

In the Name of Allāh,  
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## 11. The Chapters On Divorce And *Li'ān* From The Messenger of Allāh ﷺ

(المعجم ١١) أَبْوَابُ الطَّلَاقِ  
وَاللَّعَانِ عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ٩)

### Chapter 1. What Has Been Related About The *Sunnah* Divorce

(المعجم ١) - بَابُ مَا جَاءَ فِي طَّلَاقِ  
السَّنَةِ (التحفة ١)

**1175.** Yūnus bin Jubair said: “I asked Ibn ‘Umar about a man who divorced his wife while she was menstruating. So he said: ‘Don’t you know ‘Abdullāh bin ‘Umar?’ Indeed he divorced his wife while she was menstruating, so ‘Umar asked the Prophet ﷺ about that, and he ordered him to take her back.” He said: “I said: And that divorce is counted? He said: And that divorce is counted? He said: ‘What else would you think if he was helpless and foolish?’” (*Ṣaḥīḥ*)

١١٧٥ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ يُونُسَ بْنِ جُبَيْرٍ قَالَ: سَأَلْتُ ابْنَ عُمَرَ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ، فَقَالَ: هَلْ تَعْرِفُ عَبْدَ اللَّهِ بْنَ عُمَرَ؟ فَإِنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ، فَسَأَلَ عُمَرَ النَّبِيَّ ﷺ، فَأَمَرَهُ أَنْ يَرْجِعَهَا.  
قَالَ: قُلْتُ: فَيَعْتَدُ بِتِلْكَ الطَّلَاقِ؟ قَالَ: فَمَهْ، أَرَأَيْتَ إِنْ عَجَزَ وَاسْتَحَمَقَ؟.

تخريج: متفق عليه، وأخرجه مسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها . . . الخ، ح: ٧/١٤٧١ عن قتيبة والبخاري، ح: ٥٣٣٣ من حديث محمد بن سيرين به.

**1176.** Sālim narrated that his father divorced his wife during her menses, so ‘Umar asked the Prophet ﷺ about that and he said: “Tell him to take her back, then let him divorce her while she is pure or pregnant.” (*Ṣaḥīḥ*)

١١٧٦ - حَدَّثَنَا هَذَا: حَدَّثَنَا وَكَيْعٌ عَنْ سُفْيَانَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ، عَنْ سَالِمٍ، عَنْ أَبِيهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ فِي الْحَيْضِ. فَسَأَلَ عُمَرَ النَّبِيَّ ﷺ فَقَالَ: «مُرْهُ فَلْيُرْجِعْهَا، ثُمَّ لِيُطَلِّقْهَا طَاهِرًا أَوْ حَامِلًا».

(Abū ‘Eisā said:) The *Ḥadīth* of Yūnus bin Jubair from Ibn ‘Umar is a *Ḥasan Ṣaḥīḥ Ḥadīth*, and so is the *Ḥadīth* of Ṣālim from Ibn

'Umar. This *Hadith* has been reported through other routes from Ibn 'Umar from the Prophet ﷺ.

This is acted upon according to the people of knowledge among Companions of the Prophet ﷺ and others. The *Sunnah* divorce is to divorce her while she is pure without having intercourse. Some of them said if he divorces her thrice (at one time) while she is pure, then it will also be according to the *Sunnah*. This is the view of Ash-Shāfi'i and Aḥmad (bin Hanbal). Some of them said that three (at one time) is not from the *Sunnah*, unless he divorces her once (and then once). This is the view of (Sufyān) Ath-Thawrī and Ishāq.

Regarding divorcing a pregnant woman they said: He divorces her whenever he wants to. This is the view of Ash-Shāfi'i, Aḥmad and Ishāq. Some of them said that he pronounces one divorce on her during each month.

[قَالَ أَبُو عِيسَى:] حَدِيثُ يُوسُفَ بْنِ جُبَيْرٍ عَنِ ابْنِ عُمَرَ، حَدِيثٌ حَسَنٌ صَحِيحٌ. وَكَذَلِكَ حَدِيثُ سَالِمٍ عَنِ ابْنِ عُمَرَ. وَقَدْ رُوِيَ هَذَا الْحَدِيثُ مِنْ غَيْرِ وَجْهِ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، أَنَّ طَلَاقَ السُّتْبَةِ، أَنْ يُطَلَّقَهَا طَاهِرًا مِنْ غَيْرِ جَمَاعٍ. وَقَالَ بَعْضُهُمْ: إِنْ طَلَّقَهَا ثَلَاثًا وَهِيَ طَاهِرَةٌ، فَإِنَّهُ يَكُونُ لِلْسُّتْبَةِ أَيْضًا. وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ [بْنِ حَبِيلٍ] وَقَالَ بَعْضُهُمْ: لَا تَكُونُ ثَلَاثًا لِلْسُّتْبَةِ، إِلَّا أَنْ يُطَلَّقَهَا وَاحِدَةً [وَاحِدَةً].

وَهُوَ قَوْلُ [سُفْيَانَ] الثَّوْرِيِّ وَإِسْحَاقَ. وَقَالُوا فِي طَلَاقِ الْحَامِلِ: يُطَلَّقُهَا مَتَى شَاءَ. وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُهُمْ: يُطَلَّقُهَا عِنْدَ كُلِّ شَهْرٍ تَطْلِيقَةً.

تخريج: متفق عليه، وأخرجه مسلم، ح: ٥/١٤٧١ (انظر الحديث السابق) من حديث وكيع والبخاري، ح: ٧١٦٠ من حديث سالم بن عبدالله بن عمر به.

### Comments:

It is not correct to divorce a woman during her menstruating period, because a woman is divorced when her husband actually hates her and has ill feelings about her. During the menstruating period, a woman is not clean and tidy, moreover, dullness and laziness overcomes her. In such physical and mental condition she is averse to adorn herself for her husband and the husband too is not inclined towards her in this period. So it is not approved to divorce a woman during the menstruating period. According to all Four *A'immaḥ*, and in view of most of the people of knowledge among the Companions, if a woman has been divorced during this period it will be considered as divorced.

## Chapter 2. What Has Been Related About A Man Who Divorces His Wife Irrevocably

1177. 'Abdullāh bin Yazīd bin Rukānah narrated from his father, from his grandfather who said: "I went to the Prophet ﷺ and said: 'O Messenger of Allāh! I irrevocably divorced my wife.' So he said: 'What did you intend by that?' I said: 'One (divorce).' He said: '(Do you swear) By Allāh?' I said: 'By Allāh.' He said: 'Then it is as you intended.'" (*Da'if*)

(Abū 'Eisā said:) We do not know of this *Hadīth* except from this route.

I asked Muḥammad about this *Hadīth* and he said: "There is some confusion (*Idtirāb*) in it; and it has been reported from 'Ikrimah, from Ibn 'Abbās that Rukānah divorced his wife three times."

The people of knowledge among the Companions of the Prophet ﷺ and others differ over the irrevocable divorce. It has been related from 'Umar bin Al-Khaṭṭāb that he counted the irrevocable divorce as one, and it has been related from 'Alī that he considered it three. Some of the people of knowledge said it depends on the intention of the man; if he intended one then it is one, and if he intended three then it is three, and if he intended two then it will only count as one. This is the view of Sufyān Ath-Thawrī and the people of Al-Kūfah.

Mālik bin Anas said about the irrevocable divorce: If he had gone

(المعجم ٢) - بَابُ مَا جَاءَ فِي الرَّجُلِ  
يُطَلِّقُ امْرَأَتَهُ الْبَتَّةَ (التحفة ٢)

١١٧٧ - حَدَّثَنَا هَنَّادٌ: حَدَّثَنَا قَبِيصَةُ عَنْ جَرِيرِ بْنِ حازِمٍ، عَنِ الرَّبِيعِ بْنِ [سَعِيدٍ]، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ بْنِ رُكَّانَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي طَلَقْتُ امْرَأَتِي الْبَتَّةَ، فَقَالَ: «مَا أَرَدْتَ بِهَا؟» قُلْتُ: وَاحِدَةً. قَالَ: «وَاللَّهِ؟» قُلْتُ وَاللَّهِ قَالَ: «فَهُوَ مَا أَرَدْتَ».

[قَالَ أَبُو عِيسَى]: هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ.

وَسَأَلْتُ مُحَمَّدًا، عَنْ هَذَا الْحَدِيثِ فَقَالَ: فِيهِ اضْطِرَابٌ، وَيُرْوَى عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رُكَّانَةَ طَلَّقَ امْرَأَتَهُ ثَلَاثًا.

وَقَدْ اخْتَلَفَ أَهْلُ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ فِي طَلَاقِ الْبَتَّةِ. فُرِوِي عَنْ عُمَرَ ابْنِ الْخَطَّابِ أَنَّهُ جَعَلَ الْبَتَّةَ وَاحِدَةً، وَرُوي عَنْ عَلِيٍّ أَنَّهُ جَعَلَهَا ثَلَاثًا، وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ، فِيهِ نَيْتُ الرَّجُلِ، إِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ وَإِنْ نَوَى ثَلَاثًا فَثَلَاثٌ، وَإِنْ نَوَى ثِنْتَيْنِ لَمْ تَكُنْ إِلَّا وَاحِدَةً. وَهُوَ قَوْلُ الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ.

وَقَالَ مَالِكُ بْنُ أَنَسٍ فِي الْبَتَّةِ: إِنْ كَانَ قَدْ دَخَلَ بِهَا فِيهَا ثَلَاثَ تَطْلِيقَاتٍ.

وَقَالَ الشَّافِعِيُّ: إِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ، يَمْلِكُ الرَّجَعَةَ، وَإِنْ نَوَى ثِنْتَيْنِ [فِثْنَانٍ]. وَإِنْ نَوَى ثَلَاثًا فَثَلَاثٌ.

into her, then it is three divorces. *Shāfi'ī* said: "If he intended one then it is one, and he is able to return, and if he intended two then it is two, and if he intended three then it is three."

تخریج: [إسناده ضعيف] وأخرجه أبو داود، الطلاق، باب: في البتة، ح: ٢٢٠٨ وابن ماجه، ح: ٢٠٥١ من حديث جرير بن حازم به، الزبير بن سعيد: لين الحديث (التقريب: ١٩٩٥) وحديث أبي داود (٢٢٠٦، ٢٢٠٧) يعني عنه.

### Chapter 3. What Has Been Related About: Your Case Is Up To You

**1178.** *Ḥammād bin Yazīd* said: "I said to *Abū Ayyūb*: 'Do you know of anyone who said that: "Your case is up to you" counts as three besides *Al-Ḥasan*?' He said: 'No, not besides *Al-Ḥasan*.' Then he said: 'O *Allāh* forgive me – except for what has been narrated to me by *Qatādah*, from *Kathīr* the freed slave of *Banū Samurah*, from *Abū Salamah*, from *Abū Hurairah*, that the Prophet ﷺ said: "Three."'

*Abū Ayyūb* said: 'So I met *Kathīr* the freed slave of *Banū Samurah* and asked him about it, but he was not aware of it. So I returned to *Qatādah* and informed him about that and he said: "He forgot." (*Da'if*)

(*Abū 'Eisā* said:) This *Ḥadīth* is *Gharīb*, we do not know of it except as a narration of *Sulaimān bin Ḥarb*, from *Ḥammād bin Yazīd*. I asked *Muḥammad* about this *Ḥadīth* and he said: "*Sulaimān bin Ḥarb* narrated this from *Ḥammād bin Yazīd* to us, but it was only *Mawqūf* from *Abū Hurairah*."

(المعجم ٣) - بَابُ مَا جَاءَ فِي: أَمْرِكُ

بِيَدِكَ (التحفة ٣)

١١٧٨ - حَدَّثَنَا عَلِيُّ بْنُ نَصْرِ بْنِ عَلِيٍّ: حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ قَالَ: قُلْتُ لِأَيُّوبَ: هَلْ عَلِمْتَ [أَنَّ] أَحَدًا قَالَ فِي: أَمْرِكُ بِيَدِكَ: إِنَّهَا ثَلَاثٌ إِلَّا الْحَسَنَ؟ فَقَالَ: لَا إِلَّا الْحَسَنَ. ثُمَّ قَالَ: اللَّهُمَّ غَفِرًا إِلَّا مَا حَدَّثَنِي قَتَادَةُ عَنْ كَثِيرِ مَوْلَى بَنِي سَمُرَةَ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «ثَلَاثٌ».

قَالَ أَيُّوبُ: فَلَقِيْتُ كَثِيرًا مَوْلَى بَنِي سَمُرَةَ فَسَأَلْتُهُ فَلَمْ يَعْرِفْهُ، فَرَجَعْتُ إِلَى قَتَادَةَ فَأَخْبَرْتُهُ فَقَالَ: نَسِيَ.

[قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ [غَرِيبٌ] لِأَنَّ نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ سُلَيْمَانَ بْنِ حَرْبٍ عَنْ حَمَادِ بْنِ زَيْدٍ. وَسَأَلْتُ مُحَمَّدًا عَنْ هَذَا الْحَدِيثِ فَقَالَ: حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ عَنْ حَمَادِ بْنِ زَيْدٍ بِهِذَا. وَإِنَّمَا هُوَ عَنْ أَبِي هُرَيْرَةَ مَوْقُوفٌ.

وَلَمْ يَعْرِفْ حَدِيثُ أَبِي هُرَيْرَةَ مَوْقُوعًا

The *Hadīth* of Abū Hurairah is not known to be *Marfū'*, and 'Alī bin Naṣr (one of the narrators) is a *Ḥāfiẓ*, a person of *Ḥadīth*.

The people of knowledge differ over (the statement): "Your case is up to you." Some of the people of knowledge among the Companions of the Prophet ﷺ and others – among them 'Umar bin Al-*Khaṭṭāb* and 'Abdullāh bin Mas'ūd – said: "It is one." This is the view of more than one of the people of knowledge among the *Tābi'in* and those after them.

'Uthmān bin 'Affān and Zaid bin Thābit said that the decision is as she decides.

Ibn 'Umar said: "If a man leaves the case up to his wife and she divorces herself three times and her husband dislikes that, saying: 'I only left the case up to her for one' then the husband is to take an oath and it will be in accordance with whatever he swears."

Sufyān and the people of Al-Kūfah followed the view of 'Umar and 'Abdullāh. As for Mālik bin Anas he said: "The decision is as she decides," and this is the view of Aḥmad. As for Iṣḥāq, he followed the view of Ibn 'Umar.

تخریج: [إسناده ضعيف] وأخرجه النسائي: ١٤٧/٦، ح: ٣٤٣٩ عن علي بن نصر، وأبو داود، ح: ٢٢٠٤ من حديث سليمان بن حرب به \* قتادة مدلس وعنعن.

### Comments:

Imām Muḥammad has reported this point of view of the *Ahnāf*; that it depends on the intention of the husband. If he intends one divorce it will be revocable during the waiting period of three months. According to Zaid bin Thābit, if the husband intends one divorce it is revocable.

وَكَانَ عَلَيَّ بِنُ نَصْرِ حَافِظًا، صَاحِبَ حَدِيثٍ .  
وَقَدْ اِخْتَلَفَ أَهْلُ الْعِلْمِ فِي: أَمْرِكَ بِيَدِكَ .  
فَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ  
ﷺ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ: هِيَ وَاحِدَةٌ. وَهُوَ قَوْلُ غَيْرِ  
وَاحِدٍ مِنْ أَهْلِ الْعِلْمِ مِنَ التَّابِعِينَ وَمَنْ  
بَعْدَهُمْ .

وَقَالَ عُثْمَانُ بْنُ عَمَانَ وَزَيْدُ بْنُ ثَابِتٍ:  
الْقَضَاءُ مَا قَضَتْ .

وَقَالَ ابْنُ عُمَرَ: إِذَا جَعَلَ أَمْرَهَا بِيَدِهَا  
وَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، وَأُنْكَرَ الزَّوْجُ وَقَالَ: لَمْ  
أَجْعَلْ أَمْرَهَا [بِيَدِهَا] إِلَّا فِي وَاحِدَةٍ،  
اسْتَحْلَفَ الزَّوْجُ وَكَانَ الْقَوْلُ قَوْلَهُ مَعَ يَمِينِهِ .  
وَدَهَبَ سُفْيَانُ وَأَهْلُ الْكُوفَةِ إِلَى قَوْلِ عُمَرَ  
وَعَبْدِ اللَّهِ . وَأَمَّا مَالِكُ بْنُ أَنَسٍ فَقَالَ: الْقَضَاءُ  
مَا قَضَتْ . وَهُوَ قَوْلُ أَحْمَدَ وَأَمَّا إِسْحَاقُ  
فَدَهَبَ إِلَى قَوْلِ ابْنِ عُمَرَ .

#### Chapter 4. What Has Been Related About The Choice

1179. 'Āishah said: "The Messenger of Allāh ﷺ gave us the choice, so we chose him. So was that a divorce?" (*Ṣaḥīḥ*)

(Another chain with a similar narration)

(Abū 'Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. The people of knowledge differ over the choice. It has been related from 'Umar and 'Abdullāh bin Mas'ūd that they said: "If she chooses herself (divorce) then it is once, irrevocable." And it has been related from them that they also said: "Once, and he has the ability to take her back, and if she chooses her husband then it is (counted as) nothing."

It has been related that 'Alī said: "If she chooses herself (divorce) then it is once, irrevocable, and if she chooses her husband then it counts as once, and he has the ability to take her back."

Zaid bin Thābit said: "If she chooses her husband then it is once, and if she chooses herself then it is three."

On this topic, most of the people of knowledge and *Fiqh* among the Companions of the Prophet ﷺ and those after them followed the view of 'Umar and 'Abdullāh, and it is the view of Sufyān Ath-Thawrī and the people of Al-Kūfah. As for Aḥmad bin Ḥanbal, he followed the view of 'Alī, may Allāh be pleased with him.

(المعجم ٤) - بَابُ مَا جَاءَ فِي الْخِيَارِ

(التحفة ٤)

١١٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: خَيْرَنَا رَسُولُ اللَّهِ ﷺ فَأَخْتَرْنَاهُ. أَفَكَانَ طَلَاقًا؟.

حَدَّثَنَا بُنْدَارٌ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ عَنِ الْأَعْمَشِ، عَنْ أَبِي الضُّحَى، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ، بِمِثْلِهِ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي الْخِيَارِ. فَرَوَى عَنْ عُمَرَ وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُمَا قَالَا: إِنْ اخْتَارَتْ نَفْسَهَا، فَوَاحِدَةٌ بَائِنَةٌ. وَرَوَى عَنْهُمَا أَنَّهُمَا قَالَا أَيْضًا: وَاحِدَةٌ يَمْلِكُ الرَّجْعَةَ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَلَا شَيْءَ. وَرَوَى عَنْ عَلِيٍّ أَنَّهُ قَالَ: إِنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ بَائِنَةٌ. وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ يَمْلِكُ الرَّجْعَةَ.

وَقَالَ زَيْدُ بْنُ ثَابِتٍ: إِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ، وَإِنْ اخْتَارَتْ نَفْسَهَا فَثَلَاثٌ. وَذَهَبَ أَكْثَرُ أَهْلِ الْعِلْمِ وَالْفِقْهِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَمَنْ بَعْدَهُمْ فِي هَذَا الْبَابِ إِلَى قَوْلِ عُمَرَ وَعَبْدِ اللَّهِ. وَهُوَ قَوْلُ الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ. وَأَمَّا أَحْمَدُ بْنُ حَنْبَلٍ، فَذَهَبَ إِلَى قَوْلِ عَلِيٍّ رَضِيَ اللَّهُ عَنْهُ.

**تخريج:** متفق عليه، وأخرجه مسلم، الطلاق، باب بيان أن تخييره امرأته لا يكون طلاقاً إلا بالنية، ح: ١٤٧٧ عن محمد بن بشار والبخاري، ح: ٥٢٦٣ من حديث إسماعيل بن أبي خالد به.

### Comments:

Most of the Companions of the Prophet ﷺ and the followers of the Companions and scholars of Islamic jurisprudence say; if the woman chooses her husband then it is counted as nothing. She can go back to her husband. This is an accepted and correct point of view. If she chooses herself to be divorced, then there is difference of opinion among the scholars and the people of knowledge. Imām At-Tirmidhi has discussed the details of this issue.

### Chapter 5. What Has Been Related About: The Woman With Three Divorces Gets No Housing Nor Maintenance (From The Husband)

**1180.** Fāṭimah bint Qais said: “My husband divorced me three times during the time of the Prophet ﷺ. So the Messenger of Allāh ﷺ said: “There is no housing for you nor maintenance.” Al-Mughīrah (one of the narrators) said: “I mentioned that to Ibrāhīm and he said: Umar said: “We do not leave the Book of Allāh and the *Sunnah* of our Prophet for the saying of a woman, and we do not know if she remembered or forgot.” And ‘Umar used to give her (the divorced woman) housing and maintenance.” (*Sahīh*)

This was narrated to us from Aḥmad bin Manī‘ (who said): “Hushaim narrated to us: ‘Hushain, Ismā‘il and Mujālid informed us.”

Hushaim said: “Dāwūd narrated it to us as well, from Ash-Sha‘bī who said: ‘I entered upon Fāṭimah bint Qais and asked her about the judgement of the Messenger of

(المعجم ٥) - بَابُ مَا جَاءَ فِي الْمُطَلَّقَةِ  
ثَلَاثًا لَا سُكْنَى لَهَا وَلَا نَفَقَةَ (التحفة ٥)

١١٨٠ - حَدَّثَنَا هَنَّادٌ: حَدَّثَنَا جَرِيرٌ عَنْ مُغِيرَةَ، عَنِ الشَّعْبِيِّ، قَالَ: قَالَتْ فَاطِمَةُ بِنْتُ قَيْسٍ: طَلَّقَنِي زَوْجِي ثَلَاثًا عَلَى عَهْدِ النَّبِيِّ ﷺ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا سُكْنَى لَكَ وَلَا نَفَقَةَ».

قَالَ مُغِيرَةُ: فَذَكَرْتُهُ لِإِبْرَاهِيمَ فَقَالَ: قَالَ عُمَرُ: لَا نَدْعُ كِتَابَ اللَّهِ وَسُنَّةَ نَبِيِّنَا ﷺ لِقَوْلِ امْرَأَةٍ، لَا نَدْرِي أَحْفِظْتَ أَمْ نَسَيْتِ، وَكَانَ عُمَرُ يَجْعَلُ لَهَا السُّكْنَى وَالنَّفَقَةَ.

حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا هُشَيْمٌ: أَنَّ أَبَانًا حُصَيْنٌ وَإِسْمَاعِيلُ وَمُجَالِدٌ.

قَالَ هُشَيْمٌ: وَحَدَّثَنَا دَاوُدُ أَيْضًا عَنِ الشَّعْبِيِّ قَالَ: دَخَلْتُ عَلَى فَاطِمَةَ ابْنَةِ قَيْسٍ فَسَأَلْتُهَا عَنْ قَضَاءِ رَسُولِ اللَّهِ ﷺ فِيهَا، فَقَالَتْ: طَلَّقَهَا زَوْجُهَا الْبَتَّةَ، فَحَاصِمَتُهُ فِي السُّكْنَى وَالنَّفَقَةِ، فَلَمْ يَجْعَلْ لَهَا النَّبِيُّ ﷺ سُكْنَى وَلَا نَفَقَةَ.

Allāh ﷺ in her case. She said that she was divorced irrevocably by her husband and she argued with him for housing and maintenance, but the Prophet ﷺ did not grant her housing, nor maintenance.”

And in the narration of Dāwud she said: “And he ordered me to stay at the home of Ibn Umm Maktūm during my *Iddah*.”

(Abū 'Eisā said:) This *Hadīth* is *Hasan Sahīh*.

This is the view of some of the people of knowledge, among them Al-Ḥasan Al-Baṣrī, 'Aṭā' bin Abī Rabāh, and Ash-Sha'bi, and it is the view of Aḥmad and Ishāq. And they said: The divorced woman gets neither housing nor maintenance when her husband does not have the ability to take her back.

Some of the people of knowledge among the Companions of the Prophet ﷺ – among them 'Umar and 'Abdullāh – said that the woman divorced three times gets housing and maintenance. This is the view of Sufyān Ath-Thawrī and the people of Al-Kūfah.

Some of the people of knowledge said that she gets housing but there is no maintenance for her. This is the view of Mālik bin Anas, Al-Laith bin Sa'd, and Ash-Shāfi'i. Ash-Shāfi'i said: “We only give her housing based upon the Book of Allāh, Allāh Most High said: And turn them not out of their homes, nor shall they (themselves) leave, except in the case they are guilty of

وَفِي حَدِيثِ دَاوُدَ قَالَتْ: وَأَمَرَنِي أَنْ أَعْتَدَ فِي بَيْتِ ابْنِ أُمِّ مَكْتُومٍ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَهُوَ قَوْلُ بَعْضِ أَهْلِ الْعِلْمِ، مِنْهُمْ الْحَسَنُ الْبَصْرِيُّ وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَالشَّعْبِيُّ، وَبِهِ يَقُولُ أَحْمَدُ وَإِسْحَاقُ، وَقَالُوا: لَيْسَ لِلْمُطَلَّقَةِ سُكْنَى وَلَا نَفَقَةٌ، إِذَا لَمْ يَمْلِكْ زَوْجُهَا الرَّجْعَةَ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ، مِنْهُمْ عُمَرُ وَعَبْدُ اللَّهِ: إِنَّ الْمُطَلَّقَةَ تَلَاثًا، لَهَا السُّكْنَى وَالنَّفَقَةُ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: لَهَا السُّكْنَى وَلَا نَفَقَةٌ، لَهَا، وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَاللَّيْثِ بْنِ سَعْدٍ وَالشَّافِعِيِّ. وَقَالَ الشَّافِعِيُّ: إِنَّمَا جَعَلْنَا لَهَا السُّكْنَى بِكِتَابِ اللَّهِ قَالَ اللَّهُ تَعَالَى: ﴿لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يُخْرِجُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفِدْحَةٍ مُنِيئَةٍ﴾ [الطلاق: ١] قَالُوا: هُوَ الْبَدَاءُ، أَنْ تَبْدُوَ عَلَى أَهْلِهَا، وَأَعْتَلَّ بِأَنَّ فَاطِمَةَ ابْنَةَ قَيْسٍ لَمْ يَجْعَلْ لَهَا النَّبِيُّ ﷺ السُّكْنَى، لِمَا كَانَتْ تَبْدُو عَلَى أَهْلِهَا.

قَالَ الشَّافِعِيُّ: وَلَا نَفَقَةٌ لَهَا، لِحَدِيثِ رَسُولِ اللَّهِ ﷺ فِي قِصَّةِ حَدِيثِ فَاطِمَةَ بِنْتِ قَيْسٍ.

some open *Fahishah*.<sup>[1]</sup> And they say it (*Fahishah*) is to behave in a foul manner, that she misbehaves with her family, and they explain that the reason that Fātimah bint Qais was not granted housing by the Prophet ﷺ is that she had behaved in a foul manner with her family.”

Ash-Shāfi'ī said: “And she gets no maintenance due to the *Hadīth* of the Prophet ﷺ about the story of Fātimah bin Qais.

تخريج: وأخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ١٤٨٠ من حديث

مغيرة به.

#### Comments:

This is agreed upon that one divorce which is revocable and three divorces which are irrevocable in both if a woman is pregnant has the right of housing and maintenance during her *'Iddah*. (Probationary period of divorce.)

### Chapter 6. What Has Been Related About: There Is No Divorce Before Marriage

1181. 'Amr bin Shu'aib narrated from his grandfather, from his father, that the Messenger of Allāh ﷺ said: “There is no vow for the son of Ādam over what he has no control, and there is no emancipating he can do for one whom he does not own, and there is no divorce for him regarding that which he has no control over.” (*Hasan*)

(He said:) There are narrations on this topic from 'Alī, Mu'ādh bin Jabal, Jābir, Ibn 'Abbās, and 'Aishah.

(المعجم ٦) - بَابُ مَا جَاءَ لَا طَّلَاقَ  
قَبْلَ النِّكَاحِ (التحفة ٦)

١١٨١ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا هُشَيْمٌ: حَدَّثَنَا عَامِرُ الْأَحْوَلُ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَذَرُ لِابْنِ آدَمَ فِيمَا لَا يَمْلِكُ، وَلَا عَتَقَ لَهُ فِيمَا لَا يَمْلِكُ، وَلَا طَّلَاقَ لَهُ فِيمَا لَا يَمْلِكُ». [قَالَ:] وَفِي الْبَابِ عَنْ عَلِيٍّ وَمُعَاذِ بْنِ جَبَلٍ وَجَابِرِ وَابْنِ عَبَّاسٍ وَعَائِشَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ عَبْدِ اللَّهِ بْنِ عَمْرِو حَدِيثٌ حَسَنٌ صَحِيحٌ. وَهُوَ أَحْسَنُ شَيْءٍ رُوِيَ فِي هَذَا الْبَابِ. وَهُوَ قَوْلُ أَكْثَرِ

[1] *At-Ṭalāq* 65:1.

(Abū 'Eisā said:) The *Hadīth* of 'Abdullāh bin 'Amr is a *Hasan Sahih Hadīth*, and it is the best thing reported on this topic. This is the view of most of the people of knowledge among the Companions of the Prophet ﷺ and others. This has been related from 'Alī bin Abī Ṭālib, Ibn 'Abbās, Jābir bin 'Abdullāh, Sa'eed bin Al-Musayyab, Al-Ḥasan, Sa'eed bin Jubair, 'Alī bin Al-Ḥasan, Shuraiḥ, Jābir bin Zaid, and more than one of the *Fuqahā'* among the *Tābi'in*, and it is the view of Ash-Shāfi'ī.

It has been related that Ibn Mas'ūd said about the *Manṣūbah*:<sup>[1]</sup> "She is divorced." It has been related from Ibrāhīm An-Nakha'ī, Ash-Sha'bī, and others among the people of knowledge that they said: "If he specifies a time, it (the divorce) holds (at the expiration of the time)." This is the view of Sufyān Ath-Thawrī. Mālik bin Anas said: "When he names a woman specifically, or specifies a time, or he says: 'If I marry someone from this district,' then if he marries someone, she is divorced."

As for Ibn Al-Mubāarak, he was very stern on this topic, he said: "If it is done, I do not say that it is unlawful." Aḥmad said: "If he married, I do not order him to separate from his wife." Ishāq said: "I allow it in the case of *Al-Manṣūbah*, due to the *Hadīth* of Ibn Mas'ūd, but if he marries her, I

أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. رُوِيَ ذَلِكَ عَنْ عَلِيٍّ بْنِ أَبِي طَالِبٍ وَابْنِ عَبَّاسٍ وَجَابِرِ بْنِ عَبْدِ اللَّهِ وَسَعِيدِ بْنِ مُسَيْبٍ وَالْحَسَنِ وَسَعِيدِ بْنِ جُبَيْرٍ وَعَلِيٍّ بْنِ الْحُسَيْنِ وَشُرَيْحٍ وَجَابِرِ بْنِ زَيْدٍ وَغَيْرِ وَاحِدٍ مِنْ فُقَهَاءِ التَّابِعِينَ. وَبِهِ يَقُولُ الشَّافِعِيُّ، وَرُوِيَ عَنِ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي الْمَنْصُوبَةِ: إِنَّهَا تَطْلُقُ.

وَقَدْ رُوِيَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ وَالشَّعْبِيِّ وَغَيْرِهِمَا مِنْ أَهْلِ الْعِلْمِ: أَنَّهُمْ قَالُوا: إِذَا وَقَّتْ نَزَلَ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَمَالِكِ ابْنِ أَنَسٍ: أَنَّهُ إِذَا سَمَى امْرَأَةً بِعَيْنِهَا أَوْ وَقَّتْ وَقْتًا أَوْ قَالَ: إِنْ تَزَوَّجْتُ مِنْ كُورَةَ كَذَا، فَإِنَّهُ إِنْ تَزَوَّجَ فَإِنَّهَا تَطْلُقُ.

وَأَمَّا ابْنُ الْمُبَارَكِ فَشَدَّدَ فِي هَذَا الْبَابِ وَقَالَ: إِنْ فَعَلَ، لَا أَقُولُ هِيَ حَرَامٌ. وَقَالَ أَحْمَدُ: إِنْ تَزَوَّجَ لَا أَمْرُهُ أَنْ يُفَارِقَ امْرَأَتَهُ. وَقَالَ إِسْحَاقُ: أَنَا أُجِيزُ فِي الْمَنْصُوبَةِ، لِحَدِيثِ ابْنِ مَسْعُودٍ، وَإِنْ تَزَوَّجَهَا لَا أَقُولُ تَحْرُمُ عَلَيْهِ امْرَأَتُهُ وَوَسَّعَ إِسْحَاقُ فِي غَيْرِ الْمَنْصُوبَةِ.

وَذَكَرَ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ أَنَّهُ سُئِلَ عَنْ رَجُلٍ حَلَفَ بِالطَّلَاقِ أَنْ لَا يَتَزَوَّجَ ثُمَّ بَدَأَ لَهُ أَنْ يَتَزَوَّجَ، هَلْ لَهُ رُخْصَةٌ بِأَنْ يَأْخُذَ بِقَوْلِ الْفُقَهَاءِ الَّذِينَ رَخَّصُوا فِي هَذَا؟ فَقَالَ [عَبْدُ اللَّهِ] بِنُ الْمُبَارَكِ: إِنْ كَانَ يَرَى هَذَا

[1] "In some of the manuscripts it is: *Manṣūbah* with *Sin* meaning a woman belonging to a tribe or a land. And the meaning of *Manṣūbah* is the particular woman." (*Tuḥfat Al-Aḥwadhī*)

do not say that his wife is unlawful for him.” In cases other than the *Mansūbah*, Ishāq was liberal with it.

It has been mentioned that ‘Abdullāh bin Al-Mubāarak was asked about a man who took an oath of divorce that he would not marry, then it occurred to him to marry, does he have the permission to do it if he follows the view of the *Fuqahā* that permit that? So (‘Abdullāh) Ibn Al-Mubāarak said: “If he thought that this view was the truth before he was tested with this issue, then he can take their saying. As for the one who did not accept this, then if he is tested and wants to take their saying, then I do not think it is allowed for him.”

تخريج: [إسناده حسن] وأخرجه ابن ماجه، الطلاق، باب: لا طلاق قبل النكاح، ح: ٢٠٤٧ من حديث هشيم وأبو داود، ح: ٢١٩٠ من حديث عمرو بن شعيب به ولفظ الحاكم: ٢/ ٢٠٥ "لا طلاق قبل النكاح" وصححه الذهبي \* وفي الباب عن علي [ابن ماجه، ح: ٢٠٤٩ والطبراني في الصغير: ٩٦/١ وأصله عند أبي داود، ح: ٢٨٧٣] ومعاذ بن جبل [الحاكم في المستدرک: ٤١٩/٢ وهو منقطع] وجابر [الحاكم: ٤٢٠/٢] وابن عباس [الحاكم: ٤١٩/٢ والبيهقي: ٣٢٠/٧] وعائشة [الحاكم: ٤١٩/٢].

### Comments:

Shah Waliullāh writes that the saying of the Messenger of Allāh ﷺ “There is no divorce for him regarding that which he has no control over” is quite clear, and it relates to the divorce that is going to be effective, but is pending or delayed for some condition. As in this example, “when I marry someone she is divorced.” This is a general order for all.

### Chapter 7. What Has Been Related About: Divorce For A Slave Woman Is Twice

1182. Muzāhir bin Aslam narrated that Al-Qāsim narrated from ‘Aishah that the Messenger of Allāh ﷺ said: “The divorce for a slave woman is two divorces, and her *Iddah* is two menstruations.” (*Da’if*)

الْقَوْلُ حَقًّا مِنْ قَبْلِ أَنْ يُتَلَى بِهِ الْمَسْأَلَةَ، فَهَهُ أَنْ يَأْخُذَ بِقَوْلِهِمْ، فَأَمَّا مَنْ لَمْ يَرْضَ بِهَذَا، فَلَمَّا ابْتُلِيَ أَحَبَّ أَنْ يَأْخُذَ بِقَوْلِهِمْ، فَلَا أَرَى لَهُ ذَلِكَ.

(المعجم ٧) - بَابُ مَا جَاءَ أَنَّ طَلَّاقَ

الْأَمَةِ تَطْلِيقَتَانِ (التحفة ٧)

١١٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى

النَّيْسَابُورِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ عَنِ ابْنِ

جُرَيْجٍ قَالَ: حَدَّثَنِي مُطَاهِرُ بْنُ أَشْلَمَ

قَالَ: حَدَّثَنِي الْقَاسِمُ عَنْ عَائِشَةَ: أَنَّ رَسُولَ

(Another chain with a similar narration)

(He said:) There is something on this topic from 'Abdullāh bin 'Umar.

(Abū 'Eisā said:) The *Hadīth* of 'Aishah is a *Gharīb Hadīth*, we do not know of it being *Marfū'* except from the narration of Muzāhir bin Aslam. We do not know of Muzāhir to have any knowledge, aside from this *Hadīth*.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. It is the view of Sufyān Ath-Thawrī, Ash-Shāfi'ī, Aḥmad, and Ishāq.

اللَّهُ ﷺ قَالَ: «طَلَقُ الْأَمَةِ تَطْلِيقَتَانِ، وَوَعْدَتُهَا حَيْضَتَانِ».

قَالَ مُحَمَّدُ بْنُ يَحْيَى: وَحَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا مُظَاهِرٌ بِهِذَا.

[قَالَ:] وَفِي الْبَابِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ. [قَالَ أَبُو عِيسَى:] حَدِيثُ عَائِشَةَ حَدِيثٌ غَرِيبٌ، لَا نَعْرِفُهُ مَرْفُوعًا إِلَّا مِنْ حَدِيثِ مُظَاهِرِ ابْنِ أَسْلَمَ، وَمُظَاهِرٌ لَا نَعْرِفُ لَهُ فِي الْعِلْمِ غَيْرَ هَذَا الْحَدِيثِ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

**تخریج:** [إسناده ضعيف] وأخرجه أبو داود، الطلاق، باب: في سنة طلاق العبد، ح: ١٨٩ وابن ماجه، ح: ٢٠٨٠ من حديث أبي عاصم به وقال أبو داود: "هو حديث مجهول" \* مظاهر بن أسلم: ضعيف كما في تقريب التهذيب وغيره \* وفي الباب عن عبدالله بن عمر [ابن ماجه، ح: ٢٠٧٩].

### Comments:

According to the *Ahnāf* enforcement and effectiveness of divorce depends on the wife's status, whether she is a free woman or a slave woman. If she is a slave woman, divorce will be effective with two divorces and she cannot marry her husband again until and unless she marries another person, and they have sexual relations. Her *Iddah* is two menstruating periods. The status of the male has no concern with it whether he is a free man or a slave. the *Ahnāf* bring forward this narration in their support. According to the other three *A'immah*, this narration is related to that slave woman whose husband is also a slave.

## Chapter 8. What Has Been Related About The Man Who Thinks To Himself About Divorcing His Wife

**1183.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Allāh has permitted my *Ummah* what occurs in their minds, as long as it is not spoken or acted upon." (*Sahih*)

(المعجم ٨) - بَابُ مَا جَاءَ فِيْمَنْ يُحَدِّثُ نَفْسَهُ بِطَلَاقِ امْرَأَتِهِ (التحفة ٨)

١١٨٣ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تَجَاوَزَ اللَّهُ

(Abū 'Eisā said:) This *Hadīth* is *Hasan Ṣaḥīḥ*. This is acted upon according to the people of knowledge, when a man thinks about divorce to himself, it will not amount to anything until he talks about it.

لَأُمَّتِي مَا حَدَّثَتْ بِهِ أَنْفُسَهَا، مَا لَمْ تَكَلِّمْ بِهِ  
أَوْ تَعْمَلْ بِهِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ  
صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ:  
أَنَّ الرَّجُلَ إِذَا حَدَّثَ نَفْسَهُ بِاطِّلاقٍ، لَمْ يَكُنْ  
شَيْئًا حَتَّى يَتَكَلَّمَ بِهِ.

**تخریج:** متفق عليه، وأخرجه مسلم، الإيمان، باب: تجاوز الله عن حديث النفس والخواطر بالقلب إذا لم تستقر، ح: ١٢٧ عن قتيبة والبخاري، ح: ٥٢٦٩ عن حديث قتادة به.

### Comments:

There is no accountability on thinking of human beings until they put this thinking into practice. If someone ponders over the issue of divorce, whether to divorce his wife or not, no matter if it is out loud there is no accountability and no divorce is implemented because no one knows his intention except Allāh. When he brings his intention of divorce on his tongue and says it before the people it is effective.

## Chapter 9. What Has Been Related About Seriousness And Jest Regarding Divorce

**1184.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Three are serious when they are serious, and serious when they are in jest: Marriage, divorce, and return." (*Hasan*)

(Abū 'Eisā said:) This *Hadīth* is *Hasan Gharīb*.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others.

Abū 'Eisā said: And 'Abdur-Raḥmān (one of the narrators) is Ibn Ḥabīb bin (Ardak Al-Madani). And Ibn Māhak; to me (it seems that) he is Yūsuf bin Māhak.

(المعجم ٩) - بَابُ مَا جَاءَ فِي الْحَدِيثِ  
وَالهَزْلِ فِي الطَّلَاقِ (التحفة ٩)

١١٨٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا حَاتِمُ بْنُ  
إِسْمَاعِيلَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ [أَرْدَكِ الْمَدَنِيِّ]  
عَنْ عَطَاءٍ، عَنِ ابْنِ مَاهَكَ، عَنْ أَبِي هُرَيْرَةَ  
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثٌ جِدُّهُنَّ  
جِدٌّ، وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ،  
وَالرَّجْعَةُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ  
غَرِيبٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ  
أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. قَالَ أَبُو عِيسَى:  
وَعَبْدُ الرَّحْمَنِ، هُوَ ابْنُ حَبِيبِ بْنِ [أَرْدَكِ  
الْمَدَنِيِّ]. وَابْنُ مَاهَكَ، هُوَ عُنْدِي يُوسُفُ بْنُ  
مَاهَكَ.

تخريج: [إسناده حسن] وأخرجه ابن ماجه، الطلاق، باب من طلق أو نكح أو راجع لآعبا، ح: ٢٠٣٩ من حديث حاتم وأبو داود، ح: ٢١٩٤ من حديث عبدالرحمن بن أردك به وصححه الحاكم: ١٩٨/٢ وغيره.

**Comments:**

In Islamic Law, some serious deeds like marriage, divorce, return, and manumission and their execution are strictly determined under decisive expediencies. So, it is strongly prohibited doing these in jest. Whoever performs these deeds in jest and fun, his action is taken seriously and it is considered implemented according to Islamic Law.

**Chapter 10. What Has Been Related About *Khul'***

(المعجم ١٠) - بَابُ مَا جَاءَ فِي الْخُلْعِ  
(التحفة ١٠)

**1185.** Ar-Rubayyi' bint Mu'awwidh bin Al-'Afrā' narrated that she got a *Khul'* during the time of the Prophet ﷺ. So the Prophet ﷺ ordered her - or: she was ordered - that she observe an 'Iddah of a menstruation." (*Hasan*)

١١٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ: حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى عَنْ سُفْيَانَ: حَدَّثَنَا مُحَمَّدُ ابْنُ عَبْدِ الرَّحْمَنِ - وَهُوَ مَوْلَى آلِ طَلْحَةَ - عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنِ الرَّبِيعِ بِنْتِ مَعْوِذِ ابْنِ عَفْرَاءَ: أَنَّهَا اخْتَلَعَتْ عَلَى عَهْدِ النَّبِيِّ ﷺ، فَأَمَرَهَا النَّبِيُّ ﷺ - أَوْ أَمَرَتْ - أَنْ تَعْتَدَ بِحَيْضَةٍ.

(He said:) There is something on this topic from Ibn 'Abbās.

[قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ عَبَّاسٍ. قَالَ أَبُو عِيسَى: حَدِيثُ الرَّبِيعِ الصَّحِيحُ أَنَّهَا أَمَرَتْ أَنْ تَعْتَدَ بِحَيْضَةٍ.

Abū 'Eisā said: In the *Hadīth* of Ar-Rubai' what is correct is: "she was ordered that she observe an 'Iddah of one menstruation."

تخريج: [إسناده حسن] وأخرجه ابن ماجه، الطلاق، باب عدة المختلعة، ح: ٢٠٥٨ والنسائي: ١٨٦/٦، ١٨٧، ح: ٣٥٢٨ (من حديث الربيع بنت معوذ به) \* وفي الباب عن ابن عباس [يأتي بعده في نفس الباب: ١١٨٥].

**1185B.** Ibn 'Abbās narrated that the wife of Thābit bin Qais was granted a *Khul'* from her husband during the time of the Prophet ﷺ. So the Prophet ﷺ ordered her to observe an 'Iddah of a menstruation. (*Hasan*)

١١٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ الْبُعْدَايِيُّ: حَدَّثَنَا عَلِيُّ بْنُ بَحْرٍ: حَدَّثَنَا هِشَامُ ابْنُ يُوسُفَ عَنْ مَعْمَرٍ، عَنْ عَمْرٍو بْنِ مُسْلِمٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةَ ثَابِتِ ابْنِ قَيْسٍ اخْتَلَعَتْ مِنْ زَوْجِهَا عَلَى عَهْدِ النَّبِيِّ ﷺ، فَأَمَرَهَا النَّبِيُّ ﷺ أَنْ تَعْتَدَ بِحَيْضَةٍ.

(Abū 'Eisā said:) This *Hadīth* is *Hasan Gharīb*.

The people of knowledge differ over the '*Iddah*' for the woman who was granted a *Khul'*. Most of the people of knowledge among the Companions of the Prophet ﷺ and others said that the '*Iddah*' for the woman who was granted a *Khul'* is the '*Iddah*' of the divorced woman, [three menstruations]. This is the view of (Sufyān) Ath-Thawrī and the people of Al-Kūfah, and it is the view of Aḥmad and Ishāq.

Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that the '*Iddah*' of the woman who was granted a *Khul'* is one menstruation. Ishāq said: "If someone followed this view, then it is a strong view."

تخريج: [إسناده حسن] وأخرجه أبو داود، الطلاق، باب: في الخلع، ح: ٢٢٢٩ عن محمد ابن عبدالرحيم به وصححه الحاكم ٢٠٦/٢ ووافقه الذهبي.

### Comments:

"*Khul'*" means putting off the clothes as it is said 'put off your shirt' or 'put off your shoes,' etc. In the Qur'an, man and wife have been mentioned as clothes for each other, so a wife's separation from her husband after giving his rights is like casting off the clothes.

### Chapter 11. What Has Been Related About The Women Who Seek A *Khul'*

1186. Thawbān narrated that the Prophet ﷺ said: "The women who seek a *Khul'* are hypocrites." (*Ṣaḥīḥ*) (Abū 'Eisā said:) This *Ḥadīth* is *Gharīb* from this route, and its chain is not strong. It has been related that the Prophet ﷺ said: "Whichever woman seeks a *Khul'* from her husband without harm (cause), then she will never smell the scent of Paradise."

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ. وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي عِدَّةِ الْمُخْتَلِعَةِ، فَقَالَ أَكْثَرُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: إِنَّ عِدَّةَ الْمُخْتَلِعَةِ عِدَّةَ الْمُطَلَّقَةِ، [ثَلَاثَ حِيضٍ] وَهُوَ قَوْلُ [سُفْيَانَ] الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ، وَبِهِ يَقُولُ أَحْمَدُ وَإِسْحَاقُ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: أَنَّ عِدَّةَ الْمُخْتَلِعَةِ حِيضَةٌ. قَالَ إِسْحَاقُ: وَإِنْ ذَهَبَ ذَاهِبٌ إِلَى هَذَا، فَهُوَ مَذْهَبٌ قَوِيٌّ.

(المعجم ١١) - بَابُ مَا جَاءَ فِي

الْمُخْتَلِعَاتِ (التحفة ١١)

١١٨٦ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا مُرَاجِمُ ابْنُ دَوَّادِ بْنِ عَلْبَةَ عَنْ أَبِيهِ، عَنْ لَيْثٍ، عَنْ أَبِي الْخَطَّابِ، عَنْ أَبِي زُرْعَةَ، عَنْ أَبِي إِدْرِيسَ، عَنْ ثَوْبَانَ عَنِ النَّبِيِّ ﷺ قَالَ: «الْمُخْتَلِعَاتُ هُنَّ الْمُنَافِقَاتُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ، وَلَيْسَ إِسْنَادُهُ بِالْقَوِيِّ.

وَرَوَى عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «أَيُّمَا امْرَأَةٍ اخْتَلَعَتْ مِنْ زَوْجِهَا مِنْ غَيْرِ بَأْسٍ، لَمْ تَرَخْ رَائِحَةَ الْجَنَّةِ».

**تخریج:** [صحيح] وأخرجه ابن عدي في الكامل: ٩٨٦/٣ من حديث أبي كريب به وسنده ضعيف ولكن له شواهد عند النسائي: ١٦٨/٦، ح: ٣٤٩١ وغيره، وبها صح الحديث.

**1187.** Thawbān narrated that the Messenger of Allāh ﷺ said: “Whichever woman seeks a *Khul'* from her husband without harm (cause), then the scent of Paradise will be unlawful for her.” (*Sahih*)

(Abū 'Eisā said:) This *Hadīth* is *Hasan*. This *Hadīth* has been reported from Ayyūb, from Abū Qilābah, from Abū Asmā', from Thawbān. Some of them reported it from Ayyūb with this chain, but without mentioning it to be *Marfū'*.

١١٨٧ - حَدَّثَنَا بِذَلِكَ مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ: حَدَّثَنَا أَيُّوبُ عَنْ أَبِي قِلَابَةَ، عَمَّنْ حَدَّثَهُ، عَنْ ثَوْبَانَ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا طَلَاقًا مِنْ غَيْرِ بَأْسٍ، فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ، وَيُرْوَى هَذَا الْحَدِيثُ عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي أَسْمَاءَ، عَنْ ثَوْبَانَ، وَرَوَاهُ بَعْضُهُمْ، عَنْ أَيُّوبَ بِهَذَا الْإِسْنَادِ وَلَمْ يَرْفَعُهُ.

**تخریج:** [صحيح] وأخرجه أحمد: ٢٧٧/٥، ح: ٢٢٧٣٨ من حديث أيوب به وأخرجه أبو داود، ح: ٢٢٢٦ وابن ماجه، ح: ٢٠٥٥ من حديث أيوب السخيتاني عن أبي قلابه عن أبي أسماء عن ثوبان به.

**Comments:**

The *Shāri'ah* aims to see the relationship of a husband and wife as permanent and lifelong, for this reason it has been suggested to overlook the weaknesses and drawbacks of each other, and pay no heed to small inaccuracies. Though *Khul'* and divorce are lawful, yet they have not been encouraged.

**Chapter 12. What Has Been Related About Treating Women Kindly**

**1188.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “Indeed the woman is like a rib, if you try to straighten her you will break her, and if you leave her, what you enjoy from her will be with the crookedness.” (*Sahih*)

(المعجم ١٢) - بَابُ مَا جَاءَ فِي مَدَارَاةِ النِّسَاءِ (التحفة ١٢)

١١٨٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَبِي زِيَادٍ: حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ: حَدَّثَنِي ابْنُ أَخِي ابْنِ شِهَابٍ عَنْ عَمِّهِ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ

(He said:) There are narrations on this topic from Abū Dharr, Samurah, and 'Āishah.

(Abū 'Eisā said:) The *Hadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Hadīth* that is *Gharīb* from this route, (and its chain is *Jayyid*).

اللَّهِ ﷺ: «إِنَّ الْمَرْأَةَ كَالضَّلَعِ إِنْ ذَهَبَتْ تُقِيمُهَا كَسَرْتَهَا، وَإِنْ تَرَكْتَهَا اسْتَمْتَعْتَ بِهَا عَلَى عَوَجٍ».

[قَالَ:] وَفِي الْبَابِ عَنْ أَبِي ذَرٍّ وَسَمُرَةَ وَعَائِشَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ، غَرِيبٌ مِنْ هَذَا الْوَجْهِ [وإِسْنَادُهُ جَيِّدٌ].

تخریج: وأخرجه مسلم، الرضاع، باب الوصية بالنساء، ح: ١٤٧٠ من حديث يعقوب به وللحديث طرق عند البخاري، ح: ٥١٨٤ ومسلم وغيرهما \* وفي الباب عن أبي ذر [أحمد: ٥/١٥٠] وسمره [ابن حبان، ح: ١٣٠٨ والطبراني في الكبير: ٧/٢٤٤، ح: ٦٩٩٢ وله طريق آخر عند أحمد: ٨/٥] وعائشة.

#### Comments:

Dealing with women with kindness and overlooking their crookedness makes the family life more pleasant.

### Chapter 13. What Has Been Related About A Man Whose Father Asks Him To Divorce (His Wife)

(المعجم ١٣) - بَابُ مَا جَاءَ فِي الرَّجُلِ يَسْأَلُهُ أَبُوهُ أَنْ يُطَلِّقَ [رَوْجَتَهُ] (التحفة ١٣)

**1189.** Ibn 'Umar narrated: "I had a wife whom I loved, but my father disliked her, so he ordered me to divorce her but I refused. I mentioned that to the Prophet ﷺ and he said: 'O 'Abdullāh bin 'Umar! Divorce your wife.'" (*Ḥasan*) (Abū 'Eisā said:) This *Hadīth* is *Ḥasan Ṣaḥīḥ*, we only know of it as a narration of Ibn Abī *Dhi'b*.

١١٨٩ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ: حَدَّثَنَا ابْنُ الْمُبَارَكِ: حَدَّثَنَا ابْنُ أَبِي ذَيْبٍ عَنِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَمْرَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنِ ابْنِ عُمَرَ: قَالَ: كَانَتْ تَحْبِبُنِي امْرَأَةٌ أُحِبُّهَا، وَكَانَ أَبِي يَكْرَهُهَا، فَأَمَرَنِي أَبِي أَنْ أُطَلِّقَهَا فَأَبَيْتُ، فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «يَا عَبْدَ اللَّهِ بْنَ عُمَرَ طَلِّقْ امْرَأَتَكَ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ

صَحِيحٌ، إِنَّمَا نَعْرِفُهُ مِنْ حَدِيثِ ابْنِ أَبِي  
ذُئِبٍ.

**تخريج:** [إسناده حسن] وأخرجه أبو داود، الأدب، باب: في بر الوالدين، ح: ٥١٣٨ وابن ماجه، ح: ٢٠٨٨ من حديث محمد بن عبدالرحمن بن أبي ذئب به وصححه ابن حبان (الإحسان): ٤٢٧، ٤٢٨ والحاكم على شرط الشيخين: ١٩٧/٢، ١٥٢/٤، ١٥٣ ووافقه الذهبي.

**Comments:**

Divorce is lawful but not appreciated. Divorce has been permitted under severe circumstances and dire need. No one should divorce his wife without utmost necessity, and in unavoidable circumstances.

**Chapter 14. What Has Been Related About: No Woman Should Ask For The Divorce Of Her Sister**

(المعجم ١٤) - بَابُ مَا جَاءَ لَا تَسْأَلِ  
الْمَرْأَةُ طَلَاقَ أُخْتِهَا (التحفة ١٤)

**1190.** Abū Hurairah narrated that the Prophet ﷺ said: “No woman should ask for the divorce of her sister (in religion) in order to spill what is in her container.”<sup>[1]</sup> (*Ṣaḥīḥ*)

١١٩٠ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ، يَبْلُغُ بِهِ النَّبِيُّ ﷺ قَالَ: «لَا تَسْأَلِ الْمَرْأَةُ طَلَاقَ أُخْتِهَا، لِتَكْفِيَءَ مَا فِي إِنَائِهَا». [قَالَ:] وَفِي الْبَابِ عَنْ أُمِّ سَلَمَةَ.

(He said:) There is something about this from Umm Salamah.

(Abū ‘Eisā said:) The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ، حَدِيثٌ حَسَنٌ صَحِيحٌ.

**تخريج:** متفق عليه، وأخرجه مسلم، البيوع، باب تحريم بيع الحاضر للبادي، ح: ١٥٢٠ والبخاري، ح: ٢١٤٠ من حديث سفيان بن عيينة به \* وفي الباب عن أم سلمة [الطبراني في الكبير: ٢٣/٢٥٣، ح: ٥١٧].

**Comments:**

This narration is proof that a woman in any circumstances, and in any situation – even for the woman who is going to be her co-wife – should not ask for divorce. When Allāh gave her shelter and spending in the form of a husband, no woman should dare to undo this arrangement.

[1] “In order to spill what is in her container” is a phrase that here refers to when a co-wife tries to get her husband to be inclined to her over his other wife. (See *Tuḥfat Al-Aḥwadhī*)

### Chapter 15. What Has Been Related About The Divorce Pronounced By The *Ma'tūh*<sup>[1]</sup> Person

1191. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Every divorce is valid except the divorce of the *Ma'tūh* person whose reason is overcome." (*Da'if Jiddan*)

(Abū 'Eīsā said:) We do not know of this *Ḥadīth* to be *Marfū'* except through the narration of 'Aṭā' bin 'Ajlān, and 'Aṭā' bin 'Ajlān is weak and his narrations are not preserved.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others: The divorce of the *Ma'tūh* whose reason is overcome is not valid, unless his state of *Ma'tūh* is sometimes lifted and he said the divorce when it was lifted.

(المعجم ١٥) - بَابُ مَا جَاءَ فِي طَلَاقِ  
الْمَعْتُوهِ (التحفة ١٥)

١١٩١ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى  
[الصَّنْعَائِي]: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ  
الْفَزَارِيُّ عَنْ عَطَاءِ بْنِ عَجَلَانَ، عَنْ  
عِكْرِمَةَ بْنِ خَالِدِ الْمَخْزُومِيِّ، عَنْ أَبِي  
هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ  
طَلَاقٍ جَائِزٌ، إِلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ  
عَلَى عَقْلِهِ».

[قَالَ أَبُو عِيْسَى]: هَذَا حَدِيثٌ لَا نَعْرِفُهُ  
مَرْفُوعًا إِلَّا مِنْ حَدِيثِ عَطَاءِ بْنِ عَجَلَانَ،  
وَعَطَاءُ بْنُ عَجَلَانَ ضَعِيفٌ، ذَاهِبُ الْحَدِيثِ.  
وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ  
أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: أَنَّ طَلَاقَ  
الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ لَا يَجُوزُ، إِلَّا  
أَنْ يَكُونَ مَعْتُوهاً، يُفِيقُ الْأَحْيَانَ، فَيُطْلَقُ فِي  
حَالِ إِفَاقَتِهِ.

تخريج: [إسناده ضعيف جداً] ورواه ابن الجندي في العلل المتناهية: ١٥٦/٢، ح: ١٠٦٩ من حديث الترمذي به \* عطاء بن عجلان: متروك بل أطلق عليه ابن معين والفلاس وغيرهما الكذب، راجع التقريب وغيره.

#### Comments:

A divorce is effective when a woman is divorced consciously and deliberately by understanding the consequences of the words pronounced. As for a man who is insane or not in his senses and totally unaware of his actions, the pronouncement of divorce from him will not be implemented. Similarly the divorce given by a drunkard or intoxicated person is ineffective.

[1] It is explained in the *Ḥadīth*. See *Tuḥfat Al-Aḥwadhī*. This *Ḥadīth* is mentioned by *Al-Bukhārī* as a statement of 'Alī which appears directly before *Ḥadīth* no. 2629 in his *Ṣaḥīḥ*.

**Chapter 16. The Revelation Of Allāh's Saying: Divorce Is Two Times**

(المعجم ١٦) - بَابُ [ نَزُولِ قَوْلِهِ :

الطَّلَاقِ مَرَّتَانِ ]

(التحفة ١٦)

**1192.** Hishām bin ‘Urwah narrated from his father, from ‘Āishah that she said: “The people were such that a man would divorce his wife when he wanted to divorce her, and she remained his wife when he wanted to take her back while she was in her *Iddah*, and he could divorce a hundred times, or even more, such that a man could say to his wife: ‘By Allāh! I will neither divorce you irrevocably, nor give you residence ever!’ She would say: ‘And how is that?’ He would say: ‘I will divorce you, and whenever your *Iddah* is just about to end I will take you back. So a woman went to ‘Āishah to inform her about that, and ‘Āishah was silent until the Prophet ﷺ came. So she told him and the Prophet ﷺ was silent, until the Qur’ān was revealed: Divorce is two times, after that, retain her on reasonable terms or release her with kindness.”<sup>[1]</sup> So ‘Āishah said: “So the people could carry on with divorce in the future, (knowing) who was divorced, and who was not divorced.” (*Hasan*)

(Another chain) from Hishām bin ‘Urwah from his father and it is similar to this *Hadīth* in meaning, but he did not mention in it: “From ‘Āishah.”

(Abū ‘Eisā said:) This is more

١١٩٢ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا يَعْلَى بْنُ شَيْبٍ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ، قَالَتْ: كَانَ النَّاسُ، وَالرَّجُلُ يُطَلِّقُ امْرَأَتَهُ مَا شَاءَ أَنْ يُطَلِّقَهَا، وَهِيَ امْرَأَتُهُ إِذَا ارْتَجَعَهَا وَهِيَ فِي الْعِدَّةِ، وَإِنْ طَلَّقَهَا مِائَةَ مَرَّةٍ أَوْ أَكْثَرَ، حَتَّى قَالَ رَجُلٌ لَامْرَأَتِهِ: وَاللَّهِ لَا أُطَلِّقُكَ فَتَبِينَنَّ مِنِّي، وَلَا أُوِيكَ أَبَدًا، قَالَتْ: وَكَيْفَ ذَلِكَ؟ قَالَ: أُطَلِّقُكَ، فَكَلَّمَا هَمَّتْ عِدَّتِكَ أَنْ تَقْضِي، رَاجِعْتُكَ، فَذَهَبَتِ الْمَرْأَةُ حَتَّى دَخَلَتْ عَلَى عَائِشَةَ فَأَخْبَرَتْهَا. فَسَكَتَتْ عَائِشَةُ حَتَّى جَاءَ النَّبِيُّ ﷺ فَأَخْبَرَتْهُ فَسَكَتَ النَّبِيُّ ﷺ، حَتَّى نَزَلَ الْقُرْآنُ: ﴿الطَّلَاقُ مَرَّتَانٍ فَمَا سَأَلَا بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ﴾ [البقرة: ٢٢٩] قَالَتْ عَائِشَةُ: فَاسْتَأْنَفَ النَّاسُ الطَّلَاقَ مُسْتَقْبَلًا، مَنْ كَانَ طَلَّقَ وَمَنْ لَمْ يَكُنْ طَلَّقَ.

حَدَّثَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، نَحْوَ هَذَا الْحَدِيثِ بِمَعْنَاهُ، وَلَمْ يَذْكُرْ فِيهِ عَنْ عَائِشَةَ.

[ قَالَ أَبُو عِيْسَى: ] وَهَذَا أَصَحُّ مِنْ حَدِيثِ

يَعْلَى بْنِ شَيْبٍ.

[1] *Al-Baqarah* 2:229.

correct than the (previous) narration of Ya'lā bin Shabīb.

**تخریج:** [حسن] وأخرجه البيهقي: ٣٣٣/٧، من حديث يعلى بن شبيب به وهو لين الحديث كما في التقريب وغيره ومع ذلك صححه الحاكم: ٢٨٠/٢ فتعقبه الذهبي، ورواه البيهقي: ٣٦٧/٧ من حديث ابن إسحاق: حدثني هشام عن أبيه عن عائشة به نحو المعنى وللحديث شواهد أخرى.

**Comments:**

In the period of *Jahiliyyah* people used to divorce their wives, and before the expiry of the probationary period (*Iddah*) they would take them back. There was no limit to this way of conduct. The husband could divorce his wife as many times as he wanted and take them back within the expiry of *Iddah* and she would remain his wife. Islamic Divine Law (*Sharī'ah*) imposed a limit to it. "Divorce is two times, after that retain her on reasonable terms of release her with kindness." According to Shah Waliullāh excessive use of the right of divorce and giving little importance to its consequences causes many evils and miseries in the society.

**Chapter 17. What Has Been Related About The Pregnant Woman Who Gives Birth After Her Husband Dies**

(المعجم ١٧) - بَابُ مَا جَاءَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا زَوْجُهَا تَضَعُ (الصحفة ١٧)

**1193.** Al-Aswad narrated from Abū As-Sanābil bin Ba'kak who said: "Subai'ah delivered twenty-three or twenty-five days after her husband had died. So when she was ready (finished post-natal bleeding) she adorned herself for marriage, but she was rebuked for doing that, so it was mentioned to the Prophet ﷺ and he said: 'If she has done that then her time has come.'" (*Hasan*)

١١٩٣ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا حُسَيْنُ بْنُ مُحَمَّدٍ: حَدَّثَنَا شَيْبَانُ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنِ أَبِي السَّنَابِلِ ابْنِ بَعْكِكَ قَالَ: وَضَعَتْ سُبَيْعَةُ بَعْدَ وَفَاةِ زَوْجِهَا بِثَلَاثَةِ وَعَشْرِينَ يَوْمًا، أَوْ خَمْسَةَ وَعَشْرِينَ يَوْمًا، فَلَمَّا تَعَلَّتْ تَسْوَفَتْ لِلنِّكَاحِ، فَأَنْكَرَ عَلَيْهَا ذَلِكَ، فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ. فَقَالَ: «إِنْ تَفَعَّلَ فَقَدْ حَلَّ أَجْلُهَا».

(Another chain with a similar narration)

(He said:) There is something on this topic from Umm Salamah.

حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا الْحَسَنُ بْنُ مُوسَى: حَدَّثَنَا شَيْبَانُ عَنْ مَنْصُورٍ نَحْوَهُ.

(Abū 'Eīsā said:) The *Hadīth* of Abū As-Sanābil is a well known *Hadīth* that is *Gharīb* from this route; we do not know of anything from Al-Aswad from Abū As-Sanābil. I heard Muḥammad saying:

[قَالَ:]: وَفِي الْبَابِ عَنِ أُمِّ سَلَمَةَ.

[قَالَ أَبُو عِيسَى:]: حَدِيثُ أَبِي السَّنَابِلِ حَدِيثٌ مَشْهُورٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ، وَلَا

“I do not know that Abū As-Sanābil lived after the Prophet ﷺ.”

This is acted upon according to most of the people of knowledge among the Companions of the Prophet ﷺ and others. It is lawful for the pregnant woman whose husband dies to seek marriage when she gives birth, even though her *Iddah* has not transpired.

This is the view of Sufyān Ath-Thawrī, Ash-Shāfi‘ī, Aḥmad, and Ishāq. Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that she remains in her *Iddah* until the end of the two terms.<sup>[1]</sup> But the first view is more correct.

**تخریج:** [حسن] وأخرجه ابن ماجه، الطلاق، باب الحامل المتوفى عنها زوجها، إذا وضعت حلت للأزواج، ح: ٢٠٢٧ والنسائي، ح: ٣٥٣٨ من حديث منصور به وصححه ابن حبان (الإحسان): ٤٢٨٥ وللحديث شواهد عند النسائي، ح: ٣٥٤٠ وغيره \* وفي الباب عن أم سلمة [يأتي: ١١٩٤].

**1194.** Sulaimān bin Yasār narrated that Abū Hurairah, Ibn ‘Abbās, and Abu Salamah bin ‘Abdur-Raḥmān mentioned the pregnant woman whose husband died and she gave birth after the death of her husband. So Ibn ‘Abbās said: “She observes *Iddah* until the end of the two terms.” Abū Salamah said: “Rather, she is allowed when she gives birth.” Abū Hurairah said: “I am with my nephew,” meaning Abū Salamah.

So he sent a message to Umm Salamah the wife of the Prophet ﷺ. She said: “Subai‘ah Al-

نَعْرِفُ لِلأَسْوَدِ شَيْئًا، عَنِ أَبِي السَّنَابِلِ، وَسَمِعْتُ مُحَمَّدًا يَقُولُ: لَا أَعْرِفُ أَنَّ أَبَا السَّنَابِلِ عَاشَرَ بَعْدَ النَّبِيِّ ﷺ.

وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ أَنَّ الْحَامِلَ الْمُتَوَفَّى عَنْهَا زَوْجَهَا، إِذَا وَضَعَتْ فَقَدْ حَلَّ لَهَا التَّزْوِيجُ وَإِنْ لَمْ تَكُنْ انْقَضَتْ عِدَّتُهَا.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: تَعْتَدُ آخِرَ الْأَجَلَيْنِ، وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

١١٩٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ أَبَا هُرَيْرَةَ وَابْنَ عَبَّاسٍ وَأَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ تَذَكَّرُوا الْمُتَوَفَّى عَنْهَا زَوْجَهَا، الْحَامِلَ تَضَعُ عِنْدَ وِفَاةِ زَوْجِهَا، فَقَالَ ابْنُ عَبَّاسٍ: تَعْتَدُ آخِرَ الْأَجَلَيْنِ. وَقَالَ أَبُو سَلَمَةَ: بَلْ تَحِلُّ جِئِن تَضَعُ، وَقَالَ أَبُو هُرَيْرَةَ: أَنَا مَعَ ابْنِ أَخِي، يَعْنِي أَبَا سَلَمَةَ.

فَأَرْسَلُوا إِلَى أُمِّ سَلَمَةَ، زَوْجِ النَّبِيِّ ﷺ فَقَالَتْ: قَدْ وَضَعَتْ سُبَيْعَةُ الْأَسْلَمِيَّةُ بَعْدَ وِفَاةِ

[1] Meaning four months and ten days.

Aslamiyyah gave birth a short time after her husband died, so she sought the judgement of the Messenger of Allāh ﷺ and he ordered her to get married.” (Ṣaḥīḥ)

(Abū ‘Eīsā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

**تخریج:** وأخرجه مسلم، الطلاق، باب انقضاء عدة المتوفى عنها وغيرها، بوضع الحمل، ح: ١٤٨٥ من حديث الليث بن سعد به وللحديث طرق عند البخاري، ح: ٤٩٠٩ وغيره.

رَوَّجَهَا بَيْسِيرٍ، فَاسْتَفْتَتْ رَسُولَ اللَّهِ ﷺ. فَأَمَرَهَا أَنْ تَتَزَوَّجَ. [قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

**Comments:**

Allāh’s Command about the woman whose husband has died are quite clear in *Ṣurat Al-Baqarah* Verse 234. “If any of you dies and leaves a widow behind; they shall wait concerning themselves four months and ten days when they have fulfilled their term.” In this Verse it has not been mentioned about the widow left behind whether she is pregnant or not. It can be inferred that in both cases the period is four months and ten days. In *Ṣurat At-Ṭalāq* it has been mentioned about the pregnant woman “For those who are pregnant their period is until they deliver their burden.”

**Chapter 18. What Has Been Related About The ‘Iddah Of A Woman Whose Husband Dies**

Ḥumaid bin Nāfi‘ narrated that Zainab bint Abī Salamah informed him of these three *Aḥādīth*:

**1195.** Zainab said: “I entered upon Umm Ḥabibah, the wife of the Prophet ﷺ when her father Sufyān bin Ḥarb died. So she asked for some perfume that had something yellow saffron or something else, so a girl applied it to her and put some on her cheeks. Then she said: ‘By Allāh! I have no need for perfume except that I heard the

(المعجم ١٨) - بَابُ مَا جَاءَ فِي عِدَّةِ الْمُتَوَفَّى عَنْهَا زَوْجَهَا (التحفة ١٨)

حَدَّثَنَا الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنُ بْنُ عِيسَى: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ بْنِ مُحَمَّدِ بْنِ عَمْرٍو بْنِ حَزْمٍ، عَنْ حُمَيْدِ ابْنِ نَافِعٍ، عَنْ زَيْنَبِ بِنْتِ أَبِي سَلَمَةَ، أَنَّهَا أَخْبَرَتْهُ بِهَذِهِ الْأَحَادِيثِ الثَّلَاثَةِ:

١١٩٥ - قَالَتْ زَيْنَبُ: دَخَلْتُ عَلَى أُمِّ حَبِيبَةَ زَوْجِ النَّبِيِّ ﷺ حِينَ تُوَفِّي أَبُوهَا، أَبُو سُفْيَانَ بْنُ حَرْبٍ. فَدَعَتْ بِطِيبٍ فِيهِ صُفْرَةٌ خَلُوقٍ أَوْ غَيْرِهِ، فَدَهَنْتُ بِهِ جَارِيَةً، ثُمَّ مَسَّتْ بِعَارِضِيهَا، ثُمَّ قَالَتْ: وَاللَّهِ مَا لِي بِالطِّيبِ مِنْ حَاجَةٍ، غَيْرَ أَنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ

Messenger of Allāh ﷺ saying: “It is not lawful for a woman who believes in Allāh and the Last Day to mourn for the dead more than three days, except for her husband (in which case it is) four months and ten days.”<sup>[1]</sup> (*Sahih*)

يَقُولُ: «لَا يَجِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ  
الْآخِرِ، أَنْ تُحَدِّدَ عَلَى مَيِّتٍ فَوْقَ ثَلَاثَةِ أَيَّامٍ،  
إِلَّا عَلَى زَوْجٍ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا».

تخريج: متفق عليه، وأخرجه البخاري، الجنائز، باب إحداد المرأة على غير زوجها،  
ح: ١٢٨١، ٥٣٣٤ مسلم، ح: ١٤٨٦ من حديث مالك به وهو في الموطأ: ٥٩٦/٢، ٥٩٧.

### Comments:

This narration proves that mourning for the dead for more than three days is not allowed. In case of the death of the husband, a widow must mourn and wait for four months and ten days. In this period she should not adorn herself. This is essential for her as it is mentioned in the narration no. 1197.

**1196.** Zainab said: “So I entered upon Zainab bint Jahsh when her brother died. She called for some perfume and put it on, then said: ‘By Allāh! I have no need for perfume except that I heard the Messenger of Allāh ﷺ saying: “It is not lawful for a woman who believes in Allāh and the Last Day to mourn for the dead more than three nights, except for her husband (in which case it is) four months and ten days.”’ (*Sahih*)

١١٩٦ - قَالَتْ زَيْنَبُ: فَدَخَلْتُ عَلَى  
زَيْنَبَ بِنْتِ جَحْشِ بْنِ تُوْفَيْي أَحْوَهَا، فَدَعَتِ  
بِطِيبٍ فَمَسَّتْ مِنْهُ، ثُمَّ قَالَتْ: وَاللَّهِ! مَا لِي فِي  
الطِّيبِ مِنْ حَاجَةٍ، غَيْرَ أَنِّي سَمِعْتُ رَسُولَ  
اللَّهِ ﷺ يَقُولُ: «لَا يَجِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ  
وَالْيَوْمِ الْآخِرِ أَنْ تُحَدِّدَ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ  
لَيَالٍ، إِلَّا عَلَى زَوْجٍ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا».

تخريج: متفق عليه، وأخرجه البخاري، الطلاق، باب: تحد المتوفى عنها أربعة أشهر  
وعشراً، ح: ٥٣٣٥ ومسلم، ح: ١٤٨٧.

**1197.** Zainab said: “And I heard my mother, Umm Salamah say: ‘A woman came to the Messenger of Allāh ﷺ and she said: “O

١١٩٧ - قَالَتْ زَيْنَبُ: وَسَمِعْتُ أُمِّي، أُمَّ  
سَلَمَةَ تَقُولُ: جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ  
ﷺ. فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ ابْنَتِي تُوْفَيْي

<sup>[1]</sup> This occurred after the mourning period had ended, and she said that she had no need because she was still sad, but she ended the mourning due to the *Hadith*. See *Tuhfat Al-Ahwadhī*.

Messenger of Allāh! My daughter's husband died, and she is suffering from an eye ailment, so can she use *Kohl*?" the Messenger of Allāh ﷺ said: "No" two or three times. Each time (she asked) he said "no." Then he said: "It is just a matter of four months and ten (days). During *Jāhiliyyah* one of you would throw a clump of camel dung when one year passed."<sup>[1]</sup> (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from Furai'ah bint Mālik bin Sinān who is the sister of Abū Sa'eed Al-Khudrī, and Ḥafṣah bint 'Umar.

(Abū 'Eīsā said:) The *Ḥadīth* of Zainab is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. The woman whose husband has died is to avoid perfume and adornments during her *'Iddah*.

This is the view of Sufyān Ath-Thawrī, Mālik (bin Anas), Ash-Shāfi'ī, Aḥmad, and Ishāq.

**تخریج:** متفق علیه، وأخرجه البخاري، ح: ٥٣٣٦ مسلم، ح: ١٤٨٨ (انظر الحديث السابق) \* وفي الباب عن فريعة بنت مالك بن سنان [يأتي: ١٢٠٤] وحفصة بنت عمر [الطيالسي في مسنده، ح: ١٥٨٧ في: أن تحد فوق ثلاثة أيام إلا للزوج].

### Comments:

Mourning is a must for every widow without any distinction, no matter if the widow is a free woman or a slave woman, young or aged. (*Zad Al-Ma'ād*. v. 5.p. 620.)

عَنْهَا زَوْجُهَا. وَقَدْ اشْتَكَّتْ عَيْنَهَا، أَفَنَكْحُلُهَا؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا»، مَرَّتَيْنِ أَوْ ثَلَاثَ مَرَّاتٍ، كُلُّ ذَلِكَ يَقُولُ: «لَا»، ثُمَّ قَالَ: «إِنَّمَا هِيَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرًا، وَقَدْ كَانَتْ إِخْدَاكُنَّ فِي الْجَاهِلِيَّةِ تَرْمِي بِالْبَعْرَةِ عَلَى رَأْسِ الْحَوْلِ».

[قَالَ:] وَفِي الْبَابِ عَنِ فُرَيْعَةَ ابْنَةِ مَالِكِ بْنِ سِنَانَ، أُخْتِ أَبِي سَعِيدِ الْخُدْرِيِّ، وَحَفْصَةَ بِنْتِ عُمَرَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ زَيْنَبَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ؛ أَنَّ الْمُتَوَفَّى عَنْهَا زَوْجُهَا، تَتَّقِي فِي عِدَّتِهَا الطِّيبَ وَالزَّيْنَةَ.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَمَالِكِ [بْنِ أَنَسٍ]، وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

[1] See *Tafsīr Ibn Kathīr*, vol 1, p. 659 under the comments on *Al-Baqarah* 2:234.

**Chapter 19. What Has Been Related About The One Who Has Uttered *Zihār* And Has Intercourse (With His Wife) Before Atoning<sup>[1]</sup>**

**1198.** Salamah bin Şakhr Al-Bayāḍī narrated that the Prophet ﷺ said, about the one who uttered *Zihār* and had intercourse before the atonement: "One atonement." (*Da'īf*)

(Abū 'Eisā said:) This *Hadīth* is *Ḥasan Gharīb*.

This is acted upon according to most of the people of knowledge. This is the view of Sufyān Ath-Thawrī, Mālik, Ash-Shāfi'i, Aḥmad and Işḥāq.

Some of them said that when he has intercourse with her before he fulfills the atonement, then he has to fulfill two atonements. This is the view of 'Abdur-Raḥmān bin Maḥdī.

(المعجم ١٩) - بَابُ مَا جَاءَ فِي الْمُظَاهِرِ يُوَاقِعُ قَبْلَ أَنْ يُكَفِّرَ (التحفة ١٩)

١١٩٨ - حَدَّثَنَا أَبُو سَعِيدٍ الْأَشْجُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرٍ الْبَيَّاضِيِّ عَنِ النَّبِيِّ ﷺ فِي الْمُظَاهِرِ يُوَاقِعُ قَبْلَ أَنْ يُكَفِّرَ، قَالَ: «كَفَّارَةٌ وَاحِدَةٌ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَمَالِكٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُهُمْ إِذَا وَاقَعَهَا قَبْلَ أَنْ يُكَفِّرَ، فَعَلَيْهِ كَفَّارَتَانِ، وَهُوَ قَوْلُ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ.

**تخريج:** [إسناده ضعيف] وأخرجه ابن ماجه، الطلاق، باب المظاهر. بجامع قبل أن يكفر، ح: ٢٠٦٤ عن الأشج به وصححه ابن خزيمة، ح: ٢٣٧٨ وابن الجارود، ح: ٧٤٤ والحاكم: ٢/ ٢٠٣ على شرط مسلم ووافقه الذهبي وقال البخاري: "سليمان لم يسمع عندي من سلمة" والحديث الآتي (١٢٠٠) يعني عنه.

**1199.** Ibn 'Abbās narrated that a man came to the Prophet ﷺ, and he had uttered *Zihār* upon his wife then he had intercourse with her. So he said: 'O Messenger of Allāh! I uttered *Zihār* against my wife, then I had intercourse with her before atoning.' He (ﷺ) said: 'What caused you to do that, may

١١٩٩ - حَدَّثَنَا أَبُو عَمَّارٍ الْحُسَيْنِيُّ بْنُ حَرْبٍ: حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى عَنْ مَعْمَرٍ، عَنِ الْحَكَمِ بْنِ أَبَانَ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا أَتَى النَّبِيَّ ﷺ، قَدْ ظَاهَرَ مِنْ امْرَأَتِهِ فَوَقَعَ عَلَيْهَا، فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي قَدْ ظَاهَرْتُ مِنْ امْرَأَتِي فَوَقَعْتُ عَلَيْهَا قَبْلَ

[1] See *Al-Mujādilah* 58:1-4.

Allāh have mercy upon you?' He said: 'I saw her anklets in the moonlight.' He said: 'Then do not go near her until you have done what Allāh ordered (for it).'" (*Ḥasan*)

This *Ḥadīth* is *Ḥasan Gharīb*.

أَنْ أَكْفَرُ، فَقَالَ: «مَا حَمَلَك عَلَى ذَلِكَ، يَرْحَمُكَ اللهُ؟» قَالَ: رَأَيْتُ خَلْخَالَهَا فِي ضَوْءِ الْقَمَرِ، قَالَ: «فَلَا تَقْرُبْهَا حَتَّى تَفْعَلَ مَا أَمَرَكَ اللهُ [بِهِ]».

هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ غَرِيبٌ.

تخريج: [إسناده حسن] وأخرجه النسائي: ١٦٧/٦، ح: ٣٤٨٧ (الطلاق، باب الظهار) عن الحسين بن حريث به وصححه الجارود، ح: ٧٤٧.

### Comments:

Word '*Zihār*' is derived from '*Zahr*' meaning back. This word is also used for a riding animal, and there is also a hint in it for sexual relationship between the husband and wife, that is why it has been used as a symbolic reference. In the period of *Jahiliyyah*, it was customary that if anybody wanted to make his wife unlawful for himself, he would say that she resembles his mother from the back.

## Chapter 20. What Has Been Related About The Atonement For *Zihār*

**1200.** Abū Salamah and Muḥammad bin 'Abdur-Raḥmān (bin *Thawbān*) narrated that Salmān bin *Ṣakhr* Al-Anṣārī – from Banū Bayāḍah – said that his wife was like the back of his mother to him until Ramaḍān passed. After half of Ramaḍān had passed he had intercourse with his wife during the night. So he went to the Messenger of Allāh ﷺ to mention that to him. The Messenger of Allāh ﷺ said to him: "Free a slave." He said: "I don't have one." So he said: "Then fast two consecutive months." He said: "I am unable." He said: "Feed sixty needy people." He said: "I can not." So the Messenger of Allāh ﷺ said to Farwah bin 'Amr: "Give him that *'Araq* – and it is a large basket that holds fifteen or sixteen *Sā'* – to feed sixty needy people." (*Ḥasan*)

(المعجم ٢٠) - بَابُ مَا جَاءَ فِي كَفَّارَةِ

الظَّهَارِ (التحفة ٢٠)

١٢٠٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: حَدَّثَنَا هَارُونُ بْنُ إِسْمَاعِيلَ الْخَزَّازُ: حَدَّثَنَا عَلِيُّ بْنُ الْمُبَارَكِ: حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ: حَدَّثَنَا أَبُو سَلَمَةَ وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ [بْنِ ثَوْبَانَ]: أَنَّ سَلْمَانَ بْنَ صَخْرٍ الْأَنْصَارِيَّ، أَحَدَ بَنِي بِيَاضَةَ، جَعَلَ امْرَأَتَهُ عَلَيْهِ كَظَهْرِ أُمِّهِ حَتَّى يَمُضِيَ رَمَضَانَ، فَلَمَّا مَضَى نِصْفُ مِنْ رَمَضَانَ وَقَعَ عَلَيْهَا لَيْلًا، فَأَتَى رَسُولَ اللَّهِ ﷺ فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «أَعْتِقَ رَقَبَةً»، قَالَ: لَا أَجِدُهَا، قَالَ: «فَصُمْ شَهْرَيْنِ مُتَابِعَيْنِ»، قَالَ: لَا أَسْتَطِيعُ، قَالَ: «أَطْعِمِ سِتِّينَ مِسْكِينًا»، قَالَ: لَا أَجِدُ، فَقَالَ رَسُولُ اللَّهِ ﷺ لِفَرْوَةَ بِنْتِ عَمْرٍو: «أَعْطِيهِ ذَلِكَ الْعَرَقَ - وَهُوَ مِكَتَلٌ يَأْخُذُ خَمْسَةَ عَشَرَ صَاعًا أَوْ سِتَّةَ عَشَرَ صَاعًا - إِطْعَامَ سِتِّينَ مِسْكِينًا».

(Abū 'Eisā said:) This *Hadīth* is *Hasan*. They say: "Salmān bin Şakhr" and they say: "Salamah bin Şakhr Al-Bayādī.

The people of knowledge act according to this *Hadīth* regarding the atonement for *Zihār*.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ، يُقَالُ: سَلْمَانُ بْنُ صَخْرٍ، وَيُقَالُ: سَلَمَةُ بْنُ صَخْرٍ الْبَيَّاضِيُّ.  
وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ، فِي كَفَّارَةِ الظَّهَارِ.

تخریج: [حسن] وأخرجه الحاكم (٣٠٤/٢ ح ٢٨١٦) من حديث يحيى بن أبي كثير به وصححه على شرط الشيخين ووافقه الذهبي.

**Comments:**

According to Imām Aḥmad, if atonement is paid in the form of wheat it will be one *Mudd*, and if it is in the form of dates or barley, it will be two *Mudd* or half a *Şā'*. In view of Imām Shafi'ī, Imām Awzā'i and 'Aṭā there is only one *Mudd* to be paid from any kind of grain as atonement. In the view of Imām Mālik the amount of atonement is two *Mudd* from any kind of grain, and according to Imām Ath-Thawrī and Imām Abū Ḥanīfah, for wheat one *Mudd*, dates two *Mudd* and barley one *Şā'* is prescribed as the atonement.

**Chapter 21. What Has Been Related About *Īlā'***<sup>[1]</sup>

(المعجم ٢١) - بَابُ مَا جَاءَ فِي الْإِيلَاءِ (التحفة ٢١)

**1201.** 'Āishah narrated: "The Messenger of Allāh ﷺ swore *Īlā'* from his wives, and he made something unlawful and he made for himself unlawful what was lawful, and he made atonement for his oath." (*Da'if*)

١٢٠١ - حَدَّثَنَا الْحَسَنُ بْنُ قَرَعَةَ الْبُصْرِيُّ: حَدَّثَنَا مَسْلَمَةُ بْنُ عَلْقَمَةَ: حَدَّثَنَا دَاوُدُ بْنُ عَلِيٍّ عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: أَلَى رَسُولِ اللَّهِ ﷺ مِنْ نِسَائِهِ، وَحَرَمٍ، فَجَعَلَ الْحَرَامَ حَلَالًا، وَجَعَلَ فِي الْيَمِينِ كَفَّارَةً. [قَالَ:] وَفِي الْبَابِ عَنْ أَنَسٍ وَأَبِي مُوسَى.

(He said:) There are narrations on this topic from Anas and Abū Mūsā.

(Abū 'Eisā said:) The narration of Maslamah bin 'Alqamah from Dāwūd was reported by 'Alī bin Mushir and others from Dāwūd: "From Ash-Sha'bī, that the Prophet ﷺ" which is *Mursal*, and it does not

[قَالَ أَبُو عِيسَى:] حَدِيثٌ مَسْلَمَةٌ بْنُ عَلْقَمَةَ عَنْ دَاوُدَ، رَوَاهُ عَلِيُّ بْنُ مُسْهِرٍ وَغَيْرُهُ عَنْ دَاوُدَ، عَنِ الشَّعْبِيِّ: أَنَّ الشَّيْبَانَ ﷺ، مُرْسَلًا، وَلَيْسَ فِيهِ: عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ

[1] When a man vows to abandon intercourse with his wife.

contain: "From Masrūq, from 'Āishah." And this is more correct than the narration of Maslamah bin 'Alqamah.

*Īlā'* is that a man swears to not approach his wife for four months or more. The people of knowledge differ about it when the four months have passed. Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that when the four months pass, it (the *Īlā'*) ends. He either returns or he divorces. This is the view of Mālik bin Anas, Ash-Shāfi'ī, Aḥmad, and Ishāq.

Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that when the four months pass she is irrevocably divorced. This is the view of (Sufyān) Ath-Thawrī and the people of Al-Kūfah.

وَهَذَا أَصْحَحُ مِنْ حَدِيثِ مَسْلَمَةَ بْنِ عَلْقَمَةَ،  
وَالْإِيلَاءِ [هُوَ] أَنْ يَحْلِفَ الرَّجُلُ أَنْ لَا يَقْرَبَ  
أَمْرَأَتَهُ أَرْبَعَةَ أَشْهُرٍ فَأَكْثَرَ. وَاخْتَلَفَ أَهْلُ  
الْعِلْمِ فِيهِ إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ، فَقَالَ بَعْضُ  
أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ:  
إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ يَوْفُ. فَإِمَّا أَنْ يَفِيءَ،  
وَإِمَّا أَنْ يُطَلَّقَ. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ  
وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُ  
أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ:  
إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فِيهِ تَطْلِيقَةٌ بَاطِنَةٌ. وَهُوَ  
قَوْلُ [سُفْيَانَ] الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ.

**تخريج:** [إسناده ضعيف] وأخرجه ابن ماجه، الطلاق، باب الحرام، ح: ٢٠٧٢ عن الحسن بن قزعة به وصححه ابن حبان (الإحسان): ٤٢٦٤ \* مسلمة بن علقمة بن داود أحاديث منكري، عند الجمهور والمرسل أصح \* وفي الباب عن أبي موسى [البخاري، ح: ١١٩١ ومسلم، ح: ١٣٩٩] وأنس [الطبراني كما في مجمع الزوائد: ١٠/٥ وفيه يوسف بن خالد السمطي متهم متروك.

**Comments:**

Why the Messenger of Allāh ﷺ swore '*Īlā'*' from his wives. There are various reasons and statements about it. a) Events related to the honey. Prohibiting himself from eating honey. b) Incident of Mariya Qabtiyah. c) Demand of increase in spending and housing. d) Issue of the Caliphate of Abū Bakr and 'Umar.

**Chapter 22. What Has Been Related About *Li'ān***

(المعجم ٢٢) - بَابُ مَا جَاءَ فِي اللَّعَانِ  
(التحفة ٢٢)

**1202.** Sa'eed bin Jubair narrated: "I was asked about those who were involved in the case of *Li'ān* and if they are to be separated, during

١٢٠٢ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا عَبْدُهُ بْنُ  
سَلِيمَانَ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سَلِيمَانَ، عَنْ  
سَعِيدِ بْنِ جُبَيْرٍ قَالَ: سُئِلْتُ عَنِ الْمُتَلَاعِنِينَ

the leadership of Muṣ'ab bin Az-Zubair. I did not know what to say. So I went to the house of 'Abdullāh bin 'Umar and I sought permission to enter. I was told that he was taking a nap, but he heard me talking and he said: 'Is it Ibn Jubair? Enter. You would not have come except for a need.'"

He said: "So I entered and found him lying on a saddlecloth from his mount. I said: 'O Abū 'Abdur-Raḥmān! Are those involved in *Li'ān* separated?' He said: 'Glorious is Allāh! Yes. The first who asked about that was so-and-so the son of so-and-so. He came to the Prophet ﷺ and said: "O Messenger of Allāh! If one of us saw his wife committing adultery what should he do? If he were to say anything, his statement would be a horrible matter, and if he were to remain silent, his silence about the matter would be horrible."

"He said: 'So the Prophet ﷺ remained silent and did not answer him. Afterwards he came to the Prophet ﷺ and said: "The one who asked you about it has been tried by it." So Allāh revealed these *Āyāt* from *Sūrat An-Nūr*: And those who accuse their wives and have no witnesses except themselves.<sup>[1]</sup> – until the end of those *Āyāt*. So he called for the man and recited the *Āyāt* to him and admonished him, reminded him, and he told him:

فِي إِمَارَةِ مُضَعَبِ بْنِ الرَّبِيعِ، أَيَمْرُقُ بَيْنَهُمَا؟  
فَمَا دَرَيْتُ مَا أَقُولُ، فَكُنْتُ مَكَانِي إِلَى مَنْزِلِ  
عَبْدِ اللَّهِ بْنِ عُمَرَ، فَاسْتَأْذَنْتُ عَلَيْهِ فَقِيلَ لِي:  
إِنَّهُ قَائِلٌ، فَسَمِعَ كَلَامِي فَقَالَ: ابْنُ جُبَيْرٍ  
أَدْخُلْ، مَا جَاءَ بِكَ إِلَّا حَاجَةٌ.

قَالَ: فَدَخَلْتُ فَإِذَا هُوَ مُفْتَرِشٌ بَرْدَعَةً  
رَحَلَ لَهَا، فَقُلْتُ: يَا أَبَا عَبْدِ الرَّحْمَنِ  
الْمُتَلَاعِنَانِ، أَيَمْرُقُ بَيْنَهُمَا؟ فَقَالَ: سُبْحَانَ  
اللَّهِ! نَعَمْ، إِنَّ أَوَّلَ مَنْ سَأَلَ عَنْ ذَلِكَ فَلَانُ  
ابْنُ فَلَانٍ، أَتَى النَّبِيَّ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ  
لَوْ أَنَّ أَحَدَنَا رَأَى امْرَأَتَهُ عَلَى فَاحِشَةٍ، كَيْفَ  
يَضَعُ؟ إِنْ تَكَلَّمَ، تَكَلَّمَ بِأَمْرِ عَظِيمٍ، وَإِنْ  
سَكَتَ، سَكَتَ عَلَى أَمْرِ عَظِيمٍ، قَالَ:  
فَسَكَتَ النَّبِيُّ ﷺ فَلَمْ يُجِبْهُ.

فَلَمَّا كَانَ بَعْدَ ذَلِكَ، أَتَى النَّبِيَّ ﷺ  
فَقَالَ: إِنَّ الَّذِي سَأَلْتُكَ عَنْهُ قَدْ ابْتُلِيَ بِهِ،  
فَأَنْزَلَ اللَّهُ هَذِهِ الْآيَاتِ الَّتِي فِي سُورَةِ النُّورِ:  
﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا  
أَنْفُسُهُمْ﴾ [النور: ٦-١٠] حَتَّى خَتَمَ الْآيَاتِ،  
فَدَعَا الرَّجُلَ فَتَلَا الْآيَاتِ عَلَيْهِ، وَوَعظَهُ  
وَدَكَّرَهُ وَأَخْبَرَهُ: أَنَّ عَذَابَ الدُّنْيَا أَهْوَنُ مِنْ  
عَذَابِ الْآخِرَةِ، فَقَالَ: لَا، وَالَّذِي بَعَثَكَ  
بِالْحَقِّ! مَا كَذَبْتُ عَلَيْهَا، ثُمَّ نَتَيْ بِالْمَرْأَةِ  
فَوَعظَهَا وَدَكَّرَهَا، وَأَخْبَرَهَا: أَنَّ عَذَابَ الدُّنْيَا  
أَهْوَنُ مِنْ عَذَابِ الْآخِرَةِ، فَقَالَتْ: لَا،

[1] *An-Nūr* 24:6-10.

“Indeed the punishment of the world is less than the punishment of the Hereafter.” So he said: “Nay! By the One Who sent you with the truth! I did not lie about her.” Then he did the same with the woman, admonishing her and reminding her and he told her: “Indeed the punishment of the world is less than the punishment of the Hereafter.” She said: “Nay! By the One Who sent you with the truth! He is not telling the truth.”

“He said: ‘So he started with the man: He testified four times, by Allāh that he is one of the truthful, and the fifth time that the curse of Allāh be upon him if he was one of the liars. Then the same with the woman: She testified four times by Allāh, that he was one of the liars, and the fifth time that the wrath of Allāh be upon her if he was one of the truthful. Then he separated the two of them.’” (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from Sahl bin Sa’d, Ibn ‘Abbās, Ḥudhaifah, and Ibn Mas‘ūd.

(Abū ‘Eisā said:) The *Ḥadīth* of Ibn ‘Umar is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This *Ḥadīth* is acted upon according to the people of knowledge.

تخريج: وأخرجه مسلم، اللعان، ح: ١٤٩٣ من حديث عبد الملك والبخاري، ح: ٥٣١١ من حديث سعيد بن جبير به \* وفي الباب عن سهل بن سعد [البخاري، ح: ٥٢٥٩ ومسلم، ح: ١٤٩٢] وابن عباس [البخاري، ح: ٥٣١٠ ومسلم، ح: ١٤٩٧] وحنيفة [الطبراني في الأوسط: ٥١/٩، ح: ٨١٠٧] وابن مسعود [مسلم، ح: ١٤٩٥].

### Comments:

According to Imām *Shafi’i* only on the occasion of a man’s *Li’an* will there be separation, but in the view of the *Aḥnāf*, separation will be effective on the

وَالَّذِي بَعَثَكَ بِالْحَقِّ! مَا صَدَقَ، قَالَ، فَبَدَأَ بِالرَّجُلِ فَشَهِدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ، وَالْخَامِسَةَ: أَنْ لَعَنَهُ اللَّهُ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ، ثُمَّ نَتَى بِالْمَرْأَةِ فَشَهِدَتْ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ، وَالْخَامِسَةَ: أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ، ثُمَّ فَرَّقَ بَيْنَهُمَا. [قَالَ:] وَفِي الْبَابِ عَنْ سَهْلِ بْنِ سَعْدٍ، وَابْنِ عَبَّاسٍ، وَحُدَيْفَةَ وَابْنِ مَسْعُودٍ [قَالَ أَبُو عِيسَى:] حَدِيثُ ابْنِ عُمَرَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ.

orders of the judge. Imām Aḥmad affirms both the views. When the *Li'an* is imposed there is no way out for their remarriage. It will be a life long separation. The issue of *Li'an* is started with the oath of husband. (*Al-Mughni* v. 11 p. 144-145.)

**1203.** Ibn 'Umar narrated: "A man pronounced the *Li'an* on his wife, and the Prophet ﷺ separated the two of them, and he decided that the child belonged to the mother." (*Ṣaḥīḥ*)

Abū 'Eisā said: This *Ḥadīth* is *Ḥasan Ṣaḥīḥ* (And this is acted upon according to the people of knowledge).

تخریج: متفق علیه، وأخرجه البخاري، الطلاق، باب: يلحق الولد بالملاعنة، ح: ٥٣١٥ ومسلم، ح: ٨/١٤٩٤ اللعان من حديث مالك به وهو في الموطأ: ٥٩٧/٢.

### Chapter 23: What is Reported On Where The Widow Observes Her *Iddah*

**1204.** Zainab bint Ka'b bin 'Ujrah narrated that Al-Furay'ah bint Mālik bin Sinān – the sister of Abū Sa'eed Al-Khudrī – informed her that she went to the Messenger of Allāh ﷺ to ask him if she could return to her family in Banū Khudrah. Her husband had gone out searching for his runaway slaves, and when he was in Taraf Al-Qadūm he caught up with them and they killed him. She said: "So I asked the Messenger of Allāh ﷺ if I could return to my family since my husband had not left me a home that he owned nor any maintenance." She said: "So the Messenger of Allāh ﷺ said: 'Yes.' Then I left. When I was in the courtyard," or, "in the *Masjid*, the

١٢٠٣ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: لَاعَنَ رَجُلٌ امْرَأَتَهُ، وَفَرَّقَ النَّبِيُّ ﷺ بَيْنَهُمَا، وَالْحَقُّ الْوَلَدُ بِالْأُمِّ.

قَالَ أَبُو عِيْسَى: هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. [وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ].

(المعجم ٢٣) - بَابُ مَا جَاءَ آيِنَ تَعَدُّهُ الْمُتَوَفَّى عَنْهَا رَوْجُهَا (التحفة ٢٣)

١٢٠٤ - حَدَّثَنَا الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ: حَدَّثَنَا مَالِكُ عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ ابْنِ عُجْرَةَ، عَنْ عَمَّتِهِ زَيْنَبِ بِنْتِ كَعْبِ بْنِ عُجْرَةَ: أَنَّ الْفُرَيْعَةَ بِنْتَ مَالِكِ بْنِ سِنَانٍ - وَهِيَ أُخْتُ أَبِي سَعِيدِ الْخُدْرِيِّ - أَخْبَرَتْهَا: أَنَّهَا جَاءَتْ رَسُولَ اللَّهِ ﷺ تَسْأَلُهُ أَنْ تَرْجِعَ إِلَى أَهْلِهَا فِي بَنِي خُدْرَةَ، وَأَنَّ رَوْجَهَا خَرَجَ فِي طَلَبِ أَعْبُدٍ لَهُ أَبْنُو، حَتَّى إِذَا كَانَ بِطَرْفِ الْقُدُومِ لِحَقِّهِمْ فَقَتَلُوهُ. قَالَتْ: فَسَأَلْتُ رَسُولَ اللَّهِ ﷺ أَنْ أَرْجِعَ إِلَى أَهْلِي، فَإِنَّ رَوْجِي لَمْ يَتْرُكْ لِي مَسْكَنًا يَمْلِكُهُ، وَلَا نَفَقَةً، قَالَتْ: فَقَالَ رَسُولُ اللَّهِ ﷺ: «نَعَمْ»، قَالَتْ: فَاَنْصَرَفْتُ، حَتَّى إِذَا كُنْتُ فِي الْحُجْرَةِ أَوْ فِي

Messenger of Allāh ﷺ called me” or, “summoned for me to come back to him and he said: ‘What did you say?’” She said: “So I repeated the story that I had mentioned to him about the case of my husband. He said: ‘Stay in your house until what is written reaches its term.’” She said: “So I observed my *'Iddah* there for four months and ten (days).” She said: “During the time of *'Uthmān*, he sent a message to me asking me about that, so I informed him. He followed it and judged accordingly.” (*Ṣaḥīḥ*)

(Another chain) which is similar in meaning.

(Abū 'Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. This *Ḥadīth* is acted upon according to most of the people of knowledge among the Companions of the Prophet ﷺ and others. They did not think that the woman observing *'Iddah* could move from the home of her husband until her *'Iddah* transpired.

This is the view of Sufyān Aṭh-Thawrī, Ash-Shāfi'i, Aḥmad, and Ishāq.

Some of the people of knowledge among the Companions of the Prophet ﷺ and others, said that the woman is to spend her *'Iddah* wherever she wishes, even if she does not observe the *'Iddah* in the home of her husband.

(Abū 'Eisā said:) But the first view is more correct.

الْمَسْجِدِ نَادَانِي رَسُولُ اللَّهِ ﷺ أَوْ أَمَرَ بِي فَنُودِيَتْ لَهُ فَقَالَ: «كَيْفَ قُلْتِ؟» قَالَتْ: فَرَدَدْتُ عَلَيْهِ الْقِصَّةَ الَّتِي ذَكَرْتُ لَهُ مِنْ شَأْنِ زَوْجِي، قَالَ: «أَمْكُثِي فِي بَيْتِكَ حَتَّى يَبْلُغَ الْكِتَابَ أَجَلَهُ». قَالَتْ: فَأَعْتَدْتُ فِيهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، قَالَتْ: فَلَمَّا كَانَ عُثْمَانُ، أَرْسَلَ إِلَيَّ فَسَأَلَنِي عَنْ ذَلِكَ فَأَخْبِرْتُهُ، فَاتَّبَعَهُ وَقَضَى بِهِ.

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا سَعْدُ بْنُ إِسْحَاقَ بْنِ كَعْبِ بْنِ عَجْرَةَ. فَذَكَرَ نَحْوَهُ بِمَعْنَاهُ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ لَمْ يَرَوْا لِلْمُعْتَدَّةِ أَنْ تَنْتَقِلَ مِنْ بَيْتِ زَوْجِهَا حَتَّى تَقْضِيَ عِدَّتَهَا.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ، وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: لِلْمَرْأَةِ أَنْ تَعْتَدَّ حَيْثُ شَاءَتْ وَإِنْ لَمْ تَعْتَدَّ فِي بَيْتِ زَوْجِهَا. [قَالَ أَبُو عِيسَى:] وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

تخريج: [إسناده صحيح] وأخرجه أبو داود، الطلاق، باب: في المتوفى عنها تنتقل، ح: ٢٣٠٠ من حديث مالك به وهو في الموطأ: ٥٩١/٢ وصححه ابن حبان (الإحسان): ٤٢٧٨ وابن الجارود، ح: ٧٥٩ والمحاكم: ٢٠٨/٢ والذهبي.

**Comments:**

According to the point of view of the Four *A'imma* and in view of most of the Companions of the Prophet ﷺ and the followers of the Companions, a widow must stay in the house of her husband to complete the period of *'Iddah*, no matter whether the house she is living in is a rented house or the property of her husband. According to 'Alī, Ibn 'Abbās, 'Āishah, Jābir bin Zaid, Ḥasan Al-Baṣrī, they say she can spend her period of *'Iddah* wherever she wants, there is no binding on her. This narration confirms the first point of view. She is allowed to go out during the daytime for her needs, but she must spend the night in the house of her husband. (*Al-Mughnī* v. 11. p. 297.)