrations because he was brought to Rasūlullāh ʿalayhi wa sallam and sent to him. Rasūlullāh ʿalayhi wa sallam said to the one who sent him: “O Hazāl! It would have been better if you concealed him.” Rasūlullāh ʿalayhi wa sallam then said to Māʾīz: “Is it true what I was informed about you?” He then asked him about his adultery and Māʾīz radīyallāhu ‘anhu admitted it four times.

Some scholars reply to the above objection by saying that words “Is it true what I was informed about you?” are in the narration of Ḥadrat 'Abdullāh ibn ʿAbbās radīyallāhu ‘anhu and not in the narrations of the other Ṣahābah. At the time of the incident, Ḥadrat 'Abdullāh ibn ʿAbbās radīyallāhu ‘anhu was a young boy. The narrations of the senior Ṣahābah will therefore be given preference.

Furthermore, another narration of Ḥadrat 'Abdullāh ibn ʿAbbās radīyallāhu ‘anhu in Ṣahīḥ Bukhārī (2/1008) and Sunan Abī Dāwūd (p. 607) is in line with the narrations of the majority of Ṣahābah. The words “Is it true what I was informed about you?” are therefore assumed by the narrator.

The following sources – with some alterations and additions – were used for the above article:


Allāh ta’ālā knows best.
When a person cannot bear the punishment of lashing

Question

A person commits adultery but cannot bear the punishment of lashing. Will it be permissible to resort to a leeway by striking him with a broom for example?

Answer

In the case where a person is weak and feeble, and therefore cannot bear the punishment of lashing, it will be permissible to resort to a leeway by striking him with a broom or a similar item. However, consideration should be given that the item used – e.g., a broom – to strike the person must pass over the whole body. This is so that the required number is completed.
الشجر أو الحشيش فاضرب به ولا حثش في يمينك فأخذ ضغطاً يشتمل على مائة عود صغار فضربها به ضربة واحدة. (المترقات: 7/274، كتاب الحدوء، ملتان)

فتاوى الشأي:

قوله إلا أن يقع اليأس من برئه فيقام عليه أي بأن يضرب ضريبا خفيفاً يشمل، وفي الفتح: ولو كان المريض لا يرجي زوال كالسل أو كان ضعيف الحلقة فعندنا وعند الشافعي يضرب بعثكل في مائة شماخ دفعة، وتقدم في الأعيان أنه لم يبد من وصول الكل إلى بدنه، ولذاقيل: لا بد أن تكون مبسطة. (فتاوى الشأي: 4/16، كتاب الحدوء، سعيد)

والمزيد أنظر: الفتاوى الهندية: ج2، ص147.

Allāh ta’ālā knows best.

**Establishing the ḥadd solely on circumstantial evidence**

**Question**

A virgin girl gave birth to a child but she does not admit having committed adultery. There are no four witnesses to testify that the child was born out of wedlock. What we do know is that she was having an affair with a stranger. Bearing all this in mind, can the ḥadd of adultery be applied solely on circumstantial evidence?

**Answer**

It is essential to have four witnesses for the Shar’ī ḥadd of adultery to be applied. Alternatively, the adulterer must admit to the crime in four separate assemblies. The Shar’ī ḥadd of adultery cannot be applied in the absence of either of these two. Circumstantial evidence is not enough. In fact, the attitude of the Sharī’ah is that the ḥadd falls off in the presence of doubts; and not that it be applied through circumstantial evidence and suspicions.

عن عائشة رضي الله عنها قالت: قال رسول الله صل الله عليه وسلم: ادرءوا الحدود عن المسلمين ما استطعتم فإن كان
Rasūlullāh ﷺ alayhi wa sallam said: Hold back the hujdīd from the Muslims as much as you can. If there is a way out for the person, let him be. It is better for the leader to err while pardoning than to err when imposing a punishment.

Further reading: Fatūwā Farīdīyyah, vol. 4, p. 503.
Allāh ta‘ālā knows best.
The testimony of a dumb person

Question

Nowadays, the gestures of a dumb person have taken on the form of a language of its own. He is able to express his thoughts and feelings explicitly, leaving no room for any misunderstanding. In such a situation, can the testimony of a dumb person be used for establishing adultery?

Answer

One of the prerequisites of a testimony is that it must be verbal, it has to be uttered. A testimony is not correct without a verbal utterance. The prerequisites for establishing adultery are more stringent. Therefore, the testimony of a dumb person with respect to adultery is even more unacceptable.

When a woman is hired for her services

Question

An objection is made against the Ḥanafis. If a person hires a woman to engage in intercourse with her, then according to Ḥanafis, the hadd falls away. This is clearly an act of adultery. How, then, can the hadd fall away?

Answer

As per the Hadīth, the hadd of adultery falls away when there is a doubt about the situation. Furthermore, hiring a woman for sexual intercourse is known as mutʿah. Although mutʿah is ḥarām, its
permissibility is attributed to certain Sahābah. It therefore causes the hadd to fall away. Nonetheless, a severe punishment will be given.

احكام القرآن:

"قوله فما استثمن بمثني فئني أجورين" فالأوجب على الزوج كمال المهر.

وقد سمي الله المهر أجراً في قوله: "فاستثمنوا بألفين وألفين أجورين".

فليس المهر أجراً وكذلك الأجر المذكور في هذه الآية بي الدار وإنما سمي المهر أجراً لأنه بدل منائع وليس ببدل عن الأعيان كما سمي بدل منائع الدار والدابة أجراً وفي نسخة الله المهر أجراً دليل على صحة قول أبي حنيفة فيمن استأجر امرأة فننا بها أنه لا حد عليه لأن الله تعالى قد سمي المهر أجراً فهو كمن قال: أميرك كذا وقد روى نحوه عن عمر بن الخطاب رضي الله عنه ومثل هذا يكون نصاحاً فاسداً لأنه غير شهود. (احكام القرآن للخصاص: 15/2)

فتح القدر:

ومن شبيه العقد ما إذا استأجرها ليزني بها ففعل لا حد عليه ويعز و قال بما والشافعي والمالك وأحمد: يبعد لأن عقد الإيجار لا يستباح به وضع فصار كما لو استأجرها للطيف ونحوه من الأعمال ثم روى بها فإنه مباح اتفاقاً، ولد أن المستوجب بالزنا المنفعة وبي المعقود عليه في الإيجار لكنه في حكم العين، فلينظر إلى الحقيقة تكون محلاً لعقد الإيجار فأثرب شبيهة، يخالف الاستئجار للطيف ونحوه لأن العقد لم يضف إلى المستوى بالوضع والعقد المضاف إلى محل ثور الشبيهة فيه لا في محل آخر. (فتح القدر: 235/5، دار الفكر) وكذا في البحر الراق: 18/18، كوثته.

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تبيين الحقيقة:

ولأي حقيقة ما روي أن امرأة طلبت من رجل مالاً فأبى أن يعطيها حتى تمكن من نفسها فدراً عمر رضي الله عنه الحد عندما وقال: قد مهرباً ولأن الله تعالى سعى المهر أجرة بقوله تعالى: فما استمتع به من بن فاتني أجوبين فريضة!، فصار شيبة لأن الشيبة ما يشب الحقيقة لا الحقيقة إلا ترى أن لو قال: أمهرتك كذا لا ترني بك لم يحب الحد... ولأن المستupe بالوطء منفعة حقيقة وإن كان في حصم العين شرعاً فاعتبار الحقيقة يقتضي أن يكون محلًا للإجراء فأورث شيبة. (تبيين الحقيقة: 88/3، باب الوطء الذي، ملتان).

'أَلَامَة Ibn Humām rahimahullāh gives preference to the view of Imām Abū Yūsuf rahimahullāh and Imām Muḥammad rahimahullāh and says that the hadd will be applied.

والحق في هذا كله وجوه الحد. (فتح الخد، 5/363، دار الفكر)

Fatāwā Bayyināt also issues the fatwa by quoting the view of Imām Abū Yūsuf rahimahullāh and Imām Muḥammad rahimahullāh.

Fatāwā Bayyināt:

The ruling on this issue is based on the fatwā of Imām Abū Yūsuf rahimahullāh and Imām Muḥammad rahimahullāh.1

'أَلَامَة Shāmī rahimahullāh says that it is only ‘أَلَامَة Ibn Humām rahimahullāh who gives preference to the view of Imām Abū Yūsuf rahimahullāh and Imām Muḥammad rahimahullāh. The other jurists have chosen the view of Imām Abū Ḥanīfah rahimahullāh. 'أَلَامَة Sayyid Ahmad Tahtāwī rahimahullāh said that a very severe punishment will have to be given.

قول: والحق وجوه الخد أي كما بولوهما، وبدأ يحب للصاحب الفتح، وسكت عليه في النهر والمنتر والشروح على قول الإمام. (فتوى الشائى: 6/35، باب الوطء الذي يوجب الحد، سعود)

1 Fatāwā Bayyināt, vol. 4, p. 480.
The commentators generally present two proofs in support of the view of Imām Abū Ḥanīfah raḥīmahullāh:

1. The verdict of Ḥadīrat 'Umar raḍīllāhu 'anhu.
2. The verse in which Allāh ta'ālā refers to the dowry (mahr) as a payment (ujrat).

Fatāwā Bayyināt states that the verdict of Ḥadīrat 'Umar raḍīllāhu 'anhu is narrated via an authentic chain of transmission and that it is on the level of ījmā' sukūtī (tacit consensus) because his verdict was issued in the presence of the Șahībah raḍīllāhu ‘anhum and no one rejected it.

Fatāwā Bayyināt:

Ḥadīrat Imām raḥīmahullāh drops off the hadd on the basis of doubt (and issues the verdict of punishment). His proof is the following statement of Ḥadīrat 'Umar raḍīllāhu 'anhu as quoted by Imām ‘Abd ar-Razzāq raḥīmahullāh in his Musannaf:

After quoting another narration, he writes:

The narrators of both narrations are reliable. Hāfīz Ibn Ḥazm Andalūsī raḥīmahullāh quotes them in his al-Muḥallā without making any objection against their authenticity. Instead, he quotes it as an evidence against the Mālikī and Shāfī‘ī scholars. He writes:
If this is their principle, why do they not consider the above-quoted incident of Ḥadrat 'Umar rađiyallāhu 'anhu as a proof? This, notwithstanding the fact that none of the Șahābah rađiyallāhu 'anhum objected to it.¹

Allāh ta‘ālā knows best.

**Adultery with an insane woman**

**Question**

A man committed adultery with an insane woman. If the law of the Sharī'ah is applied in a place, will the ḥadd be applied to both the man and woman? There is a narration which states that Ḥadrat 'Umar rađiyallāhu 'anhu ordered that an insane adulteress be stoned but he retracted his ruling when Ḥadrat 'Alī rađiyallāhu 'anhu asked him not to. What is the status of this narration? Fatwā Dār al-'Ulām Zakārīyyā (vol. 2, p. 379) states that there is no chain of transmission for it but Ḥadrat Maulānā Muḥammad Yūnus Jaunpūrī Sahānpuṛī attest to it from al-Yawqūt al-Ghāliyyah (vol. 2, p. 379). Fatwā Dār al-'Ulām Zakārīyyā and al-Yawqūt al-Ghāliyyah both quote al-ʾIstāb of Ibn ʿAbd al-Barr raḥimahullāhā as a reference. How is this contradiction resolved?

**Answer**

The ḥadd of adultery is applied to an adulterer who is sane and mature once the evidence of the Sharī'ah is established. There is no ḥadd on an insane woman. An insane person is included among the three who are not accountable – as stated in a Ḥadīth.

The incident related to Ḥadrat 'Umar rađiyallāhu 'anhu and Ḥadrat 'Alī rađiyallāhu 'anhu is as follows:

¹ Fatwā Bāyīnāt, vol. 4, pp. 477-479.
قال أحمد بن زبير، ثنا عبد الله بن عمر المغيرة، ثنا مؤمل بن إسماعيل، ثنا
سفيان الثوري عن يحيى بن سعيد عن سعيد بن مسيب: قال: كان عمر رضي
الله عنه يتعوذ بالله من معضة ليس لها أبو الحسن، وقال في المجنونة التي
أمر برجمها وفي التي وضعت لستة أشهر فأراد عمر رضي الله عنه رجمها. فقال
لـ: علي رضي الله عنه: إن الله تعالى يقول: "رحمه، وفضلنا ثلاثون شهراً" (الاحتفاف: 45)، الحديث. فكان عمر رضي الله عنه يقول: لـ: علي لبلك ملوك
عمر. (الاستعاب في معرفة الأصحاب لابن عبد البر: 13/10-1109 بروت)

Hāfiz Ibn 'Abd al-Barr rahimahullāh relates the above text with its
chain of transmission. He then writes the word "al-Hadīth" and follows
it with this sentence:

فكان عمر رضي الله عنه يقول: لـ: علي لبلك عمر.

'Umar used to say: Were it not for 'Alī, 'Umar would have been
destroyed.

We are of the view that the discussion ends before the word "al-
Hadīth" and that the words لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي لـ: علي L: 'Umar are not part of the
previously quoted text. Ḥadrat Shaykh Muḥammad Yūnus is of the
view that it is a part of the previously quoted text. Even if it is included
in the previous text, the chain of transmission contains Mu‘ammal ibn
Isma‘īl who is classified as munkar al-Hadīth and there is no supporting
narration (mutābi‘) for the present narration. In the absence of a
mutābi‘, his narration is not reliable.

Furthermore, Hāfiz Ibn Taymiyyah rahimahullāh said that this
addition is not known in this Ḥadīth:

إن هذه الزيادة ليست معروفة في هذا الحديث. (منباح السنة: 2/55)

From this we learn that Ibn Taymiyyah rahimahullāh also believes that
the addition is not a part of the Ḥadīth.

Dr. Bashshār ‘Awwād writes in Tahrīr Taqrīb at-Tahdhīb:

مؤمل بن إسماعيل قال البخاري: منكر الحديث، وإنافق أبو حاتم وابن سعد
وأنسائي عمل اليوم والليلة (55) ويعقوب بن سفيان والدارقطني ومحمد بن
There is another narration in al-Istāb:

Hadīth, 'Umar raḍiyallāhū 'anhu used to seek refuge from a complex issue in which Hadīth, 'Alī raḍiyallāhū 'anhu was not present.

The chain of transmission of this Hadīth also contains Mu‘ammal ibn Ismā‘īl.

Allāh ta‘ālā knows best.

**When stolen wealth is given to the thief**

**Question**

A man’s hand was to be chopped off because he was guilty of theft. The judge passed the verdict against him. However, the owner gave the wealth to the thief. Will the punishment of chopping off his hand fall away?

**Answer**

Once the owner gives the wealth to the thief, the punishment of chopping off his hand falls away even though the judge passed a verdict for it to be chopped off.

Allāh ta‘ālā knows best.
The consumer of wine in today’s times

Question

What is the ruling with regard to an alcoholic in our times? What warnings are there for a person who commits this sin?

Answer

The original ruling for a consumer of wine – when the crime is established by an Islamic court – is eighty lashes. Unfortunately, in the absence of an Islamic state, the Shari‘ah hadd cannot be implemented. Muslims should therefore advise such a person and abstain from helping and assisting him in any way. They must sever ties with him with the intention that he will probably desist. If Muslims have their own judge or jam‘iyat, they must impose some form of suitable punishment on him. This is because the Qur’an and Sunnah contain severe warnings against such a person. A few are quoted as examples.

O believers! This wine, gambling, idols and divining arrows are all vile deeds of Satan. Continually abstain from them, then, so that you may gain salvation. Satan only seeks to breed enmity and malice among you by means of wine and gambling, and to turn you away from the remembrance of Allâh and from salâh. Will you now abstain?1

وقال ابن كثير: قال الزري: حدثني أبو بكر بن عبد الرحمن بن الحارث بن بشام أن أباه قال: سمعت عثمان بن عفان رضي الله عنه يقول: اجتنبوا الخمر فإنها أم الخبائث، إن كان رجل فيمن خلص فليس من توابين ويعترض الناس فخِلَّقته امرأة غَوِيَة فأرسلت إليه جاريتها أن تدعوه لشهادة فدخل معها

1 Sûrah al-Mâ‘idah, 5: 90-91.
Fajr va Fajr (4:24): The Prophet ﷺ said: Abstain from wine because it is the mother of all evils. (Listen to a story): There was an ardent worshipper in the past. He separated himself from the people and remained in solitude. An immoral woman became attracted to him. She sent one of her domestics calling him to serve as a witness. The man arrived innocently. As he passed each door, it was locked behind him until he reached the woman. There was a young boy near her and a pitcher of wine. She said to him: "By Allah, I did not summon you for any testimony. I called you to have intercourse with me. If not, you will have to kill this boy or drink this wine." The worshipper thought to himself that drinking the wine is a lesser evil than the other two options, so he drank the wine. But then he began asking for more. He continued drinking until he became so intoxicated that he had intercourse with the woman and killed the boy. You should therefore abstain from wine because it and imān cannot combine. If there is wine, there cannot be perfect imān. If there is imān, there can be no wine...a narration in Sahīh Bukhārī and Sahīh Muslim states that Rasūlullāh ﷺ said: A person committing adultery does not remain a believer when he is committing it. A person stealing does not remain a believer when he is stealing. A...
person consuming wine does not remain a believer when he is consuming it.

Hadrat Asmā’ bint Yazīd radhiyallāhu ‘anhā narrates that Rasūlullāh ﷺ said: “When a person consumes wine, Allāh ta’ālā is displeased with him for forty days. If he dies, he will die as an unbeliever. If he repents, Allāh ta’ālā will accept his repentance. If he becomes habituated to wine, Allāh ta’ālā will certainly make him drink the pus of the inmates of the Hell-fire.”

وَقَالَ الْإِمَامُ السَّرْخِسِيُّ فِي الْمُبْسَوْطَ: أَخْرِجْ رَكِيبَةَ وَالْبُخَارِيَ وَمُسْلِمَ عِنْ ابْنِ عُمَّرٍ رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: من شرب الخمر في الدنيا لم يشربها في الآخرة إلا أن يتوب. وأخرج البيتفي في الشعب عن ابن عمر رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: من شرب الخمر في الدنيا ولم يتب لم يشربها في الآخرة وإن أدخل الجنة. وأخرج البيتفي عن ابن عمر رضي الله عنه قال: نهى رسول الله صلى الله عليه وسلم أن يقعد على مائدة يشرب عليها الخمر. (الدر المتنور: 3/176)

وقال الإمام السرخسي في المبسوط: أعلم أن الخمر حرام بالكتاب والسنة: أما الكتاب فقوله تعالى... والسنة: ما روى عن النبي صلى الله عليه وسلم أن قال: لعن الله في الخمر عشراء، الحديث، وذلك دليل نهاية التحريم، وقال عليه الصلاة وسلم: شارب الخمر كعابد الوثن، وقال عليه الصلاة وسلم: إذا وضع الرجل قدحا في خمر على يده لعنته ملائكته السموات والأرض فإن شربها لم تقبل صلاة أربعين ليلة، وإن داوم عليها فهو كعابد الوثن، والأمة أجمع على تحريمها، وكفى بالإجماع حجة بذة حرمة قوية بائدة حتى يقتصر مستحلها ويفسق شاربها. (المبسوط: كتاب الأشرية، 27)

وقال ملك العلماء أبو بكر مسعود بن أحمد الكاساني:
إن حد شرب الحمر وحد السكر مقدر بثمانين جلة في الأحرار لإجماع الصحابة وقياسهم على حد القذف حتى قال سيدنا علي رضي الله عنه: إذا سكر بذي وإذا بذي افترى وحد المفترون ثمانون وباشربين في العبيد لأن الرق منصف للحد كحد القذف والزنا. (بدائع الصنائع: 5/133، كتاب الإشربة، سعيد)

Allâh ta‘âlâ knows best.

**When a person is murdered by poisoning**

**Question**

If a person murdered another by poisoning, will retribution and blood money become obligatory?

**Answer**

There are some details related to murdering a person through poisoning. If someone forced poison into a person’s mouth or gave him poison and compelled him to consume it, then in both cases there is no retribution on the one who gave it to him, but blood money will be obligatory on the man’s tribe.

If a person merely gave poison to someone, and the latter consumed it without any compulsion, then there is neither retribution nor blood money on the one who gave it. This is irrespective of whether the one who consumed it was aware that he was consuming poison or not. Yes, the one who gave it can be punished appropriately.

وإذا سقى رجلًا سماً فمات من ذلك فإن أوجره إيجاراً على كره منه أو ناوله ثم أكرب عليه شرب حتى ناول من غير إجارة عليه فإن أوجره أو ناول أو أكرب عليه شرب فلأ قصاص عليه وعلى عاقته الدنيا وإذا ناول فشرب من غير أن أكرب عليه لم يكن عليه قصاص ولا دية سواء علم الشارب بسماً أو لم يعلم، بكذا في الذكيرة. (الفتاوی الهندیة: ۶/۲)
Second view

‘Allāmah Shāmī rahimahullāh says that the person will be killed as a retribution because the poison works similarly to fire which burns a person and a knife which cuts. Bearing the situation in our times, the fatwā ought to be issued on this view.

ودذكر السائحاني: أن شيخ أبا السعد ذكر في باب قطع الطريق لقتل الفاسق قبل يجب القصاص لأنه يعمل عملاً للفساد والفساد بالارض.

(شام: ۶/۴۵۴)

وفي التحرير المختار: قول وذكر السائحاني وقال السندي في آخر السيرة نقلاً عن الحموي: من سما رجلاً سماً فيدأ فأما في جنات البديع: يجب القصاص لأنه يعمل عملاً للفساد والفساد بالارض.

(التحرير المختار: ۶/۳۳۳، سعيد)
Hamalī and Mālikī jurists are of the view that this is an intentional killing. The Shāfi‘ī jurists say that it will be an intentional killing when a child who has not reached the age of understanding or an insane person is given the poison. Or, a mature sane person is compelled to consume it. If the latter is not compelled, then it will be a pseudo-intentional killing.

Allāh ta‘alā knows best.

Murdering a person through magic

Question
A magician kills a person through his magic. What is the ruling with regard to him? What punishment should be meted out to him?

Answer
If a magician kills someone through his magic, he will neither be killed on the basis of retribution nor will blood money be obligatory. However, the judge could issue the death penalty on him as a punishment for causing corruption in the land.
Murdering a Muslim in a non-Muslim country

Question
A Muslim killed a fellow Muslim in a non-Muslim country. He is now remorseful. Is retribution or blood money obligatory on him? How can he make peace with the deceased’s family?

Answer
Because the murder took place in a non-Muslim country, the rule of retribution falls away. However, blood money is obligatory. He may make peace with the deceased’s family if he wants.
When a ruler or government compels one to kill someone

Question

A ruler or government compels one to kill a certain person. The man carries out the order. On whom will retribution be obligatory?

Answer

Retribution is obligatory on the killer, and not on the ruler or government. If the one who issued the order is a caliph of the Muslims, retribution will be obligatory on the one who issued the order. The one who was ordered to kill will become mubāḥ ad-dam (one whose life becomes lawful) and mardād ash-shāhīdah (one whose testimony is not accepted).

الفتاوى الهندية:

وإن أكره على قتل غيره بقتل لم يرضخ ولم يستع أن يقدم عليه ويصبر حتى يقتل فإن فعل كأنه رفع الحصان عن المكرر وإن كان عبداً عند محمد وأبي حنيفة كذا في الكافي، ولو كان المامر مختلط العقل أو صبياً يجب القصاص على المكرر الأمر كذا في العيبي شرح البداية. وإذا بعد الحيلية عاملاً على كورة فقال الرجل لا قتلت بهذا الرجل بسيف ولا لاقتلك لا ينبغي للمكرر المامر أن يقتل وحالت مع بما أن قتل فالقود علي الأمر المكرر والمكرر المامر بالقتل يأت ويتسق وترد شهادته ويباح قتله والمكرر الأمر يحرم عن المراث دون المكرر المامر كذا في خزانة المفتتين. (الفتاوى الهندية: 39/5، 141)
When one is convinced that he is going to be killed

Question
A person is convinced or has an overriding feeling that Zayd is going to kill him, can he kill Zayd?

Answer
The Shar'i'at strictly prohibits killing a person except in three situations:

1. A married person who commits adultery, and is therefore stoned to death.
2. A person becomes an apostate.
3. A person is killed in retribution for a murder which he committed.

There is no room for killing another apart from the above three situations. If a person suspects or fears that he is to be killed, he must seek the assistance of the police or resort to other similar means to save his life. Yes, if [in this situation] Zayd attacks the person with a weapon and there is no alternative but to defend himself – if not, there is the fear of losing his life – he may kill the person in self-defence.
Rasūlullāh sallallāhu 'alayhi wa sallam said: The live of a Muslim who testifies that there is none worthy except Allāh and that I am Allāh’s Messenger is sacrosanct except in three situations: (1) A life for a life. (2) A married adulterer. (3) A person who leaves his Dīn and abandons the community of believers.

Blood money in the case of unintentional killing

Question

A person was practising to shoot with a gun. A bullet struck someone accidentally and the man died. The person who shot him acknowledges his error. Does he have to pay blood money? What is the amount in rands and dollars? Is there any difference in ruling if the
error is proven by admission of guilt and by the testimony of witnesses?

**Answer**

This is classified as an unintentional killing. Atonement (kaffārah) and diyat (blood money) become obligatory. If the killing is established by a testimony of witnesses, the blood money will have to be paid by the 'āqilah (family/tribe). If it is established solely through the admission of the killer, the blood money will have to be paid from the killer's wealth. It can be paid within a period of three years. The amount to be paid is 1 000 dinārs, or 10 000 dirhams. The latter equals about 30.616kgs of silver.
Identity of the ‘āqilah in today’s times

Question
In today’s times, who falls under the classification of ‘āqilah and what details are there in this regard?

Answer
Hadrat Muftī Muḥammad Taqī ‘Uthmānī Sāhib writes:

When tribal life was common, it was easy to delineate the ‘āqilah. Members of a tribe used to live close together, and they used to help and assist each other. Therefore, the tribe of each person was his ‘āqilah which used to pay the blood-money. However, in the present age, who is going to be the ‘āqilah especially in our urban and city life? We gauge from the traditions that the basis of ‘āqilah is mutual help and assistance. Thus, those who generally help and assist each other will be a person’s ‘āqilah. They will pay the blood-money for him. If there is no tribe, but there is a formal brotherhood, they will pay the blood-money. If there is no brotherhood, then the manner in which we get a trade union today – and there is mutual help and assistance among them – then it can be the ‘āqilah. The gist of the above is that the ‘āqilah can differ according to the situation of a person...

Blood-money is obligatory on the ‘āqilah so that it may stop members of the tribe from crimes of this nature. Members must be trained and tutored in a manner that they do not commit crimes. If a person intends to kill someone, the ‘āqilah must stop him. The blood-money can be paid over a period of three years. More than three dirhams may not be collected from an individual in a year.1

1 Taqrīr Tirmīdī, vol. 2, p. 57.
والعاقلة: أبْل الدِّيوان إن كان القاتل من أبْل الدِّيوان يؤخذ من عطافاه في ثلاث سنين، وأبْل الدِّيوان أبْل الرِّياضات ويُم الفُيلش الذين كتب أساميهم في الدِّيوان ويداًً عندنا... ونا قضية حَرَض رَضي الله عنه فإنه لَم دون الدواوين جعل العاقل على أبْل الدِّيوان وكان ذلك يُخّر من الصحابة من غير تَسْكِير منهم. وليس ذلك بنسخ قال أبو تَقبر معنى لأن العاقل كان على نَبْل النصرة وقد كانت بَنَوائِب القرية والحلف والولاء والعدو في عهد عمر رَضي الله عليه قد صارت بالمِدِّيوان فجعلها على أبْل اسماءً للمعنى ولبدا قالوا: لَو كان اليوم قوم تَناصرهم بالحرف فعَقِالتهم أبْل الحَرَفة وإن كان بالحلف فأنَّه والدَة صلة لِsink إِجِابة فيما هو صلة وَبَو العطا أول منه في أصول أموالهم والتَقدير بلث ستين مروي عن النبي صلى الله عليه وسلم ومحكي عن عمر رَضي الله عليه ولأَن الأَخذ من العطاء للْتَخْذيف والعطاء يخرج في كل سنة مرة واحدة.

(البداية: ٤٢٦، كتاب المعاقلة)

تَحْكِيم فَتْح المَلِيم:

ثم اختُلِفوا في تَعْيِين مَصَداق العاقلة.. وقال الإمام أَبْو حنيفة: إن العاقلة بم الذين يتناصر بِهَم القاتل، وكان التناصر في عهد رسول الله صلى الله عليه وسلم بالقبائل، فكانت عاقلة الرجل قبلته. ثم تغير الوضع حين وضع سيدنا عمر رَضي الله عنه الدِّيوان، فصار التناصر بأَبْل الدِّيوان فأصبح أبْل الدِّيوان عائقَة... فَالحاصل أن قَضاء عمر رضي الله عنه بمحضر من الصحابة دل على أن الحكم كان مناطه النصرة، فتَيَنْهُر، ويُمَكن أن يُقال في عصرنا: إن التناصر أَصْبح لعمال بوافقهم الذي يَسِل "تَرَيد بُونين"... فَنْيَبَي أن تكون عاقلة عاملاً وقائِلاً... وَحيث لا يُمكن للقاتل جماعة ينتصر بها فادِية في بيت.
When a person is drowned

Question

A person forced another underwater and caused him to drown. Will he be liable for retribution?

Answer

If the volume of water is so much that it is normally not possible to come out of it and save one’s self, then Imām Muḥammad raḥimahullāh and Imām Abū Yūsuf raḥimahullāh classify it as intentional killing. Imām Abū Hanīfah raḥimahullāh says that it is a pseudo-intentional killing. If the volume of water is so little that it is possible to save one’s self, or it is a lot but the person knows how to swim, and it is possible for him to swim to safety, then all Hanafī Imāms concur that it is a pseudo-intentional killing.

Allāh ta‘ālā knows best.
Euthanasia

Question
Does the Sharī‘ah permit euthanasia or “mercy killing”?

Answer
The following is a concise definition of euthanasia:

A person is suffering from a destructive ailment and suffering intolerable pain. Specialist physicians are of the view that there is no hope for his recovery. He or children born with permanent defects are given a medication or an injection to put an end to their life to relieve them from their perpetual suffering. This is done to relieve their families of the continued worry and stress.

There are two types of euthanasia:

1. To give a medication which puts an end to life.
2. To stop a medication or treatment which prolongs life.

Observe the English definition:

Euthanasia (literally “good death”), practice of ending a life so as to release an individual from an incurable disease or intolerable suffering, also called “mercy killing”. The term is sometimes used generally to refer to an easy or painless death. Voluntary euthanasia involves a request by a dying patient or that person’s legal representative. Passive or negative euthanasia involves not doing...
something to prevent death—that is, allowing someone to die; active or positive euthanasia involves taking deliberate action to cause a death.

Observe the ruling in this regard:

The Sharī‘ah considers euthanasia to be forbidden. In fact, it is synonymous to killing a person. If the patient consents to it, then it is suicide. Killing and suicide are both major sins. We learn from the Hadīth that killing a person is permitted in only three situations:

Rasūlullāh sallallāhu ‘alayhi wa sallam said: The live of a Muslim who testifies that there is none worthy except Allāh and that I am Allāh’s Messenger is sacrosanct except in three situations: (1) A life for a life. (2) A married adulterer. (3) A person who leaves his Dīn and abandons the community of believers.

Rasūlullāh sallallāhu ‘alayhi wa sallam said: The destruction of this world is lighter in the sight of Allāh ta’ālā than killing a Muslim.

Rasūlullāh sallallāhu ‘alayhi wa sallam said: (مشكلة: 3/299، كتاب القصاص)
Rasūlullāh sallallāhu 'alayhi wa sallam said with reference to major sins: Ascribing partners to Allāh ta‘ālā, disobeying one’s parents, killing of a person, and false testimony.

وعن أبي بريدة رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: من قتل نفساً جديدة فحدثته في يده يتجأ بها في بطنها في نار جهنم خالدة فيها أبداً ومن شرب سماً فقتل نفسه فهو يتذبح في نار جهنم خالداً فيها أبداً ومن تردى من جبل وقتل نفسه فهو يتردى في نار جهنم خالداً فيها أبداً.

Rasūlullāh sallallāhu 'alayhi wa sallam said: A person who kills himself with a sharp object shall remain in the Hell-fire forever with the sharp object repeatedly stabbing his belly. A person who consumes poison and kills himself shall continue swallowing it in the Hell-fire forever. A person who throws himself from a mountain and kills himself shall continue falling into the Hell-fire forever.

وعن جندب بن عبد الله رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: كان في من كان قبلتكم رجل بجرح فخرج فأخذ سكيناً فنَحِبْبُهُ برجح فيدما رقأ الدم حتى مات قال الله تعالى: بادرني عبدي بنفس فحِمْتُ عليه الجنة. (منفق عليه، مشكوكاً شريف: 2/30)

Rasūlullāh sallallāhu 'alayhi wa sallam said: There was a man in one of the past nations who had an injury. He became terrified by it so he took a knife and cut his hand. Blood continued flowing from his body until he died. Allāh ta‘ālā said: “My servant hastened in taking his life before I could so I made Paradise forbidden to him.”

The limits imposed on a medical professional when treating a patient are outlined below:
It is the duty of physicians to search for ways of treating patients because there is no incurable disease. In ancient times there were certain illnesses which were believed to be incurable but this is not accepted in today’s progressive times. The Shar'ah also holds the view that treatment and cure are not from among the impossibilities. A Hadith makes reference to this:

Rasūlullāh sallallāhu 'alayhi wa sallam said: Allāh ta’ālā did not send down an ailment without sending a cure for it. Rasūlullāh sallallāhu 'alayhi wa sallam said: There is a medication for every ailment. When the medication encounters the ailment, the person is cured by Allāh’s permission.

Furthermore, when a Muslim falls ill, it is a source of atonement for his sins and an elevation in his ranks. Thus, illness is also a mercy. Nonetheless, we must always pray for wellness; we must not ask for illness. But when it comes, we must remain patient. The rule in this world is that Allāh’s special servants are always inundated by some sort of illness or pain. A Hadith states:

وعثناء أشد بلاء قال: الأنبياء ثم الأمثل فالأمثل بيثل الرجل
على حسب دينه فإن كان دينه صلباً اشتد بلاؤ وان كان في
Mus'ab ibn Sa'd relates from his father who said: I asked: O Rasūlullāh! Who is put through the severest test?” He replied: “The Prophets, then those who are closest in rank, then those who are closest in rank. Each person is put through a test in line with his level of religiosity. If he is firm in his religion, his test is tougher. If there is weakness in his religiosity, he is tested accordingly. A servant is continually put through tests until he is left with no sin against him.


‘Abdullāh relates: I went to Rasūlullāh ʿalayhi wa sallam when he had a headache. I said: “O Rasūlullāh! You seem to have a severe headache?” He replied: “Indeed. My headache equals the headache of two people from among you.” I said: “Does it mean that you will receive a double reward?” He replied: “That is certainly the case. Whenever any Muslim is afflicted by even a thorn-prick, Allāh taʿālā most certainly atones him for his sins just as a tree sheds its leaves.”
A man said: “O Rasūlullāh! What will we receive for these illnesses which afflict our bodies?” He replied: “They are atonements.” Ubayy ibn Ka'b raḍī Allāhu 'anhu asked: “Even if the illness is small?” He said: “Even if it is a thorn-prick or less than it.”

One should neither lose hope nor become despondent on account of illnesses and discomforts. Instead, he must exercise patience and hope for rewards from Allāh ta'ālā.

The ruling with regard to the second type of euthanasia:

Haḍrat Maulānā Muftī Niğām ad-Dīn Sāhib writes:

Difficulties and hardships become the means for atonement of sins and elevation of ranks in the Hereafter. This is followed by eternal peace and comfort. Therefore, neither of the two forms of euthanasia will be permitted by the Sharī‘ah. However, there will be a difference in ruling for the two. (1) If a medication is given to put an end to a person’s life, then the sin of murder will apply against the person who does this. The Sharī‘ah could impose blood money on him. (2) In the case where medication is withheld, then although the person will not be guilty of murder, he will be committing the sin of abstaining from adopting the means for his health. This is against the temperament of the Sharī‘ah. If it is done out of laziness or disregard, the person will certainly be taken to task.¹

ففق المشكلات:

فالإمتناع عن المعالجة في هذه المسألة عمل والقصد منه إبلاك النفس وإنهاء الحياة قتل النفس في (Active) بإعطاء الدواء عمل جسماني، وفي قتل النفس بالإمتناع عن الدواء بع عمل نفسي، وكلنا الصورتان محرمان شرعاً. (فقه المشكلات از مولانا قاضي مجاب الأسلام صاحب: ١٨٥)

الفتاوى الهندية:

إذا احترقت السفينة أو غلب على ظنهم أنهم لو ألقوا أنفسهم في البحر خلالوا بالسبيحة يجب عليهم ذلك ولو كانوا يجل لو ألقوا أنفسهم فيه غرقوا ولو لم يلقوا أحرقوا فهم بالحبار بين الإقامة والانقراض من قتل نفس كان إثم أكثر من أن يقتل غيره كذا في السراحية. (الفتاوى الهندية: ٣٦٨/٥) بني آدم)

عن أسامة بن شريك رضي الله عنه قال: قالوا: بارسول الله! افتقداؤي قال:
نعم يا عباد الله تداروا فإن الله لم يضع داء إلا وضع له شفاء غير داء واحد البهم. رواه أحمد والترمذي وأبو داود. (مشكاة شريف: ٢٨٨/٣)

...The Sahābah raḍi-yālliḥu 'anhum asked: “O Rasūlullāh! Should we seek medical treatment?” He replied: “Yes. O servants of Allāh! You should seek medical treatment because Allāh ta'ālā provided a cure for every ailment except old age.”

الفتاوى الهندية:

أما الأكل فعلى مراثب فرض وبو ما يندفع به البلاك فإن ترك الأكل والشرب حتى بلك فقد عصي. (الفتاوى الهندية: ٣٣٦/٥) باب في الأكل وما يتصل بـ)

Allāh ta’ālā knows best.

Punishment and retribution on the basis of scientific investigations

Question

What is the ruling with regard to forensic science? For example, cases related to rape or murder are solved through DNA tests, blood tests, sputum tests, sperm tests, etc. What is the status of this science in Islam?

Answer

Forensic science is defined as follows:

The forensic scientist is an integral member of a team that also comprises of the forensic pathologist and the police, brought together to investigate the cause of a death thought to have occurred in suspicious circumstances. The forensic scientist assists the pathologist in identification of the body through the determination of blood type, DNA profile, and in the identification of fibres, hairs, semen, and other body substances that may have been deposited by the assailant, as in the case of homicide. Forensic scientists usually work at a specialised institution that deals only with such work. Their evidence is crucial for conviction in cases of homicide.

The ruling with regard to forensic science:

If a crime is proven by forensic science and there are Sharʾī witnesses to it, then the Sharʾī rules of punishment and retribution will apply. If there are no Sharʾī witnesses and the crime is proven solely on scientific investigations, then the Sharʾī rules of punishment and retribution will not apply exclusively on the basis of scientific investigations. At the same time, they cannot be disregarded totally. Instead, the qāḍi will have the right to impose a suitable punishment. The reason for this is that the objective of the Shariʿah is to drop-off the hadd as far as possible.
Rasūlullāh ﷺ said: Hold back the hudud from the Muslims as much as you can. If there is a way out for the person, let him be. It is better for the leader to err while pardoning than to err when imposing a punishment.

The Ashab al-Nadār:

In the time of the Prophet ﷺ, the Ashab al-Nadār gathered to say: ‘Hold back the hudud from the Muslims as much as you can. If there is a way out, let the person be free. It is better for the leader to err while pardoning than to err when imposing a punishment.

In explaining the context: The Ashab al-Nadār were among the early Muslims who had converted to Islam and were known for their wisdom and moral guidance. They were known to have a reputation for being lenient and forgiving in their dealings with the Muslims. The quote reflects their wisdom in urging the leaders to avoid strict punishments and to err on the side of mercy.

The Ashab al-Nadār were known for their wisdom and moral guidance in the early days of Islam. They were among the first Muslims to convert to Islam and were known for their lenient and forgiving approach in dealing with the Muslim community. Their words reflect their understanding of the importance of mercy in leadership and the better course of erring while pardoning than erring when imposing punishment.

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المعم بن الفرس: روى أن إخوة يوسف عليه السلام لما أتوا بقميص يوسف عليه السلام إلى أبيهم يعقوب عليه السلام تأملهم فلم يجد فيهم خرقاً ولا أثر.

لناب فاستدل بذلك على كذبهم وقال: متي كان الذئب حليماً يأكل يوسف ولا يخرج قميصه. (شرح المجلة لمحمد خالد الاتاسي: 320/5، المادة 1761، مكتبة رشيدية)

درر الحكام شرح مجلة الاحكام:

القرية القاطعة بين الأمارة البالغة جداً البيتين وتعبير آخر بي القرية الواضحة بحيث يصير الأمر في حيز المقطوع به، والعمل بالقرية القاطعة يجري في أبواب الفقد المختلفة وأمثلة ذلك على الوجه الآتي: يجوز في حال ظهور أمارة حبس المتهم بالقتل أو بالجرائم الأخرى. (درر الحكام شرح مجلة الاحكام لعلي حيدر: 44/3، المادة 1781. وكذا في معيين الحكام: ص 122، الباب الحادي والخمسون، دار الفكر).

تعمملاة فتح المليم:

قد ذكر بعض الفقهاء أن الشبيهة تسقط الحد دون التعزير فالتعزير يثبت مع الشبهات والحقيقة أن الشبيهة على قسمين: الأول: ما كان ماناً من غلبة الظن بأن القريب قد ارتحب ما لا يجل له هذا القسم يستوي فيه الحد والتعزير وأن هذا النوع من الشبيهة يسقط الحد والتعزير كليهما، والثاني: ما لم يتبنى مانعاً من ذلك فهذا النوع من الشبيهة يفضي الشبيهة فنية تعرض في صدق تعريف ما يوجب الحد وفي الشبيهة التي ذكرها الفقهاء باسم الشبيهة في الملح والشبهة في الفعل فإن هذه الشبيهة تسقط الحد ولا تسقط التعزير. (تعميملاة فتح المليم: 317/2)
Fatāwā Haqqānīyyah:

Modern instruments and devices cannot be disregarded. They are quite useful means for establishing a crime provided they are supported by other means and circumstantial evidences.

If the blood of a murdered person is found on the body of the killer, it is a means for establishing the crime. If the blood of a murdered person is found on the clothing and knife of the killer, the Shari‘ah will consider the latter to be a suspect in the crime. If other proofs support this evidence, the hadd will be implemented on him. If not, the qâdî can impose a punishment on him.1

Allāh ta‘álā knows best.

Doubts on the prohibition of alcohol

Question

Some deviated and irreligious people claim that the prohibition of alcohol is not found in the Qur‘ān; it is in the Ahādīth only. Is their claim correct?

Answer

The prohibition of alcohol is mentioned in the Qur‘ān.

O believers! This wine, gambling, idols, and divining arrows are all vile deeds of Satan. Continually abstain from them, then, so that you may gain salvation. Satan only seeks to breed enmity and malice among you by means of wine and gambling, and to turn you away from the remembrance of Allāh and from ṣalāh. Will you now abstain?2

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1 Fatāwā Ḥaqqānīyyah, vol. 5, p. 516.
The above verse refers to alcohol, gambling, idols and divining arrows as vile deeds of Satan. This means that they are filthy things, and therefore not appropriate and impermissible for human life. They are satanic things. They are abhorred by Allâh ta’âlâ and Rasûlullâh sallallâhu ’alayhi wa sallam. It is the duty of Muslims to desist from Satan and satanic actions. They must obey Allâh ta’âlâ and Rasûlullâh sallallâhu ’alayhi wa sallam. This is why Allâh ta’âlâ prohibited these things.

A few objections to the prohibition of alcohol

The following are some of the doubts with regard to the prohibition of alcohol:

1. The word “ḥarām” is not mentioned anywhere in the Qur’ân.

Answer:

A hypercritical proof is that the word “ḥarām” is not used anywhere in the Qur’ân for the prohibition of adultery. Whereas everyone accepts its prohibition.

The following is stated in Tafsîr Haqqâni:

The author of al-Kashshâf says that the prohibition of alcohol is emphasised in several ways through this verse:

1. The sentence starts with the word innamā.

2. It is mentioned with idolatry.

3. It is referred to as rijs – impure.

4. It is referred to as the action of Shaytân, and the source of all evils.

5. We are ordered to abstain from it.

6. The verse states that abstaining from it ensures success. Can there be success in consuming it?

7. The reason for its prohibition is that man loses his senses. This damages his life in this world and in the Hereafter. In this world it results in mutual discord and enmity. In matters related to the Hereafter, it causes him to be heedless of galâh and Allâh’s remembrance.

The next verse emphasises the prohibition. It reads as follows:
Obey Allāh, and obey the Messenger, and continually abstain. Thereafter, if you turn away, then know that the responsibility of Our Messenger is merely to convey [the message] clearly.¹

The word “ḥarām” was therefore not needed to demonstrate its prohibition.²

Shaykh Sābūnī writes:

Furthermore, Rasūlullāh sallallāhu 'alayhi wa sallam was on the level of an expounder of the Qur’ān. In the Ahādīth, he refers to alcohol as ḥarām. This is an explanation of the Qur’ān. It is impossible to extract the meaning of permissibility from the Qur’ān while Rasūlullāh sallallāhu 'alayhi wa sallam classifies it as ḥarām. The Qur’ān says:

We revealed to you this Reminder so that you may expound before the people that which has come down to them, and so that they may contemplate.³

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¹ Sūrah al-Mā’idah, 5: 92.
² Tafsīr Ḥaqqānī, vol. 4, p. 54.
Mufti Muhammad Shafi`i writes:

The scholars concur that the word “Reminder” in this verse refers to the Qur’an. Rasūlullāh sallallāhu ‘alayhi wa sallam is instructed to explain and clarify the then-revealed verses of the Qur’an to the people. This is a clear proof that a correct understanding of the sciences and injunctions of the Qur’an is dependent on the explanations of Rasūlullāh sallallāhu ‘alayhi wa sallam. If every person was able to understand the injunctions of the Qur’an as per the intent of Allāh ta’ālā merely by studying the Arabic language and literature, there would be no sense in giving over the duty of explaining the Qur’an and expounding on it to Rasūlullāh sallallāhu ‘alayhi wa sallam.

Thus, Rasūlullāh sallallāhu ‘alayhi wa sallam explains the above-quoted verses as follows:

Rasūlullāh sallallāhu ‘alayhi wa sallam said: Allāh ta’ālā has made alcohol unlawful. “Whoever hears the verse prohibiting alcohol and has any of it with him must neither consume it nor sell it.” Those who owned alcohol, brought it onto the pathways of Madīnah and poured it [down the drains].

1 Sūrah an-Nahāl, 16: 44.
Rasūlullāh ṣallallāhu 'alayhi wa sallam said: Allāh ta‘ālā has prohibited alcohol, gambling and the playing of drums.

Ibn 'Umar raḍiyallāhu 'anhu narrates that Hadrat 'Umar raḍiyallāhu 'anhu delivered a sermon on the pulpit of Rasūlullāh ṣallallāhu 'alayhi wa sallam and said in it: The prohibition of alcohol has already been revealed.

The above texts indisputably prove the prohibition of alcohol. Al-Hidāyah states that rejecting the prohibition of alcohol is kufr – unbelief.

Second objection
The second doubt which is presented is that some verses seem to show the permissibility of alcohol:

"Yā‘īnahu lā tāqirūbīn al-salātūn wa ‘an tāqirūbīn sikkāthīna kānīna taqūblūn wa ‘ана tāqirūbīn mā taqūblūn."

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O believers! Do not approach alâh at a time when you are intoxicated until you begin to understand what you say.\(^1\)

وَمَنْ نُنَادِرَ التَّجْبَلَ وَالْأَعْيَابَ تَتَجْزَؤُونَ مِنْهُ سَكَرًا وَزَرْقًا َخَسَساً.

From the fruit of date-palms and vines, you make intoxicants and wholesome sustenance.\(^2\)

يَسْتَلْوَنَّكَ عَنْ الْحُمَرَ وَالْمِيْسِرَ، فَلْمَّا فِي هَمَا إِنَّمَا كَبْرٌ وَمَنافِعٌ لِلدُّنِيَا.

They ask you the injunction concerning wine and gambling. Say: In both there is great sin as well as benefits for the people.\(^3\)

**Answer**

The injunctions related to alcohol were revealed in stages. Alcohol was lawful in the beginning of Islam. Different verses were then revealed on separate occasions in which alcohol was made unlawful gradually. The verses which make reference to its permissibility are those which were revealed in the early stages of Islam. They were then abrogated.

\(^1\)Allâmâh Ibn Kathîr rahimahullâh writes:

وقال الإمام أحمد: عن عمر بن الخطاب رضي الله عنه أنه قال: لما نزل تحريم الحمر قال اللهم بين لنا في الحمر بياناً شافياً فنزلت الآية التي في البقرة: "يَسْتَلْوَنَّكَ عَنْ الْحُمَرَ وَالْمِيْسِرَ، فَلْمَّا فِي هَمَا إِنَّمَا كَبْرٌ وَمَنافِعٌ لِلدُّنِيَا.

فقرئت عليه فقال: اللهم بين لنا في الحمر بياناً شافياً فنزلت الآية التي في سورة النساء: "بِأَيْبَا الْذِينَ آمَنُوا لَا يُقِبِّلُوا الصَّلاةَ وَأَتِمُّوا سَكَرَى.

فدعى عمر رضي الله عنه فقرئت عليه، فقال: اللهم بين لنا في الحمر بياناً شافياً، فنزلت

\(^1\) Sûrah an-Nisâ’, 4: 43.

\(^2\) Sûrah an-Nakhl, 16: 67.

\(^3\) Sûrah al-Baqarah, 2: 219.
Some scholars are of the view that abrogation for the Qur’ān is not possible. Their rejection of abrogation is solely due to their inability to fathom its reality and wisdom.

Hadrat Muftī Muḥammad Shafī’ Ṣāhib raḥimahullāh writes in Ma’ārif al-Qur‘ān:

The third scenario is that the one issuing the order knew from before hand that conditions will change and that the latter order will not be suitable at present. A different order will have to be issued now. While knowing this, he will issue one order now and when the conditions change – according to his knowledge – he will change the previous order. This is similar to a patient who is treated by a doctor. Based on his current condition, the doctor prescribes a certain medicine. He knows that the patient’s condition will change within two days after taking this medicine, and that he will have to prescribe a different medicine after the two days. Thus, on the first day, he prescribes a medicine which is suited to the patient’s current condition, and after the passing of two days, he prescribes another medicine...it is only this third scenario in which abrogation is possible in the orders of Allāh ta’ālā.

Third objection

The verse which says fajtanibūhu (abstain from it) means that you must be cautious in its consumption so that the intrinsic harms of alcohol do not affect you. Those who present this argument are of the view that this is merely a piece of advice [and not an order].

Answer

The exegetists concur that the word fajtanibūhu is used in the meaning of abstaining totally, and staying away from it. Ibn Kathīr raḥimahullāh explains the word fajtanibūhu as utrukāhu (اتركوه).²

Imām Abū Bakr Jassās raḥimahullāh writes in Ahkām al-Qur‘ān:

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اقتضت هذه الآية تحريم الخمر من وجبين: أحدهما قوله: رجس لأن الرجس
اسم في الشرع لما يلزم اجتناب. والوجه الآخر قوله: تعال فاجتنبوه وذلك أمر
والآمر يقتضي الإجابة فانتظمت الآية تحريم الخمر من بنين الوجبين.
(أحكام القرآن: 6/112)

أحكام القرآن لابن العربي:
قوله تعالى: "فاجتنبوه" يريد ابتدأه، واجعلوه ناحية، وبذا أمر باجتنابها،
والآمر على الوجوب لا سيما وقد علق به الفلاح. (أحكام القرآن لابن العربي: 6/122)

الجامع لأحكام القرآن:
قوله تعالى: (فاجتنبوه) يريد ابتدأه، واجعلوه ناحية، فأمر الله تعالى باجتناب
بذه الأمور، واقترنت بصيغة الأمر مع نصوص الأحاديث وجماع الأمة
فحصل الاجتناب في جهة التحريم، فهذَا حوْمَتَ الخمر، ولا خلاف بين
علماء المسلمين أن سورة مائدة نزلت بتحريم الخمر، وفي مدنية من آخر ما
نزل، وورود التحريم في البيئة والدم وحلم الحنزر في قوله تعالى: "قل لا أجد
وهربا من الآى خيراً، وفي الخمر نبأ وجزرًا، وبو أقوى التحريم وأوكده.
(الجامع لأحكام القرآن: 6/182)

لسان العرب:
جنب الشيء... واجتنب: بعد عنه، وذا مفهوم عدم القرب. (لسان العرب: 287/1)

Qāmūs al-Walīd states:
اجتنب الشيء – to keep away from, to stay far from, to remain aloof from, to shun.¹

Even from the context of the verse one can gauge that the order is to show obligation, and that prohibition is meant.

Fourth objection
The Qur’ān states:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَى وَالَّذِي حَرَّمَ اللَّهُ وَلَمْ يُنْهَ أَحَدٌ مَّنْ اشْتَهَى

He has only forbidden to you dead animals, blood, the flesh of swine and the animal on which the name of anyone other than Allāh is invoked.²

This verse shows that only the items which are mentioned in it are prohibited. Since alcohol is not included in this list, it is lawful. They say that the word innamā is for restriction and limitation.

Answer
The exegists present many answers to this objection. A few are given below:

1. The word innamā is for emphasis and not restriction.
2. The restriction is on the basis of attribution and not in reality. In other words, these things are unlawful, while the šā’ibah, bahūrah, wašlah and hām which you consider to be unlawful are not so.
3. It does not mean that unlawful items are restricted to those mentioned. What it means is that there is nothing apart from the prohibition and impurity of these things. In other words, there is no benefit in them.

¹ Qāmūs al-Wahād, vol. 1, p. 284.
² Sūrah al-Baqarah, 2: 173.
4. The prohibition of these items is because of their impurity. If other items contain the property of impurity, they will also be unlawful.

5. There is a reverse restriction in this verse. In other words, you consider them to be lawful while these very things are unlawful.

Types of alcohol and the rules related to them

According to the three Imāms (Imām Mālik, Imām Ahmad ibn Ḥambal and Imām Shāfi‘ī rahimahullāh), every intoxicant is ḥārām and the ḥadd has to be applied irrespective of whether the amount is small or large. Imām Muḥammad rahimahullāh concurs with the three Imāms as regards prohibition but not the application of ḥadd (i.e. apart from alcohol, the quality of intoxication is taken into account).

Imām Abū Ḥanīfah rahimahullāh and Imām Abū Yūsuf rahimahullāh are of the view that alcoholic drinks are of three types:

1. It is unlawful irrespective of the amount. Consuming it will make one eligible for ḥadd even if it is a small amount.

2. The juice of grapes when less than two thirds is boiled away. The drink made from dates when it becomes foamy on the surface. It is unlawful to consume it irrespective of the amount. If it leads to intoxication, the ḥadd will apply.

3. Apart from a drink produced from raw grapes, a drink produced from boiled grapes, a drink produced from boiled dates, and a drink produced from raisins; e.g. the nabīd of dates and raisins which have been boiled to the slightest extent, and the juice of grapes whose two thirds have been reduced through boiling, and a drink produced from wheat, rice, barley, etc.

If small amounts of the above are drunk to the extent that they do not cause any intoxication and are consumed to provide strength in worship, then Imām Abū Ḥanīfah rahimahullāh is of the view that they are lawful. But if they are consumed for play and amusement, they are unlawful. If they cause intoxication, then the preferred view is that the ḥadd will be applied. They may be consumed for medical reasons. In normal situations, the verdict is issued on the view of Imām Muḥammad rahimahullāh. That is, it is unlawful to consume them. But when it is for medical reasons, the verdict is issued on the view of Imām Abū Ḥanīfah rahimahullāh and Imām Abū Yūsuf rahimahullāh.
That is, if a non-intoxicating amount is consumed for medical reasons, it is lawful. (This explanation has been compiled and condensed from the books of jurisprudence).

Allāh ta’ālá knows best.

The ruling for bestiality

Question

A person had sex with a goat. A few people saw him committing this act. What is the ruling of the Sharī’ah with respect to the person and with respect to the goat?

Answer

It is essential to punish the person. It is preferable to slaughter the goat and bury it, or to burn it.

أخبرنا أبو حنيفة عن عاصم بن أبي النجود عن ابن عباس رضي الله عنه، قال من أي بписание فلا حد عليه، أبو حنيفة عن البيشيم بن البيشيم... عن عمر بن الخطاب رضي الله عنه أن أتى برجل وقع على بписание فدراً عن الحد وأمر بالبسيمة فافرقت. (كتاب الآثار: ۸۰۱)

قال محمد: وبدأ قول ... وقال أبو حنيفة محمد إذا كانت البشيما لها ذجت واحترقت ولا تحتقر بغير ذبح فإنها مثلة. (كتاب الآثار: ۸۰۱/۱، مجيد).

ومن وطى بписание فلا حد عليه لأن له ليس في معنى الزنا في كونه جنایة وفي وجوه الداعي لأن الطبع السليم ينفر عنه والحامل على نهاية السلف وفرط الشبق ولنبدأ لا يجب ستره إلا أنه يعزز لما بينا والذى بروى أنه تدجى البشيما وخرج وذلك لقطع التحدث به وليس بواجب. (البداية: ۷۶).
This person will have to be punished. The extent of the punishment is left to the view of the ruler. The buffalo will have to be slaughtered and buried, or it will have to be burnt. The man who engaged in this vile act with the buffalo will be liable to pay the value of the buffalo to its owner. It is not obligatory to slaughter and bury it. It is recommended solely to put an end to the shame which will be experienced by the one who committed the crime because it will serve as a reminder to the vile act. Therefore, there is no objection if it is not slaughtered. Its meat and milk are undoubtedly lawful.¹

Allâh ta’âlâ knows best.

¹ Ahşan al-Fatâwâ, vol. , p. 503.
The status of monetary fines and penalties

Question

Most governments – whether Muslim or non-Muslim – impose monetary fines when the law is broken. Some tribes also impose a penalty when laws are broken or an action which is against the Sharī'ah is committed. In our area – between Pakistan and Afghanistan – we have a jirgah system among the tribes. In most cases, when a law is broken, a monetary fine is imposed. This enables a smooth running of the administration. There are two forms of monetary fines. One is when money is taken from the person. Sometimes, his house or wealth is destroyed and burnt. Sometimes, a penalty is imposed when he delays in presenting himself. What is the Sharī'ah status of penalties of this nature?

Answer

The jurists hold differing opinions on the imposition of monetary fines. Imām Abū Hanīfah raḥimahullāh and Imām Muḥammad raḥimahullāh are of the view that this is not permissible. Imām Abū Yūsuf raḥimahullāh says that it is permissible. 'Allāmah Shāmī raḥimahullāh gives preference to the view of impermissibility. Some jurists clarify the view of Imām Abū Yūsuf raḥimahullāh by saying that a fine is imposed as a temporary warning. Neither can the ruler nor the judge take possession of the money. It cannot be taken by the Islamic treasury. Rather, it will be placed in safe-keeping and returned to the person once he desists from the crime.

Present day scholars and muftīs also differ on this issue. The majority prohibits it while some scholars say it is permissible. While taking into account the view of permissibility, there seems to be leeway for the imposition of monetary fines and penalties.

Observe the following proofs for monetary fines and penalties:

Proof from Ahādīth:

(1) عَنْ سَعْدِ رضي الله عنه أن رسول الله صلِل الله علَيه وسلم قال: "من أخذتموه يقطع من الشجر شيئاً يعني شجر حرم المدينة فلعكم سلب لا يعضاً
شجراً ولا يقطع، قال: فرأى رضي الله عنه غلمانًا يقطعون فأذنهم فأخذ من عاقبتهما إلى مواليه، فأخبرهم أن سعدًا رضي الله عنه فعل كذا وكذا فأتوه فقالوا: يا أبا إسحاق أن غلمانك أو مواليك أخذوا معاً عن غلماننا، قال: بل أنا أخذتهما، سمعت رسول الله صلى الله عليه وسلم يقول: "من أخذموه يقطع من شجر الحرم فلحك السماء"، وحكم سلوف من مالما شئتم. (رواه البیقبی في سنة الکبرى: ١٩٥، باب ما ورد في سلوب من قطع من شجر هرمز المدينة، بيروت)

(2) عن بيض بن حكيم عن أبيه عن جده أن رسول الله صلى الله عليه وسلم قال: في كل سائمة إب ومن يبيع لبونة لا يفرق إلا عن حسابها من أعطاءه، فمتجرأ قائد بن العلاء: متجرأ بها فله أجريا، ومن منعها ذاك أخذوها، وشطر مثلها عزيمة من عزمات ربيه عز وجل ليس لآل محمد مني شيء. (رواه أبو داود: ١٣٦، باب في سواق السائمة)


(3) عن يحيى بن عبد الرحمن بن خاطب أن غلمانًا لأبي عبد الرحمن بن حاطب سرقوه بغيرًا فانتحوه، ووجد عندم جمله ورأسه، فرفع أمرهم إلى عمر بن الخطاب رضي الله عنه فأمر بقطعهم فمكثوا ساعه وما نرى إلا أن قطعوا من قطعهم، ثم قال عمر رضي الله عنه: هل بيمهم ثم قال لعبد الرحمن: والله إني لأراك تستعملهم ثم تبيعهم وتنسب إليه، حتى لو وجدوا ما حرمه عليهم.
الإجابة (4) عن سليمان بن أيوب عبد الله قال: رأيت سعد بن أبي واقف يذكر في حكم المدينة الذي حرم رسول الله صلى الله عليه وسلم فصله زمانه فجاءوا موالين فكلموه فيه فقال: إن رسول الله صلى الله عليه وسلم حرم هذا الحرم وقال: من أخذ أبداً يصير في فليس فلما أرد عليهم طمعة أطمعيما رسول الله صلى الله عليه وسلم وله만 إن شتنم دفعت إليكم شنن. (السنن الكبرى للبيهقي: 5/996، باب ما ورد في سلب من قطع من شجر حرم المدينة).

وقدما في انحاف الخبرة المبهرة بروائد المسائيات العشرة للفضيلة البصيري: (4/959) باب في أسماء المدينة المشتركة وما جاء في صيدبا، مكتبة الرشد، الرياض.

الإجابة (5) عن عمرو بن شبيب عن أبيه عن جده عبد الله بن عمرو بن العاص رضي الله عنه عن رسول الله صلى الله عليه وسلم أنه سهل عن المع العلق فقال: من أصاب بقية من ذي حاجة غير متخز خينة فلا شيء عليه و من خرج شيء منه فعله غرامة مثله والعقوبة. (رواى أبو داوود: 1/424، كتاب اللقطة).

الإجابة (6) عن معمر بن عمرو بن مسلم عن عكرمة أن حسبه عن أبي بريدة رضي الله عنه أن النبي صلى الله عليه وسلم قال: ضالة الإبل المكثمة غرامتها ومثلها معها. (رواى أبو داوود: 1/421، كتاب اللقطة).

Proof from juridical texts:
'Allāmah 'Alā' ad-Dīn Ṭarabulisi raḥimahullāh (d. 844) writes in Mu‘īn al-Ḥukkām:

(1) يجوز التعزيز بأخذ المال وله مدحوب أبي يوسف وله قال مالك، ومن قال: إن العقوبة المالية منسوخة فقد غلت على مدحوب الأئمة نقلاً واستدلأً وليس يسهل دعوى نسخه، فعل الخلفاء الراشدين وأكابر الصحابة لها بعد موتهم صلى الله عليه وسلم مبطن لدعوى نسخه، والمدعون للنسخ ليس معهم سنة ولا إجماع يصحب دعوام (معين الحكام فيما يترد بين الخصمين من الأحكام: 495، فصل في التعزيز، دار الفكر).

البحر الرائق:

(2) وفي الخلاصة سمعت من ثقة أن التعزيز بأخذ المال إن رأى القاضي ذلك أو الوالي جائز ومن جملة ذلك رجل لا يحضر الجماعة يجوز تعزيره بأخذ المال لد (البحر الرائق: 41، فصل في التعزيز، كونته).

الفتاوى البازارية:

(3) والتعزيز بأخذ المال أن المصلحة فيه جائزة... قالوا: ومن جملة من لا يحضر الجماعة يجوز تعزيره بأخذ المال (الفتاوى البازارية على باشم الفتاوي الهندية: 4/2، كتاب الحدود).

الفتاوى التنارخانية:

(4) ولم يذكر محمد في شيء من الكتب التعزيز بأخذ المال، وقيل: روي عن أبي يوسف أن التعزيز والجزر من السلطان بأخذ المال جائز... وفي الفتاوى الخلاصة: التعزيز بأخذ المال إن رأى القاضي أو الوالي جائز، ومن جملة ذلك الرجل لا يحضر الجماعة يجوز تعزيره بأخذ المال (الفتاوى التنارخانية: 5/4، كتاب الحدود، التعزيز، ادارة القرآن)
(6) الجنس السادس في السعاية: وفي نسخة القاضي الإمام أبي البسیر من المفسوط في كتاب الققيق: "من سعى رجلاً إلى السلطان حتى غروما، لا يحلو من وجوه ثلاثة: الفثاحة إذا وقع في قلب أن فلاناً يجسي إلى امرأته أو جاريته فوقع إلى السلطان، غروما، السلطان، ثم ظهر كذبه، عدديماً لا يمضن الساعي، وعند محمد يضمن قال: الفتنوى على قول محمد فالتوبة السعاية في زمانا.

The gist of the above text is that a man assumed a certain person is having an illicit relationship with his wife or slave-woman. He therefore complained to the ruler about it. The ruler imposed a fine on the person. Subsequently, it was established that it was a false complaint. According to Imám Muḥammad raḥimullāh, a penalty will be imposed on the complainant. This is the view on which the verdict is issued.

We learn from the above that there is room for imposing a monetary penalty.

(6) Ḥadrat Maulānā Shams al-Ḥaq Afghānī raḥimullāh – a former lecturer at Dār al-ʿUlūm Deoband, a former Shaykh al-Ḥadīth at Jāmiʿah Islāmiyyah Taʾlim ad-Dīn Dhābel, and a minister in Baluchistan quotes in his Muʾīn al-Qudt wa al-Muftyyn from Muʾīn al-Hukkām the permissibility of monetary penalties and does not concur with the view that it has been abrogated.1

(7) Hakīmul Ummat Ḥadrat Maulānā Ashraf ʿAlī Thānwī raḥimullāh said that if a non-Muslim government confiscates the property of a non-Muslim and gives it legally to a Muslim heir, the Muslim will become its owner. This is because the confiscation by a non-Muslim is considered to be a cause of ownership according to us. We learn from this that if the government takes possession of someone’s wealth as a penalty, the heir can take that wealth. If a monetary penalty was unlawful, it would not be permissible for an heir to take that wealth.

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1 Muʾīn al-Qudt wa al-Muftyyn, p. 70
Most jurists say that a monetary penalty is impermissible. A person can be penalized through physical punishment alone. However, Imám Abú Yúsuf rahimahullah says that a monetary penalty is permissible. From among the Ḥanafi jurists, one view of Imám Abú Yúsuf rahimahullah is that it is permissible...however, I have not come across any explicit proof against the permissibility of a monetary penalty...some latter day Ḥanafi jurists give preference to the view of Imám Abú Yúsuf rahimahullah and say that it is permissible.

(9) Maulānā Mujibullāh Nadwī writes in Islāmī Fiqh:

Imám Abú Ḥanīfah and Imám Muḥammad rahimahullāh say that it is impermissible. On the other hand, Imám Abú Yúsuf rahimahullah says that if wisdom demands it, it will be permissible...the writer of these lines is of the view that the preferred opinion is that of Imám Abú Yúsuf rahimahullah and other jurists who say that monetary penalties or monetary ruin is permissible. There are several examples for it in the Aḥādith and actions of the Ṣahābah ṭabā‘ī ‘anhum.

(10) Maulānā Khālid Sayfullāh Raḥmānī Ṣāḥib writes in Qāmus al-Fiqh:

In the absence of the Islamic penal code and punishments in today’s times, the solution to social issues, minor misdemeanours and certain offences is the imposition of monetary fines and penalties. There is no alternative to controlling and reigning in these crimes. Even in practice, we see many monetary penalties in our times. Fines are imposed by the railways, buses, traffic police, etc. I am inclined to say that these ought to be permitted.

Maulānā Khālid Sayfullāh Raḥmānī Ṣāḥib presents some parallels in his Jadīd Fiqhī Masā’il:

1. An example of a monetary penalty for transgressions against Allâh’s orders is the imposition of kaffârah for the person who breaks a fast wilfully, a person who takes an oath and does not fulfil it, a person who kills another mistakenly. The freeing of a slave or feeding a poor person a specific amount for certain transgressions can also be included in the category of monetary penalties.

2. If a person transgresses against another by causing him bodily harm, then a monetary penalty of blood money is imposed on him. It becomes obligatory when both parties agree to it or when it is not possible to impose retribution (qîṣâs).

3. The kaffârah for zîhâr is an example of a monetary penalty for a transgression in a non-material duty. The penalty includes freeing a slave or feeding poor people.

4. Take the following example of a monetary penalty for a monetary crime. A man steals the possessions of another but cannot keep them safely with him. The jurists concur that the original punishment is the chopping off of his hand. If this cannot be done – for whatever reason – he will have to pay a penalty for whatever he stole.

5. The following is an example of a monetary penalty for discrediting and debasing a person. If a man compels a woman into having sex with him, he will be compelled to pay her the dowry.\footnote{Refer to the chapter on zîhâr for details.} Hâfîz Ibn Qayyim Ḥambalî ṭabâ‘î rahimahullâh is also of the view that monetary penalties are permissible. He writes:


\footnote{Condensed from Jâdi‘ Fiqhî Masâ’il, vol. 3, p. 246.}
A review of the proofs of those who say that monetary penalties are not permissible

Scholars who hold the view that monetary penalties are impermissible generally present the following three proofs:

1. A monetary penalty was permissible in the beginning of Islam and was abrogated later on.

2. A Hadith states:

لا يحل مال أمير مسلم إلا بطيب نفسه (رواه مسلم)

The wealth of a Muslim is unlawful unless given willingly by him.

A monetary penalty is totally against this Hadith, so it is impermissible.

3. Permitting monetary penalties will open the door for tyrants to seize wealth wrongfully. This is obviously against the Shar'ah.

Replies to the above proofs

A reply to the first proof: ‘Allāmah ‘Alā‘ ad-Dīn Ṭabarulīsī Hanafī raṣīmahullāh (d. 844) states in Mu‘īn al-Hukkām that the claim of abrogation is incorrect. He writes:

A reply to the second proof: ‘Allāmah ‘Alā‘ ad-Dīn Ṭabarulīsī Hanafī raṣīmahullāh (d. 844) states in Mu‘īn al-Hukkām that the claim of abrogation is incorrect. He writes:
From: Ibn Taymiyyah, Ibn Qayyim and Dr. Wahbah Zuhayl say that the claim of abrogation is a baseless one because the Righteous Caliphs after Rasūlullāh sallallāhu 'alayhi wa sallam and the Imāms practised on it. The claim of abrogation is therefore incorrect.

Hāfiz Ibn Taymiyyah Hambalī rahimahullāh writes:

Dr. Wahbah Zuhaylī Shāfī'ī writes in al-Fiqh al-Islāmī Wa Addillatuhu:

A reply to the second proof:

In his reply to the Ḥadīth, Muftī Muḥammad Taqī Sāhib writes: Rasūlullāh sallallāhu 'alayhi wa sallam said:

لا يحل مال امرئ مسلم إلا بطيب نفس منه.
The wealth of a Muslim is unlawful unless given willingly by him.

This Hadith makes reference to a Muslim who has not committed a sin or crime. However, if a Muslim commits a crime, a monetary penalty can be imposed on him just as a bodily punishment is imposed on him. The wealth of a Muslim becomes lawful when given willingly, while his life does not become lawful even if he gives it willingly. Therefore, when a Muslim commits a crime and is then caused some type of bodily harm because of it, then all scholars concur that this is permissible. If wealth becomes lawful when given willingly, it ought to be even more lawful when imposed on account of a crime committed by him.¹

Furthermore, if a calamity afflicts one’s life, a person is ordered to repulse it by spending his wealth. And not to destroy his life for the sake of saving his money.

We learn from the above narration that the sanctity of the body is superior to the sanctity of wealth. If the jurists concur on the permissibility of imposing a penalty on the body, why can it not be permissible on wealth?

A reply to the third proof:

The jurists who say that it is impermissible because of the oppression of oppressors, then this view is based on prudence. If there is no oppression, and wealth is seized due to some wisdom or because of a crime, then they too say that it will be permissible. Maulānā Mujibullāh Nadwī Sāhib writes in Islāmī Fiqh:

The jurists who say it is unlawful to do so because of the oppression of rulers offer this view on the basis of prudence and wisdom. If there is no oppression, their view will be the same.²

¹ Taqrīr Tirmidhī, vol. 2, pp. 118-119.
Furthermore, a monetary penalty is not against the Sharī'ah. Rather, it has been laid down for administrative and political prudence.

'Allāmah 'Ālā' ad-Dīn Ṭarābulisi Ḥanafī raḥimahullāh writes:

قال القرافی: واعلم أن التوسعة على الحکام في الأحكام السياسة ليس مخالفاً للشرع، بل تشهد له الأدلة المتقدمة. (معين الحکام فيما يتردد بين الماضين من الأحكام: ۱۸۳، دار الفكر)

Allāh ta'alā knows best.

**Punishment by destruction of goods**

**Question**

A non-ruler, madrasah authority or principal breaks the musical instruments of a certain person. These instruments or devices are also used for non-musical purposes, e.g. a radio, a tape recorder, etc. Will the one who breaks these instruments be liable to pay a compensation? Is there a difference in ruling for a ruler and a non-ruler?

**Answer**

If a person breaks musical instruments and devices of play and amusement by his will, he will be liable to pay compensation for them. If someone breaks them under the instruction of a ruler or a ruler himself breaks them, there will be no compensation. However, compensation will have to be paid for breaking parts which have not been assembled into an instrument.

If an institution lays down a rule that certain items or devices are not permitted, and a person breaks this rule by having them in his possession, and the head and administrators of the institution break those devices, then no compensation need to be paid. This is because they [administrators] are like rulers. Students and their guardians have accepted the rules of the institution or madrasah and acknowledge the principal as its head. The following principle applies:

أَخْصَصْتُم كَالفاضی (قواعد الفقه: ۷۹)

Furthermore, breaking the item does not pose any specific danger. A parent and a teacher have the right to punish. A child can be punished while remaining within the limits of punishment. In fact, we gauge from the texts of 'Allāmah 'Āynī, Lāmī and others that even a non-ruler has the right to impose a monetary penalty.

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The actions of some of our seniors also support the permissibility of monetary penalty for non-rulers. They sometimes tore a garment to demonstrate their displeasure even though the action was lawful in itself but against the liking of our seniors. The following is related in Āp Beytī (the autobiography of Ḥadrat Shaykh al-Ḥadīth Maulānā Muḥammad Zakarīyyā Sāhib Kāndhlawī raḥimahullāh):

Ḥadrat Madanī raḥimahullāh liked coarse cotton cloth but abhorred imported fabrics. This was known to everyone. However, he extended one more kindness to me. Whenever he saw me wearing a kurtah made of a foreign fabric, he would hold it by the collar and tug it down with such force that it would tear to the bottom. As long as Ḥadrat raḥimahullāh was alive, I feared him and made it a point of wearing coarse cotton cloth.1

Initially, Ḥadrat Shaykh raḥimahullāh detested accepting any gift. He even tore to bits the bank notes given to him by some people...One of his friends, Ḥāji Jān Muḥammad Sāhib Peshawrī... brought him a canister of tea...Ḥadrat Shaykh raḥimahullāh broke it, and threw it against a wall causing the tea to scatter all over the place.2

Proofs for punishment through destruction of wealth and property

1.

When Ḥadrat Mūsā ’alayhis salām punished Sāmirī for his crimes, he imposed two forms of punishment on him. Allāh ta’ālā relates these in the Qur’ān:

إِنَّ لَكَ فِي الْحُجُّوْةِ أَنْ تُقُولَ لَا مِسَاسُ

Your punishment for the rest of your life is to say: “Do not touch me.”3

وَنَحْرُتُنَّهَا لَمْ نُسَمِّئُهَا وَنَسْتَسْفِئُهَا فِي الْيَمَّ الْمُسْفِقَ

We shall burn it [the calf made of gold] and scatter [its ashes] into the sea.4

Ḥadrat Mūsā ’alayhis salām burnt it and cast it into the sea.

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1 Āp Beytī, vol. 4, p. 64.
3 Šūrah Tā Hā, 20: 97.
4 Ibid.
This story contains a proof for punishment by destruction of wealth.

2.

The hypocrites had constructed a building because of their evil designs against Islam and the Muslims. Allâh ta'âlâ informed Rasûlullâh ﷺ of their conspiracies who then ordered Mâlik ibn Dakhshan and Ma'n ibn 'Adîyy to demolish the building (which the hypocrites referred to as a masjid). They carried out his order immediately and razed it to the ground. (Refer to Tafsîr 'Uthmânî)

Allâh ta'âlâ says in reference to this incident:

Those who built a masjid in opposition and upon unbelief, to promote disunity among the Muslims, and as a lurking place for him who has been fighting against Allâh and His Messenger since before. They will take oaths [saying]: “We desired only good.” Allâh testifies that they are liars.1

The above incident also shows that it is permissible to punish through destruction of wealth and property.

Observe the following proofs from the Ahâdîth

1) ـ عن أبي رافع بن خديج رضي الله عنه قال: كنا مع رسول الله صلى الله عليه وسلم بذى الخيلفة من تهامة فأصبتنا غنمًا وابنًا، فعجل القوم فاغلوا ببها القدر فأمر ببها فكفت. (رواه مسلم: 157، كتاب الاضاحي)

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1 Sûrah at-Taubah, 9: 107.
Allâmah Nawâfî ra’îmahullâh writes in his commentary to the above Hadîth:

In the above incident, Rasûlullâh sallallahu ‘alayhi wa sallam ordered for the cauldrons to be overturned. He issued this order on the basis of being the ruler.

،أوّل الأمر بإحراقهما، فقيل: بع عقوبة وتغليظ لجزر وجزء غيره عن مثل

In the above incident, Rasûlullâh sallallahu ‘alayhi wa sallam ordered the camel to be released as a form of warning.

قال المنوي: إنما قال بنزا زجراً لها ولغيرها، وكان قد سبق نحبو ونبي غبرًا

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In the above Hadith, Rasūlullāh ُsallallāhu 'alayhi wa sallam instructed the pouring away of wine and the burning of the wine vats.

In the present Hadith, Rasūlullāh ُsallallāhu 'alayhi wa sallam instructed the burning of the meat of donkeys and the breaking of the cauldrons.

In the above Hadith, Rasūlullāh ُsallallāhu 'alayhi wa sallam said with reference to the person who steals from the booty: “Burn his possessions and beat him.”
Rasūlullāh sallallāhu 'alayhi wa sallam expressed his intention of burning the houses of those who do not attend the congregational ṣalāh, although the actual act of burning is not established. 'Allāmah Ibn al-Qayyim raḥimullāh explains the reason for this. He says the women and children also inhabit these homes. The punishment would therefore afflict innocent people; and this is unlawful.

قال ابن القيم: لولا ما منع من إنفاذ ما عزم عليه من كون الذرى والنساء فيها فتتعدى العقوبة إلى غير الجاني وذلك لا يجوز كما لا يجوز عقوبة الحامل.

(اعلام الموقعين: 3/77، فصل في تغريم المال، ببروت)

'Allāmah 'Aynī raḥimullāh says that the above mentioned narration is the foundation for punishment by destruction of wealth and property.

وقد بم الشرع بتحريك دور من يتخلف عن صلاة الجماعة، وبذا أصل في العقوبة في المال إذا رأى ذلك. (عمدة القاري: 9/43/9، باب تعس السدان التي فيها الخمر، ملتان)

'Allāmah 'Aynī raḥimullāh says that punishment by destruction of wealth and property will make compensation payable according to Imām Muḥammad raḥimullāh. Imām Abū Yūsuf raḥimullāh is of the view that there is no compensation. The verdict is issued on the view of Imām Abū Yūsuf raḥimullāh.

فإن كان زق الخمر لسلم يضمن عند محمد... وعند أبي يوسف لا يضمن لأنه من حملة الأمر بالمعروف... والفتوى على قول أبي يوسف خصوصاً في هذا الزمان. (عمدة القاري: 9/43/9، باب تعس السدان التي فيها الخمر، ملتان)

In his marginalia to Lāmī‘ ad-Darrī, Ḥadrat Shaykh raḥimullāh quotes from 'Allāmah 'Aynī raḥimullāh who said that the verdict is issued on the view of Imām Abū Yūsuf raḥimullāh.1

Moreover, 'Allāmah 'Aynī raḥimullāh makes reference to the view of abrogation by using the words “it is said”. In so doing, he is making reference to the weakness of this view. He writes:

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1 حاشية لامع الدراري: ج 4، ص 39.
وقيل بهذا كان في صدر الأول ثم نسخ (عمة القاري: 396) باب بل تكسر
المنان التي فيها الحمر، ملتاناً.

(8) عن عمرو بن شعيب عن أبيه عن جده أن رسول الله صلى الله عليه وسلم
وأبا بكر رضي الله عنه وعمر رضي الله عنه حرقوا ماتغ الغال وضربوه.

(رواه ابن داود: 371، باب في عقوبة الغال).

"Allāmah Ibn Taymiyyah rahimahullāh quotes some actions of the Sahābah radiyallāhu `anhum in this regard in his Fatāwā:

(4) ومثل أمر عمر بن الخطاب رضي الله عنه وعلى أبي طالب رضي الله عنه بتحريك المكان الذي يبايع فيه الحمر.

(5) ومثل تحريق عثمان بن عفان رضي الله عنه المصاحف المتعددة للإمام.

(11) وتحريك عمر بن الخطاب رضي الله عنه لكتب الأوائل.

(21) وأمره (أي أمر عمر بن الخطاب رضي الله عنه) بتحريك قصر سعد بن أبي
و قال رضي الله عنه الذي بناء لما أراد أن يتجه عن الناس فأرسل محمد بن
مسلم رضي الله عنه وأمره أن يحرق عليه فذبح فحرقه عليه، وذهب
القضايا كليا صحيحة معروفة عند أهل العلم بذلك ونظرا مئوية متعددة.

(مجمع فتاوى ابن تيمية: 11/38، فصل في التعزر بالعقوبات الماليه).

In short, the above Ahādīth and actions of the Sahābah radiyallāhu `anhum demonstrate that punishment by destruction of wealth and property is permissible.

Statements of the jurists

قال في الدر المختار: وضمن تكسير معرف بكسير الميم آلة اللب وهو كافر
ابن كمال قيمته خشباً متحوياً صاحباً لغير اللب، وضمن القيمة مثل إرقة
سكر ومنصف وقائلا: لا يضمن ولا يصح بيعها، وعليه الفتوى، متلق ودور
وزيلع وغبراء وأقره المصنف، وأما طلب الغزاة، زاد في حظر الخلاصة:

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The gist of the above is that if a ruler or the one who is in his place, e.g., a madrasah administrator, breaks an item belonging to someone because the latter broke a law, then there will be no compensation. Just as a parent and a teacher can punish his child or student, madrasah administrators are like guardians. Obviously, punishment...
for every little misdemeanour is not permitted. If not, it could result in tribulation and corruption.

An example of where a non-ruler destroys an item:

In the above ruling, wine belonging to a dhimmī – which should not be destroyed – can be destroyed by a non-ruler as a form of punishment.

Objection: Rasūlullāh sallallāhu 'alayhi wa sallam prohibited the destruction of wealth, as gauged from the following Ḥadīth. What, then, is the reply to it?

Rasūlullāh sallallāhu 'alayhi wa sallam said: Allāh prohibited disobedience to one’s mother, female infanticide, refusing to give what ought to be given, and demanding what should not be asked for. Allāh dislikes the spreading of rumours, excessive questioning and the destruction of wealth.

Answer: The destruction of wealth refers to that in which there is no benefit and advantage. Where the action is carried out for the sake of disciplining or for self-improvement, e.g. a person shoots with a firearm for target practice. Although the bullets are being wasted, the benefit in it is that he is learning how to shoot. Studying logic and philosophy appears to be a waste of time, but it increases and strengthens the capabilities of a student. This is why the seniors studied these subjects.

Allāh ta‘ālā knows best.
The third form of monetary punishment: Changing the form of an item

Question

A student has a smart phone, compact disk (cd), cassette or memory card which contains obscenities and unlawful programs. He looks at them or listens to them periodically. A student is having an illicit relationship and has images of women on his phone. He looks at the images and takes pleasure from them. A student comes to class wearing a kurtah which is below the ankles. A student has images of animate objects. And the list goes on. Is it correct to put an end to all these evils? In other words, is it permissible to delete the unlawful images and programs? Is it permissible to cut the kurtah so that it is above the ankle? Do the madrasah authorities have the right to do these things? Will they be liable to pay compensation if they did this?

Answer

It is permissible for madrasah authorities to delete and put an end to all the above-listed evils. This is the third form of punishment. That is, the item is not destroyed completely. Rather, the evil is deleted or removed. Like the second form, this third form is also permissible. However, it can only be done by the ruler or the one who falls under the orders of the ruler. It cannot be done by anyone and everyone. If not, it could lead to tribulation and corruption.

قال العلامة العيني: ستر عائشة رضي الله تعالى عنها في تضمين فتيتك صلى الله عليه وسلم فجعله قطعتين فاتحتاً على إحداها. (عمدة القاري: 38/8، دار الحديث، ملتان).

وقال العلامة النووي: أتلف الصورة التي في... فستدل به لتغيير الملك باليد

ويتك الصور المحرمة. (شرح النووي: 2/3).

قال الملا علي القاري: وإن اتفلها أمر الشارع به، لقوله صلى الله عليه وسلم: من رأى منكم منكراً فليغريه بيد. (آخره مسلم) وانصتاراً باليد إتلافها، وبو بو أتلفها بأمر أول الأمر لا يضمن فيأمر الشارع أولى، وفي الجامع الصغير لصدر الإسلام، الفتوى في عدم الضمان على قولهما، لكثرة الفساد بين الناس حتى ذكر الصدر الشهيد أن البيت يفدي من اعتداد الفسق وأنواع الفساد، وأنه لا يجس بالهجوم على بيت المفسدين، وبغرفة العصيرة قبل أن يشتد على من اعتداد الفسق. (فتح باب العناية في شرح كتاب النقاية: 3/37، كتاب الغصب).

قال الدكتور وهبة الزحيلي: (3) التغيير قد يقتصر العقوبة المالية على تغيير الشيء، مثل نجب النبي صلى الله عليه وسلم في كسر العملة الجزيرة بين المسلمين، كالدراهم والدنار، إلا إذا كان بها بأس، فإذا كان فيها بأس كسرت، ومثل فعل النبي صلى الله عليه وسلم في الأوّل الذي كان في بيتها، والسّتر الذي ينادي، إذ أمر بقطع رأس التمثال فصار كبيهة الشجرة، وقطع السّتر، فصار وسادت يوطن، ويكاد تفوق العلماء على إزالة تغيير كل ما كان من العين أو التاليف المحرم، مثل تفكيك آلات الملاهي، وتغيير الصور المصورة. (الفقه السلاحي وادله: 6/36، التعزير بالمال، دار الفكر).

وكذا في فتاوى ابن تيمية: 117/38.
Allāh ta’ālā knows best.

**Labelling someone a kāfir or hypocrite**

**Question**
If a person addresses another as a kāfir or hypocrite, is he liable for any punishment? Is there room for killing as a form of penalty?

**Answer**
Some books state that there is no penalty for addressing someone as a kāfir or hypocrite. However, most juridical texts mention the ruling of penalty. Nowadays, the proliferation of corruption, name-calling, verbal abuse, etc. could cause people to take unfair benefits from these actions. This is why, there ought to be a penalty, but this is dependent on the verdict of a qādī. He will issue a verdict while considering situations and people. However, there is no room for penalty by killing merely on the basis of hurling verbal abuses. Yes, penalty by killing is in itself a prescribed form of punishment.
Conditions, situations and individuals will be taken into consideration when imposing a punishment, penalty or fine.

Allāh ta’ālā knows best.

Punishment by killing
Punishment by social boycott

Question

The following practice is followed in some of the areas in which we live. If a person commits a crime, the rest of the tribe or people of the area boycott him as a way of punishment. They have a term for this boycott – they say: “Water and huqqah is shut off to him.” Sometimes, he is even prevented from joining the congregational and janāzah salāhs. Does the Sharī‘at permit this?

Answer

A social boycott applied as a form of punishment is permissible. However, it is not permissible to stop a person from joining the congregational and janāzah salāhs. There are many incidents which prove the permissibility of a social boycott in the Sharī‘at. However, stopping a person from the collective acts of worship, e.g.

Allāh ta‘ālā knows best.
congregational salāḥ, janāzah salāḥ, etc. is not established in the 
Sharī'at.

Allāh ta'ālā says in the Qur'ān:

وَمَنْ أَظَلَّمَ مِنْ مَنْ مَسَّهُ اللَّهُ أَنْ يُذَكَّرَ فِيهِ اسْمَهُ وَسَعَى فِيٍّ 
حَرَابِهَا.

Who is more unjust than he who barred in the masjid of 
Allah that His name be taken therein and strove in their 
destruction.¹

Hadrat Muftī Muhammad Shafi' Şāhīb rahimahullāh writes in Ma'ārif 
al-Qur'ān:

We learn from this that all forms of preventing a person from Allāh's 
remembrance and salāḥ in the masjid are impermissible and unlawful. 
A clear example of this is when a person is explicitly stopped from 
salāḥ and reading the Qur'ān in the masjid.

Hadrat Ka‘b ibn Mālik ṭadīyallahu 'anhu and his two companions were 
boycotted. The following verse was revealed with reference to them:

وَعَلَى الْقَلْبِ الْأَمِينِ خَلِفَاهَا حَتَّى إِذَا ضَافَقَ عَلَيْهِمُ الرَّضُوُنُ يَا 
رَحْبَتِ.

And [He turned in kindness] to those three persons who 
were kept behind until the land became constricted 
upon them.²

Despite this, they were not stopped from joining the five 
congregational salāhs. Observe the following narration of Salāḥ 
Bukhārī:

وَأَمَّا أَنَا فَكُنْتُ أُخْرِجْ فُلْهَالَ الصَّلاةَ مَعَ الْمُسْلِمِينَ وَأُطُوفُ فِي 
الأسواق ولا 
يسُلَمِنِي أَحَدَ... (روااه البخاري: 1536 حديث كعب)

...I used to go out, attending the salāḥ with the Muslims 
and walking around in the market places. But no one 
would speak to me...

¹ Sūrah al-Baqarah, 2: 114.
² Sūrah at-Taubah, 9: 118.
Proofs from Ahādīth

1. Hadrat Ka'b ibn Mâlik radîyallâhu 'anhu and his two companions were boycotted for fifty days. The following is related in Sahîh Bukhârî:

فَلبِيِّتْ بَعْدَ ذلِكَ عَشَرَ لَيْلَةً حَتَّى كَمَلَ لَنَا خَمْسَٰنَ لِيْلَةً مِنَ حِينِ نُبِيّ
رسُوْلِ اللَّه ﷺ صَلْي الله عَلَيْهِ وَسَلَّمْ عِنْهُ كَلاَّمَنَا... (رواى البخاري: 2/367)

Hadrat 'Abdullâh ibn Mughaffal radîyallâhu 'anhu and his two companions were boycotted for fifty days. The following is related in Sahîh Bukhârî:

2. Hadrat 'Abdullâh ibn Mughaffal radîyallâhu 'anhu stopped talking to his nephew. The following is related in Sunan Ibn Mâjah:

3. Hadrat 'Abdullâh ibn Mughaffal radîyallâhu 'anhu and his two companions were boycotted for fifty days. The following is related in Sahîh Bukhârî:

Rasûlullâh sallallâhu 'alayhi wa sallam prohibited flinging pebbles because neither can an animal be hunted with them nor can they injure an enemy. Yes, they will break someone’s tooth and bust someone’s eye. The narrator says that his nephew repeated flinging pebbles, so Hadrat 'Abdullâh ibn Mughaffal radîyallâhu 'anhu said to him: “I am telling you that Rasûlullâh sallallâhu 'alayhi wa sallam prohibited flinging pebbles but you are still doing it. I will never speak with you.”

3. Hadrat 'Abdullâh ibn 'Umar radîyallâhu 'anhu stopped talking to his son. The following is narrated in Mishkât Sharîf:

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3. Hadrat 'Abdullâh ibn 'Umar radîyallâhu 'anhu stopped talking to his son. The following is narrated in Mishkât Sharîf:
Hadrat 'Abdillāh ibn 'Umar raḍiyallāhu 'anhu said that Rasūlullāh sallallāhu 'alaihi wa sallam said: “A man should not stop his wife from going to the masjid.” One of the sons of 'Abdillāh ibn 'Umar raḍiyallāhu 'anhu said: “We will stop them [women].” Hadrat 'Abdullāh ibn 'Umar raḍiyallāhu 'anhu said: “I am relating a Hadīth to you and this is the answer you are giving me!” The narrator says: Hadrat 'Abdullāh ibn 'Umar raḍiyallāhu 'anhu did not speak to his son for the rest of his life.

4. Hadrat 'Ā'ishah raḍiyallāhu 'anhā stopped talking to her nephew, Hadrat 'Abdullāh ibn Zubayr raḍiyallāhu 'anhu.

The gist of the narration is that Hadrat 'Abdullāh ibn Zubayr raḍiyallāhu 'anhu said: “If she does not desist from being overly generous, I will place restrictions on her.” When Hadrat 'Ā'ishah raḍiyallāhu 'anhā was informed of it, she asked: “Did he really say such a thing? I take an oath I will never speak to him.” He could only reconcile with her after some time and after making many efforts in this regard.

The following is narrated in Mishkāt Sharīf:

عن أبي أيوب الأنصاري رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: لا يجل للرجل أن يهجّر أخاه فوق ثلاث ليال. (مشكاة شريف: ۲۰۷/۴، باب ما ينفي من الهجر).

Mullā 'Alī Qārī raḥimahullāh writes in his commentary to this Hadīth:

قال الحكّابي: يخص للمسلم أن يغضب على أخيه ثلاث ليال لقلته، ولا يجوز فوقها إلا إذا كان البحجرا في حق من حقوق الله تعالى، فيجوز فوق ذلك، وفي حاشية السيوطي على المؤداة: قال ابن عبد البر... وأجمع العلماء على أن من
The issue of disciplining

Question

Does the Sharī'at permit disciplining one’s wife, children, students, etc.? If it does, then to what extent?

Answer

There is room for disciplining in certain cases provided one remains within the boundaries of the Sharī'at.

Disciplining one’s wife

وَأَلْبَيَّةٌ تحَفَّظُونَ وَعُظْمُهُنَّ وَهُجُرُوهُمْ فِي الْمَضَاجِعِ

Those [women] whose misconduct you fear, admonish them and separate them in sleeping, and strike them.

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2 Sūrah an-Nisā’, 4: 34.
When you apprehend disobedience from your wife, the first step towards rectification should be through lenient explanation. If she does not desist despite your lenient approach, the next step is to separate your bed from hers. In this way, she will realize the husband’s displeasure and regret her actions. This separation must be only in the place where husband and wife sleep; and not separation of houses because this will cause serious grief and could increase the conflict...If a woman is not affected by this dignified warning, the husband is permitted to strike her lightly. This must be done in a manner which leaves no marks on the body, does not break any bones, and does not cause injury. Men are strictly prohibited from striking a woman on her face.¹

Qāmūs al-Fiqh:

We learn from this Qur’ānic instruction that physical disciplining is only permitted when verbal advice and temporary separation of the beds were insufficient for the rectification of the wife. If the latter two methods are able to effect rectification, the husband should never raise his hand on his wife.²

Observe the following Ahādīth:

عن إياس بن عبد الله بن أبي ذئاب قال: قال النبي صلى الله عليه وسلم: لا تضربوا إماة الله فجاء عمر رضي الله عنه إلى رسول الله صلى الله عليه وسلم فقال: ذئرن النساء علي أزواجهن فرخص رسول الله صلى الله عليه وسلم في ضربهن فأطاف بالآي رسول الله صلى الله عليه وسلم في نساء كثير يشكون أزواجهن فقُل رسول الله صلى الله عليه وسلم: لقد طاف بالآي محمد نساء كثير يشكون أزواجهن ليس أولئك بخيركم. (رواه أبو داود: 2921/399، باب ضرب النساء. والنسائي وابن ماجة)

عن عائشة رضي الله عليها تعلاني عنها قالت: ما ضرب رسول الله صلى الله عليه وسلم خادماً ولا امرأة ولا ضرب بيده شيئاً. وعن عبد الله بن زمعة رضي

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² Qāmūs al-Fiqh, vol. 4, p. 308.
الله عنه قال: خطب النبي صل الله عليه وسلم... ثم قال: إلى ما يجد أحدكم
امرأته جلد الأمة ولعله أن يضاجعها من آخر يومه. (رواء ابن ماجة: 142، باب
ضرب النساء).

We learn from the above that Rasūlullāh ُsallallāhu ‘alayhi wa sallam
disapproved of striking one’s wife even when a person has no
alternative and is compelled to do it. Yes, there is leeway for a light
punishment when she is recalcitrant. One will not be taken to task for it.

عن الأشعث بن قيس قال ضمت عمر رضي الله عنه ليلة فلما كان في جوف
الليل قام إلى أمه. يضربها فحجزت بينهما فلما آوى إلى فراش، قال لي: يا
أشعث احفظ عني شيئا صمتعا عن رسول الله صلى الله عليه وسلم: لا يسأل
الرجل فيما ضرب امرأته. (رواء ابن ماجة ص 134)

قال في المجاه الحجة: قوله: فيما يضرب امرأته أي إذا راعي شرط الضرب
伍حدود. (المجاه الحجة: 142)

Some of the situations in which it is permissible to strike one’s wife are
as follows:

قال في تنوير الأنصار: يعرض المولى عبده والزوج زوجته على تركها الزينة
وغسل الجبنية، والخروج من المنزل وترك الإجابة إلى الفراش، وقال في الدر
المختار: يلحق بذلك ما لو ضرب ولدبا الصغير عند تكبت أو ضربت
جاربة غيره ولا تتعظ بوعظه أو شتمته، ولو بنحوها حمار أو دعت عليه أو
مزقت ثيابه أو كلبه. ليسعتها أجنبي أو كشفت وجهها لغير محرم أو كلمته أو
شتمته أو أعطت ما لم تجر العادة به بلا إذن والضابط: كل معصية لا حد فيها
فلمزوج والويلي التعزير. وقال الشاهي: لست على القول بأنه لا يضربها لتترك
صلاة يخشى الجوائز بما لا تقتصر منفعتها عليها. (الدر المختار مع فتاوى
الشاهي: 477، باب التعزير، سعيد).

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الاستفسار: هل يجوز لنزوج أن يضرب امرأته في خصيلة من الحلال؟

الاستشارة: نعم، قالوا: يجوز له أن يضربها في أربعة أموار وما في معانيها أحيانا:

- على ترك الزينة للزوج.
- على عدم إجابتها إذا دعابها إلى فراش، وبي طابرا من الحيض والنفاس.
- على ترك الصلاة، وترك الصلوات، وترك الفسخ من الحجاب، إذا لم يكن مقرر في اليمين.

ومن جابر رضي الله عنه أن رسول الله صل الله عليه وسلم قال: فاضربوا ضرباً غير ممرح. (رواة مسلم: ٢٩٧

قال المفسرون: أنه لا يفسر فيها عضواً ولا يؤثر فيها شيئاً. (ابن كثير: ٢٣٨)

وعن معاوية بن حديقة القشيري عن أبيه قال: يا رسول الله: ما حق زوجة أخذنا عليها؟ قال: أن تطعمنا إذا طعت وتكسوينا إذا اكتست ولا تضرب
Disciplining Minor Children

Maulānā Khālid Sayfullāh says that it is essential to consider the same conditions and limits which apply to disciplining one’s wife when disciplining children. If a person transgresses the limits in disciplining, he himself will be liable for disciplining.\(^1\)

\(^{1}\) Qānūn al-Fiqh, vol. 4, p. 309.

\(^{2}\) Qānūn al-Fiqh, vol. 4, p. 309.

وإن أرادوا كثيرًا من الجلد فإنهم لا يجبرون، وإن أرادوا قليلًا فعليه حقه، فلا يجبر، لأن الله علّم بالعدل الصلاة. (القدر المختار مع فتاوى الشام: ۳۸/۹۸، سعيد)

وعن أبي بكر رضي الله عنه قال: كان النبي صلى الله عليه وسلم يقول: لا يجد الله عدلاً فوق عشر جلدات إلا في حد من حدود الله. (رواه البخاري: ۱۰۳/۹)
More than ten lashes can be given when injunctions of Allâh ta’âlâ are broken. When any human law is broken, such a severe punishment should not be inflicted.

(عهد الأحكام: 78/8)

Shaykh Muḥammad ibn Sâlîh ‘Uthaymîn writes in his commentary of Ṣâliḥ as-Ṣâliḥîn:

More than ten lashes can be given when injunctions of Allâh ta’âlâ are broken. When any human law is broken, such a severe punishment should not be inflicted.
Haḍrat Mufti Mahmūd Hasan Ṣāḥib writes:

Small children may be beaten without a cane, rod, etc. only to the extent of what they can bear. They may be beaten three times and not more. They cannot be struck on their faces and heads. They may be hit on their necks and backs. Anything more than this is not permitted. If not, the child will exact revenge on the day of Resurrection. Children should be treated with kindness, affection and leniency. The era in which children used to be beaten has almost come to an end. Beating children has awful consequences. They become shameless and fearless. When they become accustomed to beating, they do not learn their work. In fact, in most cases, they give up their studies.¹

Disciplining Mature Children

There is also room for punishing mature children.

Observe the following narration of Saḥīḥ Bukhārī:

فُقَالَ أَبُو بُخْسَرِ رَضِيَ الَّهُ عَنْهُ: أَحْبَسْتُ رَسُولَ اللهِ صَلِي الله عَلَيْهِ وَسَلَّمَ النَّاسَ لِيْسَوا عَلَى مَأَةٍ وَلَيْسَ مَعِيْمَ مَاءٍ، فَقَالَتِ عَائِشَةُ رَضِيَ الَّهُ عَنْهَا فِى دُلْوَاتِهَا أَبُو بُخْسَرِ رَضِيَ الَّهُ عَنْهُ وَقَالَ: مَا شَاءَ اللَّهُ أَنْ يَقُولَ وَجِلَّ يَطْعَنِي بِهِدٍ فِى خَاصِرَتِي. (رواه البخاري: ۸۴۳، باب التعين)

قال العيني: في تأديب الرجل ابنته ولو كانت متزوجة كبيرة خارجة عن بيته، ويلتحق بذلك تأديب من له تأديب وإن لم يأذن له الإمام. (عمدة القاري: ۱۹۷۳)

[The above Ḥadīth makes reference to an incident in which Haḍrat 'Ā'ishah raḍiullāhū 'anāhā delayed a caravan from moving forward. She relates that Abū Bakr raḍiullāhū 'anhu (her father) reprimanded her and prodded her on her hip].

¹ Fatāwā Maḥmūdiyyah, vol. 14, p. 129.
A teacher can punish his students irrespective of whether they are minors or mature. Minors can be punished because their guardians have given the teacher the right to discipline them. A mature student can be punished because he himself gave this right to his teacher.  

Allāh ta‘ālā knows best.

**When hands and legs are broken in the course of punishing**

**Question**

If a teacher breaks a child’s hand or leg at the time of punishing him, is he liable to pay compensation?

**Answer**

If he punished the child after obtaining the father’s permission, he will not be liable to pay compensation. If he punished him without obtaining permission, he will be liable to pay compensation. This ruling applies if the teacher punished the child according to the norm. If it was not in line with the norm, he will be liable to pay compensation in all situations.

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1 *Āhsan al-Fatāwā*, vol. 5, p. 508.
جمع الضعانات:
المعلم إذا ضرب صبياً، أو الأستاذ المحرف إذا ضرب التلميذ، قال أبو بكر محمد بن الفضل رحمه الله: إن ضرب بأمر أبيه أو وصية ضريباً معتدًا في الموضع المعتاد لا يضمن، وإن ضرب غير معتاد ضمن. فإن ضرب غير أمر أبيه أو وصية ضمان، ضمن تمام الدية في قولهم، سواء ضرب معتاداً، أو غير معتاد، من فصل البقار من فضي خان. (جمع الضعانات: ۱/۱۰۹، النوع الثامن عشر، دار السلام)

الدر المختار مع فتاوى الشاهي:
ضرب الأب أو الوصي أو المعلم فإن الأب تعليماً فمات لا ضمان... ومحل في الضرب المعتاد وأما غيره فوجب للضمان في الشامية: قوله فإن الأب أي أو بإذن الوصي ولذ ضرب بغير إذنما يضمن... قوله ومحل في الضرب المعتاد أي كما وكيفاً ومحلأً فلو ضرب ولوجه أو على المذاكر، يجب الضمان بلا خوف ولسوزاً واحداً لأنه إتلاف. (الدر المختار مع فتاوى الشاهي: ۲/۶۳، باب القود فيما دون النفس، سعيد)

hashia al'dhathawiy li al'dar al'mukhtar:
الوصي والزوج إذا ضرب اليتيم أو زوجته، تأديباً وكذا المعلم إذا ضرب الصبي بإذن الأب أو الوصي لتعليم القرآن أو عمل آخر مثل ما يضرب فيه لا يضمن بوب ولا الأب والوصي بالإجماع... ولو ضرب المعلم بدون إذن، فمات يضمن.
(الدتوبة الطحطاوية على الدر المختار: ۴/۷۶، باب القود فيما دون النفس)

Allāh ta'ālā knows best.
When a motor car knocks a horse

Question
A person was driving on a public road at night. The road did not have any barriers on either side. A horse emerged onto the road and he knocked it, causing injury to it. Whose fault is it? Who is liable to pay compensation?

Answer
If it is the driver's fault, he will have to pay compensation. Mufti Muhammad Taqiuddin writes in *Takmilah Fath al-Mulhim*:

إن جنایة البهیمة لا تحول من حالین إما أن تكون متفلتة ليس معها أحد أو يکون معها راكب أو سائق أو قائد. فإن كانت منتفقتة ليس معها أحد فأتلفت شيئا فلا ضمان على صاحبها عند الحنفیة مطلقا سواء كان الوقت وقت الیمن أو وقت الليل عملًا بإطلاق حديث الباب... وذكر شیخنا الیمنی في إعیاس الستن (ج 18، ص 424) عن الطحاوی: أن تحقيق مذهب أبي حنیفة أنه لا ضمان إذا أرسلها مع حافظ، وأما إذا أرسلها من دون حافظ ضمن، وخلافة أن الحکم عند أبي حنیفة لا يدور مع الیمن أو الليل، وإنما يدور على التقصیر في الحفظ. فإن قصر المالك في حفظ البهیمة بالنیار ضمن، وإن لم يقصر باللیل لم يکون حديث ناقة الفراء على التقصیر في الحفظ واستدل شیخنا الیمنی لمذهب أبي حنیفة بما أخرجه الدارقطینی عن عمرو بن شعیب عن أبيه عن جده عن النبي صلى الله عليه وسلم قال: ما أصابت الیلم باللیل ضمن أحلها وما أصابت بالنیار فلا شيء فيه، وما أصابت الغنم باللیل والنیار غرم أهلها. قال شیخنا: وبدل إجیاب الضمان على أهل الغنم باللیل والنیار على أنه لا دخل للنیار في إسقاط الضمان، وإنما بناهما على عدم التقصیر وما كان حفظ الغنم متيسرًا دل إفسادها على ترك الحفظ من الرعاية.
A car accident

Question

A person was driving a car or bus. It either broke down, overturned, or met in an accident with another vehicle. The passengers got injured or died. The driver survived. Will he be liable for compensation or blood money?

Answer

If the driver committed an offence wittingly, e.g. he drove on the wrong side of the road, and the car overturned; he was driving extremely fast, e.g. 200k/h; or he was driving recklessly – then in all these cases, the driver will be liable to pay compensation. If this was not the case and he was driving responsibly, and an accident took place suddenly, the driver will not be liable. He does not have to pay any compensation. Yes, if he knocks a pedestrian and the latter dies, it will be obligatory on him to pay blood money.

Maulānā Mujibullāh Nadwī ⁴ sahib explains these issues in detail. Observe the following:

The ruling for lifeless modes of transport such as motor-cycles, trains, aeroplanes, etc. is the same. That is, if they cause wilful monetary damage or unintentional damage, then the owner of that mode of transport is not liable to pay compensation. Compensation will be taken from the driver, conductor or guard. For example, a train driver drives a train towards a station without receiving a signal to do so, and the train therefore crashes into another train; a bus driver drives the...
bus on the wrong side of the road or drives beyond the speed limit – then in all these cases, the driver will be liable to pay monetary costs.

If someone places a rock on the path and the driver cannot see it, and this causes an accident; or a pedestrian was walking on the wrong side of the road and a motor-cycle knocks him; or a person suddenly places himself in the path of a vehicle – then in these cases, neither is the driver, owner nor government liable to pay anything.

If a vehicle and train meet in an accident coincidently or a plane crashes – and a person or several people die – the driver or pilot will not be liable for the loss of lives. Rather, the company or government will be liable. This is because the jurists say that blood money for an inadvertent accident falls on the 'āqilah. In the beginning of Islam, there used to be a register for people belonging to a single category. They were 'āqilah to each other. Subsequently, the responsibility was placed on a tribe or family. This has also changed in present times. The liability now has to be placed on the company, factory or government. The jurists classify it as an unintentional killing. The company, factory or government can punish the driver or pilot, but cannot impose the liability of blood money on him. These are new issues which the 'ulamā' need to further explore.¹

لا أصحاب فارسان حران فماتان فعل العباقرة كل واحد منها الدية للأخرى كإلا في الهدية، قال في الإصلاح والإيضاح وهنو شرط مذكور في الفتاوى الظهرية، وهو أن يقع كل واحد منها على قفاه... وشرط آخر مذكور في المحيط وهو أن لا يكونا عامدين في ذلك الاصطدام، فإنهما لم كانا عامدين فيه ضمن كل نصف الدية للأخرى... ولو اصطدم دابتان فعطبت، ولكل منهما سائر فضمان التي عطبت على الآخر، من قاضي خان (مجمع الضمانات: ٤٣١), الفصل الخامس في جنایة الهمة، للعلامة أبي محمد البغدادي، والهدية: ٤٤٨١)

وانتظر للاسترادة: تحكيلIPLE熔脉靥، حكم السيرة: ٥٣٥.

Allāh ta’ālā knows best.

When an animal is killed unwittingly

Question
The driver was not at fault. Rather, it was the fault of the animal or its owner. The animal crossed over [a fence, for example] and was knocked and killed. Will the driver be liable to pay compensation?

Answer
If it was not the fault of the driver, but of the owner of the animal in the sense that he fell short in saving his animal from the driver, then the driver is not liable for any compensation.

If a conveyance goes out of control and its rider cannot bring it under control, there is no liability on the rider irrespective of whether it causes physical or monetary loss. This is because the action of the animal will not be attributed to its rider... this rule will apply when the rider rode the horse at a speed to which it was accustomed. If he rode it in a manner to which it was unaccustomed, e.g. by whipping it, or he wittingly rode it beyond its ability, he will be liable to pay compensation.
When cars collide

Question
Two cars collided into each other. One driver was at fault while the other was not. The vehicle of the driver who was at fault was damaged. Does the driver who was not at fault have to pay for the damages?

Answer
The driver who was not at fault is not liable to pay anything. This is because a compensation is imposed on the one who committed an excess or transgression.

A motorized vehicle is similar to an animal, but with certain differences:

Allāh taʿālā knows best.

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1 Alḥsan al-Fatāwā, vol. 8, p. 512.
A person drives a car without permission and meets in an accident

Question

Zayd asked Bakr to reverse his car for him. But Bakr reversed the car right out of the driveway and drove onto a public road without Zayd’s permission. ‘Umar was sitting with Bakr. He said to Bakr: “Do not take the car without permission.” But Bakr did not pay any heed. The car met in an accident and was declared a “write-off”. Is there compensation? If there is, who is liable to pay? In other words, Bakr took the car but ‘Umar drove it, and an accident took place. If there is compensation, will the car-owner take it from the one who took the car or the one who drove it? Or does the owner have the right to ask whichever of the two he wants? If he does not take compensation from the driver but from the one who took it, can the latter revert to the driver and ask him to pay?

Answer

The owner can ask either of the two to pay compensation. If the owner demanded it from the one who took the car, the latter will collect the money from the driver because he [the driver] had even stopped him from taking it. If the owner demands compensation from the driver first, the latter cannot revert to the one who took the car without permission. He is the cause, and there is no compensation on him.
When a driver drives over someone and the latter dies

Question
A person was driving his car when he unwittingly drove over three people and they died. Is he liable to pay compensation and blood money? If he is, what is the amount for blood money? Is he liable to pay kaffārah?

Answer
He is liable to pay kaffārah and blood money. The kaffārah can be incorporated for all three and he will have to pay only one. On the other hand, there is no incorporation for blood money because it is
from among the rights of fellow humans. He will therefore have to pay blood money for three persons.

الهدية:
قال الراكب ضامن لما أوطنت الدابة بيدها أو رجلها أو رأسها أو كدمت أو خبطت وكذا إذا صدمت. (الهدية: 4:111 (2))
إلا على الراكب الكفارة فيما أوطنته الدابة بيدها أو برجلها. (الهدية: 4:42)
وقتل الخطأ تجب به الدية على العاقلة والكفارة على القاتل. (الهدية: 4:88)
وال çoهرة النيرة: 1:73
فتاوي الشامى:
والحاصل أنا لم نقل بالتدخل في الحكم في العبادات لما يلزم عليه من الأمر الشنيع وهو ترك العبادة المطلوب تكثيرها مع قيام سببها وجعلنا الكل سبباً واحداً لمفع ذلك لأنه أليف بها، أما العقوبات فإن مبناها على الدرب والعفو فلا يلزم من تركها مع قيام سببها الأخر الشنيع بل يحصل المقصود منها في الدنيا وهو الزجر يعقوبة واحدة. (فتاوي الشامى: 2:116، والبحرا الرائق: 2:136، والفتاوى الهندية: 3:277)
وأما الجناية إذا تعددت بقطع ضعوه ثم قتله فإنها لا يتداخل فيها إلا إذا كنا خطائيين على واحد... الخ. (الأشباه والنظائر: 2:106)
الفتاوى الهندية:
ولكن كان صاحب الدابة راكباً على الدابة والداية تسير إن وطنت بديها أو رجلها يضمن وعلى عاقلته الدية وتلزم الكفارة. (الفتاوى الهندية: 5:106)
Who is liable to pay blood money in today’s times?

Question

Who is liable to pay blood money bearing in mind that the system of 'aqilah does not exist in today’s times? Also, the tribal system is virtually non-existent in most places.

Answer

The 'aqilah is liable to pay blood money. If the criminal admits to committing the crime and the 'aqilah does not affirm it, then it will be paid from the killer’s wealth.

The basis of 'aqilah is mutual help and mutual support. Therefore, those among whom there is mutual help and support will be the 'aqilah for a person. Where there is an organized tribal system and each person knows who his tribe is, then it will be his 'aqilah and it will pay his blood money. If there is no tribal system but there is an organized brotherhood, the latter will pay the blood money. If there is no brotherhood, then present day trade unions which have a system of mutual support could serve as a person’s 'aqilah. If this too is not found, the blood money will have to be paid from the killer’s wealth.

Allâh ta’álâ knows best.
When an animal is trampled to death

Question
A person fell from a roof and landed on someone's goat or fowl, causing the latter to die. Will this person be liable to pay compensation?

Answer
The person who fell down will be liable to pay compensation because he was the direct cause. And the principle is that the direct cause is liable even if it was done unintentionally. Similarly, if a person is trampled to death, it is classified as an error. Kaffārah and blood money will have to be paid. The blood money will be paid by the 'āqīlah. In the question under discussion, compensation will have to be paid from the wealth of the direct cause [the person who fell on the animal].

الكفاءة شرح الهدية:

وما أجري مجري الخطا لغير النائم ينقب على رجل فيقتله فحكمه حكم الخطا في الشرع لكنه دون الخطا حقيقة فإنه ليس من أهل القصد أصلا، وإنما وجبت الكفارة لترك التحرز عن نومه في موضع يتوهم أن يصبر قاتلًا، والكفارة في قتل الخطا إلا نجب لترك التحرز أصلاً... والذي سقط من سطح فوقع على إنسان قتله أو كان في يده لبنة أو خشبية فسقط ووقع على إنسان قتله... مثل النائم ينقب على رجل فيقتله لكونه قتلا للعالم من غير قصد فكان جارياً مجري الخطا؛ كذا في الأوضاع. (الكفاءة شرح الهدية على هامش فتح القدر: 14819).

الهدية:

ومن حفر بيرا في طريق المسلمين أو وضع حجرا فتخلف بذلك إنسان فديته على عاقلته، وإن أتلف بهيمة فضمانها في ماله... إن العاقلة تتحمل النفس دون المال فكان ضمان البهيمة في ماله. (الهدية: 23020).
Compensation when a doctor commits an error

Question
A dentist erred in extracting a tooth and his error came into the open. He gave R10 000.00 to the patient to cover up his error. Can the patient accept this amount?

Answer
If a doctor is permitted to practice legally, and he treats a patient but does not adhere to medical precautions, then he will be liable to pay for the damages which he causes to a patient or a life which is lost in the process. This is because he did not fulfil his condition. It was his responsibility to adhere to all medical considerations and fulfil all medical requirements. He erred when he did not adhere to medical ethics. This is why he will be liable to pay compensation.1

1 Qāḍī Mujāhid: Ṣibbī Akhlāqiyyāt, p. 128.
If a qualified doctor erred in his treatment and this caused harm to the patient, the doctor will be liable to pay compensation.\(^1\)

To sum up, it is permissible for the patient to accept the R10 000.00 for the dentist’s error.

Allāh ta’ālā knows best.

**When a person causes damage to an animal over which Bismillāh was not read**

**Question**

A Shāfiʽī person slaughtered an animal without reading Bismillāh and cooked it. A Hanafī got angry and threw the food away, causing it to go to waste. Is he liable to pay compensation?

**Answer**

Most juridical texts say that there is no compensation, but there are certain scholars who say that a compensation has to be paid. The fatwā ought to be issued on the latter view.

\(^1\) Qāḍī Mujāhidul Islām: Ḩājī Ḥāfīz Faysāl, p. 84.
The above statement of Maulānā 'Abd al-Hayy Lucknowī rahimahullāh is supported by another issue, viz. if Bismillāh is left out intentionally, will the promulgation of its permissibility be executed? 'Allāmah Shāmī rahimahullāh is of the view that it will be executed.

I have stated that in the case where the rest of the ḥadīth in the mafrūda is left out, it is permissible. However, it is not permissible if the rest of the ḥadīth is left out intentionally.

The conclusion of the first statement is: if Bismillāh is left out intentionally, the promulgation of its permissibility will be executed.

The conclusion of the second statement is: if Bismillāh is left out intentionally, the promulgation of its permissibility will not be executed.
Allāmah Zafar Ahmad 'Uthmānī rahimahullāh related an incident. A Shāfi‘ī scholar presented the proofs for the permissibility of an animal over which Bismillāh was intentionally left out. He did this before the Sultan in the presence of Hanafī scholars... He then writes:

وظهر أن سكون جملة الأئمة الحنفية في مجلس السلطان لم يكن لقوة تلك الوجوه ومتانتها، بل لأمر آخر. وهذا الكلام كان مع الشافعي وتبين منه أن كلامه في هذه المسألة من جهة الإجتهاد، والمسألة من المسائل التي للإجتهاد فيها مجال كسائر الإجتهادات، وليس من القطعيات التي لا مجال فيها للإجتهاد حتى يجعل كلامه فيها من الأباطيل، والقول بأنه مخالف للإجماع ليس بما ينبغي لأن الشافعي أطرف بالإجماع وأهله، فلا يظن به أنه خرق الإمام. (إعلاء السنن: 1982)

Allāmah Sayyid Ahmad Tahtāwī rahimahullāh writes:

وبحث الأكمل فيه بأنه لما أمرنا أن نترك أهل الالتباس على ما اعتقدهم من الباطل وجب علينا أن نترك أهل الإجتهاد على ما اعتقدهم من فهم صحية بالطريق الأول، ف حينئذ يجب أن نقول بموجب الضمان على من أتلف متروك التنمية عدا لأنه مال متقوم في اعتقاد الشافعي، وتمامه في الجموي. (حاشية الطحطاوي: 114)

Allāh ta‘ālā knows best.

Compensation when an employee is careless

Question

Some petrol-pump attendants are very careless. In their hurry, they fill more petrol than was requested by the driver. Can a compensation be imposed on them for their carelessness?
**Answer**

The employee filled extra petrol out of negligence and carelessness. A compensation can be imposed on him. However, if the petrol pump is such that despite taking all precautions, a little extra petrol flows into the tank, then it is not permissible to impose a compensation on him.

لَو تَلفَ المَستأجر فِيه بِتَعْدي الأَجِير وَتَقصيرهُ، يَضْمِن. وَتَعْدي الأَجِير هُو أن يَعمل عَملاً أو يَتَصرَف تَصرفاً مُخالِفِينً لأَمِرِ الموَجِر صَراحةً كَان أَو دَلَالةً.

(شرح المجلة، ص 326)

وتقصير الأَجِير هُو عدم اعْتِنَائِهِ فِي مَحافظة المُستأجر فِيه بَلا عَذرِ (شرح المجلة، ص 328).

الأَجِير الخاص أمِين حَتَّى أنَّه لا يَضْمِن المَال الَّذِي تَلفَ فِيه بدَه بَغيِر صَنعٍ وَكِذا لا يَضْمِن المَال الَّذِي تَلفَ بَعْلِه بَلا تَعَد أَيضاً (شرح المجلة، ص 329).

Allāh ta’ālā knows best.

**Compensation for breaking an item**

**Question**

A man placed his spectacles on the floor in front of him and started performing ǧalāh. A man from the front walked across and stepped on the expensive spectacles, causing it to break. Will he be liable to pay compensation?

**Answer**

The person was occupied in ǧalāh and the man from the front walked within the place of prostration of the worshipper. He will have to pay compensation because the transgression was committed by him. The Sharī’ah prohibits us from walking within the place of prostration. If the person was not occupied in ǧalāh, and this person steps on his spectacles, there will be no compensation. This is because since he is not in ǧalāh, the other person has the right to walk across him.
When a bird is released from its cage

Question
A man had a bird which was in a cage. Another person opened the door of the cage and the bird flew away. Does the latter have to pay compensation?

Answer
There is a difference of opinion on the issue of compensation in such a case. Imām Muḥammad raḥimullāh is of the view that he will be liable to pay compensation. Imām Abū Ḥanīfah and Imām Abū Yūsuf raḥimahumallāh are of the view that there will be no compensation. The fatwā is issued on the view of Imām Muḥammad raḥimahullāh.

Allāh ta’ālā knows best.
Compensation for dying clothes incorrectly

Question
A person gave a dyer a cloth to dye a certain colour. The dyer dyed it a different colour. Will he be liable to pay compensation?

Answer
The owner has two choices. He can ask the dyer to keep the cloth and the latter must pay him the value of the un-dyed cloth. He can accept the cloth as it is and pay the normal fee for his service. He must not pay more than the agreed price.

When a cloth is spoilt

Question
A dyer dyed a cloth according to the colour which was required, but he spoilt the cloth or the colour did not catch on in the correct manner. Or, a panel-beater was given a car to paint, but the same thing happened (the colour did not catch on as it ought to). Will he be liable to pay compensation? Will he be eligible for payment for his service?

Answer
The owner has two choices. He can ask the dyer to keep the cloth and the latter must pay him the value of the un-dyed cloth. He can accept the cloth as it is and pay the normal fee for his service, but more than
the agreed price will not be paid. In the case of a vehicle, he must pay the normal fee and take his car.

وإذا دفع ثوبا إلى صباغ ليصبغه بعصفر مث معد، فصبغته بما سي إلا أنه خالف في صفته ما تعين به، فإن أشيع أو قطر في الإصباغ حتى تعيث الثوب، فصاحبه بالخيار، إن شاء ترك الثوب عليه وضمه قيمة ثوبه أبيض وإن شاء أخذ الثوب وأعطاه أجر مثل عمله لا يجائز به المسئ. (الفتاوى الهندية: 1416)

Allāh ta’ālá knows best.

When a washer-man loses a garment

Question

A washer-man was given clothes to wash. They got lost or were stolen. Will he be liable to pay compensation?

Answer

There could be three scenarios in this case:

1. The garment was totally damaged due to the action of the washer-man. He will be liable to pay compensation.

2. The garment was not damaged through the action of the washer-man but due to a common calamity. For example, the city caught on fire. He will not be liable to pay any compensation.

3. There was no common calamity, but it got lost. Imām Abū Yusuf and Imām Muḥammad raḥimahullāh are of the view that he will be liable to pay compensation. Imām Abū Hanīfah raḥimahullāh is of the view that compensation is not obligatory. Al-Fatāwā al-Hindiyyah issues the verdict on the view of the first two Imāms.

(قوله لا يضمن الخ) إعلم أن الهلاك إما بعمل الأجير أو لا، والأول إما يتعدي أو لا، والثاني إما أن يحكم الاحتراس عنه أو لا، ففي الأول يضمن اتفاقا، وفي الثاني الثاني لا يضمن اتفاقا، وفي الأول لا يضمن عند الإمام مطلق، ويضمن عندهما مطلق، وأفتي المتأخرون بالصلح على نصف القيمة مطلقًا.)
وقيل أن مصلحا لا يضمن وإن غير مصلح ضمن... وإن مستور الحال فصلح (فتاوى شامي: 156)

وفي الهندية: وفي الإباحة أخذ الفقهاء أبو الليث رحمه الله تعالى في هذه المسألة بقول أبي حنيفة رحمه الله تعالى وبه أفتى، كذا في التارخانية، ويكوهما يفتي اليوم لتغير أحوال الناس، وبه يحصل صيانة أمواتهم، كذا في التبيان. (الفتاوى الهندية: 400)

Allâh ta’âlâ knows best.
WAQF

The definition of waqf and its existence in the time of the Sahābah

Question

What is waqf? Did the Sahābah practise it?

Answer

Waqf refers to removing something from your ownership, giving it over to the ownership of Allāh ta’ālā and reserving it for individuals, institutions, masājid, graveyards or other good works without consideration to rich and poor, with the intention of obtaining Allāh’s pleasure for eternity.

The existence of waqf in the time of the Sahābah

The basis for waqf is the following narration of Hadrat ‘Umar rađiyallāhu ‘anhu in Sahih Bukhārī:

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The basis for waqf is the following narration of Hadrat ‘Umar rađiyallāhu ‘anhu in Sahih Bukhārī:
Hadrat 'Abdullah ibn 'Umar radhiyallahu 'anhu narrates that when Hadrat 'Umar radhiyallahu 'anhu received some land in Khaybar he went to Rasûlullahu alayhi wa sallam to consult with him on what he should do with it. He said: “O Rasûlullahu! I received some land in Khaybar. I never owned such valuable property before this. What should I do with it?” Rasûlullahu alayhi wa sallam said: “You could retain the actual property and give its income in charity.” Hadrat 'Umar radhiyallahu 'anhu then decided to give its income in charity. The property itself will neither be sold, given nor inherited. He bequeathed its income for the poor, relatives, for the freeing of slaves, for those in Allâh’s path, for travellers and guests. He added that the one who is its trustee may eat from it according to the norm and he may feed others. He will not be permitted to accumulate its income.

The waqf of Hadrat 'Umar radhiyallahu 'anhu is accepted as the first waqf in the history of Islam. Subsequently, other Sahâbah radhiyallahu 'anhum began bequeathing properties as waqf and this system continued since that time.

Hadrat Jâbir radhiyallahu 'anhu said that there is no affluent Sahâbi who did not bequeath anything as waqf.

Hadrat Abû Bakr radhiyallahu 'anhu had made his house waqf for his son. Hadrat 'Umar radhiyallahu 'anhu had a house near Marwah. He made it waqf for his sons. Hadrat 'Ali radhiyallahu 'anhu had bequeathed his property in Yanbu’ as waqf. Hadrat Zubayr radhiyallahu 'anhu bequeathed his properties in Makkah and Egypt as waqf. The wealth which he had in Madinah was made waqf for his children. Hadrat Sa’d ibn Waqqas radhiyallahu 'anhu bequeathed a property in Madinah as waqf, and his house in Egypt as waqf for his children. Similarly, it is established that Hadrat 'Uthmân, Hadrat 'Amr ibn al-’Ās, Hadrat Hakîm ibn Hizâm radhiyallahu 'anhum and others had bequeathed their properties as waqf.

Thânâ’ Abu Bakr – Radhiyallahu ‘anh – Reciting a dua that one should say in the morning:

لا تدفنني أبدا بالمعروف ويطعم غير متمول.

(رواه البخاري: ۱۳۸۸، ومسلم: ۱۴۲۵)
طالب رضي الله عنه بأرضه يبيع فيبي إلى اليوم وتصدّق الزريب بن العوام رضي الله عنه بداره بمكة في الحرامية وداره بمصر وأمواله بالمدينة على وله فذلك إلى اليوم وتصدّق سعد بن أبي وقاص رضي الله عنده بداره بالمدينة وبداره بمصر على وله فذلك إلى اليوم، وعثمان بن عفان رضي الله عنه برومة فيبي إلى اليوم وعمرو بن العاص رضي الله عنه بالوطب من الطائف وداره بمكة على وله فذلك إلى اليوم وحكم بن حزام رضي الله عنه بداره بالمدينة على وله فذلك إلى اليوم، - وعن أنس رضي الله عنه أنه وقف داراً بالمدينة فكان إذا حج مر بالمدينة فنزل داره. (السند الكبير للبيهقي: 136/6، كتاب الوقف، دار المعرفة، بيروت).


For further details about the auqâf (pl. of waqåf) of Rasûlullâh salallâhu 'alayhi wa sallam and the Sahâbah radîyallâhu 'anhum, refer to:
To sum up, it is desirable to make waqf and there is – more-or-less – consensus of the Sahabah radiyallahu ‘anhum in this regard; as stated by Ibn Qudama Hambali rahimullah (refer to al-Mughni, vol. 6, p. 187, Kitab al-Wuqaf wa al-‘A‘ayah, Dar al-Kutub al-‘Ilmyyah)

A Hadith from Sahih Muslim also proves the validity of waqf:

"When a person passes away, his actions are cut off except from three avenues: (1) a continuous charity, (2) knowledge from which benefit is derived, (3) a righteous child who prays for him."

Rasulullah sallallahu ‘alayhi wa sallam said: "When a person passes away, his actions are cut off except from three avenues: (1) a continuous charity, (2) knowledge from which benefit is derived, (3) a righteous child who prays for him."

The above Hadith sheds light on the importance of waqf.

Allah ta’ala knows best.

**Words for the validity of waqf**

**Question**

What are the words for waqf? In other words, which words make a waqf valid and applicable?

**Answer**

Once an endower uses words which demonstrate an immediate waqf, the waqf becomes valid and applicable. If they do not reveal an immediate waqf, the waqf will neither be valid nor applicable.

Observe the following words/statements of waqf:

Words which reveal eternity. For example, the rental income of this house will always be spent on the poor. According to Imam Abû Yusuf rahimahullâhî, if a person merely says, “I am making this item waqf for such and such purpose” and he does not utter a word which conveys eternity, then it will be valid on the basis of societal norms. 'Allâmah
Shāmī rahimahullāh states that the scholars of Balkh, Sadr ash-Sharī‘ah and others used to issue the verdict on the view of Imām Abū Yūsuf rahimahullāh on the basis of societal norms.

It is not necessary to mention the word “waqf” specifically. Any other similar word which conveys the meaning of waqf will suffice. For example, gadaqah.

قال العلامة الحصيني في الدر المختار: وركن الألفاظ الخاصة كأرضي بذه صدقه مؤبدة على المساكين و نحو من الألفاظ كموقفة لله تعالى أو على وجه الخير أو الأذى وأكثرك أبو يوسف بلغت موقفة فقط، قال الشهيد: ونحن نفتح للعرف. وقال العلامة الشامى: قولك وأكثرك أبو يوسف بلغت موقفة، أي بدون ذكر تأبيد أو ما بدل عليه كلفت صدقه، أو نقف المساكين و نحو كالمسجد، وإذا لما لم يصح وفقًا على معين كردي أو أولاد فلان، فإن لا يصح بلغت موقفة لمنافاة التعين للتأبيد، ولذا فرق بين موقفة وبين موقفة على زيد حيث أجذر الأول دون الثاني، نعم تعين المسجد لا يضر لأنه مؤيد.

قال في البحر: لا يصح أي موقفة فقط إلا عند أبي يوسف فإن جعلها بسجدة بهذا اللغة موقفة على الفقراء وإذا كان مفيداً لخصوص المصرع أعني الفقراء لزم كون مؤبدة لأن جهة الفقراء لا تنقطع. قال الصدر الشهيد: ومشتغل بلغ يفتن أن أبي يوسف ونحن نفتح للعرف أيضاً ملكان العرف لأن العرف إذا كان يصرف إلى الفقراء كان التنصيص عليهم. (الدر المختار مع رد المختار: 40/4)

كتاب الوقف، سعيد

الفتاوى الهندية

فازما ركز الفآلاظ الخاصة الدالة عليها... وقال جعلت أرضي هذه صدقة موقفة مؤبدة أو أوصيت بها بعد موتي فإذا صح حتى لا يملك بيعه ولا بورث عنه، لمكن ينظر إن خرج من الثلاث يجوز (وان لم يخرج من الثلاث
Allāh ta’ālā knows best.

**Question**

A man said: “After I pass away, my house is waqf for my children and then for my grandchildren.” He did not mention anyone else after that. Is this house classified as waqf?

**Answer**

The waqf is incorrect and not applicable. For a waqf to be valid, it is necessary for the poor and needy to be the final recipients. This is so that the direction in which it goes is not cut off. It is essential for a waqf to have the element of eternity. Without it, waqf will not be correct. Yes, if the endower mentioned the word “sadaqah”, then the waqf will be valid according to Imām Abū Yūsuf raḥimullāh.
To sum up, if, in the case where the endowment is specified, the word “sadaqah” is used, then the waqf will be valid. After the last specified person, the waqf will be for the poor. But if the person only uttered the word “waqf” when specifying it, and did not utter the word “sadaqah”, the waqf will not be valid. This is because eternity is a prerequisite for waqf, while specifying the recipient/s negates this. However, the word “sadaqah” establishes eternity and the waqf becomes valid. In the present case, it seems that the word “waqf” was uttered while “sadaqah” was not mentioned. Therefore, the house has not been made waqf.

Allāh ta‘ālā knows best.

Waqf of children and grandchildren

Question

A person specified his house as waqf on “children, grandchildren, and so on”. I have two questions in this regard:

1. Does this include his daughters and the children of his daughters?
2. Is it correct to add the condition “and so on”?

Answer

When a person makes waqf in favour of children and grandchildren, his daughters and son’s daughters are unanimously included. However, there is difference of opinion about the inclusion and non-inclusion of daughters’ children. Qāḍī Khān, Imām Khassāf, Shams al-A‘immah, Sarakhsī rahimahullāh and others give preference to the view of inclusion. ‘Allāmah Shāmī rahimahullāh and others prefer the view of non-inclusion. The fatwā is issued on the latter view. It is
possible that this difference of opinion is based on societal norms, just as these are considered in bequests.

**فتاوى الشايب:**

اعلم أنهم ذكروا أن ظاهر الرواية المفقود بعهد الدخول أولاد البنات في الأولاد مطلقًا، أي سواء قال علي أولادي بلغه الجمع أو بلغه اسم الجنس كولدي، سواء اقتصر على البطن الأول كما مثلنا أو ذكر البطن الثاني مضافًا إلى البطن الأول المضاف إلى ضمير الواقف كأولادي وأولاد أولادي... (فتاوى الشايب: ٤/٣٢٣، مطلب في تحرير الكلام على دخول أولاد البنات، سعيد)

**تفتيح الفتاوى الحامدية:**

وقد كنت عزمت على أن أضع فيها رسالة لما وقع فيها من الاضطراب، فاستغنتي عن ذلك بما حرره بنا فأقول قد ذكر بذ هذه المسألة الإمام الطرطصي في أنفع الوسائل ثم قال بعد ما أطل في النقول ما حاصل أن في دخول أولاد البنات في لفظ الأولاد وأولاد الأولاد اختلاف الرواية ففي رواية الخصاف وبلا أدخلون وفي ظاهر الرواية لا يدخلون وعليه الفتوى. (تفتيح الفتاوى الحامدية: ١٧٥/١)

**الفتاوى السراجية:**

رجل وقف ضبعته على أولاده وأولاد أولاده أبداً ما تناسلوا ولم أولاد وأولاد أولاد قسم بينهم بالسمنية لا يفضل الذكور على الإناث ولا يدخل أولاد البنات في ظاهر الرواية وعليه الفتوى. (الفتاوى السراجية: ٣٠، مير محمد كتب خان)

المحيط البرياني:

وبلد يدخل فيه ولد البنات؟ ذكر بلال أن لا يدخل ويبكى ذكر محمد في السير الكبير. (المحيط البرياني: ٨٦/٧، رشيده)
A waqf can be made in favour of one’s family and relatives provided the last recipient is eternal, for the sake of rewards (e.g. the poor and needy, madāris).

To sum up, it is correct to specify waqf in favour of one’s children and grandchildren, but the final recipient has to be for a worthy cause. For example, if the third generation comes to an end, the benefits will go over to the poor, needy, or madāris.

Allāh ta’ālā knows best.

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1 Majmū’āh Qawānīn Islāmī: 357, register 17, Qānūn-e-Waqf.
Differentiating between male and female

Question
A person allotted a large property as waqf for his children. As long as his children and their children are alive, they will benefit from the property. After them, it is waqf for a certain madrasah. Will the income from this property be given equally to the males and females, or will there be a difference in the shares for males and females?

Answer
Since the endower did not make an explicit statement in this regard, the males and females will receive equally. In other words, they will receive 50% each.

Waqf in favour of one's wife

Question
A person allocated his house as waqf in favour of his wife. After she dies, will her heirs receive it or will someone else?

Answer
One of the prerequisites for a waqf to be valid is that the final recipient has to be eternal. In other words, it has to be in the name of the poor, needy, masājid, madāris, etc. In the case where a person endows a house to his wife and includes the poor and needy, then the waqf will be valid. Once his wife passes away, the income from the house will be distributed among the poor and needy.

Qādī Mujāhidul Islām Qāsimī Şāhib raḥimahullāh writes:
A waqf can be made in favour of one's family and relatives provided the last recipient is eternal, for the sake of rewards (e.g. the poor and needy, madāris).

1 Majmū‘ah Qawānīn Islāmī: 357, register 17, Qānūn-e-Waqf.
Waqf of dinârs and dirhams

Question

Is it correct to make waqf of dinârs and dirhams? What is the preferred verdict?

Answer

Imâm Abû Yûsuf râhîmahullâh is of the view that waqf of dinârs and dirhams is not valid. This is because they are items which are not movable. He is of the view that waqf of non-movable items is not valid. Imâm Muḥammad and Imâm Zufar râhîmahumallâh are of the view that it is permissible to make waqf of items which are made waqf on the basis of societal norms. The waqf of dinârs and dirhams is well-known, so it is permissible to do so. The fatwâ is issued on the latter view.

الدر المختار:

وكما صح وقف كل منقول قصدًا في تعامل للناس كفأس وقودوم بل ودرايم ودنايم. وفي الشامية: قول: بل ودرايم ودنايم عزاء في الخلاصة إلى الأنصاري وكان من أصحاب زفر وعزاء في الحائزة إلى زفر حيث قال: وعن زفر شربيلائية وقى المصنف في المنح: ولما جرى التعامل في زماننا في البلاد الرومية وغيرها في وقف الدرايم والدنايم دخلت تحت قول محمد المفتي به في وقف كل منقول فيه تعامل كما لا يزلي فلا يحتاج إلى هذا إلى تخصيص القول بجواز وقفها بمذهب الإمام زفر من رويا الأنصاري...وبهذا ظهر صحة ما ذكره المصنف من إلحاقها بالمنقول المتعارف على قول محمد المفتي به وانما
Waqf of cash money will be permissible in countries where waqf of cash money is the norm. It will not be permissible where this is not the norm. Nowadays, waqf of dinârs and dirhams has become common in most countries.

Allâh ta’âlâ knows best.

**The recipients of waqf dinârs and dirhams**

**Question**

If dinârs, dirhams or rands are allocated as waqf, how should they be spent? In other words, who are their recipients?

**Answer**

The capital amount of the dinârs, dirhams or rands should be preserved, while their profits will be spent in good charitable works. For example, the money can be invested as *muðârabah*. The original amount will be preserved while the profits will be spent in charity.

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Waqf of dinārs and dirhams is valid. However, because waqf entails benefit from the profits while the original item remains preserved, the prerequisite for waqf of dinārs and dirhams will be that the original amount be preserved – it must not be spent. Their profits will be given in charity. Alternatively, an item may be purchased with the money, and its benefits will be enjoyed by the poor.1

Allāh ta’ālā knows best.

**When an heir rejects a waqf**

**Question**

A man owned a large business. He passed away and left behind two sons. One of them says that their father had said: “This business is waqf. I will enjoy its profits for as long as I am alive.” The other son rejects this claim. What is the ruling of the Sharī‘ah?

**Answer**

The waqf of the business is valid, but the one who rejects it will have to take an oath. If he takes an oath and says that he has no knowledge about it being waqf, then the waqf will not apply to his share of the business. He will be given his share. The share of the other brother will be accepted as waqf because his acknowledgement is not a proof against the one who rejects the waqf.

1 *Aḥsan al-Fatāwā*, vol. 6, p. 416.
We learn from the above text that an oath will be taken from the one who rejects. He will take an oath that he has no knowledge about his father making the business waqf. Once he takes the oath, he may take his share while the share of the other brother will be waqf.

الفتاوى الهندية:

ولو أن رجلاً بينهما أرض فوقف أحدهما نصيب جاز في قول أبي يوسف:
(الفتاوى الهندية: 2/373، فصل في وقف المشاع)

الفتاوى التأترخانية:

وفي الذكرة: ذكر الحصاف في وقفة تفرغعاً على قول أبي يوسف فقال: إذا كانت الأرض بين رجلين، وقف أحدهما نصيب منها، وبو النصف، لَ أن يقسم شريك، ففرز حصة الوقف، لأن ولاية الوقف إليه. (الفتاوى التأترخانية: كتاب الوقف، 5/299، إدارة القرآن)

Allāh ta’ālā knows best.

**Benefiting from a waqf for as long as one is living**

**Question**

Husband and wife want to make a waqf. Can they lay down this condition: Both of us will continue benefiting from this property for as long as we are living. After we pass away, the entire property will be waqf.

**Answer**

The precondition of benefiting from a waqf for as long as one is living is valid. In this case, husband and wife can continue benefiting from their property for as long as they are living. Once they die, their property will become waqf.
الفتوى الهندية:

في النذيرة: إذا وقف أربعاً أو شيئاً آخر وشرط الكل لنفسه أو شرط البعض لنفسه ما دام حياً. وبعدة للفقراء، قال أبو يوسف الوقف صحح ومشابه بلغ أخذوا يقول أبو يوسف وعلى الفتوى ترغيباً للناس في الوقف. ويلكذ في الصغرى والنصاب كذا في المضارمات. (الفتوى الهندية: 397/3، الباب الرابع فيما يتعلق بالشروط في الوقف)

وأيضاً فيه: ولو قال صدقة موقفة لله تعالى تجري غلطها علي ما عشت ولم يرد على ذلك. جاز وإذا مات تحسون للفقراء. (الفتوى الهندية: 398/2، الباب الرابع فيما يتعلق بالشروط في الوقف)

فتوى الشأي:

قوله (وجاز جعل غلة الوقف لنفسه) أي كلها أو بعضها عند الثاني (أي عند أبي يوسف) قوله. وعلى الفتوى كذا قال الصدر الشيخ وبو مختار أصحاب المتون ورجم في الفتح، واختار مشابه بلغ وفي البحر عن الحاري أن الأخبار للفتوى ترغيباً للناس في الوقف وتحصيراً للخير. (فتوى الشأي: 384/4، مطلب في إشراط الزلة، سعيد).

*Majmū‘ah Qawānīn Islāmī:

It is valid for an endower to lay down the precondition of complete or partial benefit from an endowment for as long as he is living.1


Allāh ta‘ālā knows best.

1 Majmū‘ah Qawānīn Islāmī, p. 355.
Waqf of movable items

Question

A person is running a school. Is it valid to make items of the school – e.g. machines, computers, books, etc. – waqf? In other words, is the waqf of movable items permissible?

Answer

It is correct and permissible to classify items of a school as waqf. The waqf of movable items which are generally made waqf is correct.
From movable items, only those items which are normally made waqf can be classified as waqf. For example, copies of the Qur’an for masjids, madaris and libraries. Books, water-pitchers, prayer-mats, clocks, electric fans, etc. can also be made waqf for these places.\(^1\)

Allāh ta’ālā knows best.

**Demolishing and rebuilding a waqf building**

**Question**

A man made a property waqf which had a building on it. Is it permissible to demolish the building and construct another building without the endower’s permission?

**Answer**

Since the man handed over the property to a trustee, and the latter makes changes to it as he deems fit or constructs a new building, it will be permissible to do so. When the old building is demolished, its bricks and other usable items will be used in the construction of the new building. The continuous charity will remain intact.

Furthermore, the demolition of the building does not terminate the continuous charity just as wiping wuḍū’ water off one’s body does not terminate the reward of wuḍū’. When the masjid which was constructed by Rasūlullāh sallallāhu ‘alayhi wa sallam was rebuilt by Hadrat ‘Uthmān radīallāhu ‘anhu, no one objected by saying that the rewards of those who built it will cease. Rather, that reward was recorded in their favour. When dust falls on a person’s body who is in the path of Allāh ta’ālā, the Hell-fire will not touch it.

\(^1\) Majmū’ah Qawānīn Islāmī, p. 348.
This does not mean that he must not wash his body. The reward is recorded in his book of deeds even if traces of the dust do not remain on the body.

Allāh ta’ālā knows best.

**Waqf when one is on one’s death-bed**

**Question**

A person was critically ill when he made his property waqf for a madrasah. Is this waqf valid?

**Answer**

Waqf when one is on his death-bed is valid but it is on the level of a waqīyyah – bequest. This means that after he dies, the waqf will apply from one third of his estate. Yes, if all the heirs agree to the waqf, it will be valid. In this case, if the property falls within one third of the estate, well and good. If not, the extent which makes up one third will be classified as waqf. If the heirs make the entire property waqf by their permission, the waqf of the entire property will be valid.
Majmū‘ah Qawānīn Islām:

An endower cannot cancel a waqf which he had made while on his death-bed. If the waqf item is more than one third of his entire estate, the waqf will not apply to the amount which is above one third.¹


Allāh ta‘ālā knows best.

Renting a waqf property for a long period

Question

Is it permissible to give a waqf property on rent for 100 or 200 years?

Answer

There are differing views on the rental period for waqf properties. The early jurists did not specify a rental period. The latter day jurists preferred the view of specifying a rental period to protect the waqf property. For example, a land or property should not be given on rent for more than three years. It is not permissible to give a place of residence on rent for more than one year. Yes, there is room to increase or decrease the rental period depending on what is most suitable. But in the present case - of giving a waqf property on rent for 100 or 200 years - this is not permissible. This is because there is the possibility of the waqf being destroyed. It is possible that over the passage of time, the children of the tenant may seize ownership of the property and it will then be given over as inheritance from one generation to the next.

¹ Majmū‘ah Qawānīn Islām, p. 356.
Allāh ta‘ālā knows best.

**Selling waqf property**

**Question**

a) A waqf property was lying vacant and unused. Is it permissible to sell it? The endower hadn’t laid down any condition of sale.

b) In what situations and conditions will it be permissible to sell it?

**Answer**

a) If the endower did not lay down any condition at the time of endowing the property, it will not be permissible to sell the waqf property.

b) It is permissible to sell a waqf property only in the following two situations:

1. At the time of endowing the property, he laid down the condition of right of sale of the property in favour of himself or someone else.

2. When the waqf property becomes totally useless – when no benefit whatsoever can be derived from it.

** صحيح البخاري:**

عن ابن عمر رضي الله عنه أن عمر بن الخطاب رضي الله عنه أصاب أرضًا جزير فأتقى النبي صلى الله عليه وسلم استأمره فيها، فقال: يا رسول الله إن أصبت أرضًا جزير لم أصب مالاً فقط أنفس عندي منه، فما تأمرني بي؟ قال: إن شئت حبست أصلها وتصدقت بها، قال: فتصدقي بها عمر رضي الله عنه أنه لا تباع، ولا تورث، ولا تصدق بها في الفقراء وفي القرباء وفي الرقاب وفي سبيل الله وابن السبيل والضيف، لا جناح على من ولبها أن يأكل منها بالمعروف ويطعم غير ممول. (رواية البخاري: 3/102، ومسلم: 31/45)
الدر المختار:

قدًا تم ولزم لا يملك ولا يعار ولا يبين - وفي الشامية: قوله لا يملك أُي لا يمكن مملوكةً لصاحب ولا يملك أي لا يقبل التمليك لغيره بالبيع ونحوه واستحالة تمليك الخارج عن ملكه. (الدر المختار مع رد المختار: ۶۲۵/۴، سعيد)

الفتاوى الهندية:

وعندما حبس العين على حكم ملك الله تعالى على وجه تعود منفعته إلى العباد فيلزم ولا يياع ولا ييوب ولا يورث كذا في البداية. (الفتاوى الهندية: ۳۰۵/۲)

Majmū‘ah Qawānin Islāmī:

The following is not permissible with regard to a waqf item: to sell it, to mortgage it, to take something on mortgage in exchange for it, to loan it. Because the waqf item leaves the ownership of the endower and its ownership is not established in favour of someone else, no one has the right to exercise ownership influences over it. For example, buying, selling, gifting, loaning, mortgaging, etc. are fundamentally not permissible. If anyone does this, it will be an invalid transaction.۱

وجاز شرط الاستبدال به أرضاً أخرى حينئذ أو شرط بعيم ويشرتي بشنه أرضاً أخرى إذا شاء فإذا فعل صارت الثانية كالأول في شرائطها وإن لم يذكرها ثم لا يستبدلاً بذلك لأنه حكم ثبت بالشرط والشرط وجد في الأول لا الثاني وأما الاستبدال ولو للمستعدين آل بدون الشرط فلا يملك إلا القاضي درر وشرط في البحر خروج عن الاتفاق بالكلية وكون البديل عقاراً والمستبدل قاضى اللجنة المفسر بذى العلم والعمل... وفي الشامية: قوله وجاز شرط الاستبدال به اعلم أن الاستبدال على ثلاثة ووجه: الأول: أن يشرط...

۱ Majmū‘ah Qawānin Islāmī, p. 350.
If the place becomes totally worthless and no income can be derived from it, and there is also no way of renovating and constructing it, it will be permissible to replace it. It could be sold, another place could be purchased, and it may be used as waqf as per the conditions of the endower.¹

*Majmū‘ah Qawānīn Islāmī:*

If a property was made waqf for the direct benefit of certain people and it has become unusable now, they may obtain the permission of an Allāh-fearing qādī to exchange it for another property or sell it for cash and use the money to buy another property. The new property will be classified as waqf in place of the previous one.

If the endower laid down the condition that only the income of the waqf property is in favour of certain people but the property has become useless, it may be exchanged for another property which is less costly but more profitable. Alternatively, it could be sold for cash and the money must be used to purchase another property in its place.

¹ *Fatāwā Muḥāmidyyah*, vol. 14, p. 292.
The new property will be classified as waqf in place of the previous one.\(^1\)

Allāh ta’ālā knows best.

Making up for selling a waqf property

**Question**

A person sold a waqf property. It is not possible for him to take it back due to legal implications. How can he make up for this? For example, he sold it to a non-Muslim and non-Muslims do not observe the rules and regulations of waqf.

**Answer**

When a property is classified as waqf, it will remain like that forever. It is not permissible for anyone to sell it. If someone sold it, the transaction is not valid. The property will remain waqf as it was. If it not possible to retrieve it because of legal implications, another property will have to be bought with the money obtained and the second property will remain waqf as per the conditions laid down by the endower. This is similar to the jurists’ ruling that if a property becomes unusable, it may be sold, another will be purchased in its place, and it will remain waqf as per the previous conditions.

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1 *Majmū‘ah Qawānīn Islāmī, p. 352.*
Constructing a building on waqf land

Question

A piece of land is waqf in favour of a masjid but there are no buildings or anything else on it. Therefore, it is neither bringing any income nor any benefit. In fact, it is incurring expenses such as tax. The masjid does not have the means to construct anything on the property. The trustees are quite perplexed. A person said to them: “I would like to construct a shop at my expense, but it will not be as waqf; it will remain in my ownership. I will pay a reasonable rent together with a certain portion from my profits to the masjid. Is it permissible to construct the shop under these conditions? Can a personal ownership be established on waqf land?

Answer

When a waqf land is lying useless, then to construct something on it and render it beneficial is not only permissible but preferable. If the masjid does not have the means to make it usable, the masjid trustees can permit a person to construct a building on the land. The building
will belong to him for as long as he does not make it waqf. A monthly rental will be collected from him. The additional amount which he wants to give from his profits, he may do so if he wants. This entire transaction will have to be put in writing with signatures from both parties. The documents will have to be filed and preserved by the masjid so that as time goes, the heirs do not make claims to ownership. Because this will entail losing the waqf property.

 وإذا بني الواقف بناء في أرض الوقف، أو غرس فيها أشجاراً، فإن كان البناء والغرس من مال الوقف، أو كان من مال الواقف، وذكر أنه بناء أو غرس للوقف، فإنه يسكن وقفاً، وإن كان من مال، ولم يذكر أنه للوقف يسكنون مانينة أو غرس ملكاً له. (قانون العدل والانصاف، ص ٢٤٢، مادة: ٤٥، البناء والغرس في أرض الوقف)  

Majmū‘ah Qawānīn Islāmī:

To avoid claims to ownership or unlawful seizure, a tenant should not be allowed to construct his own building on it. However, if the trustee permitted him to construct his own house or he constructed himself, and the rental period has ended, then even if he is prepared to pay the market-rate rental and there is an overriding feeling that he will not take unlawful possession of it, it is not incumbent on the trustee to maintain him as a tenant...If there is no danger of causing harm to the waqf property, he may be compelled to construct a building on it. If there is the danger of his causing harm to it, he must not permit him to construct a house...As long as none of these options are available, the waqf property with the building should be given to someone else on rent until the building becomes dilapidated and broken down, and its rubble is returned to the owner. During this period, the rental income will be shared between the owner of the building and the waqf according to their respective shares.¹

¹ Majmū‘ah Qawānīn Islāmī, pp. 366-368, register 40.
The recipients of waqf income

Question
A man in our town gave a house as waqf for an Islamic school. The income from the house used to be spent by the school. The house has been under the control of the administrators for the past four years. Who are now the recipients of the income? Where should the income be spent?

Answer
The income from the waqf will be spent as per the conditions laid down by the endower. Yes, the trustee can make certain changes to the arrangements and recipients of the waqf in a manner which does not cause a loss to the objectives of the waqf. If the endower did not lay down any condition, the income from the house will first be spent on the maintenance of the house. After that, it will be spent on the most important expenses. After that, it may given to those who are eligible to receive from the school, e.g. salaries for the school teachers and other staff members. In short, the income has to be spent according to need and what is most prudent.

ويبداً من غله بعمارته ثم ما بو أقرب لعمارته كمسيجد ومدرس مدرسة يعطون بقدر كفایتهم ثم السراج والبساط كذلك الى آخر المصالح
The conditions laid down by an endower have the status of an explicit text. This is why benefiting from the waqf and making arrangements for it will have to be in line with the conditions laid down by the endower. Nonetheless, a qāḍī could make changes to the arrangements and recipients of the waqf in a manner which does not negate the objectives of the waqf. Income from properties bought from waqf income will be spent on the recipients of the waqf. Properties which...
were bought from waqf income could be sold while bearing in mind the interests of the waqf.\(^1\)

Allāh ta‘ālā knows best.

**Changing the conditions laid down by the endower**

**Question**

A woman wrote a waqf deed in which she laid down certain conditions. For example, I will remain in this house for as long as I live. It will be waqf for Allāh ta‘ālā after I die. Four people will benefit from it. When they die, it will be waqf for the masjid. After writing the deed, she wants to make certain changes to it. For example, instead of four people, she wants to write it in favour of just one person. Does she have the right to make such a change? This, bearing in mind that the waqf deed does not contain any condition of making changes.

**Answer**

If an endower wrote a waqf deed and did not record any right to make changes to it in favour of herself, she will not be permitted to make changes to it later on. In this case also, she does not have the right to make changes and alterations.

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\(^1\) *Majmū‘ah Qawānīn Islāmī*, p. 354, register 11 and 13.
Allāh ta’ālā knows best.

Trusteeship of a person who receives a salary

Question

An Islamic school appointed an ʿālim as its chairman. People are objecting to this by saying that he will receive a salary from the school, whereas a chairman ought to be someone who does not receive a salary. Does the Sharī'ah permit a paid employee to become a chairman?

Answer

It is better to appoint a person who is an expert in the Islamic sciences for the running and administration of an Islamic school. This, so that he instils an Islamic spirit in the school and lays down a system of education which is in line with the Sharī'ah. This ʿālim must then be given a salary for his livelihood so that he may have a free rein to focus his efforts towards improving the administration and running of the school. Bear in mind that there is no conflict of interest in appointing a person as a chairman and paying him a salary. The Khulafā’ Rāshīdūn used to take a salary from the Islamic Treasury despite being the rulers of the Islamic state.

‘Allāmah Suyūṭī rahimahullāh writes in Ṭārīkh al-Khulafā’ that when Abū Bakr raḍīyallāhu ’anhu was appointed as the caliph, he proceeded to the market the next morning with a bundle of clothes. ʿUmar
radiyallâhu 'anhu asked him: “Where are you going?” He replied: “I have been appointed as a caliph of the Muslims but I still have to make arrangements for feeding my wife and children.” 'Umar radiyallâhu 'anhu said: “Come, let’s go to Abû ‘Ubaydah; he will specify a stipend or salary for you.” The two went to him. He said: “I am laying down a stipend which is equal to what is given for the expenses of one Emigrant. You will also receive clothes for winter and summer.”

The text of Târikh al-Khulâf’ reads as follows:


He then writes that an annual salary of 2,000 was laid down for him. Abû Bakr radiyallâhu ‘anhu said: “Bearing in mind that I have a wife and children, this amount is less.” Five hundred was added to that amount.

وأخرج ابن سعد عن ميمون قال لما استخلف أبو بكر رضي الله عنه جعلوا لألوفين قال: زيدوني فإن لي عبلاً وقد شغلتمني عن التجارة فزاده خمس مائة. (تاريخ الخلفاء: 78)

مشكوة شريف:

وعن عائشة رضي الله عنها قال: لما استخلف أبو بكر رضي الله عنه قال: لقد علم قومي أن حرفتي لم تكن تعجز عن مؤونة أبي وشغلت بأمر المسلمين فسياكل أبي بكر رضي الله عنه من هذا المال يحرف للمسلمين فيه. (رواه البخاري) وعنه عمر رضي الله عنه قال: علبت على عبيد رسول الله صلى الله عليه وسلم فعملن. رواه أبو داود وقال التوريبيشن تأي أعطاني...
Responsibilities of a trustee of waqf property

Question
What are the prerequisites and responsibilities of a person who has been entrusted with a waqf property?

Answer
Observe the following prerequisites, responsibilities and attributes of a trustee of waqf property:

1. He must be in his senses. He must have reached the age of puberty. He must be a person of trustworthiness and integrity. It is not permissible to appoint a treacherous person as a trustee.

2. He must personally carry out the responsibilities of the waqf and see to its preservation. Alternatively, he may appoint someone to act on his behalf.

3. He must strive to protect the waqf and fulfil its objectives.

4. He must fulfil all matters in line with the conditions laid down by the endower or as done by previous trustees.

5. He must give the properties on rent and spend the monthly income in the correct manner.

6. As regards endowments which are for certain public benefits, e.g. lodges for travellers, graveyards, water-sources [such as wells and bore-holes], libraries, welfare organizations, etc. – he must stop unlawful usage of them and give permission for their lawful usage.

7. He must adopt means and measures which would protect the endowments from falling into disrepair.

Allāh ta’ālā knows best.
8. He must engage in transactions from the income as per need.
9. After collecting the income, he must spend it on the recipients.
10. Apart from specific conditions and situations, he is not permitted to sell the waqf properties or to exchange them for immovable property.
11. Waqf lands may be rented for a maximum of three years, and residential properties may be rented for a maximum of one year. Renting them for more than this could pose a danger to the preservation of the waqf property. This could be changed if the situation demands it.
12. It is not permissible to mortgage a waqf property for the sake of obtaining a loan.
13. A trustee may not take a loan unless it is for the benefit of the waqf property. If he takes a loan where there is no real benefit for the waqf property, he will be personally liable for the loan.
14. It is the duty of a trustee to hire out waqf items at the market rate. If he decreases the rent considerably from the market rate, the tenant will still be liable to pay the market rate.

التدبر المختار:

وينزع وجوباً لو الواقف (فغيره بالأولى) غير مأمون أو عاجزاً أو ظهراً به فسق كشبرم خمر وثنو فتح، أو كان يصرف ماله في الكيميا، نهر، وفي الشامية: قوله غير مأمون قال في الإسعاف: ولا يولي إلا أمين قادر بنفسه أو بنائه لأن الولاية مقيدة بشرط النظر وليس من النظر تولية الخانق لأن يخل بالمفسد، وكذا تولية العاجز لأن المقصود لا يحصل به، ويستوى فيه الذكر والأثني وكذا الأعى والصبر وكذا المحدود في قدف إذا تاب لأنه أمين، وقاوا: من طلب التولية على الواقف لا يعني له وبو كم طلب القضاء لا يقل، والظاهر: أنبا شرائط الأولية لا شرائط الصحة، وإن الناظر إذا فسق استحق العزل ولا ينعزل كالفاقض إذا فسق لا ينعزل على الصحيح المفقه به، ويشترط لصحته بلغة وعقله لا حريته وإسلامها لما في الإسعاف لو أوصى إلى الصبي تبطل في
القياس مطلقاً وفق الاستحسان بي باطلة ما دام صغيراً، فإذا كبر تكعون
الولاية له. ولو كان عبداً يجوز قياسه واستحسانه لأبيته. في ذات بديل أن
تصرف المؤقوف لحق المولى ينفذ عليه يعد العنق لزوال المانع بخلاف الصبي.
(الدر المختار مع رد المختار: 4/280، مطلوب في شروط الموت، سعيد)
(وكذا في قانون العدل والانصاف، ص 97، الفصل الأول في ولاية الوقف،
بيروت).

فتاوى الشام:
شروط الواقف معترضة إذا لم تخلاف الشرع. (فتاوى الشام: 4/236، مطلوب
شروط الواقف)

الفتاوى الهندية:
إذا وقف داره على الفقراء فالقيم يُؤجراً ويبدأ من غلتها بعمارتها وليس
للقيم أن يسكن فيها أحداً بغير أجر كذا في التأثيرات. (الفتاوى الهندية:
1/168)

وفي الدر المختار: يراعى شرط الواقف في إجازته. فلو أرسل الواقف مدتها قبل
تطلق وقيل تقيد بسنة مطلقاً وبيها أي بالسنة يبقى في الدار ويثلاث سنين في
الأرض إلا إذا كانت المصلحة بخلاف ذلك وهذا مما يختلف زمناً وموضوعاً.
وفي فتاوى الشامية: قول وقيل تقيد بسنة لأن المدة إذا طالت تؤدي إلى إبطال
الوقف، فإن من رآه ينصرف بها تصرف الملاك على طول الزمان يظن مالك
إسعاف. (قول: وبثلاث سنين في الأرض) أين إذا كان لا يتمسكن المستأجر من
الزراعة فيها إلا في الثلاث كما قلبه المصيف تبعاً للدرر حيث قال: إن
الأرض إن كانت مما تزرع في كل سنتين مرة، أو في كل ثلاث كان ل أن يُؤجرها
مدة يتمسكن فيها من الزراعة، ومثله في الإسعاف، وكذا في الحانية لمكن

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ذكر فيها بعد ذلك قوله وعن الإمام أبي حفص البخاري أنه كان يجيز إجراء الصباع ثلاث سنين، فإن آخر أكثر اختلافوا فيه وأكثر مشابه بلغ لا يجوز... وظاهره جواز الثلاث بلا تفصيل تأمل. وأن اختيار الفقيه جواز الأكبر. واعلم أن المسألة فيها ثمانية أقوال ذكرها العلامة فناني زاده في رسالته أجددا: قول المتقدمين عدم تقدير الإجارة بدأ ورجح في أثني الوسائل، والمتفق بهما ذكره المصنف خوفاً من ضياع الوقف كما علمت. (الدر المختار مع رد المحترف: ۳۰۳۰، كتاب الوقف)

فتح الفندر:
ليس على الناظر أن يفعل إلا ما يفعله أمثال من الأمر والهيبيا لمصلح...
والأخذ والإعطاء. (فتح الفندر: ۶/۴۴۰، دار الفكر)

الفتاوى الهندية:
وإن كان في الأرض الموقوفة نخل وحاف القيم بلا كبا كان للقيم أن يشترى من غلة الوقف فصيلاً فيغرس كيلا ينقطع كذا في فتاوى قاضي خان. (الفتاوى الهندية: ۳۱۴/۴۳)
**MASĀJID**

**Personal ownership of the masjid and personal law**

**Question**

Do masājid and madāris have the capability of becoming owners? In other words, if a person gives carpets to a masjid (for example) but does not make them waqf. Or a person sends books to a madrasah without making them waqf. Will these items be waqf or will they fall under the personal ownership of the masjid or madrasah? Similarly, if someone gives qurbān skins to a masjid or madrasah, will they become the owners of these skins? Can the monies obtained from qurbān skins be used to pay the salaries of the madrasah teachers?

**Answer**

Masājid and madāris can become personal owners. If a person gives an item to a masjid or madrasah without making it waqf, the masjid or madrasah will become its owner. The trustee will have acquired the right to utilize it. In the same way, if a person gives qurbān skins to a masjid or madrasah, it will become its owner. It can sell the skins and use the money to pay the salaries of the teachers.

The jurists refer to this as *qānūn shakhi* (personal law). A clear example and parallel to it is the system of the Bayt al-Māl (the Islamic Treasury). The Islamic Treasury does not have waqf wealth. Rather, its wealth is its personal ownership. It has a system of receiving and giving. Because masājid and madāris fall under the ruling of the Islamic Treasury, they too can have personal property or right to ownership. People who have given their wealth or items to masājid and madāris without making them waqf ought to have them distributed among their heirs after their demise, but this does not happen. Furthermore, bear in mind that specific words have to be uttered for waqf. Without them, a waqf is not valid.

قوله وركبه الألفاظ الخاصة قال في الشرح الملتقى ناقلاً عن القيسيتاني: إنما قيد بالقول لأنه لو كتب صورة القضية مع الشرائط بلا تلفظ لم يصر وقفاً بالاتفاق ثم قال: إنه لم يصر وقفاً عند الطرفين إلا إذا كتب بيده وقال للشهود أشهدوا بمضمون فإنه إقرار باني وقفت كما ذكرت فيه أو كلاماً نحوه فحينئذ يصير وقفاً (كذا في هاشية الطحاوي على الدر المختار: 7/495)
Observe the following proofs for the validity of ownership by masjids and madāris:

 عن عائشة رضي الله عنها قالت: سمعت رسول الله صلى الله عليه وسلم يقول: لَوْ أن قومك حديثو عبد جاجيك أو قال: بعثر لأنفقت كنز الكعبة في سبيل الله وجعلت بابها بالأرض، ولأدخلت فيها من الحجر، (رواه مسلم، نيل الوضاءة: 374)

Hadrat Maulānā Zafar Ahmad ʿUthmān rahimahullāh writes:

التمليك للمسجد صحيح: قلت: وفي الحديث دليل لما قال: علماً من أن التمليك للمسجد صحيح فهى الهندية: رجل أعطى درعاً في عمارة المسجد، أو نفقة المسجد، أو مصالح المسجد صح، لأنه إن كان لا يمكن تصحيحه، وفقاً يمكن تصحيح، تمليك على يد للمسجد وراثات الملك للمسجد على هذا الوجه صحيح، فيتم بالقبض كذا في الواقع، وقال: وبيت داري للمسجد، أو أعطيتها له صح ويعكون تمليك، ويشترط التسليم كما لو قال: وقفت هذه المائة للمسجد يصح بطريق التمليك إذا سلم، لكلهم كذا في الفتوى العتابية (٣/٣٠، إعلاء السنن: ٣٠٠/٣، باب الوقف على مصالح المسجد، إدارة القرآن)

الفتاوى التواترانية:

ولو قال: وبيت داري للمسجد، أو أعطيتها له صح ويعكون تمليك، ويشترط التسليم كما لو قال: وقفت هذه المائة للمسجد، يصح بطريق التمليك إذا سلم، للفقه. (الفتاوى التواترانية: ٥٣٠/٥، كتاب الوقف، مسائل الوقف المساجد، إدارة القرآن)
In other words, just as waqf is made for a masjid and other noble works, it is permissible to give them as charity.

The following text of al-Fatwā al-Hindiyah shows that the Islamic Treasury is a personal entity (qânîn shakhs).

It is necessary for the Imam to divide the Islamic Treasury into four parts because each one has a separate rule which is specific to it and does not apply to the other. If some parts do not have any wealth, a
loan can be taken from the other part. For example, some money from the sadaqah was given to the kharāj as a loan. Once the kharāj is collected, the debt must be paid to the sadaqah. In other words, the Islamic Treasury can become a creditor and a debtor. This is a qānūn shakhṣī.

Hadrat 'Umar radhiyallāhu 'anhu used to distribute pieces of the cover of the Ka'bah to the pilgrims because it was not waqf.

'Allāmah Abul Wālid Muḥammad ibn 'Abdillāh ibn Aḥmad Azra'ī writes:

 حدثنا أبو الوليد قال: حدثنا حفيظ بن إبراهيم بن محمد الشافعي، عن مسلم بن خالد، عن ابن أبي نجيح، عن أبيه، أن عمر بن الخطاب رضي الله عنه كان ينزع كسوة البيت في كل سنة فيقسمها على الحاج، فيستظلون بها على السمر بمكة (أخبار مكة وما جاء فيها من الآثار للازرق: 2/171، باب ما جاء في تجريد الكعبة، وأول من جردتها، مكتبة الثقافة الدينية).

عمدة القراء:

 وقال ابن صلاح: الأمر فيها إلى الإمام يصرف في مصرف بيت المال بيعاً عطاء واحتج بما ذكره الأزرق أن عمر رضي الله عنه كان ينزع كسوة البيت كل السنة... اللخ، وعن الأزرق في ابن عباس رضي الله عنه وعائشة رضي الله تعالى عنها أنهما قالا: لا يأتي أن يلبس كسوتها من صارت إليه من حائض وجناب وغيرها، وكذا قالاه أم سلمة رضي الله تعالى عنها، وذكر ابن أبي شيبة عن ابن أبي ليلى، وذكر على رجل سرق من الكعبة، فقال: ليس عليه قطع، ويقال: الاظبار جواز قسمة الكسوة عتيقة إذ بقايا تعريض لفساداً بخلاف النقدين. (عمدة القراء: 2/132، وكذا في شرح اللباب: ص 54).

Hadrat 'Umar radhiyallāhu 'anhu had intended distributing the gifts which had been given to the Ka'bah. 'Allāmah 'Āynī raḥimahullāh writes in this regard:
We learn from this that those items belonged to the Ka'bah.

 Anything which can be made waqf and is a specific thing, then it is a legal person. A masjid can be made waqf.

 Anything which can become an owner is a legal person. Protection of what it owns is a binding duty on the government. It has the right to claim protection of what belongs to it.
A personal possession can terminate and can be transferred. When such an ownership which is terminable and transferable makes its owner a legal entity, then the possession of a masjīd which is non-terminable and non-transferable will give even more rights of a legal entity to its owner (the masjīd).\footnote{Kifāyatul Muftī, vol. 7, p. 98.}

Allāh ta’ālā knows best.

**Objection**

There is one objection to this. If masājid and madāris enjoy the status of self-ownership, then if zakāh is given to them, it ought to be fulfilled. Whereas the ‘ulamā’ concur that zakāh given to masājid and madāris is not fulfilled. What is the answer to this?

**Answer**

The recipients of zakāh are specified [in the Qur’ān]. Madāris and masājid are not included in that list. Zakāh will therefore not be fulfilled.

Allāh ta’ālā knows best.

**The personal ownership of the Ka’bah**

**Question**

If a person gives something to the Ka’bah, will it come under the ownership of the Ka’bah?

**Answer**

Anything given to the Ka’bah will fall under its ownership.

الفتاوى الهندية:

ولو قال ويبت داري للمسجد أو أعطيتها لـ صح ويعكون تمليكًا فيشترط التسليم. (الفتاوى الهندية: 37/6)

 إعلاء السنن:

التمليك للمسجد صحيح: قلت: وف الحديث دليل لما قال علماًنا من أن التمليك للمسجد صحيح ففي الهندية: رجل أعطى درهماً في عماره المسجد
In short, if a thing does not have the capacity to become waqf, when something is given to it, it becomes its owner.

Allâh ta’âlâ knows best.

Extending a masjid

Question

A man gave his land as waqf. This land is adjacent to the masjid. The local residents have increased in number and the masjid is now too small to accommodate them. There is a need to extend it. Is it permissible to extend the masjid onto the waqf land? The intention of the endower was that the land must be used for charitable works, a masjid, a madrasah, etc.
Answer
It is permissible to include the waqf land into the masjid and extend the latter. Although the land was made waqf for charitable works, it is permissible to include it in the masjid. Extending a masjid is also a charitable work. It is from among the important matters of the Sharī‘ah and one of the salient features of Islam.

Excluding the lower level from a masjid

Question
A person wants to buy a piece of land for a masjid. Before he can buy it, he makes the intention that the lower level will be reserved for parking of vehicles or for some other use while the upper floor will be for the masjid. Is it permissible to do this?
Answer

The intention of excluding the lower level before purchasing the land is correct and it is permissible and correct to exclude it from the masjid as described. Once the building is constructed, the upper floor will be for the masjid while the lower level may be used for other benefits of the masjid.

الدر المختار:

إذا جعل تحت سرداً لما صاحبه أي المسجد جاز كمسجد القدس. وفي الشامية:
قول إذا جعل تحت سرداً جمع سرادي بيت يتخذ تحت الأرض لغرض تبريد الماء وغيره، قال في البحر: وحاصلاً إن شرط كونه مسجداً أن يكون سفند وعلوه مسجداً لينقطع حق العباد عند لقول تعالى: وأن المسجد لله ( تعالى) تعارض ما إذا كان السردا والعلو موقوفاً لصالح المسجد فيه كسردا بيت المقدس بناء بوضوح الرواية وباكر روايات ضعيفة، فرع: لو بني فوقما بيتاً للإمام لا يضر لأن من المصالح أما لو تمت المسجدي ثم أراد البناء مثمن ولو قال عنيت ذلك لم يصدق. (الدر المختار مع فتاوى الشائ: 4/377 والبحر الرائق: 5/21)

التحرير المختار:

قول المصنف لما صاحبه ليس بقيد بل الحكيم كذلك إذا كان ينتفع به عامة المسلمين على ما أفاده في غاية البيان حيث قال: أورد الفقيه أبو الليث سوالاً جواباً فقال: فإن قيل أليس مسجد بيت المقدس تحت مجتمع الماء والناس ينتفعون به قبل إذا كان تحت شيء ينتفع به عامة المسلمين يجوز لأنه إذا انتفع به عامتهم صار ذلك الله تعالى. (التحرير المختار: 8/4)

Allāh ta’ālā knows best.
Moving the building of a masjid

Question
If residents no longer live around the masjid and it becomes deserted, will it be permissible to sell the masjid and construct one in another place? For example, there is a masjid in a certain locality which has a population of Muslims. The government then orders them to leave that locality, and they relocate to another place. Just one or two Muslim families remain or the masjid is no longer inhabited. What should be done with the masjid in such a situation? Should it be demolished, the land sold, and the money used for constructing a new masjid in a different locality? Is it permissible to do this? Is it permissible to move the fans, copies of the Qur’an, carpets, etc. to another masjid? If it is permissible, where should they be moved to? Is it permissible to use these items in madāris?

Answer
As per the issued fatwā, it is not permissible to demolish a masjid or to sell its land. Instead, it should be left as a masjid. Those who live nearby should keep it inhabited. If there are no Muslims living nearby, then – based on necessity – the belongings of the masjid, even its walls, could be moved to another place where a masjid will be constructed. The land of the masjid should not be sold. The preferred view is that no matter what, that land will be classified as a masjid.
إذا لم ينقل يأخذ أنقاض المقصوض والمغلوبون كما بو مشابه وكذا أوقاف.

يأكل النظار أو غيرهم وتلزم من عدم النقل خراب المسجد الآخر المحتاج إلى النقل إليها. وقد وقعت حادثة سئلت عنها في أمير أردن أن ينقل بعض أحجار مسجد خراب في صف فاقيون بدمشق لبياضية بها صحن الجمع الأموي فأقتحت بعدم الحواجز متاحة للشرطيين، ثم بلغني أن بعض المتغلبين أخذ تلك الأحجار لنفسهم فندمت علماً أقتحت به ثم رأيت الآن الذكرى. قال وفي الفتوى السفلى: ستلزم الشيخ الإسلام عن أبل قرية رحلوا وتداعي مسجدنا إلى الحراب وبعض المغلوب يستلزم على خشب وينقلون إلى دوريم بل لوحد لأبل المحلة أن يبيع الخشب بأمر القاضي ويسفك الضم ليصرف إلى بعض المساجد أو إلى هذا المسجد قال: نعم. وحكى أنه وقع مثله في زمن سيدنا الإمام الأجل في رباب في بعض الطرق الحرة ولا ينتفع المارا بول أوقاف عامرة فستلزم بل يجب نقلها إلى رباب آخر ينتفع الناس. قال: نعم، لأن الواقف غرض انفعال المارة ويحصل ذلك بالغا. (فتاوى الشاهي: 36/4، مطلب في نقل مناقش المسجد، ط سعيد)

وانظر للمزيد: (الفتاوي البابارية على باشم الهندية: 37/6، الرابع في المسجد... نوع آخر)

**Imdād al-Fatāwā:**

The original and preferred view is that it cannot be moved to another place. However, some ‘ulamā’ have given permission on the basis of necessity. It is not permissible to leave the original verdict without a genuine necessity, but there is leeway at the time of necessity. Another point we learnt is that when a certain masjid becomes redundant, it is permissible to transfer its waqf to another place.

Allāh ta’ālā knows best.

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Old carpets of a masjid

Question
New carpets have been laid in a masjid. What should we do with its old carpets? The trustees have a few opinions in this regard:

1. It should be distributed among the congregants.
2. It should be sold to the congregants and the money will be used for the masjid.
3. It should be given to some other masjid.

Which is the correct view?

Answer
1. It is not permissible to distribute it among the congregants because this is wealth which is classified as waqf.
2. It is permissible to sell it and use the money for the masjid.
3. If the other masjid is in need of it, it will be permissible to give it to that masjid.

Kifāyatul Muftī:
If the old belongings of the masjid cannot be used for the new masjid, it will be permissible to sell them. It will be better to sell them to Muslims. The money should then be used for the construction...
purposes of the same masjid, or for buying the same type of items which were sold.¹

'Aẓīz al-Fatatūwā:

The belongings of the masjid must be used for the nearest masjid. If the latter does not need them at present, they must be stored safely so that they could be used when needed. Alternatively, they could be sold and the money spent on the nearest masjid.²

Fatāwā Maḥmūdīyyah:

If a masjid has extra mats and there is no way of storing them safely – and they are getting ruined – it will be permissible to give the extra mats to a masjid which requires them. They can be given after mutual consultation among the trustees and other seniors. They should not be given without consultation because this could foment trouble.³

One point needs consideration. 'Ālimah Shāmī, 'Ālimah Tahtāwī and others differentiate between the old belongings of a masjid. Imām Muḥammad raḥimahullāh is of the view that when a masjid no longer needs an item, it returns to the ownership of its owner. Imām Abū Yūsuf raḥimahullāh is of the view that it will be moved to another masjid. They then say that as regards items of the masjid, the fatwā is issued on the view of Imām Muḥammad raḥimahullāh; and with regard to the rubble of the masjid, the fatwā is issued on the view of Imām Abū Yūsuf raḥimahullāh. This is the view preferred by Muftī Rashīd Ahmād Sāhib raḥimahullāh in Aḥsan al-Fatatūwā (vol. 6, pp. 426-427).

قول مثله حشيش المسجد أي الخشيش الذي يفرش بدل الحصير، كما يفعل في بعض البلاد كبلاد الصعيد كما أخبرني به بعضهم قال الزياني: وعلى هذا

² 'Aẓīz al-Fatatūwā, vol. 1, p. 567.
When only the construction of a masjid is completed

Question

The main section and courtyard of the masjid have been constructed. In other words, the construction work has been completed. However, due to certain reasons, the trustees did not start the five congregational salahs as yet. Some other people would like to start performing salah. Is it permissible for them to do this? Do the injunctions of a Sharī’i masjid apply the moment the construction is complete?

Answer

There are three requirements for a Sharī’i masjid:

1. The land must be made waqf for a masjid.
2. The endower separated his ownership or the ownership of someone else from the endowed property in such a manner that neither he nor anyone else has any claim over it.

3. Salah with congregation has been performed at least once with the permission of the trustees.

If these three conditions are met, the injunctions of a Shar'i masjid will apply. If not, they will not apply.

In the above case, salah with congregation has not been performed as yet. It is therefore not a Shar'i masjid. Those who want to perform salah in it can do so after obtaining permission from the trustees.
2. He separated it from his ownership in such a manner that neither he nor anyone else has any claim over it. He then made it waqf and handed it over to the trustees, or at least one congregational salāh was performed after obtaining the permission of the endower.¹

Further reading: *Fatāwā Dār al-ʿUlūm Zakarīyyā*, vol. 1, rules related to a masjid and jamāʿat khānā.

Allāh taʿālā knows best.

**Repairing the masjid driveway with masjid funds**

**Question**

The driveway leading to the masjid is gone quite bad. The congregants normally use it to frequent the masjid. Is it permissible to repair the driveway from the masjid funds?

**Answer**

The driveway leading to the masjid is included among the interests of the masjid, and it is permissible to spend masjid funds for purposes related to interests of the masjid. It is therefore totally permissible to use masjid funds to repair the masjid driveway.

¹ *Kifāyatul Muftī*, vol. 7, p. 61.
Including the surrounding property when extending a masjid

Question

There is a piece of land near the masjid. The masjid itself has run out of space. The congregants have asked the owner of the land to sell the land to the masjid but he is refusing. Can they purchase the land by force?

Answer

If there is no fear of conflict and dissension, and the masjid is in dire need of additional space, and there is no sufficiently large masjid nearby, then it can be purchased by force.

Allāh ta’ālā knows best.

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Allāh ta’ālā knows best.
منه ويؤيد ما ذكرنا فعل الصحابة إذ لا مسجد في مكة سوى المسجد الحرام.

(فتاوى الشاهي: ۳۷۹/۴، سعيد)

تاريخ مكة:

حدثي أبو الوليد عن ابن جريج قال: كان المسجد الحرام ليس عليه جدرات محاطة. إنما كانت الدور مدقة من كل جانب. فضلت الناس فاشترى عمر بن الخطاب رضي الله عنه دوراً فدمها وبدم على قرب المسجد فأي بعضهم أن يأخذ الشن وتنمأ عن البيع فوضعت أثامها في خزانة الكعبة حتى أخذوها بعد. ثم كثر الناس في زمان عثمان بن عفان رضي الله عنه فبيع المسجد فاشترى من قوم وأي آخر أن يبيعوا فدم على فصولو فصيحوا به.

قال: إنما جرأكم على حلي عنكم. (تاريخ مكة للإزرق: ۴۴۵)

However, 'Allâmah Râfi‘î rahimahullâh makes the objection that the sale of the lands of Makkah is not valid. Observe the following:

في شرح الوبيانية: في الاستدلال بما ذكر على قول أبي حنيفة نظر فإنه لا يجوز بيع أراضي مكة في الصحيح ولا إجارتها أيضاً. وقد أوضح فلاباني أنه غايب أو مستعز في أمر بأخذ عمارة وتمد إلى المسجد لعدم تملكه. (التحرير المختار: ۸۴/۴، سعيد)

Since the matter related to the sale of the lands of Makkah is based on the view of Imâm Abû Yûsuf rahimahullâh and Imâm Muḥammad rahimahullâh, the objection made by 'Allâmah Râfi‘î rahimahullâh is not correct.

قال في الدار المختار: وصبر بيع دور مكة فتجب الشفعة فيها وعليك الفتوى.

أشباه قال الشاهي: أفاد أن وجوبها فرع عن جواز أرضها على قولهما المفتى به ولا فوجد البينة لا يوجب الشفعة. (الدر المختار مع فتاوى الشاهي: ۳۳۳/۴، سعيد)
Changing a section of a masjid into a pathway or terrace

**Question**

Is it permissible to remove a section of a masjid and change it into a pathway or terrace?

**Answer**

As per the accepted verdict, when a place is classified as a Shar'i masjid, its status as a masjid continues until the day of Resurrection. This status does not end nor can anyone terminate it. In this case also, no section of the masjid can be removed or excluded from the masjid.

Allah ta'ala knows best.

Once a piece of land is included into a masjid, it will remain such until the day of Resurrection. It cannot be removed from the masjid for whatever reason.¹

The fourth important and fundamental difference between masjids and other waqf lands is that a masjid remains a masjid forever. Even if

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¹ Al'ṣan al-Fatāwā, vol. 6.
a masjid is deserted and unusable, or it has been seized unlawfully, it will remain a masjid until the day of Resurrection. (vol. 2)

Hadhrat Mufti Muhammad Shafi’ Sahib rahimahullah writes:

When a place is classified as a masjid, it will remain as such until the day of Resurrection. It is not permissible to use that place for any other purpose. Even if ten new masajid are built in place of one masjid, the latter will remain a masjid; it cannot be removed from its masjid status.¹

Allah ta‘ala knows best.

**Laying drainage pipes beneath a masjid**

**Question**

The rain water and drain water of the houses of a certain village flow through the land of a certain person and then fall into a certain pond. This person constructed walls on his property and this has stopped the flow of water. He has also won a court case approving his action. The masjid property is on the border of the man’s property. Congregational salah is performed in this masjid. Some people are requesting drainage pipes to be laid beneath the masjid, and a floor to be cemented from above so that the water could flow easily from under the masjid without causing any damage to it. This will ease the flow of the water. What is the Shari’ah verdict in this regard?

**Answer**

It is totally forbidden to lay pipes under the masjid and to cement a floor above it. Once a place has been classified a masjid, it will remain as such until the day of Resurrection. A masjid extends to the bowels of the earth and to the heavens. Therefore, it is not permissible to do anything which will break the sanctity of the masjid.

The qāhn (courtyard) of the masjid has two connotations. The first is the area which does not have a roof. It is made for ṣalāḥ but left open. The second is: Apart from the roofed or un-roofed sections which are set aside for ṣalāḥ, there are areas which are left as bare pieces of ground or floors, but they are not made for congregational ṣalāḥ.

When the first meaning is taken, the courtyard is a part of the masjid and the same rules of a masjid will apply to it. It is not permissible to build a pond and wudū' facilities in it. This is because once a place is set aside as a masjid, it is reserved for ṣalāḥ. It cannot be used for any other purpose.¹

Allāh ta’ālā knows best.

**Planting fruit-bearing trees on masjid property**

**Question**

Is it permissible to plant fruit-bearing trees on a masjid property with the intention of selling the fruit and using the income for the masjid expenses? Also, what is the ruling with regard to trees which are already on the masjid property?

**Answer**

The empty spaces of a masjid property where people do not perform ṣalāḥ can be used to construct shops, a market, plant fruit-bearing

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¹ *Kifāyatul Muftī*, vol. 3, p. 182, Dār al-Ishā’at.
Constructing a masjid which is attached to a madrasah

Question
Is it permissible to construct a masjid attached to a madrasah? Some people are labelling it as Masjid-e-Dirär. What is the ruling in this regard?

Answer
It is an excellent and meritorious act to construct a masjid attached to a madrasah. If there is no masjid nearby, then the importance of constructing one increases. The madrasah has its own peculiar system and program. Constructing a masjid while upholding the system and program of the madrasah cannot be denied. For example, because there are classes after maghrib and the students eat after that, the 'ishā ṣalāh in the madrasah masjid is quite late. The timings which the students adhere to and restrictions to their movements also make it necessary for a masjid. Therefore, constructing a masjid which is attached to this madrasah is not objectionable. Rather, it is praiseworthy and deserves appreciation.

Those who are labelling it Masjid-e-Dirär are committing a major error. They ought to repent. Ḥāḍrat Muftī 'Azīz ar-Rahmān Śāhīb raḥimahullāh wrote this in one of his fatāwā. We are instructed to have noble thoughts about others. Therefore, we cannot label a masjid which has been constructed by fellow Muslims as Masjid-e-Dirär. We
cannot ascertain with certainty that the person who is building this masjid is doing it to harm the first masjid, and building it for show and ostentation. On the other hand, the corrupt intentions of the builders of the original Masjid-e-Dirār was made clear through divine revelation.

In this case, the question is not about an evil intention. Rather, it is out of necessity that the second masjid is being constructed. Plans to demolish it are very evil plans.

Allāh ta’ālā knows best.

The miḥrāb of a masjid

Question

Is the miḥrāb a part of a masjid? If the īmām of the masjid is observing i’tikāf, will it be permissible for him to stand in the miḥrāb to lead the congregation? After all, the miḥrāb is beyond the boundaries of the masjid walls. Some people have doubts in this regard. I hope you will answer me in the light of the texts of the jurists.

Answer

The miḥrāb is a part and parcel of the masjid. Standing in the miḥrāb is synonymous to standing in the masjid. It is considered to be a masjid even on the basis of ‘urf – societal norms.

Further reading: 

Allāh ta’ālā knows best.
The location of the mimbar of Rasūlullāh ﷺ

Question

Rasūlullāh ﷺ said: “The area between my house and my mimbar is one of the gardens of Paradise.” We observed in Masjid-e-Nabawi that the mimbar is at quite a distance from the Mihrāb-e-Nabawi or Muqaddas-e-Nabawi. The Mihrāb or Muqaddas of Rasūlullāh ﷺ will be in the centre of the masjid, and the mimbar ought to be near it. After all, the mimbar is also in the centre of a masjid. Yet we see the present mimbar at quite a distance. It is also far-fetched to assume that the mimbar was moved later on to its present location because the limits of Riyaḍ al-Jannah are in relation to the location of the mimbar. The location of the date trunk is marked off near the Muqaddas of Rasūlullāh ﷺ, so the mimbar ought to be there as well. What is the answer to this objection?

Answer

After studying the commentaries of Ahādīth collections, we learn that the mimbar of Rasūlullāh ﷺ was next to his muqaddas. There is no discussion on whether the mihrāb was also near it or not. Hāfīẓ Ibn Hajar rahimahullāh writes:

قال الكرماني: من حيث أن صلى الله عليه وسلم كان يقوم بجانب المنبر...

وأوضح من ذلك ما ذكره ابن رشيد أن البخاري أشار بهذا الترجمة إلى حديث

سفي بن سعد رضي الله عنه الذي تقوم في باب الصلاة على المنبر و الحشيب

فإن فيه أنه عليه الصلاة والسلام قام على المنبر حين عمل فصل عليه,

فاقتضى ذلك أن ذكر المنبر يوخذ من موضع قيام المصلي (فتح الباري

للمفسقاني: ٥٠٥) ١٠٠٨

‘Allāmah Ibn Rajab Ḥambalī rahimahullāh writes:

وأما حديث سلمة بن الأكووع رضي الله عنه فتخريج البخاري لم في هذا

الباب يدل على أنه. فهم منه أن المنبر كان بإزاء موقف النبي صلى الله عليه

وسلم في صلاتهم. أو متقدمًا عليه متحييًا عن جدار قبلة المسجد. (فتح

الباري: لابن رجب الحنبلي: ٣٢٣)
It is the practice of Muslims to have the mimbar on the right side of the muqallā of the imām. If the mimbar was so far as it is in Masjid-e-Nabawi, it would have been Sunnah or desirable to have the mimbar at that distance. Furthermore, it makes more sense to have the mimbar in the centre so that when the imām delivers a sermon or lecture, he can stand or sit on the mimbar. In this way, he will be in the centre of all the congregants.

Hāfīz Ibn al-Qayyim writes in Zād al-Ma‘ād:
The above view is different from what was mentioned before. 'Allāmah Shānqī writes in *ad-Durr ath-Thamīn*:

Filema ṭoḥul al-nabi صلى الله عليه وسلم إلى المنبر عن الجذع قام الجذع بحثين إلى النبي صلى الله عليه وسلم. فاختار الجذع أن يكون من غراس الجنة وسكب من الحنين ودقن هذا الجذع فيما بعد تحت المنبر من جهة القبلة.

(الدر اليمين للشئيني، ص 35)

The same theme is also mentioned in *Wafāʾ al-Wafʿ*, vol. 2, p. 394. Maulānā 'Abd al-Hayy Sāhib quotes it in *Majmūʿah al-Fatwā*:

Mawṣūʿ al-mihrb mā yūfūr wa-bīdāl biḥād an y Jawal al-nabi صلى الله عليه وسلم موضع المنبر يغيب ويغيب كل البعد أن يجعل النبي صلى الله عليه وسلم موضع منبره في حرف مسجد ولا يتوسط أصحابه.

The location of the mimbar was not changed. It is far-fetched for Rasūlallāh sallallāhu 'alayhi wa sallam to place his mimbar in one side of his masjid and not have it placed in the centre of his Companions.¹

Wabū muwafiq ma rūy ān ān maʿāna džarā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūjā wa-rūj4

¹ Majmūʿah al-Fatwā (translated), p. 205.
We learn from the above texts that the mimbar of Rasūlullāh ﷺ was next to his musalla. However, we learn from Ḥāfīz Ibn Qayyim, Wafʿ al-Wafʿ, other books, and by witnessing it ourselves that the mimbar was far from the miḥrāb and that Riyāḍ al-Jannah is up to that point. The virtue of this place is known to all Muslims.

We could reconcile the discussion by saying that when Rasūlullāh ﷺ was delivering his sermon, the mimbar was placed near the muṣalla. And sometimes, it used to be placed where it is located at present. This was done so that the area between the muṣalla and miḥrāb remains open, and when the Ṣaḥḥābīs رضی الله عنهم sat in a circle, the beauty of Rasūlullāh ﷺ was not concealed from them – there was no barrier between them and Rasūlullāh ﷺ alayhi wa sallam. And the following Ḥadīth is making reference to the present location of the mimbar:

> The area between my house and my mimbar is one of the gardens of Paradise. Allāh taʿālā knows best.

### The history of minarets

**Question**

Since when have minarets been constructed in masjīd? What is their purpose? Is it a bidʿah to have a minaret?

**Answer**

My honourable teacher, Ḥadrat Maulānā Sarfarāz Khān Ṣāhib ṭabāḥimullāh wrote in this regard in Rāh-e-Sunnat. The gist of it is that a minaret is essentially built so that the adhān may be called out from it, and the sound of the adhān may be heard far and wide. Imām Abū Dāwūd ṭabāḥimullāh has a chapter titled Bāb al-Adhān Fauqah al-Minārah (Abū Dāwūd, vol. 1, p. 77).

Ḥadrat Abū Barzah Aslamī ṭabāḥillahu anhu (d. 65 A.H.) said:
According to the principles of Hadith, a Sunnah refers to the Sunnah of Rasūlullāh ṣallallāhu 'alayhi wa sallam.¹

In his al-Isābah Fī Tamyiz as-Sahābah, Hāfiz Ibn Hajar rahimullāh writes with reference to a Sahābī by the name of Maslamah ibn Mukhallad rađiullāhu 'anhu:

Since a minaret is not the objective and is a way of identification for a masjid, and was a means for conveying the sound of the adhān far and wide in past times, it is not a bid'ah. This is especially so when it is an established practice from the Sahābah rađiullāhu 'anhum.

Allāh ta'ālā knows best.

**Reserving a place in the masjid for the mu'adhdhin**

**Question**

Is it permissible to place a carpet behind the imām for the mu'adhdhin and to reserve that place for him?

**Answer**

Ḥadrat Muftī Rashid Ahmad Ludhyānwi rahimullāh considers it impermissible.

*Ahṣan al-Fatāwā*:

The same rulings applies to a mu'adhdhin. The custom of reserving a place and laying a carpet for him is not correct. Whoever enters a masjid and sits in whichever place he wants is the most eligible for that place.²

On the other hand, Maulānā Fath Muhammad Sāhib, a student of Maulānā 'Abd al-Hayy Lucknowī rahimullāh considers it to be permissible.

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¹ Rāḥ-e-Sunnat, p. 305.
² *Ahṣan al-Fatāwā*, vol. 6, p. 457.
**Halal Harām Ke Ahkām:**

That from which benefit may be taken. This falls under the ruling of waqf. For example, masājid, some wells, bridges, roads, etc. As per certain necessities, the general public has right over them. For example, every person has the right to stand in the first row in the masjid. At the same time, it is necessary to take the peculiar duties of the imām, khaṭīb, mukabbir and muʿadhhdhin into consideration.

Also, we learn from the following statement of Rasūlullāh sallallāhu ʿalayhi wa sallam that certain special people have more right to sit near the imām.

لِيلَيْتَيْ مَنْسَكُكُمْ أُولو الأُحْلَامِ.

Allāh taʿālā knows best.
ETIQUETTE RELATED TO THE MASJID

Offering condolences in a masjid

Question
Is it permissible to sit in a masjid for the sake of offering condolences? Is it against the etiquette of the masjid to do this?

Answer
When people gather to offer condolences in a masjid, the majority of them engage in futile conversations, backbiting, and various other useless conversations. This is against the etiquette of the masjid and the temperament of the Sharī'ah. Yes, if condolences are conveyed through lectures, pieces of advice, inviting to Islam; while upholding the sanctity of the masjid, there will be no objection to conducting such a gathering. Furthermore, those entering the masjid should be encouraged to perform tahāyyatul masjid. If they are encouraged to do this, it will have the added benefit of fulfilling a Sunnah. According to one view, tahāyyatul masjid is sunnat-e-mu’akkadah (an emphasised Sunnah).

Some of the juridical texts state that a gathering of this nature is impermissible, while others permit it.

البحر الرائق:
وأما الجلوس في المسجد للنصيبه فمكره، لأنه لم ينظر لـ وعن الفقه أني الليره أنه لا بأس به لأن النبي صلى الله عليه وسلم حين بجعفر رضي الله عنه وزيد بن حارثة رضي الله عنه جلس في المسجد والناس يأتونه ويعزونه. (البحر الرائق: 36)

خلاصة الفتائى:
الجلوس في المسجد لغير الصلاة جائز وللمصيبة. (خلاصة الفتائى: 31)
فتاوى الشائي:

(في غير مسجد) أما فيما في غير المسجد، كنما في البحر عن المجتمعي، وجزم به في شرح
المثنية والفتائح، لكن فيظهرية، لا يتأس به لأجل الميت في البيت أو المسجد
والناس يثوبونه ويعزونه، فقلت: وما في البحر من أنه صلى الله عليه وسلم
جلس لما قتل جعفر رضي الله عنه وزيد بن حارثة رضي الله عنه والناس
يأتونه ويعزونه، يجب عند أن جلوس صلى الله عليه وسلم لم يهتم مقصوداً
لنعزية... قلت: وليل تنتهي الكربة بالجلموس في المسجد وقراءة القرآن حتى
إذا فرغوا قام ولي الميت وعزاء الناس كما يفعل في زمننا، الطيار، لا، لكون
الجلموس مقصوداً للعزية لا للقراءة ولا سبما إذا كان هذا الاجتماع والجلموس
في المفتيرة فوق القبور المدثورة، ولا حول ولا قوة إلا بالله. (فتاوى الشائى:
341/2)

hashiya al-tahthabiya: حاشية الطحثبى على الدردشة

(قوله في غير مسجد) أعلم أن صاحب البحر تصبب كلمه فأفاد أولاً جوازه
في المسجد وآخراً كرارة وعبارت. قال الباقلي: ولا يتأس بالجلموس للعزاء ثلاثة
أيام في البيت أو المسجد وقد جلس رسول الله صلى الله عليه وسلم أي في
المسجد لما قتل جعفر رضي الله عنه وزيد بن حارثة رضي الله عنه والناس
يأتونه ويعزونه والعزية في اليوم الأول أفضل والجلموس في المسجد ثلاثة أيام
للعزية مكرور. (حاشية الطحثبى على الدردشة: 385/1، كونته)

وللاستناد انظر: (شرح الجموى على الاستبام والنظائر: 2/88). وفتح باب
العناية في شرح النقاية: 2/66. والفتاوى التاتارخانية: 2/3

Allâh ta’âlâ knows best.
Solemnizing a marriage in a masjid

Question

Is it permissible to solemnize a marriage in a masjid? In some areas, people have their marriages performed in their homes. What is the ruling in this regard? I am asking this question because some people express condemnation at marriages performed in homes and consider this to be disapproved.

Answer

It is preferable to perform a marriage in a masjid. However, those who do not do this should not be criticized. Observe the following Hadith:

بن زيد حسن غريب (كذا في النسخ الحاضرة وأورد بذا الحديث الشيخ
ولي الدين في المشكاة وقال: رواه الترمذي وقال: بهذا حديث غريب ولم يذكر لفظ حسن، وكذلك أورد الشوكاني بهذا الحديث في النيل وقال: قال الترمذي:

بذا حديث غريب ولم يذكر بها أيضًا لفظ حسن، فالظاهر أن النسخة التي
كانت عند صاحب المشكاة عند الشوكاني هي الصحيحة وبدل عليه صحتها
تضعيف الترمذي عيسى بن ميمون أحد رواه بهذا الحديث، وقد صرح الحافظ
في الفتح بضعف هذا الحديث... قال البخاري: منكر الحديث، وقال ابن
حيان: بروى أحاديث كلا موضوعات. (تحفة الأحوذ: 298)
Observe some of the proofs in favour of performing a marriage in places other than a masjid:

عن أنس بن مالك رضي الله عنه أن عبد الرحمن بن عوف رضي الله عنه جاء إلى رسول الله صلى الله عليه وسلم ورد أثر صفرة فسأل رسول الله صلى الله عليه وسلم فأخبره أن تزوّج امرأة من الأنصار. (بخاري شريف: 4/771، باب الصفرة للمتزوج)

وفي رواية له عن جابر بن عبد الله رضي الله عنه قال: كنا مع النبي صلى الله عليه وسلم في غزوة فلما قيلنا كنا قريبًا من المدينة تعلجل على عين لي قطوف... فآلفت فإذا أنا برسول الله صلى الله عليه وسلم فقلت: برسول الله اني حديث عبد بعس، قال: أتزوجت؟ قلت: نعم. (بخاري شريف: 4/789)

The above two narrations show that the marriages of Ḥadrat 'Abd ar-Rahmān ibn 'Auf rādiyallāhu 'anhu and Ḥadrat Jābir ibn 'Abdillāh...
radiyallahu ‘anhu were not performed in the masjid, or else, Rasūllullah 
fallallahu ‘alayhi wa sallam would have known about them. This, 
notwithstanding the fact that it is possible that their marriages were 
performed in some other masjid of Madīnah Munawwarah.

A mursal narration shows that the marriages of some Sāḥibah were 
performed in the masjid:

A person asked Ḥadīrat Muftī Maḥmūd Ḥasan Sāḥib rahimahullāh 
about Rasūllullah ṣallallahu ‘alayhi wa sallam having performed all 
the marriages of the Sāḥibah radiyallahu ‘anhum in the masjid. He 
replied: “I have not verified this. However, the jurists have written 
that it is mustahab to perform a marriage in a masjid.” He added: “In 
the time of Rasūllullah ṣallallahu ‘alayhi wa sallam, marriages were not 
fastidiously performed in the masjid. We learn from the Ḥadīth 
collections that Rasūllullah ṣallallahu ‘alayhi wa sallam did not perform 
the ṣalāh of Ḥadīrat ‘Abd ar-Rahmān ibn ‘Auf radiyallahu ‘anhu. In fact, 
he only came to know of his marriage later on. Similarly, Rasūllullah 
fallallahu ‘alayhi wa sallam only learnt of the marriage of Ḥadīrat Jābir 
ragiyallahu ‘anhu after he [Rasūllullah ṣallallahu ‘alayhi wa sallam] 
returned from jihād. If full importance was given to performing 
marriages in the masjid, Rasūllullah ṣallallahu ‘alayhi wa sallam would 
have certainly been aware of these marriages.¹

Maulānā Khālid Sayfullāh Raḥmānī writes:

As regards the marriages of Rasūllullah ṣallallahu ‘alayhi wa sallam, he 
made Ḥadīrat Khadijah, Ḥadīrat Saudah and Ḥadīrat Ā’ishah 
ragiyallahu ‘anhum during the Makkah era. There is no doubt about 
the absence of masjid during that time.

He married Ḥadīrat Umm Ḥabībah radiyallahu ‘anhu when she was in 
Abyssinia. Ḥadīrat Khālid ibn Sa’īd ibn Āg radiyallahu ‘anhu was 
Rasūllullah’s representative. Here too there is no possibility of the 
marriage being performed in a masjid.

¹ Malfūzāt Ḥadīrat Maulānā Muftī Maḥmūd Ḥasan Gangohi, p. 30.
He married Hādrat Safiyyah rađiyallāhu ‘anhā while he was returning from the expedition to Khaybar. He married Hādrat Zaynab bint Jahsh rađiyallāhu ‘anhā and Hādrat Zaynab bint Khuzaymah rađiyallāhu ‘anhā in Madīnah. We do not find details in the Hadīth collections and biographies as to where these marriages were performed. The same can be said about the marriages of the pure daughters of Rasūlullāh sallallāhu ‘alayhi wa sallam. I checked al-Iṣāb, Usūd al-Ghābah, Tābaqāt Ibn Sa’d and most of the other important books of biography but could not ascertain the place where these marriages were performed – in a masjid or out of the masjid.¹

Allāh ta’ālā knows best.

**Sleeping in a masjid**

**Question**

Some people sleep in a masjid. While there, they put on the fans and air-conditioners. Does the Shari‘ah permit them to do this?

**Answer**

We learn from the Aḥādīth and juridical texts that it is māhrūḥ to sleep unnecessarily in a masjid. There is leeway to sleep in it at the time of necessity. A person observing i’tikāf and a traveller who has no other place to sleep may sleep in a masjid provided the etiquette of the masjid are observed. It is established that some saḥābah rađiyallāhu ‘anhum slept in the masjid.

The lights, fans, etc. may be used during salāh times. One should abstain from using them throughout the night. If there is a need to use them, the person should pay the trustees.

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سنن داري:

عن أبي ذر رضي الله عنه قال: أتاني نبي الله صلى الله عليه وسلم وأنا نائم في المسجد، فضربني بجلده، قال: ألا أراك نائماً فيما قلت؟ يا نبي الله غلماني عبيتي. (سنن داري: ١٣٩٩٩٣٧، باب النوم في المسجد)

¹ Kitāb al-Fatāwā, vol. 4, p. 274.
ترمذي شريف:

وقال ابن عباس رضي الله عنه: لا يتخذه (المسجد) منيباً ومقيلاً. (ترمذي شريف: 73/1، باب ما جاء في النوم في المسجد)

الدر المصغر مع قتاوة الشامي:

ويعكر الإعطاء مطلقًا وأكل ونوم إلا لمعتكف وغريب. قال الشام: وإذا أراد ذلك ينبغي أن ينوي الاعتكاف فيدخل ويذكر الله تعالى بقدر ما نوى ثم يفعل ما شاء. (الدر المصغر مع قتاوة الشامي: 267/1، سعيد)

شرح منية المصلى:

والموم فيه لمغرب المعتكف مكروه وقيل: لا يأس للغريب أن ينام فيه والأول أن ينوي الاعتكاف ليخرج عن الخلاف. (شرح منية المصلى: ص 23)

Some narrations demonstrate permissibility for a traveller.

عن ابن عمر رضي الله عنه قال: كنا ننام على عبد رسول الله صلى الله عليه وسلم في المسجد وخن شبان. قال أبو عيسى حديث ابن عمر رضي الله عنه حديث حسن صحيح. (ترمذي شريف: 73/1)

وفي رواية البخاري: عن عبد الله بن عمر رضي الله عنه أنه كان نانم وبو شاب أعرب لأب له في مسجد النبي صلى الله عليه وسلم. (بخاري شريف: 32/1)

وأيضاً رواه ابن ماجة في باب النوم في المسجد (ص: 194)

وقال الشيخ عبد الغني المجدد الدبلوي في إنجاح الحاجة: وإذا رخصة لاين السبيل والمسافر فإن ابن عمر رضي الله عنه ما كان ل حينئذ أبل وأما لغيره
The lights and other amenities of the masjid must be used during salah times. Trustees of the masjid have the right to prohibit their use during other times. It is permissible for a mu’takif and traveller to sleep in a masjid. It is makrūh for others to do this. Those who sleep in the masjid must spread a cloth over the straw-mats (or carpets) so that their perspiration does not soil the floor and also there is no danger of making it impure while in a state of sleep (wet-dream).

Fatwā Mahmūdiyyah:

If a person is observing i’tikāf or a traveller has no other place to stay, he is permitted to sleep over in a masjid. A person who remains in the masjid for the sake of tahajjud and fajr salahs is also permitted. However, he must not make the masjid a place of relaxation for himself. The masjid lights and fans are essentially for the salah times. These amenities may be used for as long as the congregants in general are occupied in salah. If a person uses these amenities during other times and for other purposes, he must render services to the masjid in exchange for using them. Fatwā ‘Ālamgīrī contains rulings related to using the masjid lamp.


Allāh ta‘ālā knows best.

**Bringing children to the masjid**

**Question**

Some people claim that it is permitted to bring children who have not reached an age of understanding to the masjid because Ḥadīth Ḥasan and Ḥadīth Ḥusayn raḍīyallāhu ‘anhumā used to come to the masjid at a time when they could not even walk properly.

**Answer**

If there is no fear of children making a noise, passing urine or excreta in the masjid; it is permitted to bring them to the masjid. If not, one should abstain from bringing them.

Rasūlullāh sallallāhu ‘alayhi wa sallam said: Keep your masājid free from the following: children, lunatics, buying and selling, disputes, raising of voices, promulgating penal laws, and drawing of swords. Have washrooms at the entrances and burn incense on Fridays.

If there is no danger of the above, there is no question about the actual permissibility of bringing children to the masjid. A Ḥadīth states:

An nabi sallallāhu ‘alayhi wa sallam qala: ‘Eini laqum fi al-salaha ‘arid an atul fa’asum bih atayf al-salhi fa’ajuzu fi chalati krabba an aqib ‘alā amm. (Ṣaḥḥ ī l-bayhaqi: 98/1)
Sometimes I want to lengthen the salah but I hear the crying of a child, so I shorten it so as not to cause any discomfort to the child’s mother.

Offering salam when entering a masjid

Question
When people enter the masjid before salah, some of them offer salam while others do not. Should salam be offered?

Answer
If the congregants in the masjid are occupied in salah and reading the Qur’an, salam should not be offered. If they are sitting and waiting for the salah, it is still better not to offer salam. If the salah has been performed or people are occupied in talking, one should offer salam.

الفتاوى الهندية:

السلام تحية الزائرين والذين جلسو في المسجد للقراءة والتسبيح أو لانتظار الصلاة ما جلسو فيه. لدخول الزائرين عليهم، فليس بدأ أوان السلام، فلا يسلم عليهم. (الفتاوى الهندية: ٦٣٥/٥، الباب السابع في السلام، وكذا في حاشية الطحطاوي على الدر المختار: ٥٠٦/٤)

فتاوى الشايع:

وفي الشامية: قال: وإذا جلس الفاضي ناحية من المسجد للحائض لا يسلم على الحيض، ولا يسلم عليه، لأنه جلس للحائض والسلام تحية الزائرين. (فتاوى الشايع: ٤١٩/٩، كتاب الحظر والأباحة، سعيد)
It is permissible to offer salām when entering the masjid or to offer salām to those who are sitting in the masjid. However, it should not be made in such a loud voice that it disturbs a person who is occupied in salāh.¹

One should not castigate either of the two – the one who offers salām and the one who does not.

Allāh ta'ālā knows best.

**Reciting poetry in the masjid**

**Question**

Is it permissible to recite poetry in the masjid? There is a Hadīth which prohibits reciting poetry in the masjid.

**Answer**

It is prohibited to recite poetry which is against Islam, the pure Shariah and poetry which contains immorality. This prohibition applies in the masjid and out of it. It is permissible to recite poetry which is in praise of Allāh ta'ālā, in praise of Rasūlullāh ﷺ and other similar poetry.

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¹ Kitāb al-Fatāwā, vol. 4, p. 254; Fatwā Rahīmīyyah, vol. 9, p. 68.

ʻĀ’ishah radīyallāhu ‘anhā relates: Rasūl Allāh ﷺ placed a pulpit for Hassān in the masjid. He would stand on it and speak in praise of Rasūl Allāh ﷺ. Rasūl Allāh ﷺ would say: “May Allāh help Hassān through Jibra’il so that he can render poetry in defence of Rasūl Allāh ﷺ.”

However, it is gauged from another narration of Tirmidhī that it is prohibited to recite poetry in the masjid:


The Hadith of Khadhim is narrated by Ahmad ibn Hanbal. Khadhim said: “I heard Allāh’s Messenger ﷺ saying: ‘O Allāh! Help him through Jibra’il’.”

The narration of ‘Abdullāh ibn Shabbāh is from the Kitāb al-Mukhāthir. He said: “I heard Abū Hurayrah radīyallāhu ‘anhu saying: ‘O Allāh! Help him through Jibra’il’.”

However, it is gauged from another narration of Tirmidhī that it is prohibited to recite poetry in the masjid:
Rasūlullāh sallallāhu 'alayhi wa sallam prohibited the recital of poetry in the masjid.

The contradictions are reconciled as follows:

'Allāmah 'Aynī rahimahullāh writes:

إن الشعر الحق لا يحرم في المسجد، والذي يحرم فيه ما في الدين والمذاهب والكلام الساقط، بدليل ما رواه الترمذي مصححاً من حديث أميمة رضي الله تعالى عنها (كما مر آنفًا). فإن قلت: روى ابن خزيمة في صحيحه... عن عمرو بن شعيب عن أبي عبد الله صلى الله عليه وسلم عن تناشد الأشعار في المساجد وحسنه الحافظان: الطوسي والترمذي. قلت: وقد جمع ابن خزيمة في صحيحه بين الشعر الجائز إنشاده في المسجد وبين المنوع من إنشاده فيه. وقال أبو نعيم الأصبهاني في كتاب التوحيد: نبه عن تناشد أشعار الجاهلية والمبطنين فب، فأما أشعار الإسلام والمحققين فواسع غير محدود.

(عمة القاري: 89/3، باب الشعر في المسجد، ملتان، وكذا في فتح البارى: 59/1)

'Allāmah Anwar Shāh Kashmīrī rahimahullāh writes:

وأما الأشعار فهي كتاب الطحاوي: جوازها في المسجد أي لتحصيل الأدب واللغة بشرط أن لا يتخذ لغة ويفصل شيء في الأشعار الأدبية في فتح القدير أيضاً (العرف النسائي على باب الشعر الترمذي: 81/8)

وفي حاشية الترمذي للمحدث أحمد على السبانيذر: ومراد المذمومة الباطلة وإلا فلا مع. (حاشية الترمذي: 73)

Dars-e-Tirmidhē:

The two are reconciled by saying that if the poetry contains praises of Allāh ta'ālā and Rasūlullāh sallallāhu 'alayhi wa sallam, or a theme in
the defence of Islam, then it is permissible. Other forms of poetry are makrūh.¹

Allāh ta’ālā knows best.

Women observing i’tikāf in the masjid

Question

According to Ḥanafīs, women are to observe i’tikāf in their homes, whereas i’tikāf during the time of Rasūlullāh ṣallallāhu ‘alayhi wa sallam used to be observed in the masjīd. Where should women observe i’tikāf?

Answer

We learn from the narrations that Rasūlullāh ṣallallāhu ‘alayhi wa sallam disapproved of women observing i’tikāf in the masjid and put an end to this practice. This is why women began observing i’tikāf in their homes. I’tikāf in the masjid is therefore terminated for women, while the actual practice of i’tikāf continues for them in their homes. This is the preferred view of the Ḥanafī jurists.

Rasūlullāh ṣallallāhu ‘alayhi wa sallam made an intention to observe i’tikāf. When he turned to the place where he wanted to observe it, he saw tents pitched for ‘Ā’ishah, Ḥafṣah and Zaynab rađīllāhu ‘anhunna. He said: “Do you really want to acquire goodness from this?” He then left and did not observe i’tikāf. He eventually observed it for ten days in Shawwāl.

‘Allāmah ‘Aynī raḥimahullāh writes:

وفي رواية أبي معاوية: فأمر بجبان فقوض أين نقض، وقال القاضي عياض: إنما قال صل الله عليه وسلم بذا الكلام إنكارًا لفعلين: لأن المسجد يجمع الناس ويحضره الأعراب والمنافقون، وينتخبون إلى الدخول والخروج فيتنزلا بذلك... وقال إبراهيم بن عبلة في قوله: أمير جرد! دلالة على أن ليس لين الاعتكاف في المسجد؛ إذ مفهومه ليس ببر لين، وقال بعضهم: وليس ما قاله بواضح. قلت: بل، بوب واضح لأنه إذا لم يكن برأ لين يكون فعل غير بره، أي غير طاعة، وارتكاب غير الطاعة حرام، ويبعث من ذلك عدم الجوانب.
(عبدا القارى: ٨٨٧٧٧٦/٨، باب اعتكاف النساء، ملتان) المبسوط
ولما أن موضوع أداء الاعتكاف في حقها الموضوع تمكن صلاتها في أفضل كما في حق الرجال وصلاتها في مسجد بيتها أفضل فإن النبي صلى الله عليه وسلم لما سئل عن أفضل صلاة المرأة، فقال في أشد مكان من بيتها ظلمة. (المبسوط للسريحي: ٤٣٥)
بدائع الصانع:
وتخن نقول بل بذى قربة خصت بالمسجد لمكن مسجد بيتها لحكم المسجد في حقها في حق الاعتكاف لأن له حكم المسجد في حقها في حق الصلاة... لأن كل واحد منهما في اختصاص بالمسجد سواء. (بدائع الصانع: ٣٣٣٣/٣، كتاب الاعتكاف، سعيد)
تحفة الإخبار:
عن عائشة رضي الله تعالى عنها قالت: لو رأى رسول الله صل الله عليه وسلم ما أحدث النساء بعده لمتعين المساجد كما منعت نساء بني إسرائيل. قال أبو جعفر: وإذا حكى كذلك في
'Ā'ishah radiyallāhu 'anhā said: “If Rasūlullāh sallallāhu 'alayhi wa sallam were to see what the women innovated after him, he would certainly prohibit them from the masjid as the women of the Banī Isrā'īl were prohibited.” Abū Ja'far said: “If this was the situation during the lifetime of 'Ā'ishah, the women would be further away [from adhering to Islamic teachings] after her. If this is the case, we can conclude that if there is i'tikāf for women, it will have to be somewhere out of the masjid and not in the masjid.”

His wives observed i'tikāf after him.

"His wives observed i'tikāf” – i.e. in their homes because of the disapproval of their action which was mentioned previously. This is why the jurists said: “It is desirable for women to observe i'tikāf in their homes.”

Allāh ta'ālā knows best.
Giving a beggar in the masjid

Question
Is it permissible to give a beggar something in the masjid after believing him to be a deserving person?

Answer
If a person asks you incidentally while observing the sanctity of the masjid, and you give him something, then this is permissible. But if a person makes it a habit to beg in the masjid, you should not give him because it is against the etiquette of the masjid.

سِتَّن إِبِي دَاوُدَ:
عن عبد الرحمن بن أبي بكر رضي الله عنه قال: قال رسول الله صلى الله عليه وسلم: بل في حرم أحد أطعم اليوم مسكينا، فقال أبو بكر رضي الله عنه: دخلت المسجد فأنظر يسأل فوجدت كسرة خبز في يد عبد الرحمن فأخذتها فدفعتها إليه. (سَتَّن إِبِي دَاوُدَ: ١٣٠)

فَتَاوَيَ الشَّيَأَي:
قال في الديب: المختار أن السائل إن كان لا يمر بين يدي المصل ولا يخفى الرقال ولا يسأل إجابة بل لأمر لا بد منه فلا يأصل بالسؤال والإعطاء و مثله في الزيازة وفيها ولا يجوز الإعطاء إذا لم يخطروا على تلك الصفة المذكورة.
The scholars concur that it is permissible to beg in the masjid and also permissible to give. However, if the beggar commits any outrage... then it is forbidden to ask and to give. This is the unanimous verdict of the scholars. However, the Hanafi scholars say that it is totally forbidden to beg in the masjid, and there are two views with regard to giving a beggar: (1) It is totally makrūh. (2) It is only makrūh when the beggar steps over the shoulders of the congregants. If not, it is permissible. This is the more correct view.

Allāh ta‘ālā knows best.

When the rows of congregants are not continuous

Question

Very often, the rows of congregants are not continuous in large masjids; and people perform salah in this way. What I mean is that there are gaps in-between. What is the Sharī‘ah ruling in this regard? This happens most of the time in the Haramayn (Makkah and Madīnah).

Answer

There are differing verdicts on this issue. Some books state that if the masjid is large, then large gaps do not prevent one from following the imām. Other books do not mention this precondition. Bearing in mind our current situations, salah ought to be valid in a large masjid without preconditions. The masjids of the Haramayn are quite huge. There is no continuity in the rows on normal days. If it is said that salah will be invalid, then the salah of thousands will be invalidated. 'Allāmah Tahtāwī raḥimahullāh provides a sound reasoning. When the imām is fully aware of the state of his congregants, following him will be valid because of sameness of the venue. Observe the following:

والمسجد وان كبر لا يمنع الفاصل إلا في الجامع القديم يخوارزم فإن ربع كان على أربعة آلاف أسطوانة، وجامع القدس الشريف أعني ما يشمل على المساجد الثلاثة الأقصى والصخرة والبيضاء. (فتاوى الشأي: 58/8، سعيد)
الفتاوى الهندية:

والمسجد وإن كبر لا يمنع الفاصل فيه... ولو اقتدى بالإمام في أقصى المسجد والإمام في المحراب فإنه يجوز (الفتاوى الهندية: 88/1، الباب الخامس في الإمامة)

امداد الفتاح:

والمسجد وإن كبر لا يمنع الفاصل (امداد الفتاح: ص 335)

حاشية الطحطاوي:

والفضاء الواسع في المسجد لا يمنع وإن وسع صفوفًا لأن له حكم بقعة واحدة كما في الأشياء من النف الخافي، فلو اقتدى بالإمام في أقصى المسجد والإمام في المحراب جاز كما في البندية، قال البازاري: المسجد وإن كبر لا يمنع الفاصل فيه إلا في الجامع القديم يجوز فإنه ربع كأن على أربعة آلاف أسطوانة، وجامع القدس الشريف اختيار ما يشتمل على المساجد الثلاثة، الأقصى والصخراء، والبيضاء كما في الحلمي والشرح، والظاهر أن ذلك لاستنادжал الإمامة على المأموم لا لاختلاف المكان. (hashiya al-thahthee al-muraq al-filaah: ص 39)

وللاستناد إلها: (الجواهر على الغزاة: 80 وشرح منية المصل: ص 36)

Allâh ta’âlâ knows best.

**Taking shoes which belong to someone else**

**Question**

A person’s shoes got mixed up in the masjid or in the Haramayn. Someone wore his shoes and left behind the person’s shoes. How is it for him to wear the shoes which have been left behind and which do not belong to him?
If the thought comes in his heart that the person whose shoes have been left behind will permit him to wear his shoes, it will be permissible for him to wear them. If not, he must abstain.

Allāh ta'ālā knows best.

An issue related to a certain imām

A person was an imām in a masjid. This incident occurred quite some time ago. On one or two occasions, he thought or had an overriding feeling that he dripped urine. On another occasion, the sighting of the crescent of Ramadān had not been announced as yet and the imām performed his witr ̔alāh. Then when the sighting was announced, he led the congregation in the witr ̔alāh after the tarāwīh ̔alāh. The latter ̔alāh was performed by someone else. At the time when the imām had doubts about the dripping of urine, he did not announce that the ̔alāh has to be repeated. This imām no longer has any contact with this place. By now, the majority of the congregants of that masjid must have passed away or moved to a different area. This incident happened thirty years ago. There is no use in informing the people of that place. How can the imām free himself from this situation?

When the imām had doubts about his wudū’ because of the dripping of urine, he ought to have made an announcement at that time so that the ̔alāh could be repeated. The fundamental creed of the Ḥanafīs is that the ̔alāh of the imām encapsulates the ̔alāh of the one following him. This was explained in volume two, page 234. However, bearing in mind the challenges and difficulties of the present case, we find a discussion by the jurists from which we learn the it is not necessary to make an announcement.

Muhāammad ibn 'Abd al-Latīf ibn 'Abd al-'Azīz ibn Malik writes in his explanation of the above:
As regards the Hadith which is quoted in the above text, Dr. 'Abd al-Majid ad-Durwesh quotes from Naṣr ar-Rīyāḥ that this Hadith is gharib, and Ibn Hajar said that he did not come across a marfū′ version of it. The Hadith in reference reads as follows:

أيما رجل صل بقوم ثم تذك ي جنبه، وأعادوا.

Yes, a mursal narration of Saʿīd ibn Musayyib reads as follows:

An رسول الله صلى الله عليه وسلم صلى بالناس وبو جنب
وأعاد وأعادوا.

Rasūlullāh sallallāhu 'alayhi wa sallam led the people in ṣalāh while he was in a state of impurity. He repeated his ṣalāh and so did the people.

This narration is mursal and one of its narrators, Abū Jābir al-Bayād is categorized as matrūk. Yahyā ibn Maʿīn refers to him as a big liar.

On the other hand, Dāraquṭnī quotes the following from Barraʾ ibn 'Āzib raḍiyallāhu 'anhu:

قال رسول الله صلى الله عليه وسلم: أيما إمام سبا فصلى بالقوم
وبو جنب فقد مضت صلاته ثم لبغسل بو ثم لبعيد صلاته
الخ. (شرح تفسير المروي: 846/1 بتعليقات عبد المجيد
الدوبيش).

Rasūlullāh sallallāhu 'alayhi wa sallam said: When an imām forgetfully leads a people in ṣalāh while he is in a
state of impurity, then their salāh has passed. The imām must take a bath and repeat his salāh.

This narration is also weak. One of its narrators, Juwaybir, is matrūk.

Sā‘īd Bakdāsh writes in his introduction to Munyah as-Sayyādīn with reference to Muḥammad ibn ‘Abd al-Laṭīf (d. 854) who is the author of Sharḥ Tuhfah al-Mulāk:

The reason for providing these details about this scholar is that when I quoted Sharḥ Tuhfah al-Mulāk as a reference for one of my fatwās, some muftīs raised the objection that I am giving as reference a book which is unknown. Some of the author’s works, such as Munyah as-Sayyādīn, is considered to be a master piece. Bear in mind that the text of Tuhfah al-Mulāk is written by Muḥammad ibn Abī Bakr ar-Rāzī (d. 666 A.H.).
To sum up, as far as possible, the congregants must be informed [of the invalidity of the \( \text{\textit{galäh}} \)]. But if it is very difficult, the latter view can be practised.

Alläh \( \text{ta\'alā} \) knows best.

**The imām turning towards the congregants**

**Question**

\textit{Fatāwā Dār al-\textit{Ulūm} Zakārīyyā} (vol. 2, p. 170) states that it is better for the imām to turn to the right side of the congregants. Does it refer to the right side of the congregants or the right side in the direction of the qiblah, which is the left side of the congregants?

**Answer**

Firstly, it is not correct to adhere strictly to one particular side. Rather, the imām should believe that it is permissible to turn to either side. \textit{Abdullāh ibn Mas’ūd} raḍīallāhu ‘anhu said that the one who imposes one side on himself, i.e. the right side, has in fact given a share to Shayṭān in his \( \text{\textit{galäh}} \). Rasūlullāh sallallāhu wa sallam used to turn to both sides and leave the masjid. (\textit{Sahīh Muslim}, vol. 1, p. 247)

Bayhaqī states in his \textit{as-Sunan al-Kubrā} that Rasūlullāh sallallāhu ‘alayhi wa sallam used to perform \( \text{\textit{galäh}} \) with shoes and without shoes, standing and sitting, and he used to leave from the right side and the left. (\textit{as-Sunan al-Kubrā}, vol. 2, p. 295) This is also mentioned in \textit{Ibn Mājah}, p. 66. This was also the practice of \textit{Hadrat Anas raḍīyaallāhu ‘anhu} and he used to reprimand the one who gave extra importance to the right side. (\textit{Sahīh Bukhārī}, vol. 1, p. 118) Wāsī’ ibn Hibbān said: “Ibn ‘Umar raḍīyaallāhu ‘anhu was sitting while leaning against a wall. When I completed my \( \text{\textit{galäh}} \), I turned from my left side and went to him. He asked me why I did not come from the right side. I replied: ‘I intended turning towards you.’ Ibn ‘Umar raḍīyaallāhu ‘anhu said: ‘You did the right thing. Some people assume that it is necessary to turn to the right side. You have a choice of turning to either side.’” (\textit{Muwattā Mālik}, p. 155) This incident is also related in \textit{Tirmidhī} (vol. 1, p. 66)

Nonetheless, it is better to turn to the right side. \textit{Hadrat Anas raḍīyaallāhu ‘anhu} relates that Rasūlullāh sallallāhu ‘alayhi wa sallam used to turn to the right side most of the time. (\textit{Sahīh Muslim}, vol. 1, p. 247) In his commentary to this Hadīth, Imām Nawāwī raḥimahullāh writes that the right side is better because this is what is gauged from the \textit{Ahādīth} in general. It is stated in \textit{Aujaz} that \textit{Hasan} preferred turning to the right side after \( \text{\textit{galäh}} \). (vol. 3, p. 497)
Now what is meant by the right side. We learn this from a text of Shāmī:

في شرح المنيه: أن انحراف عن يمينه أولى وأيده بحديث في صحيح مسلم.

(شامی: 531)

It is better for the imām to turn to his right side.

عن البراء رضي الله عنه قال: كنا إذا صلينا خلف رسول الله صلى الله عليه وسلم أحيننا أن نكون عن يمينه يقبل علينا بوجه. (مسلم: 447)

Barrā' rađiyallāhu 'anhu relates: When we performed ǧalāh behind Rasūlullāh șallallāhu 'alayhi wa sallam, we preferred standing to his right so that when he turns around, he would face us.

مرأق الفلاح:

 وإن شاء انحرف عن يمينه وجعل القبلة عن يساره، وبذا أولى. (مرأق الفلاح: ص 17)

If a person wants to proceed to his house after this, then from which direction should he leave? Imām Nawawī raẖmahullāh writes that if both sides are equal to him, it will be better to leave from the right side. Shāmī raẖmahullāh quotes this and accepts it (vol. 1, p. 531). It is also stated in Aḥsan al-Fatāwā that Rasūlullāh șallallāhu 'alayhi wa sallam preferred turning to his right and leaving the masjid from his right.¹ (Aḥsan al-Fatāwā, vol. 3, p. 368)

Maulānā Zafar Ahmād 'Uthmānī raẖmahullāh said that when Rasūlullāh șallallāhu 'alayhi wa sallam used to turn around to face the congregants, he used to turn to his right. And when he proceeded to his house, he would proceed from the left, i.e. the left side of the congregants. This is because his rooms were in that direction. This is the right side in the qiblah direction and the left side of the congregants. He was of the view that if a person wants to perform the Sunnah ǧalāh at his house, he must imitate Rasūlullāh șallallāhu 'alayhi

wa sallam by proceeded from the right side of the qiblah which is the left side of the congregants.¹

Allāh ta‘ālā knows best.

Loud du‘ā in the masjid

Question

Sometimes, a lecturer or imām makes loud du‘ā in the masjid. What is the preferred way of making du‘ā? What is the ruling with regard to making loud du‘ā occasionally?

Answer

It is essentially better and superior to make a silent du‘ā. It is permissible to make a loud du‘ā occasionally. It is better and more appropriate to make a loud du‘ā in masjīd which are frequented by the laity. This is so that they could learn the method of du‘ā and get the opportunity of saying “Āmīn” to the du‘ā’s of the Qur’ān and Ḥadīth. However, a silent du‘ā should be made periodically so that people do not think that a loud du‘ā is necessary.

قال الله تعالى: “ادعو رحكم تضرعاً وخفية”... قال العلامة الآلوي البغدادي الحنفي: الإخفاء أفضل عند خوف الربا والإظهار أفضل عند عدم خوفه. وأول من يقول بتقديم الإخفاء على الخبر فيما إذا خيف الربة أو كان في الخبر تشوش على نفو مصل أو نائم أو قارئ أو مشتغل بعلم شرعي ويتقدم الخبر على الإخفاء فيما إذا خلا عن ذلك وكان فيه قصد تعليم جاهل أو نفو إزالة وحشة عن مستوحش أو طرد نفو نعاس أو كسر عن الداعي نفسه أو إدخال سرور على قلب مؤمن أو تنغير مبتدع عن بدعه أو نفو ذلك ومنه الجهر بالترضي عن الصحابة والدعاء لإمام المسلمين في الخطب. (تفسير روح المعاني: ١٤٠/٨)

...Supplicate to your Sustainer with humility and silently. In other words, among the etiquette of du‘ā’ is that it must be done with humbleness and submission, and it must be made silently. We learn from this that a silent du‘ā’ is superior to a loud du‘ā’.1

However, a loud du’ā’ is permissible when wisdom demands it. Observe the following Ahādith on loud du’ā’:

This du’ā’ was made aloud; the Sahābah rādiyallāhu ‘anhum heard it.

Hadrat Habīb ibn Maslamah rādiyallāhu ‘anhu was a Sahābi whose du’ā’s were readily accepted. He was appointed as a commander over an army. He planned the path to advance towards the Romans. When they came face to face with the enemy, he said to the people: “I heard Rasūlullāh sallallāhu ‘alayhi wa sallam saying: ‘When a group assembles in a place, and one of them leads them in du’ā’ while they say ‘Āmīn’, Allāh ta’ālā will certainly accept their du’ā.’” Hadrat Habīb
radiyallahu 'anhu then praised and extolled Allâh ta‘âlâ, and made this du‘â’: “O Allâh! Protect our blood [lives] and give us the reward of martyrs.”

Hadrat Muftî Mahmûd Hasan Sâhib rahimahullâh said...We learn from this that not only is a collective du‘â’ prescribed, rather it is more likely of acceptance.

A few Ahâdith on loud du‘â’ are quoted from Hayât as-Sahâbah:

(1) أخرج الطبراني في الأوسط عن قيس المديني أن رجلاً جاء
زيّد بن ثابت رضي الله عنه فسأل عن شيء فقال له زيد:
عليكم بأبي ببيّرة رضي الله عنه فبينا أنا وأبو ببيّرة رضي الله
عنده وفنان في المسجد ندعو ونذكر بناب عنزل إذ خرج
إلينا رسول الله صلى الله عليه وسلم حتى جلس إلينا فسكتنا

1 Hayât as-Sahâbah (translated), vol. 3, p. 353.
2 Malfûzât, p. 17.
Hadrat Qays Madanî rahimahullâh says that a man came to Hadrat Zayd ibn Thâbit rađiyallâhu 'anhu and asked him about something. Hadrat Zayd said to him: “Go and ask Abû Hurayrah because on one occasion, Abû Hurayrah, another person and I were together in the masjid, making du’â‘ and engaging in the remembrance of our Sustainer. Rasûlullâh sallallâhu ‘alayhi wa sallam came to us and sat down with us. We fell silent. He said: ‘Continue with what you had been doing.’ So I and my companion made du‘â‘ before Abû Hurayrah, while Rasûlullâh sallallâhu ‘alayhi wa sallam was saying ‘Āmîn’ to our du‘â‘. Abû Hurayrah then made this du‘â‘: ‘O Allâh! I ask You for what my two companions asked. And I ask You for knowledge which is not forgotten.’ Rasûlullâh sallallâhu ‘alayhi wa sallam said: ‘Āmîn.’ We said: ‘O Rasûlullâh! We two are also asking for knowledge which is not forgotten.’ Rasûlullâh sallallâhu ‘alayhi wa sallam said: ‘This Dûsî youngster (Hadrat Abû Hurayrah) has surpassed you two.’”

A relative of Jâmî’ ibn Shaddâd relates: I heard ‘Umar ibn al-Khattâb rađiyallâhu ‘anhu saying: There are three du‘â’s which, when I make, you must say Āmîn to them:

- What has come from your heart.
- What has been commanded to you by your Lord.
- What is not forgotten.
O Allāh! I am weak, so strengthen me. O Allāh! I am hard-hearted, so make me soft-hearted. O Allāh! I am miserly, so make me generous.

And also related by Ibn Sa‘ūd (23/3) that Abū Bakr Ibn al-‘A‘rāfah said: When I saw the Prophet son of Al-Maghrib upon his umrah pilgrimage, it was in the morning, when he was wearing plain garments and proceeding in utmost humility and submission. He had a small shawl over his body which did not even reach his knees. He raised his voice in seeking Allāh’s forgiveness while tears were flowing down his cheeks. ‘Abbās ibn ‘Abd al-Muttalib said: “O Allāh! We are making the uncle of Rasūlullāh salallahu ‘alayhi wa sallam our intermediary to You.” ‘Abbās stood for quite some time at his side, making du‘ā while his eyes were flowing with tears.

Hadrat Sā‘īb ibn Yazīd rahimahullāh relates: One day I looked at ‘Umar ibn al-Khattāb during the Ramādān drought which we had been experiencing. It was in the morning, when he was wearing simple garments and proceeding in utmost humility and submission. He had a small shawl over his body which did not even reach his knees. He raised his voice in seeking Allāh’s forgiveness while tears were flowing down his cheeks. ‘Abbās ibn ‘Abd al-Muttalib said: “O Allāh! We are making the uncle of Rasūlullāh salallahu ‘alayhi wa sallam our intermediary to You.” Hadrat ‘Abbās stood for quite some time at his side, making du‘ā while his eyes were flowing with tears.

And also related by Ibn Sa‘ūd (23/3) that Abū Bakr Ibn al-‘A‘rāfah said: When I saw the Prophet son of Al-Maghrib upon his umrah pilgrimage, it was in the morning, when he was wearing plain garments and proceeding in utmost humility and submission. He had a small shawl over his body which did not even reach his knees. He raised his voice in seeking Allāh’s forgiveness while tears were flowing down his cheeks. ‘Abbās ibn ‘Abd al-Muttalib said: “O Allāh! We are making the uncle of Rasūlullāh salallahu ‘alayhi wa sallam our intermediary to You.” ‘Abbās stood for quite some time at his side, making du‘ā while his eyes were flowing with tears.
Hadrat Abū Sa‘īd, the freed slave of Hadrat Abū Usayd, relates that Hadrat ‘Umar radīyallāhu 'anhu used to walk around in the masjid after the ‘ishā ṣalāh. Whenever he came across any person, he would ask him to leave the masjid, except for the one who was occupied in ṣalāh.

One night, he passed by some Companions of Rasūlullāh ṣallallāhu 'alayhi wa sallam. Ubayy ibn Ka‘b radīyallāhu 'anhu was among them. Hadrat ‘Umar asked: “Who are these people?” Hadrat Ubayy replied: “O Amīr al-Mu‘minīn! These are a few of your house-folk.” Hadrat ‘Umar asked: “Why are you still sitting here after the ṣalāh?” He replied: “We sat to engage in Allāh’s remembrance.” Hadrat ‘Umar then asked each one until it was my turn. I was sitting at his side. He said to me: “Now you make du‘ā.” My tongue became locked and I began trembling to the extent that he too realized that I was trembling. He said: “If you cannot say anything, then at least make this du‘ā: ‘O Allāh! Forgive us. O Allāh! Have mercy on us.’” Hadrat ‘Umar then made du‘ā. There was no one who cried more and shed more tears than him. He then said: “O people! You may disperse now.”
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Chapter Title

Section Title

Subsection Title

Text

Oxford Readings Series in Islamic Thinkers: The ʿAbbasīs and the Nasīrīs

Chapter Title

Section Title

Subsection Title

Text
**Question:** Is it permissible to make a loud du’a’ after the fard salāh?

**Answer:** It is permissible to make a loud du’a’ after the fard salāh provided there is no impediment to it.¹

**Fatwā Rashīdīyyah:**

A silent du’a’ is superior. If it does not disturb the congregants in any way, it will be permissible to raise the voice slightly occasionally. It is makrūh to make a habit of a loud du’a’ all the time.

It is stated elsewhere:

It is better to make a silent du’a’. If the imām raises his voice slightly so that the congregants may learn the du’a’s or say “Āmīn” to his du’a’, then there is no harm in it. Here too, the precondition is that it does not disturb the congregants in any way.²

Allāh ta’ālā knows best.

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**The method of raising the hands in du’a’**

**Question**

The imāms of some masājid have their palms together when making du’a’. How should du’a’ be made? Should the hands be together or should there be a slight gap between them?

**Answer**

When raising the hands for du’a’, it is better to have a slight gap between them.

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¹ Fatwā Rashīdīyyah, p. 601.
Rasūlullāh ṣallallāhu 'alayhi wa sallam smiled. He then raised his hands with a gap between them, and said: "O Allāh! Send rains around us and not on us..."

The Muhaddith:

While raising hands, he would hold them at the chest, for it is narrated by Ibn 'Abas, may Allah have mercy on him, that the Prophet, peace be upon him, would raise his hands from his chest to the sky, and then he would raise his hands with a gap between them, and said: "O Allāh! Send rains around us and not on us..."

Ihāyʿ Ulūm ad-Dīn:

However, there is an objection to the above because some Ahādīth show that the hands should be joined at the time of duʿā'. Observe the following from Ihāyʿ Ulūm ad-Dīn:

"And it is narrated from 'Abas bin Ubayr, may Allah have mercy on him, that the Messenger of Allāh, peace be upon him, used to join his hands when he performed this action..."
Although the above narration is weak, there is a strong narration to support it. The following is contained in Kitāb az-Zuhd wa ar-Raq‘iq of 'Abdullāh ibn Mubārak rahimullāh:

أخبرنا عبد العزيز بن أبي رواج قال: حدثني علامة بن مرثيد واسعث بن أمية أن رسول الله صلى الله عليه وسلم كان إذا أفرغ من صلاة رفع يده وضمتهما وقال: رب اغفر لي ما قدمت وما أخرجت وما أسررت وما أعطنت وما أسرفت وما أنت اعلم به ما أنت المقدم فأنت المؤخر لا إله إلا أنت الله الملك وملك الحمد. (الزيد والرقائق لابن المبارك: 1889/1114، باب فضل ذكر الله عز وجل).

قال محقق أحمد فرید: مرسل واسناد حسن وورد مرفوعاً عن علي بن أبي طالب رضي الله عنه. (استحباب الدعاء بعد الفرض لمولاانا عبد الحفيظ المكي، ص 106).

The answer to this is that the word dann, according to the jurists, refers to "being in line, or being parallel to each other". The same explanation is given to the narration which makes reference to dann al-'aqibayn:

قلت: لعل أراد من الإلصاح المحاذات وذلك بأن يحادي كل من كعبه لآخر فلا يتقدم أحدهما على الآخر (السعاية: 180)
For further details refer to *Fatāwā Dār al-‘Ulām Zakarīyyā*, vol. 2, p. 134.

Allāh ta’ālā knows best.

**Swaying from side to side when reading the Qur’ān or making dhikr**

**Question**

When people read the Qur’ān or engage in dhikr in the masjid, they sway from side to side (or front to back). Is it permissible to make these motions?

**Answer**

If a person sways from side to side during Qur’ān reading or dhikr, and does this for some sound reason (e.g. for concentration, to develop enthusiasm, to create ease in memorizing, etc.) then it is permissible. However, if he can acquire these benefits without having to sway, he should not do it because worship requires tranquillity and decorum. Moving from side to side negates tranquillity and decorum. At the same time, if it takes the form of a dance or it is done after considering it to be an act of worship, then it will not be permissible.

جواب: الظابر أن قراءة القرآن بالسكن والوقار أفضل لأنّه أدل على التوحيد والتحرك ينافي، ثم المنع عن التحرك لم يعرّض له في الكتب المعتبرة المتناولة كالبحر والدر وغريبما نعم ذكر في الدور المختار في الصلاة على النبي صلى الله عليه وسلم وإزاعت الأعضاء برفع الصوت جيل وانما بي دعاء والدعاء يعكس بين الحب والمخافة، انتبه، فقراءة القرآن أولي بأن لا يتحقق فيها إزاعت الأعضاء لحتم لو عدل عن هذه الأولوية لغرض صحيح كفريم الخاطر وحصول النشاط في القراءة الحاصل بالتحرك بالنسبة إلى البعض كالصبيان وتخويف فالأظابر عدم الدم لأنّه المقصود الأصلي بو التعليم وضبط
الفقران بالقراءة فبأى طريق يحصل ينبغي فيهما، كما لا ينبغي على المنصف ألا ترى أن الحديث متنوع عن مس المصحف ووجوزوا للصبي المضرورة وحصول الخفظ في الصغر قال في الدرب المختار: ولا يكره مس صبي لمصحف ووح، ولا ينأم بدفع إليه وطلب منه للضرورة إذ الخفظ في الصغر كالنقش في الحجر، ولا ينبغي أن المحرك من الصبي في حالة القراءة للتعلم أدن من المس حالة الحدث، وأما القول بتشبيه اليهود فلم يثبت بنقل صحيح (فتاوى، واحد: 147)

فيض القدير:
(فيض القدير: 26/2)

بريقة محمودية:
و أما تحريك الرأس فقط بسهرة تحقيقاً لمعنى النفي والإثبات في "لا إله إلا الله" فالظل الغالب جوازه، بل استحب، إذا كان مع النيا الحاصلة الصالحة فيخرج عن حد العبث و اللعب، لأن العبث ما لا فائدة فيه والتحق المذكر من أعظم فوائد (بريقة محمودية في شرح طريقة محمودية: 139/4)

صحيح البخاري:
عن البراء رضي الله عنه قال: كان رجل يقرأ سورة الكيف والى جانب حسان مربوط بطلتين، فنغشت سحابة فجعلت تدنس، وجعل فرس ينفر، فلما أصبح 725
Majālis-e-Dhikr:
Shāh 'Abd al-Qādir Rāi Pūri raḥimahullāh said: The practice of đarb (swaying the head from the right shoulder towards the heart) was initiated to increase the effect of dhikr and to create softness and concentration in a person’s temperament. This practice is neither considered to be the objective nor is it an order. Rather, it is done solely as a way of treatment. This is why when a person realizes his objective, he is asked to give up these practices.¹

For further details refer to: Dhikr Ijtihādi Wa Jahri Sharī'at Ke Ā'īnah Mei, p. 170; Bawādir an-Nawādir, p. 446.

Some scholars make certain objections to this.

1. It is a bid'ah to sway in this manner at the time of reading the Qur’ān and making dhikr. It is not permissible.

Answer: This is not bid'ah fi ad-dīn but bid'ah li ad-dīn. In other words, it is classified as a means and is not from the objectives. The means are not unlawful according to the Sharī‘ah.

Ḥakīmul Ummat writes:
The reality of bid'ah is when an action is done while considering it to be Dīn. How can it be a bid'ah if it is done as a treatment? You get iḥdāth li ad-dīn and iḥdāth fi ad-dīn. The first is Sunnah while the second is bid'ah.²

2. This practice resembles that of the Jews. It has been their ancient practice to sway when reading the Ta‘rīkh or when worshipping. They refer to this practice as “shokling” – which means, to sway.

¹ Majālis-e-Dhikr, p.117.
² Ṭuhfah al-'Ulamā’, vol. 2, p. 140; Fiqh Ḥanafī Ke Uṣūl Wa Ḩawābiṭ, chapter six, the definition of Sunnat.
This practice continues among the Jews to this day. The question now is that if this practice has become common in certain regions, e.g. Egypt, Spain, etc. then will it be prohibited on the basis of imitation of Jews?

After quoting the above statement of `Allāmah Zamakhsharī raḥimahullāh, the author of al-Bahr al-Muḥīṭ writes:

وَقَدْ سَرَتْ بِهِ النُّزُعَةُ إِلَى أُولَٰئِكَ الْمُسْلِمِينَ فَلَمْ رَأَيْتُ بِدِيَارِ مَصرِ تَرَابِمٌ فِي

المكتبِ إِ ذا قَرَأَ الْقُرآنَ يُبِّرِزُونَ وَيُخْرِجُونَ رُؤْوِيَّهُمْ وَأَمَامُ فِي بَلَادَنَا بالأندِلْسَ

والعَرْبِ فَلَوْ تَحْرَكَ صَغْيْرٌ عَنْدَ قِرَاءَةِ الْقُرآنِ أُدْمَ مُؤْذِبِ المَكْتِبِ وَقَالَ لِهِ: لَا

تَتَحْرَكُ فَتْشِبُهُ الْيَهُودُ فِي الْدِّرَاسَةِ (تَفْسِيرُ الْبَحْرِ الْمُحْيِطُ: ٤٣٠)  

Answer: The 'ulamāʾ say that the prohibition of imitating unbelievers is not so general in nature. Rather, it is not permissible in matters which are their religious peculiarities and distinguishing signs. For example, wearing a necklace with a cross, wearing a string around the wrists which is normally worn by Hindus, applying a red dot on the forehead, and so on. Imitation is also unlawful in matters whose repugnance is mentioned in the Ahādīth. For example, wearing a trouser below the ankles, men wearing garments of women.

However, there are certain matters which, while bearing resemblance is found on one side, there is some advantage on the other side. Such matters will not be classified as unlawful. If a person observes fast only on the 10th of Muharram, it will not be impermissible because the person who does this does not intend to imitate the Jews. Rather, he intends following Ḥadīth Mūsā alayhis salām and Rasūlullāh sallallāhu ʻalayhi wa sallam. Conducting assemblies of lectures and admonition in Muharram and Rabī’ al-Awwal entails resemblance with the people of bid’ah. However, because the intention is to refute fabricated customs and explain the correct practices, the ‘ulamāʾ say that they are permissible provided they are free from baseless customs and other nonsensical adherences.

In short, if a practice becomes common and is not considered peculiar to a certain nation, it will no longer be imitation. Furthermore, the above narration does not seem to be of a Hadīth but a historical narration.

The following is stated in Fiqh Hanafi Ke Uṣūl Wa Dawābīt:

An indication that imitation of a certain nation has ended is that when looking at a person, the general public does not think that he is
dressed like such and such nation, e.g. wearing a long coat. Nonetheless, as long as the general public’s mind goes to a certain nation, it will be imitation and therefore prohibited. For example, to wear a coat, trouser, or dhoti in our country [India]. However, where a coat or trouser becomes common and people do not associate it with any nation, it will not be prohibited. As long as the public associates it with a certain nation, it will be classified as imitation and therefore unlawful.¹

Also refer to Taqrîr Tirmîdî, p. 331.

The original meaning of hazz is to move or cause to move.

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¹ Fiqh Ḥanâfî Ke Uṣūl Wa Dawâbiṭ, p. 154 – from the teachings of Ḥakîmûl Ummat Maulânâ Ashraf ‘Alî Thânwî rahîmahullâh.
The following is listed in Lisān al-‘Arab:

واهتز إذا تحرك. (لسان العرب، ج 5، ص 44).

Lughāt al-Ḥadīth:

- they swayed and were delighted in Allāh’s remembrance.¹

Refer to Dhikr Ījtīmā’ Wa Ḥaṭīṭ Sharī’at Ke Ā’īnah Mei, p. 170.

Allāh ta’ālā knows best.

**Coming to the masjid with clothing which has impurities**

**Question**

The pants which a person is wearing is impure. The impurity on it, e.g. urine or semen has dried. Is it permissible to come into the masjid while wearing this pants?

**Answer**

If there is the possibility of soiling the masjid with the garment which has impurities, then it is not permissible. If not, it is preferable not to enter the masjid with such a garment. The jurists state that it is makrūh to light a lamp in the masjid with impure oil. On the other hand, we find mention of a mustahādah woman entering a masjid. Therefore, if there is no possibility of soiling the masjid, we will not say that it is makrūh tahrīmī. Yes, it is better not to enter with such a garment.

وَظَهَرَ ٰبِنَيْيَّ لِلْمَائِطِينِ. (سُورَةُ الْحَجّ: ٢٦)

Purify My House for those who circumambulate it.

Muftī Muḥammad Shafī’ Ṣāḥib Ṣahīhullāh writes:

This verse orders keeping the Ka'bah pure. This includes physical impurities...From the words “My House” we infer that the order applies to all masājid because they are all the houses of Allāh ta'ālā.

similarly, Allāh ta’ālā says:

في نُبْوَتۡ أَدَنَّ اللَّهُ أَن تَرْفَعَ

¹ Lughāt al-Ḥadīth, vol. 4, p. 29.
In those houses which Allâh ordained to be raised...

Observe the following Ahâdîth:

In his commentary to the above Hadîth, 'Allâmah 'Aynî rahimahullâh says that if the garments or masjid will not be soiled, then there is no problem. The same applies to anyone who falls under the meaning of a mustahdâh. That is, a person who is excused (e.g. a person suffering from continuous urine drops, flowing of blood from a wound, etc.) – he is permitted to enter the masjid and observe i’tikâf in it.

ومنه يستنبط منه: جواز اعتكاف المستحاضة، وجواز صلاتها لأن حالا حال الطيارات وإنها تضع الطست لولا يصب ثوبا أو المسجد وأن دم الاستحاضة رقيق ليس كدم الحيض، ويلحق بالمستحاضة ما في تعابي كمن يسلسب البول والمدى والودى ومن يجرح يسيل في جواز الاعتكاف. (عمدة القاري: 3/313, كتاب الحيض، باب الاعتكاف للمستحاضة، دار الحديث، ملتان).

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1 Suhrat an-Nur, 24: 36.
Impure clothes should not be left in a masjid. If it is difficult to send an impure garment out of the masjid or to take it out yourself, it may be
left in the masjid out of necessity; but in a manner which would not soil the masjid.¹

Maulānā Muḥammad Yūsuf Ludhānwī raḥimahullāh writes:
If the shoes are dry, the masjid will not be rendered impure.²

Allāh ta’ālā knows best.

**A non-Muslim worshipping in a masjid**

**Question**

Is it permissible for a Christian priest to come into a masjid and engage in worship? Can permission be given to him to do this? What is the status of the narrations which mention the delegation of Najrān coming into the masjid and worshipping there?

**Answer**

The scholars differ on the issue of unbelievers entering the masjid. But none of them states the permissibility of their worshipping in the masjid. In fact, their worship is not even classified as a worship. In reality, it is polytheism and fabricated customs. An intention is necessary for worship, and unbelievers do not even have the capacity for an intention.

The narrations in this regard are dubious. There are doubts about the narrator Muḥammad ibn Is-haq. The narration of his teacher, Muḥammad ibn Ja’far is classified as mu’dal because it does not mention a Tābi‘ī and Šaḥābī. Although a munqatī’ narration of the best of eras (time of Rasūlullāh sallallāhu ‘alayhi wa sallam, Šaḥābah and Tābi‘īn) is not harmful according to Ḥanafi scholars, the narration under discussion is against the principles (Qur’ānic verses). Mūlā ‘Alī Qārī raḥimahullāh writes:

ومنها: خلاف الحديث لصريح القرآن كحديث مقدار الدنيا. (موضوعات كبير

A Ḥadīth which goes against the Qur’ān and there are objections to its chain of transmission will not be acceptable. In fact, it is an indication that it is fabricated. The part of the Ḥadīth which states that the

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¹ *Fatāwā Maḥmūdīyyah*, vol. 15, p. 193.

Christians worshipped in the masjid is not acceptable. This Hadith is also against the principles. Mullā ‘Alī Qārī raḥimahullāh writes:

There are authentic testimonies which point to the unauthentic nature of this Hadith. Therefore, the part of the Hadith which states that they prayed in the direction of the east while in the masjid has to be rejected. Alternatively, it will be rationalized by saying that the word “masjid” refers to that attached portion which is not classified as a masjid in reality. It refers to the section in which Abyssinian youngsters used to play. Occasionally, some people used to tie their camels in this section. A field which is attached to a masjid is quite often referred to as a masjid [although it is not in reality].

صدور هذه السورة (آي سورة آل عمران) نزل بسبب وفد نجران فيما ذكر محمد بن إسحاق عن محمد بن عمه بن الزبير وكانوا نصارى وفدو على رسول الله صل الله عليه وسلم بالمدينة في ستين راكبًا فيهم من أشراقهم أربعة عشر رجلاً في الأربعة عشر ثلاثة نفر إليهم يرجع أمرهم العامق أمير القوم وذو آرائهم واسم أبو المسح والسيد يمالهم وصاحب مجتمعهم واسم الأيمن وأبو حارثة بن علقمة أحد بكر بن وائل أسقفهم وعالهم، فدخلوا على رسول الله صل الله عليه وسلم أمر صلاة العصر عليهم ثياب الحرات بجب وأردي، فقال أصحاب النبي صلى الله عليه وسلم ما رأينا وفداً مثلهم جمالًا وجلالًا، ورحنت صلاتها فقاموا فصلوا في مسجد النبي صلى الله عليه وسلم إلى المشرق، فقال النبي صلى الله عليه وسلم دعواهم...الخ. (تفسير القرطبي):

4/5

والاستزادة أنظر: (المسيرة النبوية لابن بيشم: 342)
Leaving a masjid and performing congregational salâh on a field

Question

Some people make an objection against the Tablîghî brothers by saying that they leave the masjid and perform salâh outside at the ijtîmâ’ site. The objectors claim that it is sunnat-e-mu’akkadah to perform salâh with congregation in a masjid, and that there is no virtue for a congregation outside. Is this correct? They present a narration of Ḥadrat ‘Abdullâh ibn Mas’ûd râdîyallâhu ‘anhu in which congregational salâh in a masjid is referred to as sunan-e-hudâ.

Answer

If a salâh is performed with congregation outside a masjid, the reward for congregational salâh will be obtained. The reward for congregational salâh in a masjid is more.
If some people do not perform salah in the masjid but perform it in congregation at home they will obtain the virtue of congregational salah although it will be less than what they would obtain by performing in the masjid.

The fact of the matter is that there is virtue in performing salah with congregation at home, and a separate virtue for performing it in the masjid. If a person performs salah at home with congregation, he will obtain the merit of performing it with congregation, while having left out another virtue [of performing it in the masjid].

He wrote the above with reference to the tarawih salah. He then writes:

The same applies to the fard salahs.
شرح منیه المصل: 

لوصل جماعتی در این مسجد نالوا فضیلی جماعت و بی‌مضاعفی بی‌یکه عشیرین درجه لکن نیالوا فضیلی جماعت که کتیب در المسجد فا‌حاصل این کیما شرع فی الجماعت فالمسلمی فی أفضل لامشتم علیه من شرف المکان واظهار الشعائر وتصمیم سواد المسلمین.

He wrote the above with reference to the tarāwīḥ ṣalāh. Before it, he wrote the following:

ویکذا في المكتوبات أي الفرائض. (شرح منیه المصلی، ص ۴۰، ابوب التراویح، سبل).

It becomes clear from the above juridical texts that the Tablīghī brothers receive the reward for congregation if they read the congregational ṣalāhs at the ijtimā’ site, and the Sunnah is fulfilled although the masjid is better. However, due to certain reasons, everyone cannot go to the masjid, and the masjid too cannot accommodate all of them. As for the virtues of a masjid, these you can look up easily in the virtues of ṭasāṣjīd. For example, seven people will be shaded under the Throne of Allāh ta’ālā. Those whose hearts were attached to the masjīd are included in these seven. There is also the famous incident about two Sahābah who, when they used to perform their ṣalāh in the masjid and leave in the pitch darkness, a light used to emanate from their walking sticks. Another Ḥadīth states that when a person frequents the masjid in the morning and evening, Allāh ta’ālā makes arrangements to host him in Paradise. Another Ḥadīth states that if a person leaves home for the sole intention of going to a masjid, his rank is elevated by ten and ten sins are wiped out. Then when he completes his ṣalāh, the angels supplicate for mercy in his favour. These virtues are mentioned in the various Ḥadīth collections.

The narration of Ḥadrat ‘Abdullāh ibn Mas‘ūd ULATOR ‘anhu also has the same meaning. That is, congregational ṣalāh is a Sunnah and it is hypocrisy to abandon it. He says:

من سره أن يلقى الله غداً مسلماً فيحفظ على بؤلاء الصولوات الخمس حيث ينادی بهن فإن الله شرع لنبيهکم
The one who would like to meet Allâh ta’âlî tomorrow as a Muslim must safeguard these five salâhs by performing them where they are announced [i.e. in the masjid]. Allâh certainly prescribed the pathways of guidance for your Prophet salvallallâhu ‘alayhi wa sallam, and they – i.e. the five salâhs - are to be performed in congregation...If you were to perform them in your houses as is done by this one who remains behind, you would be casting aside the Sunnah of your Prophet. And if you abandon your Prophet’s Sunnah, you will go astray.

From the words “as is done by this one who remains behind” we learn that Ibn Mas’ûd radîyallhu ‘anhu considers the one who performs salâh on his own and stays away from the congregation to be worthy of reprimand. On the other hand, performing salâh in congregation is worthy of praise. Another narration of Muslim Sharîf reads as follows:

I recall a time when none would stay away from the [congregational] salâh except a hypocrite whose hypocrisy was known or a sick person. You would also find a sick person taking support from two people and attending the congregational salâh. He added: Rasûlullâh りllallâhu ‘alayhi wa sallam taught us the pathways of guidance, and one of the pathways of guidance is to
perform ṣalāh in a masjid from where the adhān is called.

The beginning part of this narration makes mention of a hypocrite who stays away from the congregation. In comparison to this, ṣalāh performed with congregation will be worthy of praise and reward. Since congregational ṣalāh in the cities and urban areas is generally performed in a masjid, the masjid is mentioned. Thus this specification does not appear to be conditional. In another narration Rasūlullāh ṣallallāhu 'alayhi wa sallam says that the ṣalāh with congregation is twenty-seven times superior to ṣalāh performed individually. It does not make mention of performing it in a masjid. Another Hadith states:

الصلاة مع الإمام أفضل من خمس وعشرين صلاة يصليها وحده. (مسلم: 337).

A ṣalāh performed with an imām is twenty-five times superior to a ṣalāh performed on one’s own.

Here the virtue is compared between a person reading on his own and one reading with congregation.

Allāh ta’ālā knows best.

**Loud dhikr in the masjid**

**Question**

Nowadays some people speak out against loud dhikr in the masjid. They say that it is a bid’ah. What is the Sharī‘ah ruling in this regard?

**Answer**

Loud and collective dhikr in the masjid is permitted according to the Sharī‘ah. The practice of our seniors bears testimony to this. I present the translation and gist of few Ahādīth in this regard:

(1) قال النبي صلى الله عليه وسلم: أنا عند ظن عبدي بي وأنا معه إذا ذكرني فإن ذكرني في نفس ذكرته في نفسى وإن ذكرني في مالاً ذكرته في مالاً خير منهم الحديث. (رواه البخاري برقم 3856)

Rasūlullāh ṣallallāhu 'alayhi wa sallam said: Allāh ta’ālā says: I treat My servant according to how he thinks of
Me. I am with him when he remembers Me. If he remembers Me in solitude, I remember him in solitude. If he remembers Me in a gathering, I remember him in a better gathering.

Remembering Allāh ta'ālā in a gathering includes silent and loud dhikr. In fact, 'Allāmah Suyūtī is of the view that the benefit of a gathering is manifested when the dhikr is made aloud.

In the Ḥadīth under discussion, the words mith na fiṣli are translated as “in solitude” because a “gathering” is mentioned in comparison to it. The words fiṣli come in the meaning of “solitude, alone”. In his commentary to the above Ḥadīth, 'Allāmah Nawawī raḥīmahullāh writes in Sharḥ Muslim:

مراد الحديث أي إذا ذكرني خالياً أثاب الله وثوابه عما عمل بما لا يطلع عليه.

أحد. (شرح النووي: ٣٤/١)

An ism is defined as follows:

كلمة تدل على معنٍ في نفسها غير مقتضي بأحد الأرمين الثلاثة.

An ism is a word which singularly refers to its meaning. On the other hand, a hurf needs an assistant. For example, the word min only refers to a partial beginning when it is attached to another word. Whereas the meaning of a total beginning is found in an ism.

In his explanation of the verse:

قل لهم في أنفسهم قولًا بليغاً.

'Allāmah Zamakhsharī raḥīmahullāh, the author of al-Kashshaf, writes:

 قال النبي صلى الله عليه وسلم: إذا صل أحدثكم لنفسن فليطل ما شاء.

Rasūllullāh sallallahu 'alayhi wa sallam said: If a person performs galāḥ on his own, he may perform it for as long as he wants.

والذكر ربك في نفسك ترضأ وخيفة دون الجهر من القول بالغدو والأصالة. (سورة الأعراف: ٨٥)
Continually remember your Sustainer in your heart with humility and awe, and without raising your voice.

[Remainder Him] by morning and evening.

One of the meanings of this verse could be: When you are in solitude, there is no use in sitting idle. You should therefore engage in Allāh’s remembrance with humility and awe. There may be no one else with you, but Allāh ta’ālā is there. Yes, if you want to engage in loud dhikr, you may do so but let it not be too loud because there is no one else present, in which case, you would do it aloud as an encouragement for him. Therefore, a slightly loud dhikr will suffice. The other meaning of this verse is that you must engage in Allāh’s remembrance with humility and awe in your heart. Or, you may do it audibly but not too loud.

2. Rasūllullāh ﷺ said: “When you pass the gardens of paradise, you must graze [to your heart’s content].” The Ṣaḥābah ra’dīyallāhu ‘anhum asked: “What are the gardens of paradise?” Rasūllullāh ﷺ replied: “The masājid.” They asked: “What is the meaning of grazing?” He said: “Sub-hānallāh, wa lhamdu lillāh, wa lā ilāha illallāh, wallāhu akbar.”

3. When people assemble for Allāh’s remembrance, a caller announces from the heavens: “Stand up, for you have been pardoned and your evils have been changed to good.”

4. ‘Abdullāh ibn ‘Amr ibn al-‘Ās ra’diyallāhu ‘anhu asked Rasūllullāh ﷺ: “What is the fruit of the assemblies of dhikr?” He replied: “It is Paradise. It is Paradise.”
5. There will be some people on the day of Resurrection whose faces will be shining brilliantly and they will be on pulpits of pearls. Others will look at them with envy. Someone asked: “O Rasūlullāh! Describe their condition to us.” Rasūlullāh ʿalayhi wa sallam said: “They are people from different families who assemble in one place and occupy themselves in Allāh’s remembrance.”

6. Allāh’s choicest angels search for assemblies of dhikr. When they find one such assembly, they sit in it and cover its people with their wings. When the assembly ends, Allāh ta’ālā asks them – although He knows fully well – “Where have you come from?” They reply: “From a group which was occupied in extolling Your greatness.”

7. Rasūlullāh ʿalayhi wa sallam approached a circle of Sāhībah and asked them: “Why are you sitting together like this?” They replied: “We are sitting in an assembly of dhikr.” Rasūlullāh ʿalayhi wa sallam said: “Jibra’īl ’alayhis salām came to me and informed me that Allāh ta’ālā is boasting in front of the angels because of you.”

8. Ḥadrat Jābir raḍiyallāhu ‘anhu relates that some people saw a light and fire in a graveyard. When they approached it, they found Rasūlullāh ʿalayhi wa sallam and he was saying: “Give me the body of this Sāhīb because he used to make dhikr in a loud voice.”

The above-quoted Aḥādīth and many others like them confirm the practice of loud and collective dhikr. Some books of jurisprudence state the permissibility of loud dhikr, while others state that it is commendable.

A person asked Ḥadrat Muftī Maḥmūd Ḥasan Gangoḥī rahimahullāh about loud dhikr. For the sake of brevity, the question is not quoted here. Ḥadrat Muftī Ṣāḥib replied: For how long are you going to fight and argue with your friends? You may engage in dhikr in solitude in a soft tone – in a manner which does not awaken a sleeping person and does not confuse a person who is in ṣalāh. As for proof for loud dhikr, that is found in the adhān, the khutbah and the takbīr tashrīq.

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The other point to bear in mind is that dhikr is prescribed as a treatment. One merely has to ensure that he does not go against the principles of the Sharī'ah. The same applies in the treatments prescribed by physicians and doctors.¹

Ḥadrat Muṭṭī Ṣāḥib raḥimahullāh says in reply to another question:

Ḥadrat Shāh 'Abd ar-Raḥūm Wilāyātī raḥimahullāh used to sit on a hilltop and engage in dhikr. His voice used to travel far and wide. Ḥadrat Maulānā Rashīd Ṭḥānī raḥimahullāh used to engage in loud dhikr until the end of his life. He would lock his room from inside. Anyone outside the door would hear his voice. Ḥadrat Maulānā Muḥammad Ilyās Ṣāḥib raḥimahullāh used to engage in loud dhikr for as long as he was not bed-ridden. It is permissible to make dhikr aloud, silently, individually and collectively.²

The following is related with regard to Ḥadrat Maulānā Rashīd Ṭḥānī raḥimahullāh in Ṭadhkīrah ar-Rashīd:

Eventually, he himself got up, performed wudū’ and entered the masjid. Ḥadrat Ḥājī Ḥimādullāh Ṣāḥib raḥimahullāh was busy with some work in one corner. Maulānā Ṭḥānī raḥimahullāh went to another corner, performed tahajjud, and began dhikr of Lā ilāha illallāh in a loud tone. He says: “I started loud dhikr. My throat was clear and my body was strong at the time. When I presented myself before Ḥadrat [Ḥājī Ḥimādullāh Ṣāḥib] in the morning, he said to me: ‘You engaged in dhikr like a person who has had a lot of practice.’ Ever since that day, I became attached to loud dhikr and I never felt like giving it up. Nor did I find any Sharī’i reason for its prohibition.”³

Ḥadrat Maulānā Ṣhāh ʻAlī Ṭẖânwi raḥimahullāh has written a detailed fatwā on loud and collective dhikr in Ḥimād al-Fatwā, volume five. He writes:

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¹ Tarbīyyat at-Ṭalibīn, p. 59.
² Maulānā Muṭṭī Fărūq: Sulāk Wa Ḥṣān Irsāḥāt Faqīh al-Ummat, p. 343.
³ Ṭadhkīrah ar-Rashīd, pp. 48-49.
It is my humble opinion that those who permit loud dhikr are correct. And that those who say that loud dhikr is preferable in certain situations and soft dhikr is preferable in other situations are more correct. The latter view combines all the Qur’anic verses, Aḥādīth and statements of the ‘ulamā’—the best matters are those which are most balanced. Now that the Shar‘ī permissibility of loud dhikr is established, it is not restricted to any form or structure. Rather, since the proofs are unrestricted, the form will also be unrestricted. It will therefore be permitted whether done individually, collectively, while sitting in a circle, while sitting in rows, while sitting, while standing or in any other way.

After quoting some Arabic texts, he writes:

It is thus proven that loud dhikr in whatever form is permissible. No one should be prohibited from doing it in any way. This is the preferred and more correct view.¹

Ḥadīrat Thānwi raḥimahullāh was also of the view that collective loud dhikr in the masjid is permissible. In the same fatwā, he quotes the proofs of those who permit it. [One of the proofs is]:

وَمَنْ أَظَلَّ مِنْ مَنْ مَسَّ مَسْجِدُ اللَّهُ أَنْ يَذْكَرْ فِيهُ إِنْ أَحْبَابُهُ وَسَقَىٰ فِيهِ

Who is more unjust than he who barred in the masjid of Allah that His name be taken therein and strove in their destruction.²

Ḥadīrat says: Prohibiting someone from dhikr is not possible unless it is done aloud. It is unimaginable for a person to know that another is engaged in dhikr unless it is done aloud.³

The essence of the above discussion is that since loud dhikr is permissible—and according to Ḥadīrat Thānwi raḥimahullāh loud dhikr whether done individually, collectively, while sitting in a circle or while sitting in rows is permissible—then collective loud dhikr is definitely permissible.

² Sūrah al-Baqarah, 2: 114.
³ ʿimdād al-Fatāwā, vol. 5, pp. 152.
Hadrat Maulānā Shaykh Muḥammad Yūnus, the Shaykh al-Ḥadīth of Mazāhir ‘Ulūm Sahāranpūr, is an erudite scholar in Ḥadīth and other sciences. He writes in al-Yawqīt al-Ḡāliyah:

In collective dhikr, a collective form is not the objective. Rather, when people sit together and see each other, they develop enthusiasm and yearning. This is the objective. Furthermore, at the time of dhikr, some of the Sufis focus their hearts on the hearts of their disciples so that the latter are more inclined to dhikr. When everyone engages in dhikr together with the shaykh, it helps them in acquiring the focus of the shaykh.

He writes after a few lines:

The disapproval of Hadrat Ibn Mas‘ūd raḍiyallāhu 'anhu is probably based on a specific reason. For example, those people believed it to be essential and necessary.¹

The narration of Hadrat Ibn Mas‘ūd raḍiyallāhu 'anhu in which his disapproval of a circle of dhikr is mentioned is a maqūf Ḥadīth against which a marfu’ Ḥadīth is given preference. I will quote one Ḥadīth as an example:

لا يقعد قوم يذكرون الله إلا حفظت به الملائكة وغشيقت به الرحمه ونزلت عليهم السكينة وذكر الله فيم عندك. (رواه مسلم، باب فضل الاجتماع على تلاوة القرآن وعلى الذكر)

Moreover, the narration of Ibn Mas‘ūd raḍiyallāhu 'anhu is muṣṭarib. The narration of Dārimī states that this incident occurred before the fajr galāh. The narration of Ṣabān in al-Mu‘jam al-Kabīr states that it occurred between the maghrib and ‘ishā galāhs. The narration of Dārimī states that it occurred in the masjid while the Muṣannaf of ‘Abd ar-Razzāq states that it occurred in the desert. The narration of Dārimī states that one person was conducting the dhikr while the others were chanting after him. The narration of Ṣabān states that they were all chanting together. Some narrations state that Ibn Mas‘ūd raḍiyallāhu 'anhu asked them to leave – as in Ṣabān. Another narration says that the two groups were made into one. These conflicting reports are proofs of the weakness of this Ḥadīth. Moreover, apart from the narration of Dārimī, all other chains of transmission are weak. As for the narration of Dārimī, it contains ‘Amr

Ibn Yahyā. Although Ibn Ma’in initially classified him as a reliable narrator, but when he re-examined his narrations later on, he classified him as a weak narrator and said:


Although Ibn Ma’in sometimes says:


Here he uses the words: ليس برضي. When the reliability and unreliability of a narrator are both mentioned, and it is not known which was first and which was second, the narration is unacceptable. Instead, the Hadith scholars restrain themselves from such a narration. For detailed references, refer to our book Dhikr Jahnī Wa Ijtim‘ Shar‘at Ke Ā’inah Mei, pp. 125-131.

Some scholars make the objection that according to Imam Abū Hanīfah rahimahullāh loud dhikr is a bid‘ah except for those instances where explicit texts are found. However, Shāmī rahimahullāh quotes from Sharh al-Munyah as-Saghir that the difference of opinion is on the issue of whether it is better or not.


حاشية الطحثاري:

قال الحليبي: والذي ينبغي أن يكون الخلاف في استحباب الجهر وعدمه لا في كرابية، وعندما يجهر مما يسحب وعندما الخفاء أفضل وذلك لأن الجهر قد نقل عن كثير من السلف كابن عمر رضي الله عنه وعلى رضي الله عنه وأبي أباماء البابلي رضي الله عنه والخاج، وأبى جعفر وابن أبي عبد العزيز وأبى ليل وأبى بن عثمان والحكم، وحmad وأمهاك وأبو ثور ومثله عن الشافعي.
Those who say that loud dhikr is superior, say this because there is enjoyment in the dhikr and the heart remains focussed. Other benefits are also acquired. Thus, the superiority of loud dhikr is due to other reasons. Apart from this, most scholars believe silent dhikr to be better.

Allâh ta’alâ knows best.

**Sitting on a chair in the masjid**

**Question**

What is the ruling with regard to sitting on a chair in a masjid when delivering a lecture? What about sitting on a chair for any other reason?

**Answer**

To sit on a chair in a masjid when delivering a lecture or sitting on it for any other reason is permissible.

The above narration is weak. The chair refers to the pulpit because the authentic narrations generally refer to a pulpit. Yes, to the extent of permissibility, the ruling for a chair could be based on the ruling for a pulpit.
Rasūlullāh ṣallallāhu 'alayhi wa sallam came to me. A chair was brought for him. I think its legs were made of iron. Rasūlullāh ṣallallāhu 'alayhi wa sallam sat on it and began teaching me some of which Allāh taught him.

A narration of Sahīh Bukhārī proves that Ḥadīrat Jibra‘il 'alayhis salām sat on a chair:

I looked up and I saw the angel who had come to me in Hīrā sitting on a chair between the sky and earth.

The Sahābah radīyallāhu 'anhum also used chairs:

Two men from Kūfah who were friends of Zayd ibn Sāuhān came to visit him. They then proceeded with him until they went to meet Salmān radīyallāhu ‘anhu. The latter was sitting on a chair. Zayd said to him: “These are
my two friends who would like to hear Hadîth from you.”
ISSUES RELATED TO MADĀRIS

Spending the money of one account for another

Question
An amount was deposited into a certain account of the madrasah. Can it be used for a different purpose? For example, the madrasah received money for textbooks. Can this money be used for construction? Or vice versa? Both monies were received as optional charities.

Answer
It is incorrect and impermissible for the madrasah to use the income of one fund for another. This is because the distributorship of the mandator has to be taken into consideration. It is necessary to act on it. When a person donates money for textbooks, it cannot be used for any other purpose.

When a person donates a sum to a madrasah, the principal is the representative of the donor. He will have to spend the money as dictated by the donor (mandator). When he gave money for textbooks, it will amount to treachery and breach of trust if the money is spent for construction purposes.

Fatāwā Maḥmūdīyyah:

It is necessary to spend the money for the purpose which the donor specified. If it is spent for a different purpose, damān (guarantee or surety) will have to be given. This is because the trustee is placed in a position of trust and representation. He does not have the right to act against the explicit instruction of the mandator.

If the donors approve and have no objection [to using it for a purpose other than what was specified], then it is permissible to do this.

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1 Fatāwā Maḥmūdīyyah, vol. 3, pp. 315-316.
2 Fatāwā Maḥmūdīyyah, vol. 15, p. 474.
Allāh ta‘ālā knows best.

**Spending the funds of one madrasah in another madrasah**

**Question**

A person collected an amount for a certain madrasah. Now there is another madrasah which is in need. Can he spend this amount for the other madrasah? Take note that a receipt was not made.

**Answer**

At the time of making a donation, the donor explicitly stated that he is giving this amount for a certain madrasah. As long as the madrasah needs the money or will need it in the near future, it will not be correct to give it to another madrasah. Yes, if the madrasah neither needs the money immediately nor will it need it in the near future, while the other madrasah is in dire need, then in such a case, some jurists have permitted giving it to the other madrasah. However, the more cautious way to proceed will be to obtain the permission of the donor if it is possible to contact him. The money may then be used for the other madrasah.

**Fatāwā Maḥmūdīyyah:**

It is necessary to spend the money for the purpose which the donor specified. If it is spent for a different purpose, ḍamān (guarantee or surety) will have to be given. This is because the trustee is placed in a position of trust and representation. He does not have the right to act against the explicit instruction of the mandator.¹

If the donors approve and have no objection [to using it for a purpose other than what was specified], then it is permissible to do this.²

**Fatāwā Dār al-‘Ulm Deoband:**

A person gave his property or cash money to a masjid. At the time of making it waqf, he laid down the condition that any left over money can be used for a madrasah or any other good cause. It will be permissible to use the left over money for the madrasah even if the endowers are not presently ready to do this. Or, if the endowers laid down this condition at the time of the waqf that they will maintain the right to change the recipient of their property or money, the endowers can still divert their contribution to another madrasah or to

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¹ *Fatāwā Maḥmūdīyyah*, vol. 3, pp. 315-316.
² *Fatāwā Maḥmūdīyyah*, vol. 15, p. 474.
some other place. But if either of the two conditions were not made at the time of the waqf, then it is certainly impermissible to give the left over money of the masjid to any madrasah. However, if any other masjid is in need of funds, then based on extreme necessity, the fatwā of permissibility could be given on the view of the latter jurists. This is on the condition that the masjid which owns this money does not need it at present nor does it foresee needing it in the near future, and there is a danger that the extra money may get destroyed.\(^1\)

Allāh ta’ālā knows best.

**When madrasah teachers act against the conditions of employment**

**Question**

Some trustees appointed two teachers to their madrasah. They laid down the condition that they will teach only in the afternoon in their madrasah. They will not do any work in the morning so that when they come to teach in the afternoon, they can teach with full focus and attention. The teachers accepted this condition. Based on their acceptance, the trustees increased their salary by 35%. Subsequently, these teachers started teaching somewhere else in the morning. Is it correct for them to do this?

**Answer**

It is forbidden to act against the terms of employment of the madrasah after having accepted those terms. As far as possible, they must adhere to the conditions laid down by the madrasah. Because both these teachers have contravened the terms of employment, they are culpable. The trustees now have the right to stop them from working in the morning or reduce their salary. Yes, if they are teaching with full enthusiasm, energy, focus and sacrifice in the afternoon; the trustees should permit them to teach in the morning.

\[ Yā aînhā al-dīnī fī sīkātā 'amīnsa wa waqfa 'alī al-fa'tūd. \]

O believers! Fulfil your covenants.\(^2\)

In his commentary to this verse, Imām Abū Bakr Jassās Rāzī rahimahullāh quotes from Ḥadīrāt 'Abdullāh ibn 'Abbās radiyallāhu 'anhu, Mujāhid ibn Jurayj, Abū 'Ubaydah and several other scholars

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\(^1\) *Imdād al-Muťyīyīn*, vol. 2, p. 768.

that the word “covenants” refers to promises and mutual agreements. Lawful conditions also fall under covenants. He writes further on:

كذلك كل شرط شرط الإنسان على نفسه في شيء يعمله في المستقبل فهو عقد.
The same applies to any condition which a person imposes on himself with regard to whatever he is to do in the future. It is a covenant.

He then describes what is demanded by this verse:

وبع عموماً بالوفاء بجميع ما يشترط الإنسان على نفسه ما لم تقم دالله

This verse makes the fulfilment of whatever conditions a person imposes on himself to be obligatory. This is provided that there is no proof which demands a specification.

A similar theme is mentioned elsewhere in the Qur’an:

فَأَوْفُوا بِالعُهُدِ

Fulfil your promises.

Qurtubī raḥimahullāh writes in his commentary to this verse:

لِفظ عَامٍ لِحَيْثُ ما يَعْقِدُ البَلَاغُ وَبِلْتَزُوْدُ الإنسانِ مِنْ بَعْضٍ أَوْ صَلَطٍ أَوْ مُوَافِقَةٍ

A covenant applies to all the things which are agreed upon verbally and which a person imposes on himself. Whether it is buying and selling, maintaining ties of kinship, or any other agreement which is in line with Din.¹

Furthermore, when the teachers accepted the condition, they are classified as specific employees. It is not permissible for a specific employee to work in another place.

والغاني وِبَوَ الأَجِيرُ الخَاصُ وَبِسْمِ أَجِيرٍ وَحَدٍ وِبَوَ يَعْمَلُ لَوْاحِدَ عَمَلًا موْفِقًا بالخِصِّيصِ وَيَسْتَحْقِقُ الأَجَيرُ بِتَسْلِيمِ نَفْسِهِ فِي الْمَدَةِ وَإِنْ لَمْ يَعْمَلَ كَمْ أَسْتَوْجَرَ شَهْرًا لِلْخِدْماَةِ أوْ شَهْرًا لِرَزَقِ الغَنْمِ المُسْمِي بِأَجِيرٍ مَسْمِيٍّ، يَخَلُفُ مَا لَوْ أَجِيرُ الْمِدَة

¹ Quoted from Jadīd Fiqhī Masā’il, vol. 3, p. 37.
Making a house waqf for a madrasah

Question

A man built a house on his land with the intention of making it waqf. He laid down the condition that after him, the house is waqf in favour of a certain madrasah, and that a certain teacher will live in it. Is it permissible for some other teacher to live in this house? Does the endower have any right to object if some other teacher lives in it?

Answer

According to the Sharī'ah, the conditions laid down by the endower will be taken into consideration. Therefore, the teacher in whose favour the endower explicitly stated that he would live in his house, will necessarily live in it. If some other teacher is made to live in that house, the endower has the right to object. Yes, if he – later on – gives an open permission, it will be permissible to get some other teacher to live in it.

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The conditions laid down by an endower hold a status similar to an explicit text. Therefore, deriving benefits from a waqf and arrangements related to it will have to be done as per the conditions laid down by the endower.\\(^1\\) Allâh ta‟alâ knows best.

**Making a condition after the waqf is completed**

**Question**

An endower did not lay down any condition at the time of making a waqf. Later on he says that a certain teacher will stay in the waqf house. Will it be binding to apply this condition? Or will it be treated as a piece of advice?

**Answer**

When an endower makes a condition after the waqf has been made, the condition is on the level of a piece of advice. It is not binding on the madrasah administrators to abide by it. An endower can only change conditions if he states in the waqf document that he reserves the right to make changes. If not, he does not have the right to make changes and additions.

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\(^1\) Majmū’ah Qawānīn Islāmī, p. 354.
Constructing a house on waqf property

Question

A piece of land belongs to the madrasah. A person constructs a house on it with the intention of waqf. Will it be classified as waqf? Later on, the endower wants a certain teacher to live in that house. Who will have more right to do this, the endower or the madrasah administration?

Allâh ta’âlâ knows best.
**Answer**

Since the land belongs to the madrasah, the house will be under the control of the madrasah. The trustees of the madrasah will have control and authority over it. The one who endowed the house will have no right over it.

**البحر الرائق:**

وفي المجتبي لا يجوز وقف البناء بدون الأصل أو المختار في الفتوى السراجية: سئل هل يجوز وقف البناء والغرس دون الأرض؟ أجاب، الفتوى على صحة ذلك، وظاهر أنه لا فرق بين أن يحبس الأرض ملكا أو وقفا. قال في الظهيرية: وإن كانت (الشجرة) في أرض موقوفة فوقفها على تلك الجهة جاز كما في البناء. (البحر الرائق: 64/5)

معين الحكام:

وإذا كان أصل القرية وقفاً على جهة قرية فبين عليهما رجل بناء ووقف بنائها على جهة قرية أخرى اختلقوا فيها فأما إذا وقف البناء على جهة القرية التي كانت البقعة وقفاً عليها فيجوز بالجماع وبصير وقفاً تبعاً للقرية هذا هو الذي استقر عليه فتاوى أئمة خوارزم. (معين الحكام مع لسان الحكام: 69، الفصل العاشر في الوقف)

*Imdād al-Fatāwā* contains the following answer to a question:

In this case, all the houses have become waqf. Had they been excluded, they would not be waqf. But now there is no doubt about their being waqf. Since they are waqf due to being on waqf land, the conditions laid down with regard to the recipients will also follow that of the property. For example, if the income/benefits from the property were to be given to a masjid, madrasah or poor, when those houses are given on rent, the rental income will have to be spent on the same recipients [masjid, madrasah or the poor].

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We learn from this that the waqf land is under the full control of the madrasah administrators. They will decide on how to use it. Therefore, their control will also extend over the house which is built on that land. The house should be given over into the supervision of the madrasah administrators. This is because the house is subservient to the land. Thus, the endower’s condition – that such and such person will live in it – will not be considered. In the same way, if the land is made waqf for the madrasah students, and someone plants a tree on that land with the condition that it is for travellers, this will not be correct.

Allāh ta’ālā knows best.

Returning something after it is no longer needed

Question

A man stipulated a piece of land for a girls madrasah. Another plot of land was given to cut a road to the madrasah. Later on it was realized that the second plot of land is not required by the madrasah. Is this second plot – which has its own boundary and plot number – also classified as waqf? Can it be taken back?

Answer

If the plot was given to the madrasah because it was needed by the madrasah, and the person clearly stated: “I have given this plot to the madrasah”, then it has fallen under the ownership of the madrasah. It cannot be taken back.

وَلَوْ قَالَ: وَبَيْتٌ دَارِي مَسْجَدٍ أَوْ أَعْطِيْتُهَا لِصَحِّ وَيْحُصُونُ تمْلِيْكاً فِي شَرْطٍ

الإِلَيْهِ السُّلَيْمِ كَمَا لَوْ قَالَ: وَقَفَتْ... الْخُ (الفتاوى البنغالية: 4/37، وكذا في الفتاوى النتائجية: 5/32)

If the person uttered the words of waqf, he still cannot take back the plot.

وَجِئَ أَبُو يوَسْفَ كَالْإِعْتَاقَ فَلَذَلِكَ لَمْ يُشُرْطَ الْقَبْضَةَ وَالْإِفْرَازَ أَيْ فِي ذِمَّٰمِهِ

بِمَجِرَدِ الْقُولِ كَالْإِعْتَاقَ بِجَمَاعِ إِسْقَاطِ المَلِكِ (فَتَاوَى الشَّأْيَ: 4/209)

وَالَّذِي بِقَولِهِ الْثَانِي أَحْوَطَ وَأَسِبِلَ بِجَرَرٍ، وَفِي الْغُرْرِ وَسَدَرَ السَّرِّيْعَةَ وَهُوَ يَفْتِنَ

وَأَقْرَهُ المَصْنَفُ (الْدُّرُ المَحْتَارٌ: 5/3، كتاب الوقف، سعيد)
It becomes absolutely clear from these texts that as per the accepted verdict, it is not necessary to give ownership of the land to the trustee and to separate the waqf land. Once the waqf is complete, it is totally forbidden to sell it for any price. Yes, in some instances there is leeway to exchange the land for another piece of land.

The gist of the above is that there are three situations with regard to changing a waqf:

1. The endower lays down the condition from the beginning that he or someone else has the right to change the waqf.
2. The waqf has become totally useless, and no benefit whatsoever can be derived from it. Or, it cannot pay for its own expenses. It can be changed by the order of a judge.
3. The condition of changing it was not laid down, but an alternative to it is better. In other words, the one with which it will be changed has more benefits. In such a case, it is not permissible to change it.

Remember, when a temporary need is fulfilled from a waqf, [and the need no longer remains], the waqf does not come to an end.

Allâh ta’âlâ knows best.
When a madrasah land is used for a different purpose

Question
A person gave a piece of land as waqf for a madrasah. Is it permissible to use one section of that land for a masjid or graveyard?

Answer
When a land is made waqf for a madrasah, the endower already has an intention for the construction of a masjid. This is because a madrasah generally has a masjid. In fact, it becomes necessary to have a masjid. Therefore, there is no objection at all to constructing a masjid.

Yes, if a graveyard is to be made, then the scholars have three opinions in this regard:

1. It is not permissible.
2. It is permissible.
3. It is permissible if it is given on rent. This means that the graveyard will have to make a monthly rental payment to the madrasah. This is the best option.

This issue is discussed at length in volume twelve of *Jadīd Fiqhī Mabāḥīth* under the heading: “Constructing a madrasah in the extra land of a masjid or graveyard”. The gist of the discussion is given below.

The scholars have three opinions in this regard:

1. It is not permissible.
2. It is permissible.
3. It is permissible if it is given on rent. In other words, some rent must be imposed on the madrasah. The rental income will then be used for the masjid needs.

The proofs of those who say it is not permissible:

1. شرط الوقف كنص الشارع (شام)١
2. الصرف بو إلى ما بو أقرب إلى العمارة كالأمام ونحوه إنما بو فيما إذا لم يمكن الوقف معيناً على جماعة معلومين كالمسجد والمدرسة. (شام)٢


Allāh ta’ālā knows best.

Annual jalsahs in madāris

Question

Is it permissible to have annual jalsahs in the madāris and makātib? What is the ruling with regard to giving prizes to students in these jalsahs?

Answer

It is permissible to have annual jalsahs in the madāris and makātib. The prerequisite is that no action against the Sharī’ah must be committed. There must be no intermingling of men and women. Girls...
who have reached the age of puberty or are close to puberty should not sing songs, poems, etc. to the men.

Provided the limits of the Shari'ah are adhered to, a jalsah is a beneficial function. It creates enthusiasm in the children and parents are encouraged to bring Din into the lives of their children. It is also a source of encouragement for the children.

The annual jalsahs of the madaris are also held with the same objectives – as is the case with the jalsahs which our madaris host. Furthermore, the completion of Sahih Bukhari, etc. is conducted to bring people closer to Din.

In addition to people hearing about the excellent efforts of the children, they will learn about Din.

If the children are given prizes which do not contain any animate objects, there is no objection to giving them prizes.

Allah ta'ala knows best.

**Taking food from the madrasah canteen**

**Question**

1. A student had a full meal in the canteen. Despite this, he takes some bread to his boarding room. Is this permissible?

2. What if a student does not eat the meal in the canteen; instead he carries it to his room? Is this permissible?

3. Is it permissible to take butter, etc. from the canteen to the boarding room? In the boarding room there are some students who did not have breakfast in the canteen, while others did.

**Answer**

All the above relates to administrative affairs. The madrasah laid down the system that all the students must sit together and eat their meals in the canteen. Generally, the principal’s office does not permit taking food to the boarding rooms. Yes, if a student is ill or has some other valid excuse, he must obtain a letter of permission from the principal and he may then take food to his room. If it difficult to obtain such a note, e.g. the office is closed or there is some other reason, the student may take food to his room after obtaining permission from the canteen supervisor. If a student did not have his meal in the canteen and took permission from the canteen supervisor to take that amount of bread which is normally allotted to him, then he may take it. No matter what, it is essential for every student to abide by the madrasah.
rule. When a student signs to abide by the madrasah rules on the application form, he has taken a covenant and made a pledge. The fulfilment of covenants and pledges is proven from the Ahādīth. In a narration of Sahih Bukhari, Rasūlullāh ʿallahu ʿalayhi wa sallam said:

المسلمون عند شروطهم.

Muslims are bound to their pledges.

Furthermore, Rasūlullāh ʿallahu ʿalayhi wa sallam abided by the conditions which were made in the peace treaty of Hudaybiyah and instructed the Sahabah radiyallahu ʿanhum to do the same. Allāh taʿālā knows best.

Ringing a bell in a madrasah

Question

Is it permissible for the madāris to ring a bell to mark the starting and ending times of periods? Some people say that in the light of Hadith this is not permissible.

Answer

If a bell is used for the correct purpose, it will be permissible to use it. To ring a bell in a Dīnī madrasah to mark the starting and ending times of periods, and for other similar purposes is included in a “correct purpose”. This is similar to speaker systems which are used to call out the adhān in the masjid. They are used solely to convey a sound.

As for the prohibition which is mentioned in the Hadith, the 'ulamāʾ provided several explanations to it.

Rasūlullāh ʿallahu ʿalayhi wa sallam said: The angels do not accompany a group in which there is a dog or a bell. Another narration states: A bell is one of the instruments of Shayṭān.

Muftī Muḥammad Taqī Ṣāḥib writes:
 وقال شيخ مmysqlنا السهارنوري في بذل المجهود: (19/5) "وذا (أي كرابة الكلب والجنس) إذا خليبا عن المنفعة وأما ما احتيج إلى منهما فمرخص فيه".

اللذي يظهر لهذا العبد الضعيف عنا الله عنه أن الكرابة المذكورة في الحديث إنما تنصرف إلى كلب وجرس قصد منهما اللهو والغناء كما كان يعتاده بعض أهل القوافل وبدل عليه قوله صلى الله السلام في الرواية الآتية "الجنس مزامير الشيطان". أما الكلب إذا كان للحراسة والتحرز من اللصوص فهو مرنخ فيه ككلب زرع ومشية وكذلك الجنس إذا كان لمقصود مباح فلا ينفع به. (تجميعة فتح المليم: 73)

الفتاوى الهندية:

اختلف العلماء في كرابة تعليق الجنس على الدواب فمنهم من قال بصرفه في الأسفار كلما الغزو وغيره في ذلك سواء، قال محمد: فأما ما كان في منفعة لصاحب الراحلة فلا ينفع به، قال وفي الجنس منافع جمة منها: إذا ضل واحد من القافلة يلحق بها بصوت الجنس ومنها: أن صوت الجنس يبعد يرام الليل عن القافلة كالذئب وغيره ومنها: أن صوت الجنس يزيد في نشاط الدواب ينفع

نظير الحدادة كما في المحيط. (الفتاوى الهندية: 33)

نفع المفقي والسائل:

الاستفسار: تعليق القلاطة التي فيها الأجراس، الجلالج في عنق الفرس، كما ترور في بلادنا بل يجوز؟

الاستبصار: لا يجوز في "مطالب المؤمنين" قال محمد: إذا كان في دار الإسلام منفعة لصاحب الراحلة فلا ينفع بأجس الجنس.

وفي الجنس منافع:
منها: إذا ضل واحد من الفأر يلتحق بصوت الجرس.

ومنها: أن صوت الجرس يبعد بهوام الليل.

ومنها: أنه يريد في نشاط الدواب. كذا في "متفرقات استحسن المحيط".

وكان جعل الأجراس في غير الإبل، والحمار الذي يحمل عليه الأثقال لا أحب أن يفعل ذلك، لمنك الذهن.

سئل على بن أحمد عن الفائدة التي فيها الأجراس تجعل على عنق الفرس، بل بيجوز، كما هو العادة في بلادنا؟

قال: نعم، كذا أجاب أبو حامد.

وسألت والدى عن هذا فقال: لا بيجوز، لأنه لا منفعة فيه، كذا في "التيمية".

انتهى.

(نفع المفتي والسائل، ص 962، بيروت)

فتح الباري:

(قوله مثل صلصلة الجرس) وفي رواية مسلم "في مثل صلصلة الجرس"

والصلصلة في الأصل صوت وقوع الحديد بعض على بعض، ثم أطلق على كل صوت له طنين، والجرس الجلال الذي يعلق في رؤوس الدواب، فإنه قيل محمود لا يشب بالمذروم، إذ حقيقة التشبيب إلحاق ناقص بعضك، والمشب الوحي وهو محمود، والمشبه به صوت الجرس وهو مذروم لصحة النبي عند، وتعن=self من مرافقة ما نمو معلق فيه والإعلام بأنه: لا تحصينه الملائكة، كما أخرجه مسلم وأبو داود وغيرهما، كيف يشبه ما فعله الملك بأمر تنفر منه الملائكة؟ والجواب: أنه لا يلزم في التشبيب تساوى المشبه بالمشبه بما في الصفات كلها، بل ولا في أخص وصف له، بل يسعفنا اشتركا كما في صفة ما...
Question: It is becoming quite common to have clocks with bells in the masjid. Is this not makrūḥ based on the fact that such a practice is not recorded from the past scholars and also because it is similar to the sound of a bell?

Answer: There is room to say that this is not the ideal, but we cannot say that it is impermissible. This is because the prohibition does not refer to such a bell. The bell which is in a clock helps in ascertaining the time. The jurists went to the extent of permitting the beating of a drum at the time of sehri (to mark the beginning of the fast). The advantage of having such a clock in a masjid is that there is a need to know the times of salah.¹

Allāh ta‘ālā knows best.

TRANSLATOR’S NOTE

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As with all human endeavours, there are bound to be errors, mistakes and slip-ups in the translation. I humbly request the reader to inform me of them so that they could be corrected in future editions. Constructive criticism and suggestions will be highly appreciated. I can be contacted via e-mail: maulanamahomedy@gmail.com

Was salâm
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