

[بِسْمِ اللَّهِ الرَّكَّابِ الرَّحِيمِ]

In the Name of Allāh, the Most Beneficent, the Most Merciful

10. The Chapters On Divorce

(المعجم ١٠) أَبْوَابُ الطَّلَاقِ

(التحفة ٨)

Comments:

The following are three types of divorce:

- Divorce in accordance with the *Sunnah*: Such a divorce given to a wife during her purity period (the days other than her menses) and on the basis that he has not had intercourse with her during her purity. A husband should divorce her by saying 'I divorce you' or 'You are divorced' and thereafter he maintains her living expenses; and he keeps her in his house for the waiting period (which is three menses or three months) and they should separate after the waiting period is over. This is the best way to divorce. Restoring one's wife after issuing such a divorce is consensually correct, and establishing a new bond of marriage after the waiting time has elapsed is also permissible.
- Divorce contrary to *Sunnah*: Divorce issued to a woman during her menses or during her purity, in which the husband has had intercourse with her; or pronouncing divorce three times in the same session is contrary to the *Sunnah*.
- False or Ineffective Divorce: Divorce issued by a person being forced to do so, divorcing before establishing a bond of marriage, divorce of a child, divorce of an insane person, or the divorce of an unconscious person are all ineffective.

Chapter 1. Suwayd bin Sa'eed told us

(المعجم ١٠) - [بَابُ: حَدَّثَنَا سُؤَيْدُ بْنُ

سَعِيدٍ] (التحفة ١)

2016. It was narrated from 'Umar bin Khattāb that the Messenger of Allāh ﷺ divorced Hafsah then took her back. (*Sahih*)

٢٠١٦ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ، وَ عَبْدِ اللَّهِ ابْنُ عَامِرٍ بْنِ زُرَّازَةَ، وَمَشْرُوقُ بْنُ الْمَرْزُبَانِ. قَالُوا: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، عَنْ صَالِحِ بْنِ صَالِحِ بْنِ حَيٍّ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ ﷺ طَلَّقَ حَفْصَةَ ثُمَّ رَاجَعَهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في المراجعة، ح: ٢٢٨٣ من حديث يحيى بن زكريا به، وذكر الحافظ النسائي له علته، ولكنها غير قادمة.

Comments:

- a. Giving divorce is permissible but one should avoid doing so without any valid reason.
- b. Restoration of the wife after divorce grants her all the rights that she had before divorce.

2017. It was narrated from Abu Musa that the Messenger of Allâh ﷺ said: What is wrong with people who play with the limits imposed by Allâh, and one of them says: "I divorce you, I take you back, I divorce you?" (*Da'if*)

٢٠١٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُؤَمَّلٌ: حَدَّثَنَا سُفْيَانُ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا بَالُ أَقْوَامٍ يَلْعَبُونَ بِحُدُودِ اللَّهِ. يَقُولُ أَحَدُهُمْ: قَدْ طَلَقْتِكِ. قَدْ رَاجَعْتِكِ. قَدْ طَلَقْتِكِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٢٢/٧ من حديث مؤمل بن إسماعيل به، وتابعه أبو حذيفة موسى بن مسعود نا سفیان الثوري به * أبوإسحاق تقدم، ح: ٤٦، والثوري تقدم، ح: ١٦٢، مدلسان وعنعنا، ومع ذلك حسنه البوصيري.

2018. It was narrated from 'Abdullâh bin 'Umar that the Messenger of Allâh ﷺ said: "The most hated of permissible things to Allâh is divorce." (*Sahih*)

٢٠١٨ - حَدَّثَنَا كَثِيرُ بْنُ عُيَيْدٍ الْجَمَصِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، عَنْ عُيَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ، عَنْ مَحَارِبِ بْنِ دِنَارٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ».

تخریج: [صحیح] أخرجه ابن عدي من حديث محمد بن خالد به، وقال: الوصافي ضعيف جدًا قلت: تابعه الثقة معرف بن واصل عند أبي داود، ح: ٢١٧٨ وغيره، وبه صح الحديث، وصححه الحاكم، والذهبي، ولم أر لمضعفه حجة.

Chapter 2. Divorce According To The Sunnah

(المعجم ٢) - **بَابُ طَلَاقِ السَّنَةِ**
(التحفة ٢)

2019. It was narrated that Ibn 'Umar said: "I divorced my wife when she was menstruating. 'Umar mentioned that to the Messenger of Allâh and he said: "Tell him to take her back until she becomes pure (i.e., her period ends), then she has her period (again), then she becomes pure

٢٠١٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ عُيَيْدِ اللَّهِ، عَنْ نَافِعِ، عَنِ ابْنِ عُمَرَ قَالَ: طَلَّقْتُ امْرَأَتِي وَهِيَ حَائِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ ﷺ. فَقَالَ: «مُرَهُ فَلْيُرَاجِعْهَا حَتَّى تَطْهُرَ، ثُمَّ تَحِيضَ، ثُمَّ تَطْهُرَ. ثُمَّ إِنْ شَاءَ طَلَّقَهَا قَبْلَ أَنْ

(again), then if he wishes he may divorce her before having sexual relations with her, and if he wishes he may keep her. This is the waiting period that Allāh has enjoined.” (Sahih)

يُجَامِعُهَا. وَإِنْ شَاءَ أَمْسَكَهَا. فَإِنَّهَا الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ.

تخريج: أخرجه مسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتها، ح: ٢/١٤٧١ عن ابن أبي شيبة وغيره به، وأخرجه البخاري، ح: ٥٢٥١، ومسلم وغيرهما من طريق مالك عن نافع به.

Comments:

Issuing divorce during menses, or during the pure days in which the husband has had intercourse, is an illegal way of divorce. This divorce has the controversial status of it being effective or ineffective. It will take place according to many scholars (like Imam Bukhāri (رحمه الله)، and they said the person giving divorce in such a way will be sinful. Some other scholars said this type of divorce cannot take place at all because it is not in accordance with the *Sunnah*. Imam Ibn Hazm and Imam Ibn Taimiyyah and others, may Allāh have mercy on them, hold this opinion.

2020. It was narrated that ‘Abdullāh said: “Divorce according to the *Sunnah* means divorcing her when she is pure, (i.e., not menstruating) and without having had intercourse with her (during that cycle).”

(Hasan)

تخريج: [حسن] أخرجه النسائي، الطلاق، باب طلاق السنة، ح: ٣٤٢٤ من حديث يحيى القطان به، وصححه ابن حزم في المحلى: ١٠/١٧٢ مسألة: ١٩٤٩، وانظر، ح: ٤٦ لعلته، وللحديث شواهد عند ابن أبي شيبة، كتاب الطلاق، باب: ١ وغيره.

2021. It was narrated that ‘Abdullāh said: “Divorce according to the *Sunnah* means divorcing her with one divorce in each cycle when she is pure, then when she becomes pure the third time, then he pronounces divorce again, and after that she must wait one more menstrual cycle.”

(Hasan)

٢٠٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَحْوَصِ، عَنْ عَبْدِ اللَّهِ قَالَ: طَلَاقُ السُّنَّةِ أَنْ يُطَلَّقَهَا طَاهِرًا مِنْ غَيْرِ جَمَاعٍ.

٢٠٢١ - حَدَّثَنَا عَلِيُّ بْنُ مَيْمُونِ الرَّقِّي: حَدَّثَنَا حَفْصُ بْنُ عِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَحْوَصِ، عَنْ عَبْدِ اللَّهِ، قَالَ، فِي طَلَاقِ السُّنَّةِ: يُطَلَّقُهَا عِنْدَ كُلِّ طَهْرٍ تَطْلِيْقَةً. فَإِذَا طَهَّرَتْ الثَّلَاثَةَ طَلَّقَهَا وَعَلَيْهَا بَعْدَ ذَلِكَ حَيْضَةٌ.

تخریج: [حسن] انظر الحديث السابق .

Comments:

- a. This is in such a case when the husband is determined for permanent separation and thus a third, final and irrevocable divorce will take place, after which returning the wife into a bond of marriage becomes impossible. It is better to let the waiting period pass after one divorce, if the husband has no intention to return to her, and thus the woman will come out of the bond of marriage, and thereafter, if there is a chance of reconciliation, they may live together as wife and husband after renewing the bond of marriage (after a new marriage contract.)
- b. If a wife is returned after the first divorce, and then the second divorce is issued, the waiting time for the second divorce is also three menstruation periods; the return of a wife, during this waiting time, without a new bond of marriage is allowed.

2022. It was narrated that Yunus bin Jubair, Abu Ghallâb, said: "I asked Ibn 'Umar about a man who divorced his wife when she was menstruating. He said: 'Do you know 'Abdullâh bin 'Umar? He divorced his wife when she was menstruating then 'Umar came to the Prophet ﷺ (and told him what had happened). He ordered him to take her back.' I said: 'Will that be counted (as a divorce)?' He said: 'Do you think he was helpless and behaving foolishly? [i.e., yes, it counts (as a divorce)].'" (*Sahih*)

٢٠٢٢ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ، عَنْ يُونُسَ بْنِ جُبَيْرٍ، أَبِي غَلَّابٍ قَالَ: سَأَلْتُ ابْنَ عُمَرَ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَقَالَ: تَعْرِفُ عَبْدَ اللَّهِ بْنَ عُمَرَ؟ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَأَتَى عُمَرَ النَّبِيَّ ﷺ. فَأَمَرَهُ أَنْ يُرَاجِعَهَا. قُلْتُ: أَيْعَتَدُ بِتِلْكَ؟ قَالَ: أَرَأَيْتَ، إِنْ عَجَزَ وَاسْتَحَمَقَ؟

تخریج: أخرجه البخاري، الطلاق، باب مراجعة الحائض، ح: ٥٣٣٣، ومسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، وأنه لو خالف وقع الطلاق ويؤمر برجعتهما، ح: ٩/١٤٧١ من حديث محمد بن سيرين به.

Comments:

The Prophet ﷺ ordered him to take her back. The wording 'to take her back' is a proof that the divorce had taken place because returning (taking a wife back) only happens after divorce. Those scholars who are not in favor of the effectiveness of this divorce, they say the wording 'to take her back' means to establish normal spouses' relation as it was before divorce. (I say: This divorce is affective, as quoted earlier in the view of Imam Bukhâri. — *Usmani*)

Chapter 3. How A Pregnant Woman Is To Be Divorced

2023. It was narrated from Ibn 'Umar that he divorced his wife when she was menstruating, and 'Umar mentioned that to the Prophet ﷺ. He said: "Tell him to take her back then divorce her when she is pure (not menstruating) or pregnant." (*Sahih*)

(المعجم ٣) - بَابُ الْحَامِلِ كَيْفَ تُطَلَّقُ
(التحفة ٣)

٢٠٢٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ ابْنُ مُحَمَّدٍ . قَالَ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، مَوْلَى آلِ طَلْحَةَ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ. فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ فَقَالَ: «مُرُهُ فَلْيَرِجِعْهَا ثُمَّ يُطَلِّقْهَا وَهِيَ طَاهِرَةٌ أَوْ حَامِلَةٌ».

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ٥/١٤٧١ عن ابن أبي شيبه وغيره به.

Comments:

Divorce can be given as the pregnancy is confirmed; there is no need for waiting until the delivery, because the confirmation of pregnancy leaves no doubt for establishing a family lineage. In this condition, the waiting time for a woman is until the delivery of the baby, during which the husband is allowed to take her back.

Chapter 4. One Who Divorces His Wife Three Times In One Sitting

2024. It was narrated that 'Amir Sha'bi said: "I said to Fâtimah bint Qais: 'Tell me about your divorce.' She said: 'My husband divorced me three times when he was leaving for Yemen, and the Messenger of Allâh ﷺ allowed that.'" (*Da'if*)

(المعجم ٤) - بَابُ مَنْ طَلَّقَ ثَلَاثًا فِي مَجْلِسٍ وَاحِدٍ (التحفة ٤)

٢٠٢٤ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمَيْحٍ: أَنَّ أَبَانَ اللَّيْثِ ابْنَ سَعْدٍ، عَنْ إِسْحَاقَ بْنِ أَبِي قُرَوَةَ، عَنْ أَبِي الزُّنَادِ، عَنْ عَامِرِ الشَّعْبِيِّ قَالَ: قُلْتُ لِغَاطِمَةَ بِنْتِ قَيْسٍ: حَدِّثِي عَنِّي عَنْ طَلَاؤِكَ. قَالَتْ: طَلَّقَنِي زَوْجِي ثَلَاثًا، وَهُوَ خَارِجٌ إِلَى الْيَمَنِ. فَأَجَازَ ذَلِكَ رَسُولُ اللَّهِ ﷺ.

تخریج: [إسناده ضعيف جداً] أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٥٤٣/١٤٨٠ وغيره، من طرق عن الشعبي نحوه دون قوله: فأجاز ذلك رسول الله ﷺ، وانظر، ح: ٢٠٣٦.

Comments:

a. The narration of *Sahih Muslim* clarifies that Abu 'Amr bin Hafs bin Mughirah Makhzumi, the husband of Fâtimah, the daughter of Qais, had already divorced her twice, and he sent her the third and the final divorce

from Yemen, through 'Aiyâsh bin Abu Rabi'ah. He did not divorce her with three pronouncements at a time in one session. (*Sahih Muslim*: 1480).

- b. As divorce can be given directly to the wife, likewise the message of divorce may also be sent through a reliable person, and may be sent as a written divorce; divorce can take place in any mentioned form.

Chapter 5. Taking One's Wife Back

(المعجم ٥) - بَابُ الرَّجْعَةِ (التحفة ٥)

2025. 'Imrân bin Husain was asked about a man who divorced his wife then had intercourse with her, and there were no witnesses to his divorcing her or his taking her back. 'Imrân said: "You have divorced (her) in a manner that is not according to the *Sunnah*, and you have taken her back in a manner that is not according to the *Sunnah*. Bring people to witness your divorcing her and taking her back." (*Sahih*)

٢٠٢٥ - حَدَّثَنَا بِشْرُ بْنُ هَلَالٍ الصَّوَّافُ: حَدَّثَنَا جَعْفَرُ بْنُ سَلَيْمَانَ الضُّبَيْيُّ، عَنْ يَزِيدَ الرَّثْكَ، عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشُّخَيْرِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ سُئِلَ عَنْ رَجُلٍ يُطَلِّقُ امْرَأَتَهُ ثُمَّ يَقَعُ بِهَا وَلَمْ يُشْهَدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعَتِهَا. فَقَالَ عِمْرَانُ: طَلَّقْتَ بِغَيْرِ سُنَّةٍ، وَرَاجَعْتَ بِغَيْرِ سُنَّةٍ، أَشْهَدْ عَلَى طَلَاقِهَا [وَعَلَى] رَجْعَتِهَا.

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب الرجل يراجع ولا يشهد،

ح: ٢١٨٦ عن بشر بن هلال به.

Comments:

As the witnesses are required for the marriage bond, similarly the divorce and return should be in the presence of witnesses. (Although the presence of witnesses is not required compulsorily for divorce and return as it is in the case of marriage. — *Usmani*)

Chapter 6. When A Divorced Pregnant Woman Gives Birth, The Divorce Becomes Irrevocable

(المعجم ٦) - بَابُ الْمُطَلَّاقَةِ الْحَامِلِ إِذَا وَضَعَتْ ذَا بَطْنِهَا بَانَتْ (التحفة ٦)

2026. It was narrated from Zubair bin 'Awwâm that he was married to Umm Kulthum bint 'Uqbah, and she said to him when she was pregnant: "I will accept one divorce." So he divorced her once. Then he went out for prayer, and when he came back

٢٠٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ هَيَّاجٍ: حَدَّثَنَا قَبِيصَةُ بْنُ عُقْبَةَ: حَدَّثَنَا سُفْيَانُ عَنْ عَمْرِو بْنِ مَيْمُونٍ، عَنْ أَبِيهِ، عَنِ الزُّبَيْرِ بْنِ الْعَوَّامِ أَنَّهُ كَانَتْ عِنْدَهُ أُمُّ كَلْثُومِ بِنْتُ عُقْبَةَ. فَقَالَتْ لَهُ، وَهِيَ حَامِلٌ: طَيِّبْ نَفْسِي

she had given birth. He said: "What is wrong with her? She misled me, may Allâh mislead her!" Then he came to the Prophet ﷺ, who said: "Her waiting period is over (and she is divorced); propose marriage anew to her." (*Da'if*)

بَطْلِقَهَا. فَطَلَّقَهَا تَطْلِيقَةً. ثُمَّ خَرَجَ إِلَى الصَّلَاةِ فَرَجَعَ وَقَدْ وَضَعَتْ. فَقَالَ: مَا لَهَا؟ خَدَعْتَنِي، خَدَعَهَا اللَّهُ. ثُمَّ أَتَى النَّبِيَّ ﷺ فَقَالَ: «سَبَقَ الْكِتَابَ أَجَلَهُ. اخْطُبْهَا إِلَى نَفْسِهَا».

تخریج: [إسناده ضعيف] وقال البوصيري: هذا إسناد رجاله ثقات، إلا أنه منقطع * ميمون هو ابن مهران، أبو أيوب، رواه عن الزبير مرسله، قاله المزي في الأطراف، وأخرج البيهقي: ٧/ ٤٢١ من طريق إبراهيم بن أبي الليث (ضعيف) عن الأشجعي عن سفیان عن عمرو بن ميمون عن أبيه عن أم كلثوم بنت عقبة به، وضعفه ظاهر وفيه علة أخرى.

Comments:

- Zubair ﷺ divorced her once with the intention to take her back, but he did not know that the delivery of the baby was near to this extent.
- If the waiting time for the divorce of revocation elapses, then just the verbal action of taking the wife back is not enough, rather they should marry anew.
- Asking the hand of an ex-wife for marriage again, means if she likes, she may remarry her ex-husband, otherwise there is no enforcement.
- The birth of a baby terminates the waiting period of divorce, as well as the waiting period after a husband's death.

Chapter 7. When A Pregnant Widow Gives Birth, It Is Permissible For Her To Remarry

2027. It was narrated that Abu Sanâbil said: "Subai'ah Aslamīyah bint Hârith gave birth twenty-odd days after her husband died. When her postnatal bleeding ended, she adorned herself, and was criticized for doing that. Her case was mentioned to the Prophet ﷺ, and he said: 'If she does that, then her waiting period is over.'" (*Hasan*)

(المعجم ٧) - بَابُ الْحَامِلِ الْمُتَوَفَّى
عَنْهَا زَوْجَهَا، إِذَا وَضَعَتْ حَلَّتْ
لِلزَّوْجِ (التحفة ٧)

٢٠٢٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو الْأَخْوَصِ عَنْ مَنَّانٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ أَبِي السَّنَابِلِ قَالَ: وَضَعَتْ سُبَيْعَةُ الْأَسْلَمِيَّةُ بِنْتُ الْحَارِثِ حَمْلَهَا بَعْدَ وَقَاةِ زَوْجِهَا بِبَضْعِ وَعِشْرِينَ لَيْلَةً. فَلَمَّا تَعَلَّتْ مِنْ نِفَاسِهَا تَشْرُفَتْ. فَعَيْبَ ذَلِكَ عَلَيْهَا. وَذَكَرَ أَمْرَهَا لِلنَّبِيِّ ﷺ. فَقَالَ: «إِنْ تَفَعَّلَ فَقَدْ مَضَى أَجَلُهَا».

تخريج: [حسن] أخرجه الترمذي، الطلاق، باب ما جاء في الحامل المتوفى عنها زوجها
تضع، ح: ١١٩٣ من حديث منصور به، وقال: لا تعرف للأسود شيئاً عن أبي السنابل، وللحديث
شواهد عند النسائي، ح: ٣٥٠٩ وغيره.

Comments:

- The waiting period for a pregnant woman is up to delivery. This issue has also been mentioned in the Noble Qur'an, as the Divine statement is: "...and those who are pregnant, their waiting period shall be until they deliver their pregnancy." (*At-Talâq* 65: 4).
- The intention of Suba'ah ﷺ to marry after she had delivered the child was objected to by Abu Sanâbil himself, who thought if the birth takes place before the end of the waiting period (four months and ten days) then the widow should wait for the full prescribed waiting period of four months and ten days. The period of waiting until the delivery shall be only if the delivery takes longer than four months and ten days, as mentioned in the following *Hadith*.
- In the beginning Suba'ah also believed that the opinion of Abu Sanâbil was true; but it became clear after having been asked from the Prophet ﷺ that the waiting period will come to end soon after the birth of child. (See *Hadith*: 2028)

2028. It was narrated that Masruq and 'Amr bin 'Utbah wrote to Suba'ah bint Hârith, asking about her case. She wrote to them saying that she gave birth twenty-five days after her husband died. Then she prepared herself, seeking to remarry. Abu Sanâbil bin Ba'kak passed by her and said: "You are in a hurry; observe waiting period for the longer period, four months and ten days." "So I went to the Prophet ﷺ and said: 'O Messenger of Allâh, pray for forgiveness for me.' He said: 'Why is that?' I told him (what had happened). He said: 'If you find a righteous husband then marry him.'" (*Sahih*)

٢٠٢٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنِ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، وَ عَمْرٍو بْنِ عُتْبَةَ أَنَّهُمَا كَتَبَا إِلَى سُبَيْعَةَ بِنْتِ الْخَارِثِ يَسْأَلَانِهَا عَنْ أَمْرِهَا. فَكَتَبَتْ إِلَيْهِمَا: إِنَّهَا وَضَعَتْ بَعْدَ وَفَاةِ زَوْجِهَا بِخَمْسَةِ وَعَشْرِينَ. فَتَهَيَّأَتْ تَطْلُبُ الْخَيْرَ. فَمَرَّ بِهَا أَبُو السَّنَابِلِ بْنُ بَعَكَكٍ. فَقَالَ: قَدْ أَسْرَعْتَ. اعْتَدِي آخِرَ الْأَجَلَيْنِ، أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. فَأَتَيْتُ النَّبِيَّ ﷺ. فَقُلْتُ: يَا رَسُولَ اللَّهِ اسْتَعْمِرْ لِي. قَالَ: «وَفِيمَ ذَلِكَ» فَأَخْبَرْتُهُ. فَقَالَ: «إِنْ وَجَدْتَ زَوْجًا صَالِحًا فَتَزَوَّجِي».

تخريج: [إسناده صحيح] أخرجه الطبراني (الكبير: ٢٤/٢٩٣)، ح: ٧٤٥ من حديث ابن أبي شيبة به، أخرجه البخاري، ح: ٥٣١٩، ٣٩٩١، ومسلم، ح: ١٤٨٤ من حديث سبيعة رضي الله عنها

به مطولاً نحو المعنى .

Comments:

- Preparing for marriage means she replaced the simple dress, which is worn for the waiting period, with a good looking dress, and she also applied the relevant adornment.
- Requesting for the supplication of forgiveness means she was remorseful about the mistake of lifting the restrictions of the waiting period before its due time. The prophetic statement clarifies that her waiting period had come to end, therefore, she did not make any mistake and should not worry about this matter.

2029. It was narrated from Miswar bin Makhramah that the Prophet ﷺ told Subai'ah to get married, when her postnatal bleeding ended. (*Sahih*)

٢٠٢٩ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ، وَ مُحَمَّدُ بْنُ بَشَّارٍ. قَالَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ دَاوُدَ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ الْمُسَوِّرِ بْنِ مَخْرَمَةَ أَنَّ النَّبِيَّ ﷺ أَمَرَ سُبَيْعَةَ أَنْ تَنْكِحَ، إِذَا تَعَلَّتْ مِنْ نِفَاسِهَا.

تخریج: أخرجه البخاري، الطلاق، باب «وأولات الأحمال أجلهن أن يضعن حملهن» ح: ٥٣٢٠ من حديث هشام به، وأصله متفق عليه، البخاري، ح: ٤٩٠٩، ومسلم، ح: ١٤٨٥ من حديث كريب عن أم سلمة ببعضه.

2030. It was narrated that 'Abdullâh bin Mas'ud said: "By Allâh, for those who would like to go through the process of praying for Allâh's curse to be upon the one who is wrong, the shorter *Surah* concerning women^[1] was revealed after (the Verses^[2] which speak of the waiting period of) four months and ten (days)."

٢٠٣٠ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: وَاللَّهِ لَمَنْ شَاءَ لَأَعْتَاهُ. لِأَنْزَلَتْ سُورَةُ النِّسَاءِ الْفُضْرَى بَعْدَ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا.

تخریج: [صحیح] أخرجه أبو داود، الطلاق، باب في عدة الحامل، ح: ٢٣٠٧ من حديث أبي معاوية به، انظر، ح: ١٧٨ لعلته، وللحديث طرق كثيرة ولكنها معلولة بتدليس الرواة، وغيره صحيح بالشواهد.

Comments:

- The Verse of *Surat At-Talâq* legislates that the waiting period for a pregnant women shall be till delivery. This is the last rule in the chronological order

[1] Meaning *Surat At-Talâq*. (65: 4).

[2] *Surat Al-Baqarah* 2:234.

of revelation; and the Verse (234) of *Surat Al-Baqarah* that the waiting period for a widow is four months and ten days was revealed earlier. Therefore, if a pregnant woman's husband dies her waiting period will not be four months and ten days, rather it will be till delivery, regardless if the time for delivery is longer or shorter, and this is the correct rule.

- b. A woman who is not pregnant and her husband dies, she will spend her waiting period according to *Surat Al-Baqarah*, which is four months and ten days, regardless if she has consummated the marriage or not.

Chapter 8. Where Should The Woman Whose Husband Died Observe Her Waiting Period?

2031. It was narrated from Zainab bint Ka'b bin 'Ujrah, who was married to Abu Sa'eed Al-Khudri, that his sister Furai'ah bint Mâlik said: "My husband went out to pursue some slaves of his. He caught up with them at the edge of Qadum^[1] and they killed him. News of his death reached me when I was in one of the houses of the *Ansâr*, far away from the house of my family and my brothers. I went to the Prophet ﷺ and said: 'O Messenger of Allâh, there has come to me news of my husband's death and I am in a house far away from the house of my people and the house of my brothers. He did not leave any money that could be spent on me, or any inheritance, or any house I may take possession of. If you think that you could give me permission to join my family and my brothers, then that is what I prefer and is better for me in

(المعجم ٨) - بَابُ: أَيَنْ تَعْتَدُ الْمُتَوَفَّى عَنْهَا زَوْجَهَا؟ (التحفة ٨)

٢٠٣١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو خَالِدٍ الْأَخْمَرِيُّ، سُلَيْمَانُ بْنُ حَيَّانَ، عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عَجْرَةَ، عَنْ زَيْنَبِ بِنْتِ كَعْبِ بْنِ عَجْرَةَ وَكَانَتْ تَحْتَ أَبِي سَعِيدِ الْخُدْرِيِّ أَنَّ أُخْتَهُ الْفُرَيْعَةَ بِنْتَ مَالِكِ، قَالَتْ: خَرَجَ زَوْجِي فِي طَلَبِ أَعْلَاجٍ لَهُ. فَأَذْرَكَهُمْ بِطَرْفِ الْقُدُومِ. فَتَقْتَلُوهُ. فَجَاءَ نَعْيَ زَوْجِي وَأَنَا فِي دَارٍ مِنْ دُورِ الْأَنْصَارِ. شَاسِعَةٍ عَنْ دَارِ أَهْلِي. فَأَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّهُ جَاءَ نَعْيَ زَوْجِي وَأَنَا فِي دَارٍ شَاسِعَةٍ عَنْ دَارِ أَهْلِي وَدَارِ إِخْوَتِي. وَلَمْ يَدَعْ مَالًا يُنْفِقُ عَلَيَّ، وَلَا مَالًا وَرَثَتُهُ. وَلَا دَارًا يَمْلِكُهَا. فَإِنْ رَأَيْتَ أَنْ تَأْذَنَ لِي فَأَلْحَقَ بِدَارِ أَهْلِي وَدَارِ إِخْوَتِي فَإِنَّهُ أَحَبُّ إِلَيَّ، وَأَجْمَعُ لِي فِي بَعْضِ أَمْرِي. قَالَ: «فَأَفْعَلِي إِنْ شِئْتِ» قَالَتْ: فَخَرَجْتُ قَرِيرَةً عَيْنِي لِمَا قَضَى اللَّهُ لِي عَلَى لِسَانِ رَسُولِ اللَّهِ ﷺ. حَتَّى إِذَا كُنْتُ فِي الْمَسْجِدِ، أَوْ فِي

[1] A location outside of Al-Madinah.

some ways.' He said: 'Do that if you wish.' Then I went out, feeling happy with the ruling of Allâh given upon the lips of the Messenger of Allâh ﷺ, until, when I was in the mosque, or, in one of the apartments, he called me and said: 'What did you say?' I told him the story, and he said: 'Stay in the house in which the news of your husband's death came to you, until your waiting period is over.'" She said: "So I observed the waiting period there for four months and ten (days)."(Sahih)

بَعْضِ الْحُجْرَةِ دَعَانِي فَقَالَ: «كَيْفَ رَعِمْتِ؟»
قَالَتْ: فَقَصَّصْتُ عَلَيْهِ. فَقَالَ: «امْكُتِي فِي
بَيْتِكَ الَّذِي جَاءَ فِيهِ نَعْيُ زَوْجِكَ حَتَّى يَبْلُغَ
الْكِتَابُ أَجَلَهُ» قَالَتْ: فَأَعْتَدْتُ فِيهِ أَرْبَعَةَ
أَشْهُرٍ وَعَشْرًا.

تخریج: [إسناده صحيح] أخرجه أبوداود، الطلاق، باب في المتوفى عنها تنتقل؟، ح: ۲۳۰۰ من حديث سعد بن إسحاق به، وصححه الترمذي، ح: ۱۲۰۴، والذهلي، والحاكم، والذهبي.

Comments:

- a. A widow should spend her waiting period at the same place where she lived with her husband.
- b. The waiting period for a widow who is not pregnant is four months and ten days.

Chapter 9. Can A Woman Go Out During Her Waiting Period?

(المعجم ۹) - بَابُ: هَلْ تَخْرُجُ الْمَرْأَةُ فِي عِدَّتِهَا (التحفة ۹)

2032. It was narrated from Hishâm bin 'Urwah that his father said: "I entered upon Marwân and said to him: 'A woman from your family has been divorced. I passed by her and she was moving. She said: 'Fâtimah bint Qais told us to do that, and she told us that the Messenger of Allâh ﷺ told her to move.' Marwân said: 'She told them to do that.'" 'Urwah said: "I said: 'By Allâh, 'Aîshah did not like that, and said: 'Fâtimah was

۲۰۳۲ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا ابْنُ أَبِي الرِّزَادِ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ قَالَ: دَخَلْتُ عَلَى مَرْوَانَ فَقُلْتُ لَهُ: أَمْرًا مِنْ أَهْلِكَ طَلَّقَتْ. فَمَرَرْتُ عَلَيْهَا وَهِيَ تَنْتَقِلُ. فَقَالَتْ: أَمَرْتَنَا فَاطِمَةُ بِنْتُ قَيْسٍ، وَأَخْبَرْتَنَا أَنَّ رَسُولَ اللَّهِ ﷺ أَمَرَهَا أَنْ تَنْتَقِلَ. فَقَالَ مَرْوَانُ: هِيَ أَمَرْتَهُمْ بِذَلِكَ. قَالَ عُرْوَةُ، فَقُلْتُ: أَمَا وَاللَّهِ لَقَدْ عَابَتْ ذَلِكَ عَائِشَةُ،

living in a deserted house and it was feared for her (safety and well being), so the Messenger of Allāh ﷺ granted a concession to her." (Hasan)

وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَسْكَنٍ وَحْشٍ. فَخِيفَ عَلَيْهَا. فَلِذَلِكَ أَرْخَصَ لَهَا رَسُولُ اللَّهِ ﷺ.

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب من أنكر ذلك على فاطمة بنت قيس، ح: ٢٢٩٢ من حديث عبدالرحمن بن أبي الزناد به، وعلقه البخاري في صحيحه، ح: ٥٣٢٦.

Comments:

- The waiting period after divorce should also be spent at the husband's home.
- It is permissible for the accommodation to be changed due to extreme reasons (like insecurity).

2033. It was narrated that 'Āishah said: "Fâtimah bint Qais said: 'O Messenger of Allāh, I am afraid that someone may enter upon me by force.' So he told her to move." (Sahih)

٢٠٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: قَالَتْ فَاطِمَةُ بِنْتُ قَيْسٍ: يَا رَسُولَ اللَّهِ! إِنِّي أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ. فَأَمَرَهَا أَنْ تَتَحَوَّلَ.

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ١٤٨٢، والنسائي، ح: ٣٥٧٧ كلاهما عن محمد بن المثنى عن حفص بن غياث حدثنا هشام عن أبيه عن فاطمة بنت قيس به، وهو الصواب، وقوله: عن عائشة قالت ، وهم.

2034. It was narrated that Jābir bin 'Abdu'llāh said: "My maternal aunt was divorced, and she wanted to collect the harvest from her date-palm trees. A man rebuked her for going out to the trees. She went to the Prophet ﷺ, who said: 'No, go and collect the harvest from your trees, for perhaps you will give some in charity or do a good deed with it.'" (Sahih)

٢٠٣٤ - حَدَّثَنَا سُفْيَانُ بْنُ وَكِيعٍ: حَدَّثَنَا رَوْحُ؛ ح: وَحَدَّثَنَا أَحْمَدُ بْنُ مُنْصَوِّرٍ: حَدَّثَنَا حَجَّاجُ بْنُ مُحَمَّدٍ، جَمِيعًا عَنِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ. قَالَ: طَلَّقْتُ خَالَتِي. فَأَرَادَتْ أَنْ تَجِدَ نَخْلَهَا. فَزَجَرَهَا رَجُلٌ أَنْ تَخْرَجَ إِلَيْهِ. فَأَتَتْ النَّبِيَّ ﷺ فَقَالَ: «بَلَى. فَجُدِّي نَخْلَكَ. فَإِنَّكَ عَسَى أَنْ تَصَدَّقِي أَوْ تَعْمَلِي مَعْرُوفًا».

تخريج: أخرجه مسلم، الطلاق، باب جواز خروج المعتدة البائن والمتوفى عنها زوجها في النهار لحاجتها، ح: ١٤٨٣ من حديث حجاج وغيره به.

Comments:

- a. A woman is allowed to go out of her house during her waiting period if there is a dire and extreme need for her to do so.
- b. Had Jābir's maternal aunt not been allowed to pick fruit from her orchard, it would have gone to waste. Therefore, she had to step out of her house for the safety of the seasonal harvest.
- c. It is inappropriate to step outside of the home for minor things. Likewise she should not go to visit a relative or to attend a wedding or any occasions of grief, because these things are not of extreme necessity.

Chapter 10. Does A Woman Who Has Been Divorced Three Times Have The Right To Accommodation And Maintenance?

2035. It was narrated that Abu Bakr bin Abu Jahm bin Sukhair Al-'Adawi said: "I heard Fâtimah bint Qais say that her husband divorced her three times, and the Messenger of Allāh ﷺ did not say that she was entitled to accommodation and maintenance." (*Sahih*)

(المعجم ١٠) - بَابُ: الْمُطَلَّاقَةِ ثَلَاثًا
هَلْ لَهَا سُكْنَى وَنَفَقَةٌ؟ (التحفة ١٠)

٢٠٣٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَ
عَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا
سُفْيَانُ، عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ بْنِ
صُخَيْرِ الْعَدَوِيِّ قَالَ: سَمِعْتُ فَاطِمَةَ بِنْتَ
قَيْسٍ تَقُولُ: إِنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا. فَلَمْ
يَجْعَلْ لَهَا رَسُولُ اللَّهِ ﷺ سُكْنَى وَلَا نَفَقَةً.

تخريج: [صحيح] تقدم، ح: ١٨٦٩.

Comments:

- a. A husband is not responsible for a woman's living expenses for the waiting period after the final divorce.
- b. If a woman is pregnant, then the husband is responsible for the expense of her waiting period, even after the final divorce. The statement of Allāh Almighty is: "And if they are pregnant then spend for them till they deliver their pregnancy." (*At-Talâq* 65: 6)

2036. It was narrated that Sha'bi said: Fâtimah bint Qais said: "My husband divorced me at the time of the Messenger of Allāh ﷺ three times. The Messenger of Allāh ﷺ said: 'You have no right to accommodation or to maintenance.'" (*Sahih*)

٢٠٣٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا
جَرِيرٌ، عَنْ مُعِينَةَ، عَنِ الشَّعْبِيِّ قَالَ: قَالَتْ
فَاطِمَةُ بِنْتُ قَيْسٍ: طَلَّقَنِي زَوْجِي عَلَى عَهْدِ
رَسُولِ اللَّهِ ﷺ ثَلَاثًا. فَقَالَ رَسُولُ اللَّهِ ﷺ:
«لَا سُكْنَى لَكَ وَلَا نَفَقَةٌ».

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٢/١٤٨٠ من حديث مغيرة به نحو المعنى، وانظر، ح: ٢٠٢٤.

Chapter 11. Giving A Gift In The Event Of Divorce

(المعجم ١١) - بَابُ مُنْعَةِ الطَّلَاقِ

(التحفة ١١)

2037. It was narrated from 'Aishah that 'Amrah bint Jawn sought refuge with Allâh from the Messenger of Allâh ﷺ when she was brought to him (as a bride). He said: "You have sought refuge with Him in Whom refuge is sought." So he divorced her and told Usâmah or Anas to give her a gift of three garments of white flax. (*Maudu'*)

٢٠٣٧ - حَدَّثَنَا أَحْمَدُ بْنُ الْمُقْدَامِ أَبُو الْأَشْعَثِ الْعَجَلِيُّ: حَدَّثَنَا عُبَيْدُ بْنُ الْقَاسِمِ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ أَنَّ عَمْرَةَ بِنْتَ الْجَوْنِ تَوَدَّتْ مِنْ رَسُولِ اللَّهِ ﷺ حِينَ أُدْخِلَتْ عَلَيْهِ. فَقَالَ: «لَقَدْ عُذْتُ بِمَعَاذِ» فَطَلَّقَهَا. وَأَمَرَ أُسَامَةَ أَوْ أَنَسًا، فَمَتَّعَهَا بِثَلَاثَةِ أَثْوَابٍ رَازِقِيَّةٍ.

تخريج: [إسناده موضوع] * عبيد بن القاسم متروك، كذبه ابن معين، واتهمه أبو داود بالوضع (تقريب)، وأصله في الصحيح البخاري، ح: ٥٢٥٤، وانظر، ح: ٢٠٥٠.

Comments:

- Imam Albâni said: Quoting Usâmah and Anas ﷺ in this narration is *Munkar* (Denounced); and he said the correct wording is: "The Prophet ﷺ ordered Abu Usaid to make her ready in order to send her to her parents' home, and also to give her two cotton cloths as compensation."
- 'Amrah the daughter of Jawn ﷺ, said these inappropriate words because of a misunderstanding.
- If a divorce is issued after a marriage contract that had its dower fixed, and the marriage was not consummated, then half of the dower is due (*Al-Baqarah* 2: 237) and if the dower is not fixed, then a pair of clothes or what is reasonable according to the circumstances should be given to the woman in compensation.

Chapter 12: When The Man Denies The Divorce

(المعجم ١٢) - بَابُ الرَّجُلِ يَجْحَدُ

(التحفة ١٢)

2038. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "If a woman claims that her husband has divorced her, and she brings a witness of good

٢٠٣٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَمْرُو بْنُ أَبِي سَلَمَةَ أَبُو حَفْصِ التَّنَيْسِيُّ، عَنْ زُهَيْرٍ، عَنْ ابْنِ جُرَيْجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنِ النَّبِيِّ ﷺ

character (to testify) to that, her husband should be asked to swear an oath. If he swears, that will invalidate the testimony of the witness, but if he refuses then that will be equivalent to a second witness, and the divorce will take effect." (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه الدارقطني: ٤/١٦٦، ٦٤/٤ من حديث محمد بن يحيى به، وقال أبو حاتم الرازي: حديث منكر (علل الحديث: ١/٤٣٢)، وحسنه البوصيري وانظر، ح: ٩١٩ لعلته، وفيه علة أخرى، وانظر، ح: ٧٢٨.

Chapter 13. One Who Divorces, Marries Or Takes Back His Wife In Jest

2039. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "There are three matters in which seriousness is serious and joking is serious: marriage, divorce and taking back (one's wife)." (*Hasan*)

قَالَ: «إِذَا أَدَعَتِ الْمَرْأَةُ طَلَّاقَ زَوْجِهَا، فَجَاءَتْ عَلَى ذَلِكَ بِشَاهِدٍ، عَدْلٍ، اسْتُخْلِفَ زَوْجُهَا. فَإِنْ خَلَفَ بَطَلَتْ شَهَادَةُ الشَّاهِدِ. وَإِنْ نَكَلَ فَتَكْوَلُهُ بِمَنْزِلَةِ شَاهِدٍ آخَرَ. وَجَارَ طَلَّاقُهُ».

(المعجم ١٣) - بَابُ مَنْ طَلَّقَ أَوْ نَكَحَ أَوْ رَاجَعَ لَأَعِيَابًا (التحفة ١٣)

٢٠٣٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ [حَبِيبِ] بْنِ أُرْدَكَ: حَدَّثَنَا عَطَاءُ بْنُ أَبِي رَبَاحٍ، عَنْ يُونُسَ بْنِ مَاهَكَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثٌ جُدْهُنَّ جِدًّا، وَهَزَلُنَّ جِدًّا: النِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ».

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الطلاق على الهزل، ح: ٢١٩٤ من حديث عبدالرحمن به، وحسنه الترمذي، ح: ١١٨٤، وصححه الحاكم وغيره.

Comments:

- The relationship of marriage is extremely important due to which a man and woman become lawful for each other and they accept its responsibilities; and it is also because of the marriage bond that their children are legal. Therefore, many rules were Divinely legislated to keep the sanctity of this relationship upright.
- When accepting a religious responsibility, or withdrawing from it, one should carefully reflect upon its consequences, so that one will not have to face regret and worry later.

Chapter 14. One Who Divorces His Wife To Himself, But Did Not Speak The Words Out Loud

2040. It was narrated from Abu Hurairah that the Messenger of

(المعجم ١٤) - بَابُ مَنْ طَلَّقَ فِي نَفْسِهِ وَلَمْ يَتَكَلَّمْ بِهِ (التحفة ١٤)

٢٠٤٠ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

Allâh ﷻ said: "Allâh has forgiven my nation for what they think of for themselves, so long as they do not act upon it or speak of it." (Sahih)

عَلِيُّ بْنُ مُسَيْهِرٍ، وَ عَبْدَةُ بْنُ سُلَيْمَانَ؛ ح: وَحَدَّثَنَا حَمِيدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، جَمِيعاً عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا. مَا لَمْ تَعْمَلْ بِهِ، أَوْ تَكَلَّمَ بِهِ».

تخریج: أخرجه البخاري، العتق، باب الخطأ والنسيان في العتاقة والطلاق ونحوه... الخ، ح: ٢٥٢٨، ٥٢٦٩، ٦٦٦٤، ومسلم، الإيمان، باب تجاوز الله عن حديث النفس والخواطر بالقلب إذا لم تستقر، ح: ١٢٧ من طرق عن قتادة به.

Comments:

- Many thoughts rise in a human's mind, of which some are good and some are bad. There is no accountability in respect to them, as long as they remain just thoughts and are not uttered or practiced.
- Some deeds are concerned just with the heart like: love, hate and fear etc., when one of these gets determinedly absorbed in one's mind, it can affect other deeds that will be recompensed good or bad accordingly. For example: love for Allâh, love for Allâh's Messenger ﷺ, respect of the Noble Qur'ân, to hate good work or to have a grudge against a good person etc.; belief, disbelief, sincerity and hypocrisy are also from this type.

Chapter 15. Divorce Of One Who Is Insane, A Minor And One Who Is Sleeping

(المعجم ١٥) - بَابُ طَلَاقِ الْمَعْتُوهِ وَالصَّغِيرِ وَالنَّائِمِ (التحفة ١٥)

2041. It was narrated from 'Aishah that the Messenger of Allâh ﷻ said: "The Pen has been lifted from three: from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses." (Hasan)

In his narration, (one of the narrators) Abu Bakr (Ibn Abu Shaibah) said: "And from the afflicted person, until he

٢٠٤١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ خَالِدِ بْنِ خِدَاشٍ، وَ مُحَمَّدُ بْنُ يَحْيَى. قَالَا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ، عَنْ حَمَادٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ. وَ عَنِ الصَّغِيرِ حَتَّى يَكْبُرَ. وَ عَنِ

recovers.”^[1] (Hasan)

الْمَجْنُونِ حَتَّى يَعْقِلَ، أَوْ يُقَيِّقَ.

قَالَ أَبُو بَكْرٍ، فِي حَدِيثِهِ: «وَعَنِ الْمُبْتَلَى حَتَّى يَبْرَأَ».

تخریج: [حسن] أخرجه أبو داود، الحدود، باب: في المجنون يسرق أو يصيب حداً، ح: ٤٣٩٨ من حديث حماد بن سلمة به، وصححه ابن حبان، والحاكم، والذهبي، الراوي عن إبراهيم النخعي، هو حماد بن أبي سليمان.

Comments:

- a. ‘The Pen has been lifted’ means: Bad deeds are not recorded against these people.
- b. Any act done by the people mentioned in the *Hadith* has no legal effective status, and will be regarded unperformed.
- c. If a sleeping person says the word of ‘divorce’, this divorce will be ineffective, because he did not have the intention to divorce nor did he know that he has divorced.

2042. It was narrated from ‘Ali bin Abu Tâlib that the Messenger of Allâh ﷺ said: “The Pen is lifted from the minor, the insane person and the sleeper.” (Hasan)

٢٠٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا رَوْحُ ابْنُ عُبَادَةَ: حَدَّثَنَا ابْنُ جُرَيْجٍ: أَنَّ بَنَّا الْقَاسِمِ ابْنَ يَزِيدَ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «يُرْفَعُ الْقَلَمُ عَنِ الصَّغِيرِ وَعَنِ الْمَجْنُونِ وَعَنِ النَّائِمِ».

تخریج: [حسن] وقال البوصيري: هذا إسناد ضعيف، القاسم بن يزيد هذا مجهول، وأيضاً لم يدرك علي بن أبي طالب، والحديث السابق شاهد له.

Chapter 16. Divorce Of One Who Is Compelled, And Of One Who Is Forgetful

(المعجم ١٦) - بَابُ طَلَاقِ الْمُكْرَهِ

وَالنَّاسِي (التحفة ١٦)

2043. It was narrated from Abu Dharr Al-Ghifâri that the Messenger of Allâh ﷺ said: “Allâh has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do.” (Sahih)

٢٠٤٣ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ بْنِ يُونُسَ الْفَرَبَايَ: حَدَّثَنَا أَيُّوبُ بْنُ سُوَيْدٍ: حَدَّثَنَا أَبُو بَكْرٍ الْهَدَلِيُّ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي دَرِّ الْعَمَارِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ، وَمَا اسْتُكْرِهُوا عَلَيْهِ».

^[1] Meaning, in place of the wording for the third, and the meaning is the same.

تخريج: [صحيح] انظر، ح: ٩٢١ لعلته، والحديث صحيح بشواهد، وقال البوصيري: هذا إسناده ضعيف لاتفاهم على ضعف أبي بكر الهذلي، والحديث الآتي شاهد له.

Comments:

- 'Mistake' means that a person wanted to do something but unintentionally it went wrong, in that case he will not be sinful. However, that wrongly performed act, somehow, must be corrected and compensated appropriately.
- If one is forced to do something illegal, being threatened to be killed or forced to do something by threat of unbearable loss, then the forced person will not be sinful (provided he is not forced to take someone's life).

2044. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Allāh has forgiven my nation for the evil suggestions of their hearts, so long as they do not act upon it or speak of it, and for what they are forced to do." (Sahih)

٢٠٤٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ مِسْعَرٍ، عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا تُؤْسِسُ بِهِ صُدُورَهَا. مَا لَمْ تَعْمَلْ بِهِ أَوْ تَتَكَلَّمْ بِهِ. وَمَا اسْتَكْرَهُوا عَلَيْهِ».

تخريج: [صحيح] تقدم، ح: ٢٠٤٠.

2045. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "Allāh has forgiven my nation for mistakes and forgetfulness, and what they are forced to do." (Sahih)

٢٠٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُصَفَّى الْحِمَاصِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ، عَنْ النَّبِيِّ ﷺ قَالَ: «إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ».

تخريج: [صحيح] أخرجه البيهقي ٣٥٦، ٣٥٧، ٧ من حديث محمد بن المصنفى به، وأخرج الدارقطني ١٧٠/٤، ١٧١، والبيهقي ٣٥٦/٧ وغيرهما من طريق بشر نا الأوزاعي عن عطاء عن عبيد بن عمير عن ابن عباس به نحو المعنى، وقال البيهقي: جود إسناده بشر بن بكر وهو من الثقات، فالسند صحيح، وصححه ابن حبان (موارد)، ح: ١٤٩٨، والحاكم: ١٩٨/٢، والذهبي وغيره، وله شواهد كثيرة.

2046. It was narrated that Safiyyah bint Shaibah said: "Āishah told me that the

٢٠٤٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ،

Messenger of Allâh ﷺ said: 'There is no divorce and no manumission at the time of coercion.' (Hasan)

عَنْ ثَوْرٍ، عَنْ [مُحَمَّدِ بْنِ] عُبَيْدِ بْنِ أَبِي صَالِحٍ، عَنْ صَفِيَّةَ بِنْتِ سَيْبَةَ قَالَتْ: حَدَّثَنِي عَائِشَةُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا طَلَّاقَ، وَلَا عَتَاقَ فِي إِغْلَاقٍ».

تخريج: [حسن] أخرجه أبو داود، الطلاق، باب في الطلاق على غلط، ح: ٢١٩٣، وأحمد: ٢٧٦/٦ من حديث ابن إسحاق حدثني ثور بن يزيد الكلاعي عن محمد بن عبيد بن أبي صالح المكي به، وهو الصواب، وصححه الحاكم، ورواه الذهبي، وله شواهد منها طريق الحاكم عن عائشة رضي الله عنها، وإسناده حسن.

Chapter 17. No Divorce Before Marriage

(المعجم ١٧) - بَابُ: لَا طَلَّاقَ قَبْلَ

النِّكَاحِ (التحفة ١٧)

2047. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "There is no divorce regarding that which one does not possess." (Hasan)

٢٠٤٧ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا هُشَيْمٌ: أَبَانَا عَامِرُ الْأَحْوَلُ؛ ح: وَحَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ عَبْدِ الرَّحْمَنِ ابْنِ الْحَارِثِ، جَمِيعاً عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا طَلَّاقَ فِيمَا لَا يَمْلِكُ».

تخريج: [إسناده حسن] أخرجه الترمذي، الطلاق، باب ما جاء لا طلاق قبل النكاح، ح: ١١٨١ من طريق هشيم، وأبو داود، الطلاق، باب: في الطلاق قبل النكاح، ح: ٢١٩١، ٢١٩٢ من حديث عبدالرحمن بن الحارث، كلاهما عن عمرو بن شعيب به، وقال الترمذي: حسن صحيح، ولفظ الحاكم: ٢٠٥/٢ لا طلاق قبل النكاح، وصححه الذهبي، ولفظ أبي داود: ولا عتق إلا فيما تملك.

2048. It was narrated from Miswar bin Makhramah that the Prophet ﷺ said: "There is no divorce before marriage, and no manumission before taking possession." (Hasan)

٢٠٤٨ - حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدٍ الدَّارِمِيُّ: حَدَّثَنَا عَلِيُّ بْنُ الْحُسَيْنِ بْنِ وَاقِدٍ: حَدَّثَنَا هِشَامُ بْنُ سَعْدٍ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنِ الْوَسْوَءِ بْنِ مَخْرَمَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا طَلَّاقَ قَبْلَ نِكَاحٍ. وَلَا عِتْقَ قَبْلَ مَلِكٍ».

تخريج: [حسن] وحسنه البوصيري، والحديث السابق شاهد له.

2049. It was narrated from 'Ali bin Abu Tâlib that the Prophet ﷺ said: "There is no divorce before marriage." (*Hasan*)

٢٠٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَبَانَا مَعْمَرٌ، عَنْ جُوَيْرٍ، عَنِ الضَّحَّاكِ، عَنِ التِّرَازِ بْنِ سَبْرَةَ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا طَلَّاقَ قَبْلَ النِّكَاحِ».

تخريج: [حسن] وضعفه البوصيري، والحديث حسن * جوير ضعيف جداً (تقريب)، والحديث السابق شاهد له.

Comments:

If a person says: 'If I marry so-and-so woman and then I will divorce her.' This is vain talk, which is ineffective, because he spoke of divorcing her when she was not even his wife, as long as he does not divorce her after the bond of marriage.

Chapter 18. (Words) By Which Divorce Takes Place

(المعجم ١٨) - بَابُ مَا يَقَعُ بِهِ الطَّلَاقُ
[مِنَ الْكَلَامِ] (التحفة ١٨)

2050. Awzâ'i said: "I asked Zuhri: 'Which of the wives of the Prophet ﷺ sought refuge with Allâh from him?' He said: "Urwah told me, (narrating) from 'Aishah, that when the daughter of Jawn entered upon the Messenger of Allâh ﷺ and he came close to her, she said: "I seek refuge with Allâh from you." The Messenger of Allâh ﷺ said: "You have sought refuge in the Almighty; go to your family." (*Sahih*)

٢٠٥٠ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشَقِيُّ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ: حَدَّثَنَا الْأَوْزَاعِيُّ. قَالَ: سَأَلْتُ الزُّهْرِيَّ: أَيُّ أَزْوَاجِ النَّبِيِّ ﷺ اسْتَعَاذَتْ مِنْهُ؟ فَقَالَ: أَخْبَرَنِي عُرْوَةُ عَنْ عَائِشَةَ أَنَّ ابْنَةَ الْجَوْنِ لَمَّا دَخَلَتْ عَلَى رَسُولِ اللَّهِ ﷺ، فَدَنَا مِنْهَا، قَالَتْ: أَعُوذُ بِاللَّهِ مِنْكَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «عُدْتِ بِعَظِيمٍ؛ الْحَقِّي بِأَهْلِكَ».

تخريج: أخرجه البخاري، الطلاق، باب من طلق، وهل يواجه الرجل امرأته بالطلاق، ح: ٥٢٥٤ من حديث الوليد به.

Comments:

- Some words used for divorce are very clear and manifest, and give clear message of divorce; for example: 'I divorce you.' These words consensually make the divorce effective.
- There are some words that have both meanings: divorce or any other meaning which is called "connotation." The clear and manifest meanings of these words rely on the intention of the person. If one uttered them with the

intention of divorce, then the divorce would be effective, otherwise not.

Chapter 19. Irrevocable Divorce

2051. It was narrated from 'Abdullâh bin 'Ali bin Yazid bin Rukânah, from his father, from his grandfather, that he divorced his wife irrevocably, then he came to the Messenger of Allâh ﷺ and asked him. He said: "What did you mean by that?" He said: "One (divorce)." He said: "By Allâh, did you only mean one (divorce) thereby?" He said: "By Allâh, I meant one." Then he sent her back to him. (*Da'if*)

Muhammad bin Mâjah said: I heard Abul-Hasan 'Ali bin Muhammad Tanâfisi saying: "How noble is this *Hadith*."

Ibn Mâjah said: 'Abu 'Ubaid left it (i.e., did not accept its narration) and Ahmad was fearful of it (i.e., of narrating it)."

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في البتة، ح: ٢٢٠٨ من حديث جرير به، وأخرجه الترمذي، ح: ١١٧٧، وذكر كلاماً * الزبير بن سعيد لئن الحديث (تقريب)، ويغني عنه طريق أبي داود، ح: ٢٢٠٦، ٢٢٠٧ وغيره نحو المعنى، وصححه أبو داود، والحاكم، والقرطبي، ولم أر لمضعفيه حجة.

Chapter 20. A Man Giving His Wife The Choice

2052. It was narrated that 'Aishah said: "The Messenger of Allâh ﷺ gave us the choice, and we chose him, and he did not consider it as something (i.e., an effective divorce)." (*Sahih*)

(المعجم ١٩) - بَابُ طَلَاقِ الْبَيْتَةِ

(التحفة ١٩)

٢٠٥١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ عَنْ جَرِيرِ بْنِ حَازِمٍ، عَنِ الزُّبَيْرِ بْنِ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَلِيٍّ بْنِ يَزِيدَ بْنِ رُكَّانَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ الْبَيْتَةَ. فَأَتَى رَسُولَ اللَّهِ ﷺ فَسَأَلَهُ. فَقَالَ: «مَا أَرَدْتَ بِهَا؟» قَالَ: وَاحِدَةً. قَالَ: «اللَّهُ مَا أَرَدْتَ بِهَا إِلَّا وَاحِدَةً؟» قَالَ: اللَّهُ مَا أَرَدْتُ بِهَا إِلَّا وَاحِدَةً. قَالَ، فَرَدَّهَا عَلَيْهِ.

قَالَ مُحَمَّدُ بْنُ مَاجَهَ: سَمِعْتُ أَبَا الْحَسَنِ عَلِيَّ بْنَ مُحَمَّدٍ الطَّنَافِيسِيَّ يَقُولُ: مَا أَشْرَفَ هَذَا الْحَدِيثَ.

قَالَ ابْنُ مَاجَهَ: أَبُو [عُبَيْدٍ] تَرَكَهُ نَاجِيَةً، وَأَحْمَدُ جَبَنَ عَنْهُ.

(المعجم ٢٠) - بَابُ الرَّجُلِ يُخَيِّرُ

امْرَأَتَهُ (التحفة ٢٠)

٢٠٥٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: خَيَّرَنَا رَسُولُ اللَّهِ ﷺ، فَأَخْتَرْنَاهُ. فَلَمْ يَرَهُ شَيْئًا.

تخریج: أخرجه البخاري، الطلاق، باب من خير أزواجه ... الخ، ح: ٥٢٦٢، ومسلم، الطلاق، باب بيان أن تخيير امرأته لا يكون طلاقاً إلا بالنية، ح: ٢٨/١٤٧٧ من حديث الأعمش .^٤

Comments:

- The background of this incident is that as the economic position of Muslims became better, as a result of conquests; the mothers of the Believers 'the wives of the Prophet ﷺ' saw the well - off position of the women of *Ansâr* and immigrants, upon which the wives of the Prophet ﷺ also requested him to increase their living expenses.
- A choice of divorce given to a wife by a husband is not a divorce, however if the wife takes advantage of the choice and decides for separation, then it will be considered one revocable divorce.

2053. It was narrated that 'Āishah said: "When the following was revealed: 'But if you desire Allāh and His Messenger,'^[1] the Messenger of Allāh ﷺ entered upon me and said: 'O 'Āishah! I want to say something to you, and you do not have to hasten (in making a decision) until you have consulted your parents.'" She said: "He knew, by Allāh, that my parents would never tell me to leave him." She said: "Then he recited to me: 'O Prophet (Muhammad)! Say to your wives: 'If you desire the life of this world, and its glitter.'"^[2] I said: 'Do I need to consult my parents about this? I choose Allāh and His Messenger.'" (*Sahih*)

٢٠٥٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أُنْبَأَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا نَزَلَتْ: ﴿وَإِنْ كُنْتُمْ تُرِيدُونَ اللَّهَ وَرَسُولَهُ﴾ [الأحزاب: ٢٩] دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ فَقَالَ: يَا عَائِشَةُ! إِنِّي ذَاكِرٌ لَكَ أَمْرًا. فَلَا عَلَيْكَ أَنْ لَا تَعْجَلِي فِيهِ حَتَّى تَسْتَأْمِرِي أَبُوبِكَ قَالَتْ: قَدْ عَلِمَ، وَاللَّهِ أَنَّ أَبُوبِي لَمْ يَكُونَا لِيَأْمُرَانِي بِفِرَاقِهِ. قَالَتْ: فَقَرَأَ عَلَيَّ: ﴿يَا أَيُّهَا النَّبِيُّ قُلْ لِمَنْ فِي هَذَا كُنْتُمْ تُرِيدُونَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا﴾ [الأحزاب: ٢٨] قَالَتْ: فِي هَذَا اسْتَأْمِرُ أَبُوبِي قَدْ اخْتَرْتُ اللَّهَ وَرَسُولَهُ.

تخریج: أخرجه البخاري، باب قوله: ﴿وَإِنْ كُنْتُمْ تُرِيدُونَ اللَّهَ وَرَسُولَهُ...﴾ الخ، ح: ٤٧٨٦، تعليقا، ومسلم، الطلاق، الباب السابق، ح: ١٤٧٥ من حديث الزهري به.

[1] *Al-Ahzâb* 33:29.

[2] *Al-Ahzâb* 33:28.

Comments:

- This *Hadith* signifies the virtue of 'Āishah ﷺ, that the Messenger of Allāh ﷺ conveyed Allāh's Message first of all to her.
- The Messenger of Allāh ﷺ did not want the Mother of the Believers to make any wrong or sentimental decision because of her young age, therefore, he instructed her to seek the consent of her parents.

Chapter 21. That *Khul'*^[1] Is Undesireble For The Women

(المعجم ٢١) - بَابُ كَرَاهِيَةِ الْخُلْعِ
لِلْمَرْأَةِ (التحفة ٢١)

2054. It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "No woman asks for divorce when it is not absolutely necessary, but she will never smell the fragrance of Paradise, although its fragrance can be detected from a distance of forty years' travel." (*Hasan*)

٢٠٥٤ - حَدَّثَنَا بَكْرُ بْنُ خَلْفٍ، أَبُو بَشِيرٍ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ جَعْفَرِ بْنِ يَحْيَى بْنِ تُوْبَانَ، عَنْ عَمِّهِ عُمَارَةَ بْنِ تُوْبَانَ، عَنْ عَطَاءٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا تَسْأَلُ الْمَرْأَةُ زَوْجَهَا الطَّلَاقَ فِي عَتْرِ كُنْهٍ فَتَجِدَ رِيحَ الْجَنَّةِ. وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا».

تخریج: [حسن] وضعفه البوصيري، والحديث الآتي شاهد لبعضه * جعفر وعمارة جهلها بعض العلماء، ووثقهما ابن حبان، والحاكم، والذهبي، انظر: ح: ١٩٧٧، والله أعلم.

2055. It was narrated from Thawbân that the Messenger of Allāh ﷺ said: "Any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of Paradise will be forbidden to her." (*Sahih*)

٢٠٥٥ - حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقَاضِي، عَنْ حَمَادِ بْنِ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي أَسْمَاءَ، عَنْ تُوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي عَتْرِ مَا بَأْسٍ، فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الطلاق، باب: في الخلع، ح: ٢٢٢٦ من حديث حماد بن زيد به، وحسنه الترمذي، ح: ١١٨٧، وصححه ابن حبان، والحاكم، والذهبي.

Comments:

- Khul'* means that a woman returns all or some of the dowry to her husband

[1] *Khul'* is a kind of annulment in which a wife seeks divorce from her husband by giving him a certain compensation, or returning back the *Mahr* (bridal-money) which he gave her.

to get an annulment of the marriage. A husband is not allowed to demand all what he has spent on her, or to demand more than the fixed dowry.

- b. *Khul'* is legal if a woman does not want to live with her husband while the husband wants to live with her. If a person deliberately troubles his wife in order to force her to eventually demand a *Khul'*, then the husband is guilty of oppression.

Chapter 22. The Man Whose Wife (Seeks) *Khul'* Takes What He Had Given To Her

2056. It was narrated from Ibn 'Abbâs that Jamilah bint Salul came to the Prophet ﷺ and said: "By Allâh, I do not find any fault with Thâbit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him." The Prophet ﷺ said to her: "Will you give him back his garden?" She said: "Yes." So the Messenger of Allâh ﷺ told him to take back his garden from her and no more than that. (*Sahih*)

تخریج: [صحیح] أخرجه البيهقي: ۳۱۳/۷ من حديث عبدالأعلى به، وقال: كذا رواه عبدالأعلى بن عبدالأعلى عن سعيد بن أبي عروبة موصولاً وأرسله غيره عنه، أخرجه البخاري، ح: ۵۲۷۳ وغيره من حديث خالد عن عكرمة عن ابن عباس به نحو المعنى.

Comments:

- When a woman feels that she cannot live with her husband, and it will be hard for her to discharge matrimonial obligations, then she may ask for divorce.
- In this situation, if a husband divorces her without taking anything back, it is also correct, and it will be considered divorce but not *Khul'*.
- When a woman returns the whole dowry or some of it to separate from her husband, it is called *Khul'* and it is legal.

2057. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "Habibah bint Sahl was married to Thâbit bin Qais bin Shammâs, who was

(المعجم ۲۲) - بَابُ الْمُخْتَلَعَةِ يَأْخُذُ مَا
أَعْطَاهَا (التحفة ۲۲)

۲۰۵۶ - حَدَّثَنَا أَبُو زُهَيْرٍ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ
الْأَعْلَى بْنُ عَبْدِ الْأَعْلَى: حَدَّثَنَا سَعِيدُ بْنُ أَبِي
عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ
عَبَّاسٍ أَنَّ جَمِيلَةَ بِنْتَ سَلُولٍ أَتَتْ النَّبِيَّ ﷺ
فَقَالَتْ: وَاللَّهِ مَا أَعْتَبْتُ عَلَى ثَابِتٍ فِي دِينٍ
وَلَا خَلْقٍ. وَلِكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ.
لَا أُطِيقُهُ بَعْضًا. فَقَالَ لَهَا النَّبِيُّ ﷺ: «أَتُرَدِّينَ
عَلَيْهِ حَلِيقَتَهُ؟» قَالَتْ: نَعَمْ. فَأَمَرَهُ رَسُولُ اللَّهِ
ﷺ أَنْ يَأْخُذَ مِنْهَا حَلِيقَتَهُ وَلَا يَزِدَّادَ.

۲۰۵۷ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو خَالِدٍ
الْأَحْمَرُ عَنْ حَجَّاجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ،
عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: كَانَتْ حَبِيبَةُ بِنْتُ
سَهْلِ تَحْتِ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ. وَكَانَ

an ugly man. She said: 'O Messenger of Allâh, by Allâh, were it not for fear of Allâh, when he enters upon me I would spit in his face.' The Messenger of Allâh ﷺ said: 'Will you give him back his garden?' She said: 'Yes.' So she gave him back his garden and the Messenger of Allâh ﷺ separated them." (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه أحمد: ٣/٤ من حديث الحجاج به، وقال البوصيري: هذا إسناده ضعيف لتدليس الحجاج، وهو ابن أرتاة، وانظر، ح: ٤٩٦، ١١٢٩.

Chapter 23. The Waiting Period Of A Woman Granted *Khul'*

2058. It was narrated from 'Ubâdah bin Sâmit from Rubai' bint Mu'awwidh bin 'Afrâ'. He said: "I said to her: "Tell me your *Hadith*." She said: "I got *Khul'* from my husband, then I came to 'Uthmân and asked him: "What waiting period do I have to observe?" He said: "You do not have to observe any waiting period, unless you had intercourse with him recently, in which case you should stay with him until you have menstruated." In that he was following the ruling of the Messenger of Allâh ﷺ concerning Maryam Maghâliyyah, who was married to Thâbit bin Qais and she got *Khul'* from him." (*Hasan*)

تخريج: [إسناده حسن] أخرجه النسائي، الطلاق، عدة المختلعة، ح: ٣٥٢٨ من حديث

Comments:

a. Although *Khul'* is apparently like a divorce where a husband lets his wife go based upon her demand to do so, however, in real terms it is irrevocable

رَجُلًا دَمِيمًا. فَقَالَتْ: يَا رَسُولَ اللَّهِ، وَاللَّهِ، لَوْلَا مَخَافَةُ اللَّهِ، إِذَا دَخَلَ عَلَيَّ، لَسَقَمْتُ فِي وَجْهِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَتُرَدِّينَ عَلَيْهِ حَدِيثَهُ؟» قَالَتْ: نَعَمْ. [قَالَ:]، فَرَدَّتْ عَلَيْهِ حَدِيثَهُ. قَالَ: فَفَرَّقَ بَيْنَهُمَا رَسُولُ اللَّهِ ﷺ.

(المعجم ٢٣) - بَابُ عِدَّةِ الْمُخْتَلَعَةِ

(الصفحة ٢٣)

٢٠٥٨ - حَدَّثَنَا عَلِيُّ بْنُ سَلَمَةَ النَّيْسَابُورِيُّ: حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ: حَدَّثَنَا أَبِي عَنِ ابْنِ إِسْحَاقَ: أَخْبَرَنِي عَبَادَةُ بْنُ الْوَلِيدِ بْنِ عَبَادَةَ ابْنِ الصَّامِتِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ، عَنِ الرَّبِيعِ بْنِ مَعُوذٍ بْنِ عَفْرَاءَ قَالَ، قُلْتُ لَهَا: حَدَّثَنِي حَدِيثُكَ. قَالَتْ: اخْتَلَعْتُ مِنْ زَوْجِي. ثُمَّ جِئْتُ عُثْمَانَ. فَسَأَلْتُ: مَاذَا عَلَيَّ مِنَ الْعِدَّةِ؟ فَقَالَ: لَا عِدَّةَ عَلَيْكَ، إِلَّا أَنْ يَكُونَ حَدِيثَ عَهْدٍ بِكَ، فَتَمَكُّتِينَ عِنْدَهُ حَتَّى تَحِيضِينَ حَيْضَةً. قَالَتْ: وَإِنَّمَا تَبَعَ فِي ذَلِكَ قَضَاءُ رَسُولِ اللَّهِ ﷺ فِي مَرْيَمَ الْمَغَالِيَّةِ. وَكَأَنْتَ تَحْتِ تَابِتِ بْنِ قَيْسٍ، فَأَخْتَلَعْتَ مِنْهُ.

يعقوب به.

separation; therefore its waiting period is not three menstruation periods, rather just the one menstruation cycle.

- b. Waiting for one menstruation period after *Khul'* is to verify that the womb is empty to confirm that she is not pregnant; and one menstruation cycle clarifies the position of pregnancy. If a menstruation cycle does not begin, then it could mean she is pregnant; in that case, she is not allowed to marry another man until delivery.

Chapter 24. Swearing To Forego Marital Relations With One's Wife

(المعجم ٢٤) - بَابُ الْإِيْلَاءِ (التحفة ٢٤)

2059. It was narrated that 'Āishah said: "The Messenger of Allāh ﷺ swore that he would not enter upon his wives for a month, and he stayed for twenty-nine days until, on the eve of the thirtieth, he entered upon me. I said: 'You swore not to enter upon us for a month.' He said: 'The month may be like this,' and he held up his (ten) fingers three times; 'or the month may be like this,' and he held up his fingers three times, keeping one finger down on the third time." (*Hasan*)

٢٠٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الرَّجَالِ، عَنْ أَبِيهِ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: أَقْسَمَ رَسُولُ اللَّهِ ﷺ أَنْ لَا يَدْخُلَ عَلَيَّ نِسَائِهِ شَهْرًا. فَمَكَتَ تِسْعَةً وَعِشْرِينَ يَوْمًا. حَتَّى إِذَا كَانَ مَسَاءَ ثَلَاثِينَ، دَخَلَ عَلَيَّ. فَقُلْتُ: إِنَّكَ أَقْسَمْتَ أَنْ لَا تَدْخُلَ عَلَيْنَا شَهْرًا. فَقَالَ: «الشَّهْرُ كَذَا» يُرْسِلُ أَصَابِعَهُ فِيهِ ثَلَاثَ مَرَّاتٍ «وَالشَّهْرُ كَذَا» وَأَرْسَلَ أَصَابِعَهُ كُلَّهَا، وَأَمْسَكَ إِصْبَعًا وَاحِدًا فِي الثَّلَاثَةِ.

تخريج: [إسناده حسن] أخرجه أحمد: ١٠٥/٦ من حديث عبدالرحمن (بن محمد بن عبدالرحمن) بن أبي الرجال به، وقال البوصيري: إسناده حسن * عبدالرحمن بن أبي الرجال ثقة و ثقته الجمهور، ولم يطمئن أحد فيه بحجة، والنقل عن أبي داود لا يثبت من أجل جهالة الأجرى. الراوي عنه ..

Comments:

- If a husband gets angry with his wife for a valid reason, and he swears by the Name of Allāh that he would not have sexual intercourse with her for sometime, it is allowed, and it is called *Iyala'*.
- The maximum period of *Iyala'* is four months. If he has sworn for an unspecified period, and the period of four months has come to end, she is allowed to sue him in court and the court would order him either to divorce her or to establish full matrimonial relations with her. (*Al-Baqarah: 226 - 227*)
- If a husband swore for four months, or for a period less than that, but still had intercourse with her before the end of the sworn period, then he would

have to pay expiation of oath; and there is no expiation if he stood by his oath until the sworn period, nor would any divorce occur.

2060. It was narrated from 'Āishah that the Messenger of Allāh ﷺ swore to keep away from his wives, because Zainab had sent back his gift and 'Āishah said: "She has disgraced you." He became angry and swore to keep away from them. (*Da'if*)

٢٠٦٠ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ، عَنْ حَارِثَةَ ابْنِ مُحَمَّدٍ، عَنْ عُمَرَةَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ إِنَّمَا آلَى، لِأَنَّ زَيْنَبَ رَدَّتْ عَلَيْهِ هَدِيَّتَهُ. فَقَالَتْ عَائِشَةُ: لَقَدْ أَقْمَأْتَك. فَعَضِبَ ﷺ. فَأَلَى مِنْهُنَّ.

تخريج: [إسناده ضعيف] انظر، ح: ٥٦ لعلته.

2061. It was narrated from Umm Salamah that the Messenger of Allāh ﷺ swore to keep away from some of his wives for a month. On the twenty-ninth day, in the evening or the morning, it was said: "O Messenger of Allāh, only twenty-nine days have passed." He said: "The month is twenty-nine days." (*Sahih*)

٢٠٦١ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ السُّلَمِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ صَيْفِيٍّ، عَنْ عِكْرِمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ ﷺ آلَى مِنْ بَعْضِ نِسَائِهِ شَهْرًا. فَلَمَّا كَانَ تِسْعَةَ وَعِشْرِينَ رَاحَ أَوْ غَدَا. فَقِيلَ: يَا رَسُولَ اللَّهِ! إِنَّمَا مَضَى تِسْعَ وَعِشْرُونَ. فَقَالَ: «الشَّهْرُ تِسْعَ وَعِشْرُونَ».

تخريج: أخرجه البخاري، الصوم، باب قول النبي ﷺ: إذا رأيتم الهلال فصوموا وإذا رأيتموه فأفطروا، ح: ٥٢٠٢، ١٩١٠، ومسلم، الصيام، باب الشهر يكون تسعًا وعشرين، ح: ١٠٨٥ من حديث أبي عاصم الضحاك بن مخلد به.

Comments:

'The month is twenty-nine days' means that this month is twenty-nine days; if it was of thirty days I would stay away for one more day.

Chapter 25. Zihâr

2062. It was narrated that Salamah bin Sakhr Al-Bayâdi said: "I was a man who had a lot of desire for women, and I do not think there was any man who had as great a share of that as me. When Ramadân began, I declared

(المعجم ٢٥) - بَابُ الظَّهَارِ (التحفة ٢٥)

٢٠٦٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ ابْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرٍ النَّبَاطِيِّ قَالَ: كُنْتُ امْرَأًا أَسْتَكْبِرُ مِنَ النِّسَاءِ. لَا أَرَى

Zihâr upon my wife (to last) until Ramadân ended. While she was talking to me one night, part of her body became uncovered. I jumped on her and had intercourse with her. The next morning I went to my people and told them, and said to them: 'Ask the Messenger of Allâh ﷺ for me.' They said: 'We will not do that, lest Allâh reveal Qur'ân concerning us or the Messenger of Allâh ﷺ says something about us, and it will be a lasting source of disgrace for us. Rather we will leave you to deal with it yourself. Go yourself and tell the Messenger of Allâh ﷺ about your problem.' So I went out and when I came to him, I told him what happened. The Messenger of Allâh ﷺ said: 'Did you really do that?' I said: 'I really did that, and here I am, O Messenger of Allâh. I will bear Allâh's ruling on me with patience.' He said: 'Free a slave.' I said: 'By the One Who sent you with the truth, I do not own anything but myself.' He said: 'Fast for two consecutive months.' I said: 'O Messenger of Allâh, the thing that happened to me was only because of fasting.' He said: 'Then give charity, or feed sixty poor persons.' I said: 'By the One Who sent you with the truth, we spent last night with no dinner.' He said: 'Then go to the collector of charity of Banu Zuraiq, and tell him to give you something, then feed sixty poor persons, and benefit from the rest.'" (*Da'if*)

رَجُلًا كَانَ يُصِيبُ مِنْ ذَلِكَ مَا أَصِيبُ. فَلَمَّا دَخَلَ رَمَضَانَ ظَاهَرَتْ مِنْ امْرَأَتِي حَتَّى يَسْلَخَ رَمَضَانَ. فَبَيْنَمَا هِيَ تُحَدِّثُنِي ذَاتَ لَيْلَةٍ انْكَشَفَ لِي مِنْهَا شَيْءٌ. فَوَيْبَتْ عَلَيْهَا فَوَافَعْتُهَا. فَلَمَّا أَصْبَحْتُ غَدَوْتُ عَلَى قَوْمِي. فَأَخْبَرْتُهُمْ خَبْرِي. وَقُلْتُ لَهُمْ: سَلُوا لِي رَسُولَ اللَّهِ ﷺ. فَقَالُوا: مَا كُنَّا نَفْعَلُ. إِذَا يُنَزَّلُ اللَّهُ فِينَا كِتَابًا، أَوْ يَكُونُ فِينَا مِنْ رَسُولِ اللَّهِ ﷺ قَوْلٌ، فَيُنْفِقِي عَلَيْنَا عَارُهُ، وَلَكِنْ سَوْفَ نَسْأَلُكَ بِحَبْرِيَّتِكَ. أَذْهَبَ أَنْتَ فَادْخُرْ شَأْنَكَ لِرَسُولِ اللَّهِ ﷺ. قَالَ: فَخَرَجْتُ حَتَّى جِئْتُهُ، فَأَخْبَرْتُهُ الْخَبْرَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَنْتَ بِذَلِكَ؟» فَقُلْتُ: أَنَا بِذَلِكَ. وَهَا أَنَا، يَا رَسُولَ اللَّهِ صَابِرٌ لِحُكْمِ اللَّهِ عَلَيَّ. قَالَ: «فَأَعْتِقْ رَقَبَةً» قَالَ: قُلْتُ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا أَصْبَحْتُ أَمْلِكُ إِلَّا رَقَبَتِي هَذِهِ. قَالَ: «فَصُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ» قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ وَهَلْ دَخَلَ عَلَيَّ مَا دَخَلَ مِنَ الْبَلَاءِ إِلَّا بِالضُّومِ؟ قَالَ: «فَقَصِّدْ [أَوْ أَطْعِمْ سِتِّينَ مَسْكِينًا]» قَالَ: قُلْتُ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَقَدْ بَتْنَا لَيْلَتَنَا هَذِهِ، مَا لَنَا عِشَاءٌ. قَالَ: «فَأَذْهَبْ إِلَى صَاحِبِ صَدَقَةِ بَنِي زُرَيْقٍ فَقُلْ لَهُ، فَلْيَدْفَعْهَا إِلَيْكَ. وَأَطْعِمْ سِتِّينَ مَسْكِينًا. وَانْتَفِعْ بِبَقِيَّتِهَا».

تخریج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢١٣ وغيره من حديث ابن إسحاق به، وحسنه الترمذي، ح: ١٢٠٠، وصححه الحاكم على شرط مسلم: ٢/٢٠٣، ووافقه الذهبي، وقال البخاري: سليمان لم يسمع عندي من سلمة * وابن إسحاق عن نعيم، ح: ١٢٠٩، وله شاهد منقطع عند الترمذي وغيره.

Comments:

- Zihâr* is that a person says to his wife, 'you are for me just like the back of my mother', which means 'you are unlawful for me just like relations with my mother are unlawful for me.'
- Doing *Zihâr* is a sin but it does not break the marriage bond. In *Zihâr* only sexual intercourse is forbidden until the expiation is made.
- There is no expiation to be made if *Zihâr* is acted upon for a fixed period and matrimonial relations do not occur during it.
- If the time limit for *Zihâr* is not specified, then expiation should be made before having intercourse.

2063. It was narrated from 'Urwah bin Zubair, that 'Āishah said: "Blessed is the One Whose hearing encompasses all things. I heard some of the words of Khawlah bint Tha'labah, but some of her words were not clear to me, when she complained to the Messenger of Allāh ﷺ about her husband, and said: 'O Messenger of Allāh, he has consumed my youth and I split my belly for him (i.e., bore him many children), but when I grew old and could no longer bear children, he declared *Zihâr* upon me; O Allāh, I complain to You.' She continued to complain until Jibra'il brought down these Verses: 'Indeed Allāh has heard the statement of she who pleads with you (O Muhammad) concerning her husband, and complains to Allāh.'"^[1] (*Sahih*)

٢٠٦٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُبَيْدَةَ: حَدَّثَنَا أَبِي عَنِ الْأَعْمَشِ، عَنْ تَمِيمِ بْنِ سَلْمَةَ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَتْ عَائِشَةُ: تَبَارَكَ الَّذِي وَسِعَ سَمْعُهُ كُلَّ شَيْءٍ. إِنِّي لِأَسْمَعُ كَلَامَ حَوَلَةَ بِنْتِ ثَعْلَبَةَ، وَيَخْفَى عَلَيَّ بَعْضُهُ، وَهِيَ تَسْتَكْبِي زَوْجَهَا إِلَى رَسُولِ اللَّهِ ﷺ. وَهِيَ تَقُولُ: يَا رَسُولَ اللَّهِ! أَكَلْتُ شَبَابِي. وَكَثُرَتْ لِي بَطْنِي. حَتَّى إِذَا كَبِرْتُ سِنِّي، وَأَنْقَطَعَ وَكْدِي، ظَاهَرَ مِنِّي. اللَّهُمَّ إِنِّي أَشْكُرُ إِلَيْكَ. فَمَا بَرَحْتُ حَتَّى نَزَلَ جِبْرَائِيلُ بِهِؤْلَاءِ الْآيَاتِ: ﴿قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ﴾ [المجادلة: ١].

تخریج: [صحیح] تقدم، ح: ١٨٨.

^[1] *Al-Mujâdilah* 58:1.

Comments:

- a. Allāh ﷻ has the Attribute of Hearing, and His Hearing is not limited like His creatures, rather it is limitless.
- b. Khawlah ؓ made mention of her old age, that had she been young, it would have been easier for her to marry another person; or someone would marry her because of her young age with the hope of bearing children from her and thus looking after the children would become easier for her.

Chapter 26. A Man Who Declared *Zihâr* Upon His Wife, Having Intercourse With Her Before Offering Expiation

2064. It was narrated from Salamah bin Sakhr Al-Bayâdi that the Prophet ﷺ said concerning a man who declared *Zihâr* upon his wife having intercourse with her before compensation: "Let him offer one expiation." (*Da'if*)

2065. It was narrated from Ibn 'Abbâs that a man declared *Zihâr* upon his wife, then he had intercourse with her before offering expiation. He came to the Prophet ﷺ and told him about that. He said: "What made you do that?" He said: "I saw her ankles in the moonlight, and I could not control myself, and I had intercourse with her." The Messenger of Allāh ﷺ smiled and told him not to go near her until he had offered expiation. (*Hasan*)

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢٢٥، من

Comments:

- a. A person who has done *Zihâr* should keep away from his wife until the expiation is performed.

(المعجم ٢٦) - بَابُ الْمُظَاهِرِ يُجَامِعُ
قَبْلَ أَنْ يُكْفِّرَ (التحفة ٢٦)

٢٠٦٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَعِيدٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ سَلَمَةَ بْنِ صَخْرٍ الْبَيْضِيِّ، عَنِ النَّبِيِّ ﷺ، فِي الْمُظَاهِرِ يُوَاقِعُ قَبْلَ أَنْ يُكْفِّرَ. قَالَ: «كُفَّارَةٌ وَاحِدَةٌ».

تخريج: [ضعيف] انظر، ح: ٢٠٦٢.

٢٠٦٥ - حَدَّثَنَا الْعَبَّاسُ بْنُ بَرِيدٍ. قَالَ: حَدَّثَنَا عُثْمَرُ: حَدَّثَنَا مَعْمَرٌ عَنِ الْحَكَمِ بْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا ظَاهَرَ مِنْ أَمْرَأَتِهِ. فَعَشِيهَا قَبْلَ أَنْ يُكْفِّرَ. فَأَتَى النَّبِيَّ ﷺ، فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ: «مَا حَمَلَكَ عَلَى ذَلِكَ؟» فَقَالَ: يَا رَسُولَ اللَّهِ! رَأَيْتُ بَيَاضَ جِجَلَيْهَا فِي الْقَمَرِ، فَلَمْ أَمْلِكْ نَفْسِي أَنْ وَقَعْتُ عَلَيْهَا. فَضَحِكَ رَسُولُ اللَّهِ ﷺ وَأَمَرَهُ أَلَّا يَتْرِبَهَا حَتَّى يُكْفِّرَ.

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في الظهار، ح: ٢٢٢٥، من حديث معمر به، وصححه الترمذي، ح: ١١٩٩.

b. If he has had intercourse mistakenly before making expiation, then he would not have to make two expiations; and just one expiation is enough, and he should beg Allāh's pardon and seek forgiveness.

Chapter 27. The *Li'ân*^[1]

2066. It was narrated that Sahl bin Sa'd As-Sâ'idi said: "Uwaimir came to 'Āsim bin 'Adi and said: 'Ask the Messenger of Allāh ﷺ for me: "Do you think that if a man finds another man with his wife and kills him, he should be killed in retaliation, or what should he do?" 'Āsim asked the Messenger of Allāh ﷺ about that, and the Messenger of Allāh ﷺ disapproved of the question. Then 'Uwaimir met him ('Āsim) and asked him about that, saying: 'What did you do?' He said: 'I did that and you have not brought me any good. I asked the Messenger of Allāh ﷺ and he disapproved of this question.' 'Uwaimir said: 'By Allāh, I will go to the Messenger of Allāh ﷺ myself and ask him.' So he went to the Messenger of Allāh ﷺ and found that Qur'ân had been revealed concerning them, and the Prophet ﷺ told them to go through the procedure of *Li'ân*. 'Uwaimir said: 'O Messenger of Allāh, by Allāh if I take her back, I would have been telling lies about her.' So he left her before the Messenger of Allāh ﷺ told him to do so, and that became the *Sunnah* for two who engage in the

(المعجم ٢٧) - بَابُ اللَّعَانِ (التحفة ٢٧)

٢٠٦٦ - حَدَّثَنَا أَبُو مَرْوَانَ، مُحَمَّدُ بْنُ عُمَانَ
الْعُمَانِيُّ: حَدَّثَنَا إِبرَاهِيمُ بْنُ سَعْدٍ، عَنِ ابْنِ
شِهَابٍ، عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ:
جَاءَ عُومِرٌ إِلَى عَاصِمِ بْنِ عَبْدِ اللَّهِ، فَقَالَ: سَلْ
لِي رَسُولَ اللَّهِ ﷺ: أَرَأَيْتَ رَجُلًا وَجَدَ مَعَ
امْرَأَتِهِ رَجُلًا فَقَتَلَهُ، أَتُقْتَلُ بِهِ؟ أَمْ كَيْفَ
يَصْنَعُ؟ فَسَأَلَ عَاصِمٌ رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ
فَعَابَ رَسُولُ اللَّهِ ﷺ الْمَسْأَلَةَ. ثُمَّ لَقِيَهُ
عُومِرٌ فَسَأَلَهُ، فَقَالَ: مَا صَنَعْتَ؟ [فَقَالَ:
صَنَعْتُ] أَنْكَ لَمْ تَأْتِنِي بِخَيْرٍ. سَأَلْتُ رَسُولَ
اللَّهِ ﷺ فَعَابَ الْمَسْأَلَةَ. فَقَالَ عُومِرٌ: وَاللَّهِ!
لَأَتَيْنَنَّ رَسُولَ اللَّهِ ﷺ وَلَا سَأَلْتُهُ. فَاتَى رَسُولَ
اللَّهِ ﷺ فَوَجَدَهُ قَدْ أُنْزِلَ عَلَيْهِ فِيهِمَا. فَلَا عَنَ
بَيْنَهُمَا. فَقَالَ عُومِرٌ: وَاللَّهِ لَئِنْ أَنْطَلَقْتُ بِهَا
يَا رَسُولَ اللَّهِ لَقَدْ كَذَبْتُ عَلَيْهَا. قَالَ: فَفَارَقَهَا
قَبْلَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ ﷺ. فَصَارَتْ سُنَّةً
فِي الْمُتَلَاعِنِينَ. ثُمَّ قَالَ النَّبِيُّ ﷺ:
«انظروها. فَإِنْ جَاءَتْ بِهِ أَسْحَمٌ، أَدْعَجِ
الْمَيْتِينَ، عَظِيمِ الْأَلْبَتِينَ، فَلَا أَرَاهُ إِلَّا قَدْ
صَدَّقَ عَلَيْهَا. وَإِنْ جَاءَتْ بِهِ أَحْمِيمِرٌ كَأَنَّهُ
وَحْرَةٌ، فَلَا أَرَاهُ إِلَّا كَاذِبًا» قَالَ: فَجَاءَتْ بِهِ
عَلَى التَّعْتِ الْمَكْرُوهِ.

^[1] An oath which is taken by both the wife and the husband when he accuses his wife of committing illegal sexual intercourse. See *Surat An-Nur* (24:6-9).

procedure of *Li'ân*. Then the Prophet ﷺ said: 'Wait and see. If she gives birth to a child who is black in color with widely-spaced dark eyes and large buttocks, then I think that he was telling the truth about her, but if she gives birth to a child with a red complexion like a *Wahrah*,^[1] then I think that he was lying.' Then she gave birth to a child with features resembling those of the man concerning whom she was accused." (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، من جوز الطلاق الثلاث لقول الله تعالى: ﴿الطلاق مرتان...﴾ إلخ، ح: ٥٢٥٩ وغيره، ومسلم، كتاب اللعان، ح: ١٤٩٢ من حديث ابن شهاب الزهري به.

Comments:

- The characteristic of self-esteem in a man is a good quality, but killing someone because of self-esteem is illegal. If one has strong doubt in the character of one's wife, then one should divorce her.
- The Messenger of Allāh ﷺ disliked this question, because according to his knowledge, this type of incident had not happened, and it was impossible to inflict punishment based purely on doubt.
- If a husband accuses his wife of committing adultery, then the woman should be questioned, and if she admits to it, she should be stoned, and the husband will not be entitled to any punishment. Likewise, if four witnesses bear witness against her, then this woman and her fornicator mate will deserve punishment.
- If a woman does not admit her sexual offence, then the man should be told that the accusation is a crime and should be asked to repent. If he admits that he accused her wrongly, then he will be inflicted with the punishment of accusation, which is eighty lashes, and the woman will have no punishment.

2067. It was narrated from Ibn 'Abbās that Hilāl bin Umayyah accused his wife in the presence of the Prophet ﷺ of (committing adultery) with Sharik bin Sahnā'. The Prophet ﷺ said: "Bring proof

٢٠٦٧ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ. قَالَ: أَنْبَأَنَا هِشَامُ بْنُ حَسَّانَ: حَدَّثَنَا عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ امْرَأَتَهُ عِنْدَ النَّبِيِّ ﷺ بِشَرِيكَ بْنِ

[1] They say it is a kind of gecko (lizard) or small red crawling animal or reptile.

or you will feel the *Hadd* (punishment) on your back." Hilâl bin Umayyah said: "By the One Who sent you with the truth, I am telling the truth, and Allâh will send down revelation concerning my situation which will spare my back." Then the following was revealed: "And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e., testifies four times) by Allâh that he is one of those who speak the truth. And the fifth (testimony should be) the invoking of the curse of Allâh on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allâh, that he (her husband) is telling a lie. And the fifth (testimony) should be that the wrath of Allâh be upon her if he (her husband) speaks the truth."^[1] The Prophet ﷺ turned and sent for them, and they came. Hilâl bin Umayyah stood up and bore witness, and the Prophet ﷺ said: "Allâh knows that one of you is lying. Will either of you repent?" Then she stood up and affirmed her innocence. On the fifth time, meaning that the wrath of Allâh be upon her if he (her husband) speaks the truth, they said to her: "It will invoke the wrath of Allâh." Ibn 'Abbâs said:

سَحْمَاءُ. فَقَالَ النَّبِيُّ ﷺ: «الْبَيْتَةُ أَوْحَدٌ فِي ظَهْرِكَ» فَقَالَ هِلَالُ بْنُ أُمَيَّةَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ إِنِّي لَصَادِقٌ. وَلَيَزُولَنَّ اللَّهُ فِي أَمْرِي مَا يَبْرِيءُ ظَهْرِي. قَالَ: فَتَزَلَّتْ ﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ﴾ حَتَّى بَلَغَ: ﴿وَالْفَلْسَفَةَ أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ﴾ [النور: ٦-٩] فَأَنْصَرَفَ النَّبِيُّ ﷺ. فَأَرْسَلَ إِلَيْهِمَا فَجَاءَا. فَقَامَ هِلَالُ بْنُ أُمَيَّةَ فَشَهِدَ، وَالنَّبِيُّ ﷺ يَقُولُ: «إِنَّ اللَّهَ يَعْلَمُ أَنَّ أَحَدَكُمَا كَاذِبٌ. فَهَلْ مِنْ تَائِبٍ؟» ثُمَّ قَامَتْ فَشَهِدَتْ. فَلَمَّا كَانَ عِنْدَ الْخَامِسَةِ: ﴿أَنَّ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ﴾ قَالُوا لَهَا: إِنَّهَا لَمْوجِبَةٌ. قَالَ ابْنُ عَبَّاسٍ: فَتَلَكَّأَتْ وَتَكَصَّتْ. حَتَّى طَنَّنَّا أَنَّهَا سَتَرْجِعُ. فَقَالَتْ: وَاللَّهِ! لَا أَفْضَحُ قَوْمِي سَائِرَ الْيَوْمِ. فَقَالَ النَّبِيُّ ﷺ: «انظروها. فَإِنْ جَاءَتْ بِهِ أَكْحَلُ الْعَيْبَتَيْنِ، سَابَغِ الْأَلْيَتَيْنِ، خَدَلَجِ السَّاقَيْنِ، فَهُوَ لِشَرِيكَ بْنِ سَحْمَاءَ». فَجَاءَتْ بِهِ كَذَلِكَ. فَقَالَ النَّبِيُّ ﷺ: «لَوْلَا مَا مَضَى مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلِهَا شَأْنٌ».

[1] An-Nur 24:6-9.

“She hesitated and backed up, until we thought that she was going to recant. Then she said: ‘By Allâh, I cannot dishonor my people for ever.’ Then the Prophet ﷺ said: ‘Wait and see. If she gives birth to a child with black eyes, fleshy buttocks and big calves, then he is the son of Sharik bin Sahnâ.’ And she gave birth to such a child. Then the Prophet ﷺ said: ‘Had not the matter been settled by the Book of Allâh, I would have punished her severely.’” (*Sahih*)

تخريج: أخرجه البخاري، الشهادات، باب: إذا ادعى أو قذف فله أن يلتمس البينة وينطلق لطلب البينة، ح: ٢٦٧١، ٤٧٤٧، ٥٣٠٧، وأبو داود، ح: ٢٢٥٤، والترمذي، ح: ٣١٧٩ كلهم عن محمد بن بشار به.

Comments:

- Hilâl bin Umayyah ﷺ trusted Allâh, and left his matter with Allâh, and Allâh cleared him.
- The wording of the fifth witnessing is different than the first four; which is to awaken the conscious that whoever is in the wrong from the two parties should admit their mistake, and should accept a worldly punishment in order to escape the punishment of the Hereafter.
- The statement of Allâh’s Messenger ﷺ: ‘Had not the matter been settled by the Book of Allâh, I would have punished her severely’ means the crime of the woman was certain, but to inflict punishment after *Li’ân* (having invoked the curse) was not allowed, so he ﷺ let her go, otherwise she would have had to be stoned.

2068. It was narrated that ‘Abdullâh said: “We were in the mosque one Friday night when a man said: ‘If a man finds a man with his wife and kills him, will you kill him, and if he speaks,^[1] will you flog him. By Allâh I will mention that to the Prophet ﷺ.’

٢٠٦٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ .
و إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ حَبِيبٍ . قَالَ :
حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سُلَيْمَانَ ، عَنِ الْأَعْمَشِ ، عَنْ
إِبْرَاهِيمَ ، عَنْ عَلْقَمَةَ ، عَنْ عَبْدِ اللَّهِ قَالَ : كُنَّا
فِي الْمَسْجِدِ لَيْلَةَ الْجُمُعَةِ . فَقَالَ رَجُلٌ : لَوْ أَنَّ

[1] Meaning he accuses her.

So he mentioned that to the Prophet ﷺ, and Allāh revealed the Verses of *Li'ân*. Then after that the man came and accused his wife, so the Prophet ﷺ told them to go through the procedure of *Li'ân* and he said: 'Perhaps she will give birth to a black child.' Then she gave birth to a black child with curly hair." (*Sahih*)

رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا فَفَتَنَهُ فَتَنَتْهُمُوهُ.
وَإِنْ تَكَلَّمَ جَلَدْتُمُوهُ. وَاللَّهُ لَأَذَكُرَنَّ ذَلِكَ لِلنَّبِيِّ
ﷺ. فَذَكَرَهُ لِلنَّبِيِّ ﷺ. فَأَنْزَلَ اللَّهُ آيَاتِ
اللِّعَانِ. ثُمَّ جَاءَ الرَّجُلُ بَعْدَ ذَلِكَ يَقْدِفُ
امْرَأَتَهُ. فَلَاعَنَ النَّبِيُّ ﷺ بَيْنَهُمَا. وَقَالَ:
«عَسَى أَنْ تَحْيِيَ بِهِ آسُودًا» فَجَاءَتْ بِهِ آسُودًا،
جَعْدًا.

تخريج: أخرجه مسلم، كتاب اللعان، ح: ١٤٩٥ من حديث الأعمش به.

Comments:

This incident most probably is the same as the one mentioned in the previous *Hadith*. It seems as if he had doubt in his wife's character but he did not see that she had committed the offense with his own eyes. As he saw with his own eyes, Allāh then revealed the Verses of the Qur'ân about invoking curses.

2069. It was narrated from Ibn 'Umar that a man invoked curses on his wife, and refused to accept her child. The Messenger of Allāh ﷺ separated them, and left the child with the woman. (*Sahih*)

٢٠٦٩ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ: حَدَّثَنَا عَبْدُ
الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ مَالِكِ بْنِ أَنَسٍ، عَنْ
نَافِعٍ، عَنِ ابْنِ عَمْرٍو أَنَّ رَجُلًا لَاعَنَ امْرَأَتَهُ
وَأَتَتْهُ مِنْ وَلَدِهَا. فَفَرَّقَ رَسُولُ اللَّهِ ﷺ
بَيْنَهُمَا. وَالْحَقَّ الْوَلَدَ بِالْمَرْأَةِ.

تخريج: أخرجه البخاري، الطلاق، باب: يلحق الولد بالملاعة، ح: ٦٧٤٨، ٥٣١٥، ومسلم، كتاب اللعان، ح: ١٤٩٤ من حديث مالك به.

Comments:

- a. *Li'ân* (invoking curses) is an irrevocable separation, after which a man (who invokes curses) can never remarry the woman.
- b. The child of a woman involved in invoking the curse will not be a part of the lineage of the husband who invokes the curse, and also the child will not be an heir of that man. However, the woman is doubtlessly the mother of the child. Therefore the child will be the heir of the mother, and other maternal relatives, and they will be the child's heir.

2070. It was narrated that Ibn 'Abbâs said: "A man from among the *Ansâr* married a woman from Bal'ijlân. He entered upon her and

٢٠٧٠ - حَدَّثَنَا عَلِيُّ بْنُ سَلَمَةَ النَّيْسَابُورِيُّ:
حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ: حَدَّثَنَا
أَبِي عَنِ ابْنِ إِسْحَاقَ. قَالَ: ذَكَرَ طَلْحَةُ بْنُ

spent the night with her, then in the morning he said: 'I did not find her to be a virgin.' Her case was taken to the Prophet ﷺ, and he called the girl and asked her. She said: 'No, I was a virgin.' So he told them to go through the procedure of *Li'ân*, and gave her the bridal-money." (*Da'if*)

نَافِعٌ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: تَزَوَّجَ رَجُلٌ مِنَ الْأَنْصَارِ امْرَأَةً مِنْ بُلْعِجَلَانَ. فَدَخَلَ بِهَا. فَبَاتَ عِنْدَهَا. فَلَمَّا أَصْبَحَ قَالَ: مَا وَجَدْتُهَا عَذْرَاءً. فَرَفَعَ شَأْنَهَا إِلَى النَّبِيِّ ﷺ. فَدَعَا الْجَارِيَةَ فَسَأَلَهَا فَقَالَتْ: بَلَى. قَدْ كُنْتُ عَذْرَاءً. فَأَمَرَ بِهِمَا فَتَلَاعَنَا. وَأَعْطَاهَا الْمَهْرَ.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٢٦١/١ عن يعقوب بن إبراهيم بن، وقال البوصيري: في إسناده ضعف لتدليس محمد بن إسحاق، وانظر، ح: ١٢٠٩.

2071. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: "There are four kinds of women for whom there is no *Li'ân*: a Christian woman married to a Muslim, a Jewish woman married to a Muslim, a free woman married to a slave, and a slave woman married to a free man." (*Da'if*)

٢٠٧١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا حَيَوَةُ بْنُ شُرَيْحٍ الْأَحْزَرِيُّ، عَنْ صَمْرَةَ بْنِ زَيْبَةَ، عَنِ ابْنِ عَطَاءٍ، عَنْ أَبِيهِ، عَنْ عَمْرِو ابْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «أَرْبَعٌ مِنَ النِّسَاءِ لَا مُلَاعَنَةَ بَيْنَهُنَّ: النَّصْرَانِيَّةُ تَحْتَ الْمُسْلِمِ. وَالْيَهُودِيَّةُ تَحْتَ الْمُسْلِمِ. وَالْحُرَّةُ تَحْتَ الْمَمْلُوكِ. وَالْمَمْلُوكَةُ تَحْتَ الْحُرِّ».

تخريج: [إسناده ضعيف جداً] أخرجه الدارقطني: ١٦٣/٣، ١٦٤ من حديث صمرة به، وقال: وهذا عثمان بن عطاء الخراساني وهو ضعيف الحديث جداً، وتابعه يزيد بن بزيع (ويقال: بزيع) الرملي وهو من الدجاجلة كما قال الدارقطني رحمه الله، وروى موقوفاً بإسناد ضعيف، والله أعلم.

Chapter 28. Declaring A Woman As Unlawful For Oneself

(المعجم ٢٨) - بَابُ الْحَرَامِ (التحفة ٢٨)

2072. It was narrated that 'Aishah said: "The Messenger of Allāh ﷺ swore to keep away from his wives and declared them as unlawful for him, so he made something permissible forbidden,

٢٠٧٢ - حَدَّثَنَا الْحَسَنُ بْنُ قُرْعَةَ: حَدَّثَنَا مَسْلَمَةُ بْنُ عَلْقَمَةَ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ، عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: أَلَى رَسُولِ اللَّهِ ﷺ مِنْ نِسَائِهِ. وَحَرَّمَ فَجَعَلَ

and he offered expiation for having sworn to do so." (*Da'if*) *وَجَعَلَ فِي الْيَمِينِ كَفَّارَةً.*

تخريج: [إسناده ضعيف] أخرجه الترمذي، الطلاق، باب ماجاء في الإيلاء، ح: ١٢٠١ عن الحسن بن قرعة به * مسلمة صدوق لكنه روى عن داود بن أبي هند أحاديث مناكير، عند الجمهور، وخالفه علي بن مسهر (ثقة) وغيره، فرووه عن داود عن الشعبي به مراسلاً، وهو المحفوظ.

Comments:

The Statement of Allâh Almighty with respect to oath is: "Its expiation is to feed ten poor persons, on a scale of that with which you would feed your own families, or to clothe them, or to set free a slave. But whosoever cannot afford (that), then he should fast for three days." (*Al-Mâ'idah*: 89).

2073. It was narrated from Sa'eed bin Jubair that Ibn 'Abbâs said: "For the one who makes unlawful is the swearing."^[1] (*Sahih*)

And Ibn 'Abbâs used to say: "You had the best example in the Messenger of Allâh."^[2]

٢٠٧٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ: حَدَّثَنَا هِشَامُ الدَّسْتَوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ يَعْلَى بْنِ حَكِيمٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: فِي الْحُرَامِ يَمِينٌ.
وَكَانَ ابْنُ عَبَّاسٍ يَقُولُ: لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ.

تخريج: أخرجه البخاري، التفسير، (سورة التحريم)، باب يايها النبي لم تحرم ما أحل الله لك ، ح: ٤٩١١، ومسلم، الطلاق، باب وجوب الكفارة على من حرم امرأته ولم ينو الطلاق، ح: ١٤٧٣ من حديث هشام الدستوائي به .

Comments:

The statement of Abdullâh bin Abbâs ؓ is that if one declares something that is lawful as unlawful, he should carry out the expiation of it (as an expiation of oath). The same narration is mentioned in *Sahih Al-Bukhâri* with the following wording: Narrated from Sa'eed bin Jubair ؓ that Ibn Abbâs ؓ said with regard to making things unlawful: "He must make an expiation."

Chapter 29. Giving A Slave Woman The Choice When She Is Freed

(المعجم ٢٩) - بَابُ خِيَارِ الْأَمَةِ إِذَا أُعْتِقَتْ (التحفة ٢٩)

2074. It was narrated from

٢٠٧٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا

[1] That is, in the case of who makes his wife unlawful for himself, he is to atone the same as the one who had to atone for swearing about something. See *Sahih Al-Bukhâri*, no. 4911.

[2] *Al-Ahzâb* 33:21.

‘Aishah that she freed Barirah and the Messenger of Allāh ﷺ gave her the choice, and she (Barirah) had a free husband. (*Da‘if*)

حَفْصُ بْنُ عِيَاثٍ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ أَنَّهَا أَعْتَقَتْ بَرِيرَةَ. فَخَيَّرَهَا رَسُولُ اللَّهِ ﷺ. وَكَانَ لَهَا زَوْجٌ حُرٌّ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب من قال كان حراً، ح: ٢٢٣٥، والترمذي، والنسائي، وابن ماجه من حديث إبراهيم به، وقال الترمذي: حسن صحيح قلت: إبراهيم النخعي يندلس كما قال الحاكم وغيره، ولم أجد تصريح سماعه، وذكر ابن حبان هذا الحديث في صحيحه (الإحسان)، ح: ٤٢٥٧، ولكن قال: وإن الأسود واهم في قوله: كان حراً، ولو ثبت هذا الحديث عن الأسود لكان ضعيفاً لمخالفة جمع كثير من الرواة والعدد الكثير أولى بالحفظ من الواحد، تنبيه: قوله وكان لها زوج حر من قول الأسود رحمه الله، كما في رواية أبي عوانة عن منصور، عند البخاري وغيره.

Comments:

Shaikh Albâni رحمه الله said, "It is untrue in this narration that her husband was a free man; the truth is that he was a slave, as comes in the following two narrations."

2075. It was narrated that Ibn ‘Abbâs said: "The husband of Barirah was a slave called Mughith. It is as if I can see him now, walking behind her and weeping, with tears running down his cheeks. The Prophet ﷺ said to ‘Abbâs: 'O ‘Abbâs, are you not amazed by the love of Mughith for Barirah, and the hatred of Barirah for Mughith?' And the Prophet ﷺ said to her: 'Why don't you take him back, for he is the father of your child?' She said: 'O Messenger of Allāh, are you commanding me (to do so)?' He said: 'No, rather I am interceding.' She said: 'I have no need of him.'" *(Sahih)*

٢٠٧٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَ مُحَمَّدُ ابْنُ خَلَادٍ الْبَاهِلِيُّ. قَالَ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ: حَدَّثَنَا خَالِدُ الْحَذَّاءُ عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: كَانَ زَوْجُ بَرِيرَةَ عَبْدًا يُقَالُ لَهُ مُغِيثٌ. كَأَنِّي أَنْظُرُ إِلَيْهِ يَطُوفُ خَلْفَهَا وَيَبْكِي. وَدُمُوعُهُ تَسِيلُ عَلَى خَدِّهِ. فَقَالَ النَّبِيُّ ﷺ لِعَبَّاسٍ: «يَا عَبَّاسُ! أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثِ بَرِيرَةَ، وَمِنْ بُغْضِ بَرِيرَةَ مُغِيثًا؟» فَقَالَ لَهَا النَّبِيُّ ﷺ: «لَوْ رَاجَعْتِهِ، فَإِنَّهُ أَبُو وَلَدِكَ» قَالَتْ: يَا رَسُولَ اللَّهِ! تَأْمُرُنِي؟ قَالَ: «إِنَّمَا أَسْتَعِينُ» قَالَتْ: لَا حَاجَةَ لِي فِيهِ.

تخريج: أخرجه البخاري، الطلاق، باب شفاعة النبي ﷺ في زوج بريرة، ح: ٥٢٨٣ من حديث عبدالوهاب الثقفي به.

Comments:

- If husband and wife both are slaves; and the wife is set free, she has the choice to live with her husband or to separate from him.
- The decision of separation will break the marriage contract, but they are allowed to reunite after remarriage. Allāh's Messenger ﷺ advised Barirah to go back to her husband, which was an advice to remarry.
- If the husband is set free before the wife, then the wife does not have a choice of separation.

2076. It was narrated that 'Āishah said: "Three *Sunan* were established because of Barirah: She was given the choice (of whether to remain married) when she was freed, and her husband was a slave; they used to give her charity and she used to give it as a gift to the Prophet ﷺ, and he would say: 'It is charity for her and a gift for us,' and he said, the '*Walā'* is for the one who set the slave free.'" (*Sahih*)

٢٠٧٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ أَسَامَةَ بْنِ زَيْدٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: مَضَى فِي بَرِيرَةَ ثَلَاثُ سُنَنِ: خَيْرَتِ حِينَ أُغْتِقَتْ. وَكَانَ زَوْجُهَا مَمْلُوكًا. وَكَانُوا يَصَدَّقُونَ عَلَيْهَا فَتُهْدِي إِلَيَّ النَّبِيُّ ﷺ فَيَقُولُ: «هُوَ عَلَيْهَا صَدَقَةٌ، وَهُوَ لَنَا هَدِيَّةٌ» وَقَالَ: «الْوَلَاءُ لِمَنْ أَعْتَقَ».

تخریج: [صحيح] أخرجه أحمد: ٢٠٧/٦ عن وكيع به مختصراً، وإسناده حسن، وللحديث طرق كثيرة عند البخاري، ومسلم وغيرهما.

Comments:

- The right of ownership changes the status of an object. If a poor person gets something in charity, and he offers it to a rich person as a present, or a rich person buys it from him, it will not have the status of charity for the rich person.
- Walā'* is a relation between the emancipator and the emancipated slave which is established due to emancipation. Due to this relation, an emancipated slave is considered the member of the emancipator's family. If the emancipated slave leaves no heir, then the emancipator will be the heir which is called the right of *Walā'*.

2077. It was narrated that 'Āishah said: "Barirah was told to observe the waiting period for three menstrual cycles." (*Hasan*)

٢٠٧٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنْ عَائِشَةَ قَالَتْ: أُمِرْتُ بِثَلَاثِ بَرِيرَةَ أَنْ تَعْتَدَ بِثَلَاثِ بَرِيرَةَ.

تخریج: [حسن] وقال البوصيري: إسناده صحيح ورجاله موثقون * سفيان الثوري عنن تقدم، ح: ١٦٢، وفيه علة أخرى، وأخرج أبو داود، ح: ٢٢٣٢ من حديث ابن عباس: وأمرها (يعني النبي ﷺ أمر بريدة) أن تعتد، وهو في صحيح البخاري، ح: ٥٢٨٠ مختصر جدًا، وروى أحمد عن عفان عن همام . حديث ابن عباس مطولاً . وفيه: أنها تعتد عدة الحرة ولم أجد ما يخالفه .

Comments:

The choice is of a female slave to separate from her husband after she has been set free from her slavery bond, and if she separates by using this choice, she will then spend three menstruation cycles as her waiting period.

2078. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ gave Barirah the choice. (Hasan)

٢٠٧٨ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوَيْبَةَ: حَدَّثَنَا عَبَادُ بْنُ الْعَوَامِ، عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ خَيْرَ بَرِيرَةَ.

تخریج: [إسناده حسن] وله شواهد عند البخاري، الطلاق، باب (١٧)، ح: ٥٢٨٤ وغيره، فالحديث صحيح .

Chapter 30. Divorce And Waiting Period Of A Slave Woman

2079. It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "The divorce of a slave woman is twice, and her waiting period is two menstrual cycles." (Da'if)

(المعجم ٣٠) - بَابُ: فِي طَلَاقِ الْأَمَةِ وَعِدَّتِهَا (التحفة ٣٠)

٢٠٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ، وَابْنُ أَبِي سَعِيدٍ الْجَوْهَرِيُّ. قَالَ: حَدَّثَنَا عُمَرُ بْنُ شَيْبَةَ الْمُسَلِّيُّ، عَنْ عَبْدِ اللَّهِ بْنِ عَيْسَى، عَنْ عَطِيَّةَ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «طَلَاقُ الْأَمَةِ اثْنَتَانِ، وَعِدَّتُهَا حِيضَتَانِ».

تخریج: [إسناده ضعيف] أخرجه الدارقطني: ٣٨/٤ وغيره من حديث عمر بن شبيب به، وقال الدارقطني: تفرد به عمر بن شبيب مرفوعاً وكان ضعيفاً، والصحيح عن ابن عمر ما رواه سالم ونافع عنه من قوله، وفيه علة أخرى، وانظر، ح: ٣٧.

2080. It was narrated from 'Āishah that the Prophet ﷺ said: "The divorce of a slave woman is twice, and her (waiting) period is two menstrual cycles."

٢٠٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا ابْنُ جُرَيْجٍ، عَنْ مُطَاهِرِ بْنِ أَسْلَمَ، عَنْ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ

Abu 'Āsim said: "I mentioned this to Muzāhir and said: 'Tell me what you told Ibn Juraij.' So he told me, narrating from Qāsim from 'Āishah, that the Prophet ﷺ said: 'The divorce of a slave woman is twice, and her (waiting) period is two menstrual cycles.'" (Da'if)

ﷺ قَالَ: «طَلَقُ الْأَمَةِ تَطْلِيقَتَانِ. وَفُرُؤُهَا حَيْضَتَانِ».

قَالَ أَبُو عَاصِمٍ: فَذَكَرْتُهُ لِمُطَاهِرٍ. فَقُلْتُ: حَدَّثَنِي كَمَا حَدَّثْتَ ابْنَ جُرَيْجٍ. فَأَخْبَرَنِي عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «طَلَقُ الْأَمَةِ تَطْلِيقَتَانِ. وَفُرُؤُهَا حَيْضَتَانِ».

تخريج: [إسناده ضعيف] أخرجه أبوداود، الطلاق، باب في سنة طلاق العبد، ح: ٢١٨٩، والترمذي، ح: ١١٨٢ من حديث أبي عاصم به، وقال أبوداود: هو حديث مجهول، وقال الترمذي: غريب * مظاهر ضعيف كما في التقريب وغيره.

Comments:

In *Muwatta*, Imam Mālik ﷺ quoted the verdicts of Uthmān, Zaid bin Thābit and 'Abdullāh bin 'Umar ؓ, that a male slave has the right to divorce two times only, and the waiting period of a female slave will be two menstruation cycles. It means divorce relies on the husband's status of him being free or a slave, while the waiting period depends on the woman's status of her being free or a slave. (*Muwatta* Imam Mālik: 2/118]

Chapter 31. The Divorce Performed By A Slave

(المعجم ٣١) - بَابُ طَلَاقِ الْعَبْدِ

(التحفة ٣١)

2081. It was narrated that Ibn 'Abbās said: "A man came to the Prophet ﷺ and said: 'O Messenger of Allāh, my master married me to his slave woman, and now he wants to separate me and her.' The Messenger of Allāh ﷺ ascended the pulpit and said: 'O people, what is the matter with one of you who marries his slave to his slave woman, then wants to separate them? Divorce belongs to the one who takes hold of the calf (i.e., her husband).'" (Da'if)

٢٠٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا يَحْيَى بْنُ عَبْدِ اللَّهِ بْنِ بُكَيْرٍ: حَدَّثَنَا ابْنُ لَهَيْعَةَ، عَنْ مُوسَى بْنِ أَيُّوبَ الْعَاقِفِيِّ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ: أَتَى النَّبِيَّ ﷺ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ! [إِن] سَيِّدِي زَوَّجَنِي أَمَتَهُ، وَهُوَ يُرِيدُ أَنْ يُفَرِّقَ بَيْنِي وَبَيْنَهَا، قَالَ، فَصَدَّقَ رَسُولُ اللَّهِ ﷺ الْوَسْوَءَ فَقَالَ: «يَا أَيُّهَا النَّاسُ مَا بَالُ أَحَدِكُمْ يُرَوِّجُ عَبْدَهُ أَمَتَهُ ثُمَّ يُرِيدُ أَنْ يُفَرِّقَ بَيْنَهُمَا؟ إِنَّمَا الطَّلَاقُ لِمَنْ أَخَذَ بِالسَّاقِ».

تخريج: [إسناده ضعيف] قال البوصيري: هذا إسناد ضعيف لضعف ابن لهيعة، وانظر، ح: ٣٣٠، وللحديث شواهد عند الدارقطني وغيره، وانظر نصب الراية: ٤/١٦٥، والطبراني: ١١/

٣٠١، ٣٠٠، ح: ١١٨٠٠ وغيرهما، ولم يصح منها شيء، وفي القرآن غنية عن هذا الحديث وغيره، راجع التعليق المغني على سنن الدارقطني: ٣٧/٤، وله شواهد موقوفة، ومرفوعة، والقرآن بعضه.

Comments:

- A slave needs his master's permission to get married, but once a slave is married, the master has no authority to cancel the marriage.
- Divorcing is a husband's right, whether he is free or is a slave. None has the right to force him to separate from his wife.

Chapter 32. One Who Divorces A Slave Woman With Two Divorces, Then Buys Her

2082. It was narrated that Abul Hasan, the freed slave of Banu Nawfal, said: "Ibn 'Abbās was asked about a slave who divorces his wife twice, then (they are freed). Can he marry her? He said: 'Yes.' It was said to him: 'On what basis?' He said: 'The Messenger of Allāh ﷺ passed such a judgement.'" (*Da'if*)

(One of the narrators) 'Abdur-Razzâq said: "Abdullāh bin Al-Mubârak said: "This Abul-Hasan loaded a tremendous boulder upon his neck.""^[1]

(المعجم ٣٢) - بَابُ مَنْ طَلَّقَ أَمَةً
تَطْلِقَتَيْنِ ثُمَّ اشْتَرَاهَا (التحفة ٣٢)

٢٠٨٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ زَنْجَوِيهِ أَبُو بَكْرٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عُمَرَ بْنِ مُعْتَبٍ، عَنْ أَبِي الْحَسَنِ، مَوْلَى بَنِي تَوْفَلٍ. قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ عَبْدِ طَلَّقَ امْرَأَتَهُ تَطْلِقَتَيْنِ ثُمَّ [أَعْتَبًا]. بَيَّرَ وَجْهَهَا؟ قَالَ: نَعَمْ. فَقِيلَ لَهُ: عَمَّنْ؟ قَالَ: قَضَى بِذَلِكَ رَسُولُ اللَّهِ ﷺ.

قَالَ عَبْدُ الرَّزَّاقِ: قَالَ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ: لَقَدْ تَحَمَّلَ أَبُو الْحَسَنِ هَذَا صَخْرَةً عَظِيمَةً عَلَى عُنُقِهِ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب: في سنة طلاق العبد، ح: ٢١٨٧ من حديث يحيى به * عمر بن معتب ضعيف كما في التقريب وغيره، ويدل السند على أن يحيى بن أبي كثير كان يروي عن الضعفاء أيضًا.

Comments:

'Loaded a tremendous boulder upon his neck' means he bore a burden of great responsibility by narrating this narration. (Imam Albāni declared this *Hadith* as Weak in *Ibn Mājah* and *Abu Dawud*. Also there are some narrations in *Ibn Mājah* that have not been classified.)

[1] Referring to the gravity of the matter, for it is not acted upon by most.

Chapter 33. The Waiting Period Of An *Umm Walad*

(المعجم ٣٣) - بَابُ عِدَّةِ أُمِّ الْوَالِدِ

(التحفة ٣٣)

2083. It was narrated that 'Amr bin 'Ās said: "Do not corrupt the *Sunnah* of our Prophet Muhammad ﷺ. The waiting period of an *Umm Walad* is four months and ten (days)." (*Da'if*)

٢٠٨٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكَيْعٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ مَطَرِ الْوَرَّاقِ، عَنْ رَجَاءِ بْنِ حَبُوةَ، عَنْ قَبِيصَةَ بْنِ دُؤَيْبٍ، عَنْ عَمْرٍو بْنِ الْعَاصِ قَالَ: لَا تُفْسِدُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا مُحَمَّدٍ ﷺ. عِدَّةُ أُمِّ الْوَالِدِ أَرْبَعَةٌ أَشْهُرٌ وَعَشْرًا.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب في عدة أم الولد، ح: ٢٣٠٨ من حديث سعيد به، وصححه ابن حبان (موارد)، ح: ١٣٣٣، والحاكم على شرط الشيخين: ٢/٢٠٩، ووافقه الذهبي، وقال أحمد: هذا حديث منكر، وقال الدارقطني: هو مرسل، لأن قبصة لم يسمع من عمرو: ٣١/٤، وتبعه البيهقي، فالسند معلل.

Comments:

- Umm Walad* is female slave who gives birth to a child by her master.
- 'Umar ؓ said, 'the female slave who gives birth to a child by her master, she should not be sold, gifted, nor be inherited. The master may benefit from her in his life, and she is a free woman after her master's death.' (*Muwatta Imam Mālik: 2/291*).
- An *Umm Walad* becomes free after the death of her master, therefore, her waiting period will be that of a free woman.

Chapter 34. It Is Disliked For A Recently Widowed Woman To Adorn Herself

2084. It was narrated from Humaid bin Nāfi' that he heard Zainab the daughter of Umm Salamah narrating that she heard Umm Salamah and Umm Habibah mention that a woman came to the Prophet ﷺ and said that her daughter's husband had died, and she was suffering from an eye disease, and she wanted to apply kohl to her eyes (as a remedy). The Messenger of Allāh ﷺ said "One of you would

(المعجم ٣٤) - بَابُ كَرَاهِيَةِ الزُّنْبَةِ

لِلْمُتَوَفَّى عَنْهَا زَوْجُهَا (التحفة ٣٤)

٢٠٨٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَا يَحْيَى بْنُ سَعِيدٍ، عَنْ حُمَيْدِ بْنِ نَافِعٍ أَنَّهُ سَمِعَ زَيْنَبَ ابْنَةَ أُمِّ سَلَمَةَ تُحَدِّثُ أَنَّهَا سَمِعَتْ أُمَّ سَلَمَةَ وَ أُمَّ حَبِيبَةَ تَذْكُرَانِ أَنَّ امْرَأَةً أَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: إِنَّ ابْنَةَ لَهَا تُؤَفِّئُ عَنْهَا زَوْجَهَا. فَاسْتَنْكَتْ عَيْنَهَا. فَهِيَ تُرِيدُ أَنْ تَكْحَلَهَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: د كَانَتْ إِخْدَاكُ تَرْهِي بِالْبَعْرَةِ عِنْدَ رَأْسِ

throw a she-camel's dropping when a year had passed (since the death of her husband).^[1] Rather it is four months and ten (days)."

(*Sahih*)

الْحَوْلِ . وَإِنَّمَا هِيَ : أَرْبَعَةٌ أَشْهُرٍ وَعَشْرًا .

تخریج: أخرجه البخاري، الطلاق، باب: تحد المتوفى عنها أربعة أشهر وعشراً، ح: ٥٣٣٦ من حديث حميد بن نافع به، ومسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة . . . الخ، ح: ١٤٨٨، ١٤٨٦/٦١ عن أبي بكر بن أبي شيبة وغيره.

Comments:

- Wearing jewelry and applying things of adornment should be avoided during the waiting period, rather a simple dress should be worn.
- Things that are used for beauty like makeup are not allowed, even for treatment during the waiting period, like: applying kohl or henna etc. Other alternatives should be used for treatment during this period.
- The waiting period after a husband's death is four months and ten days. But if a woman is pregnant, her waiting period will be till the birth of child, regardless if her child is born before the period of four months and ten days or after it. (*Sunan Ibn Mājah*; 2027-2030)

Chapter 35. Can A Woman Mourn For Anyone Other Than Her Husband?

(المعجم ٣٥) - بَابُ: هَلْ تُحَدُّ الْمَرْأَةُ

عَلَى غَيْرِ زَوْجِهَا (التحفة ٣٥)

2085. It was narrated from 'Aishah that the Prophet ﷺ said: "It is not permissible for a woman to mourn for any deceased person for more than three days, except for her husband." (*Sahih*)

٢٠٨٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُمَيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَجُزُّ لِامْرَأَةٍ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ. إِلَّا عَلَى زَوْجٍ».

تخریج: أخرجه مسلم، الطلاق، الباب السابق، ح: ١٤٩١ عن أبي بكر بن أبي شيبة وغيره

Comments:

- Besides the death of a husband, it is also correct not to adorn oneself to express sorrow for the death of other close relatives.
- Things of adornment and attraction should be avoided only for three days upon the death of relatives.
- As for the waiting period after a husband's death, she should avoid applying or using anything like pretty adornment, kohl, perfumes, etc., during the whole waiting period.

[1] A description of the widow's behavior during the period of Ignorance.

2086. It was narrated from Hafsaah the wife of the Prophet ﷺ that the Messenger of Allāh ﷺ said: "It is not permissible for a woman who believes in Allāh and the Last Day to mourn for any deceased person for more than three days, except for her husband." (Sahih)

٢٠٨٦ - حَدَّثَنَا هَنَادُ بْنُ السَّرِيِّ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ، عَنْ حَفْصَةَ زَوْجِ النَّبِيِّ ﷺ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحَدِّثَ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ. إِلَّا عَلَى زَوْجٍ».

تخريج: أخرجه مسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة وتحريمه في غير ذلك إلا ثلاثة أيام، ح: ٦٤/١٤٩٠ من حديث يحيى بن سعيد به.

2087. It was narrated from Umm 'Atiyyah that the Messenger of Allāh ﷺ said: 'No deceased person should be mourned for more than three days, except a woman should mourn for her husband for four months and ten days, and she should not wear dyed clothes, except for a garment of 'Ashb, and she should not wear kohl or perfume, except at the beginning of her purity,^[1] when she may apply a little *Qust* and *Azfar*.'^[2] (Sahih)

٢٠٨٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، عَنْ هِشَامِ بْنِ حَسَّانٍ، عَنْ حَفْصَةَ، عَنْ أُمِّ عَطِيَّةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُحَدِّثُ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ، إِلَّا امْرَأَةٌ تُحَدِّثُ عَلَى زَوْجِهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، إِلَّا ثَوْبَ عَصَبٍ. وَلَا تَكْتَجِلُ وَلَا تَطَيَّبُ إِلَّا عِنْدَ أَذْنَى طَهْرِهَا، بِنَبَلٍ مِنْ قُسْطٍ أَوْ أَظْفَارٍ».

تخريج: أخرجه البخاري، الطلاق، باب: تلبس الحادة ثياب العصب، ح: ٥٣٤٢، ٥٣٤٣، ومسلم، الطلاق، الباب السابق، ح: ٩٣٨ بعد، ح: ١٤٩١ من حديث هشام به.

Comments:

- 'Ashb is a specific cloth made in Yemen. Spun cotton thread with knots was dyed and the color would not affect the inner side of knot. So when the knot was undone, some thread would remain uncolored and some colored. The cloth made of this thread would have whiteness and color patterns; this type of cloth used to be called 'Ashb, which means some white and some colored cloth.
- This type of cloth is allowed to be worn during the waiting period because the white color prevails and the cloth does not remain attractive.

[1] Meaning after her menstrual period when she becomes clean.

[2] Nawawi said: "Qust and Azfar are two popular types of incense. They were permitted to remove offensive odor and not to use as a perfume."

Chapter 36. A Man Whose Father Orders Him To Divorce His Wife

(المعجم ٣٦) - بَابُ الرَّجْلِ يَأْمُرُهُ أَبُوهُ
بِطَّلَاقِ امْرَأَتِهِ (الصفحة ٣٦)

2088. It was narrated that 'Abdullâh bin 'Umar said: "I had a wife whom I loved, but my father hated her. 'Umar mentioned that to the Prophet ﷺ, and he ordered me to divorce her, so I divorced her." (Hasan)

٢٠٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَعُثْمَانُ بْنُ عُمَرَ. قَالَا: حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ، عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَمْرَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: كَانَتْ تَحْتِي امْرَأَةٌ. وَكُنْتُ أُحِبُّهَا. وَكَانَ أَبِي يُبْغِضُهَا. فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ. فَأَمَرَنِي أَنْ أَطْلِقَهَا. فَطَلَّقْتُهَا.

تخريج: [إسناده حسن] أخرجه أبو داود، الأدب، باب: في بر الوالدين، ح: ٥١٣٨ من حديث يحيى القطان به، وقال الترمذي، ح: ١١٨٩ حسن صحيح .

Comments:

- The parents often give preference to the pleasure of children, and sometimes they tolerate unreasonable and un-Islamic things just for the sake of children. In this situation if the parents are unhappy with the daughter-in-law, there must be a valid reason for it. Particularly, a father cannot order his son to divorce his wife.
- Giving precedence to parents' pleasure over one's own, is part of being dutiful and good to parents.

2089. It was narrated from 'Abdur-Rahmân that a man's father or mother – Shu'bah (one of the narrators) was not sure – ordered him to divorce his wife, and he made a vow that he would free one hundred slaves if he did that. He came to Abu Dardâ' while he was praying the *Duha*, and he was making his prayer lengthy, and he prayed between *Zuhr* and *Asr*. Then he asked him, and Abu Dardâ' said: "Fulfill your vow and honor your parents." Abu Ad-Dardâ' said: "I

٢٠٨٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ: حَدَّثَنَا شُعْبَةُ عَنْ عَطَاءِ بْنِ السَّائِبِ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا أَمَرَهُ أَبُوهُ أَوْ أُمُّهُ - شَكَكَ شُعْبَةُ - أَنْ يُطْلَقَ امْرَأَتَهُ. فَجَعَلَ عَلَيْهِ مِائَةَ مُحَرَّرٍ. فَأَتَى أَبَا الدَّرْدَاءِ. فَإِذَا هُوَ يُصَلِّي الضُّحَى وَيُطِيلُهَا. وَصَلَّى مَا بَيْنَ الظُّهْرِ وَالْعَصْرِ. فَسَأَلَهُ. فَقَالَ أَبُو الدَّرْدَاءِ: أَوْفِ بِنَدْرِكَ، وَبِرِّ وَالِدَيْكَ.

وَقَالَ أَبُو الدَّرْدَاءِ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ

heard the Messenger of Allâh ﷺ say: '(Honoring) one's father may lead one to enter through the best of the gates of Paradise; so take care of your parents, (it is so, whether you take care of them) or not.'" (*Hasan*)

يَقُولُ: «الْوَالِدُ أَوْسَطُ أَبْوَابِ الْجَنَّةِ، فَحَافِظُ عَلَيَّ وَالِدَيْكَ، أَوْ اتْرُكْ».

تخريج: [إسناده حسن] أخرجه الترمذي، البر والصلة، باب ماجاء من الفضل في رضا الوالدين، ح: ١٩٠٠ من حديث عطاء به، وقال: هذا حديث صحيح، وأبو عبدالرحمن السلمي اسمه عبدالله بن حبيب، وصححه ابن حبان(موارد)، ح: ٢٠٢٣، والحاكم: ١٩٧/٢، ١٥٢/٤، ووافقه الذهبي.

Comments:

- a. Service and obedience to parents is a means to enter Paradise.
- b. If the parents command the child to do something which is Islamically permissible, it should be done even though the heart dislikes it. The parents, in the same way, should also care for the rights, needs and demands of the children.