

MISUSE AND MISAPPLICATION OF THE MEASURES FOR RECONCILIATION: A  
CONSEQUENCE OF RAMPANT DIVORCE IN OUR SOCIETY.

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A careful study of the laws of the Qur'an which relate to marriage and divorce, will show that the spirit of the verse unmistakably points to a pre-vention of divorce, and that every where a reconciliation is recommended in the most appealing terms. Before the parties proceed to extremity of divorce for unavoidable reasons, it is expressly laid down that all lawful means be adapted for avoiding a breach; and it is only in the event of their failure that a separation is permitted, of course, as a last recourse. Under such extreme circumstances, divorce is not merely permissible, but has been held quite expedient, and recourse to it is recommended, in spite of deterrents, like poverty.

It is believed, God Himself opens out many ways for those whose intentions are honest:

*"And if they separate, God will make them richer out of His abundance, for God is extensive and wise"<sup>1</sup>  
(Qur'an; chapter 4:129)*

It is interesting to note that very nearly the same idea is expressed In the Qur'an where those who are single are exhorted to marry.

*"Marry those who are single among you, and such are honest of your men-servants and your maid servant. If they be poor, God will enrich them of His abundance"<sup>2</sup>  
Qur'an; chapter 24:32).*

It follows then, that according to the Islamic laws, divorce, under certain circumstances, is as necessary as marriage. The directions of the Qur'an in respect of the adoption of the courses that tend to make reconciliation possible, are explicit as they are full of wisdom. Thus in the chapter of women, we read: *"Virtuos women are obedient, careful during the husband absence, because God hath of them been careful. But those, for whose refracoriners ye have cause to fear, chide, remove them into beds aparts; and chastise them: verily God is high and great. and if ye fear a breach between husband and wife, send a judge of his family, and a judge out of her family: if they are desirous of agreement, God will effect a reconciliation between them; for God is knowing and apprised of all"<sup>3</sup>. (Qur'an ; Chapter 4:33-34).*

*"If a woman is chaste and mindful of her duties as wife, the Islamic law makes it obligatory upon the husband to associate with her on the best of terms, and with kindness and courtesy. But, if she proves refractory in her behaviour, the law confers on the husband the powers of correction if exercised in moderation"<sup>4</sup> (Holland's jurisprudence, page 240). The drift and tone of the verses quated above, point to the desirability of exercising the power of correction in three degrees.*

He may begin with a reprimand, if her conduct calls for such. Then, if she still remains rebellious, he may banish her from his bed for a few days. If this also proves unavailing, he may next beat his wife, but not so as to cause her permanent injury, for he is not allowed to use violence, even under extreme provocation.<sup>5</sup> (Abdulkadir :1886).

In the event of failure of all these expedients, divorce need not to follow, but a resort to arbitrators is advised, each party being represented by a member of his or her family. The arbitrators after hearing both parties, shall endeavour by all possible means, to bring about a reconciliation. If their efforts prove unsuccessful, they may grant a repudiation, when empowered by both parties to do so. The holy prophet, who no doubt understand the importance of the Qur'anic verses better than anybody else, is reported on good authority to have said: *"Feed thy wife as thou feedest thyself, cloth her as thou clothest thyself, strike her not on her face, separate not from her, except within the house but if she persists in her refractoriness... begin with admonitions, and awaken in her the fear of God the most high; if she does not submit, banish her from thy bed, and converse not with her for three days, if she still refuses to mend her manners, beat her but not so as to leave any mark on her person, as would be the case if rod were used. For the object is to correct her, and not to destroy her. Should this course fail to mend matters, let the case be referred to two Muslim arbitrators, free and just, are chosen from the families of each of the parties; and they shall see whether in that particular case reconciliation or separation is desirable; and their decision shall be binding upon them both"*. (Gunyat Ch: manners of marriage).

When, however, course of disagreement proceeds from the husband, the wife is certainly not given the power of correction, but, then, she is empowered by the Islamic law to obtain a divorce, if she so desires. Before the advent of Islam, neither the Jews nor the Arabs recognised the right of divorce for women: And it was the Holy Qur'an that, for the first time in the history of Arabia, gave this great privilege to women. And at the same time, it must be remembered, the spirit of the Qur'an is opposed to an indiscriminate exercise of this privilege. The prophet warned, women not to play the hypocrite, and men are advised in the most emphatic term to refrain from seeking a breach, where a little moderation on their part, may perhaps do away with the difference.

From the above discussion, we have seen, then, that divorce is permissible in Islam only in cases of extreme emergency. When all efforts for effecting a reconciliation have failed, the parties may proceed to a dissolution of the marriage by "Talaq" or by "Khola'a" when the proposal of divorce proceeds from the husband, it is called "Talaq", and when it takes effect at the instance of the wife it is called "Khola'a". Under many systems of law, divorce was certainly permitted, but it could not be revoked. But the Islamic legislator, while he permitted divorce, recognised under certain circumstances, the right of return in the husband. This privilege, in the infancy of Islam, was definitely exercised, and often abused to the detriment of women, until the prophet received revelations, setting limits to the act of divorce, and forbidding wanton cruelty to wives, by keeping them in suspense for an indefinite period.<sup>6</sup> (Malik's Muwatta).

*"You may divorce your wives, and then either retain them with humility, or dismiss them with kindness"*<sup>7</sup> (Qur'an, Chapter 2:229). Similarly, a verse as shown below summed up the manner of Islamic divorce with generosity and not unjust intention from the husband. *"When you divorce women, and the time for sending them has come, either retain them with generosity, or put them away with generosity; but retain them not by constraint so as to be unjust towards them. He who does so, indeed injures himself."*<sup>8</sup> (Qur'an, Chapter 2:231).

Above explained verses and traditions of the Holy Prophet (SAW), if observed very carefully and with good and sincere faith, surely, the rampant and frequent divorce in our society could be minimised or wiped out completely. But as divorce could not be avoided in our society, even if resorting to divorce will be the only answer to a marriage, then decency and sincerity, should be the guiding tool to it.

## THE FORM OF SEPARATION - A CHECK ON SEPARATION.

The Holy Prophet imposed certain such conditions on the exercise of the power of divorce that while, on the one hand, they serve as a powerful check on the injudicious and arbitrary use of this power, they afforded on the other hand, many opportunities to the parties for an amicable agreement, if they so desired. Of the several forms of divorce recognised by Islamic law, the one that bears the impress of the Holy Prophet's sanction and approval is the "Ahsan" type of "Talaq". This form of repudiation involves the following conditions, each of which being intended to prevent a permanent breach:

- (a) The husband, in the first place, must pronounce only one repudiation, the object of this limitation being, that he subsequently, when better sense prevail, revoke the repudiation - if he has pronounce it from a caprice or in a moment of excitement - within the period of wife's retirement consequent upon that repudiation and that, he may re-marry her, if the period expires without the right of return having been exercised by the husband.<sup>9</sup> (Fatawi Moughiri).
- (b) The repudiation must be pronounced when the wife is in a state of purity, and there is no bar to sexual intercourse, it being declared unlawful to pronounce when the wife is in menses, or when the wife is pure, but has already been approached<sup>10</sup> (Ihya' u al Ulum: Al - Ghazali).
- (c) The husband must abstain from connubial intercourse with his wife after pronouncing repudiation for the period of three months; these three months constitute the iddat period which is obligatory on such wives with whom the marriage has been consummated. *"The women who are divorce shall wait concerning themselves until they have their courses thrice".*<sup>11</sup> (Qur'an, Chapter 2:228).

There is a tradition of accepted authenticity that throws considerable light on the wisdom underlying the last two restrictions. Abdullahi Ibn Umar divorce his wife while she was in her menses; and the matter was reported to the prophet who, much exasperated at the levity of his conduct, said : *"Let him take her back and retain; till she be pure and again have her courses and again gets pure. Then, if he thinks it prudent, let him divorce her, but he should do so when she is clean and has not been approached; and this is the period of retirement (Iddat) which God has ordered for divorce"*.

Some learned commentators observe in connection with this tradition that the purpose of this condition is, to avoid a rash and hasty procedure on the part of the husband through aversion arising from the wife's impurity, and by fixing a long period of abstinence, to give him opportunities to reconsider his decision about the divorce, so that perchance he may repent, and exercise the right of return before the expiry of the term.

## THE HUSBAND - WIFE RELATIONSHIP: AN ISLAMIC VIEWPOINT.

With piety as the basis of mate selection and with the earnest satisfaction of the conditions of marriage the parties should be well on the way to a happy and fulfilling

married life. However, Islam goes much further than this in setting the course of behaviour for husbands and wives. Many are these statements of the Qur'an and the Sunnah that prescribe kindness and equity, compassion and love, sympathy and consideration, patience and god will. The Prophet goes as far as to declare that the best Muslim is the one who is best to his family, and the greatest, most blessed joy in life is a good, righteous wife.

Similarly, both parties are according to the interpretations of the verses of the Holy Qur'an and the Sunnah of the Holy Prophet (SAW), duty bound to observe every one's right, these rights can be explained in this way:

#### (a) THE WIFE'S RIGHTS

These are husbands obligations; by marriage right, ethical principle allocate to the wife certain rights and corresponding obligations, because, the Qur'an and the Sunnah of the Prophet have commanded kindness to women, it is the husbands duty to consort with his wife in an equitable and kind manner. One specific consequence this divine command is his responsibility for the full maintenance of the wife, a duty which he must discharge cheerfully, without reproach, injury, or condescendance. Maintenance entails the wife's incontestable right to lodging, clothing, nourishing and general care and well-being. The wife's residence must be adequate so as to provide her with a reasonable level of privacy, comfort, and independence. Foremost is the welfare of the wife and the stability of the marriage. What is true of the residence is true of clothing, food and general care. The wife has the right to be fed, clothed and cared for by the husband, in accordance with his means and her style of life. These rights are to be exercised without extravagance or miserliness. In addition a husband is commanded by the law of God to treat his wife with equity, to respect her feelings, and show her kindness and consideration. Infact, she is not to be shown any aversion by the husband or subjected to suspense and uncertainty. A further explanation of this rule is that no man is allowed to keep his wife with the intention of inflicting harm on her, or hindering her freedom. If he has no love or sympathy for her, she has the right to demand freedom from the marital bond, and no one may stand in her way to a new life.

#### (b) THE WIFE'S OBLIGATION :-

These are the husband's rights. The main obligation of the wife as a partner in a marital relationship is to contribute to the success and blissfulness of the marriage as much as possible. She must be attentive to the comfort and well being of her mate. She may neither offend him nor hurt his feelings. Perhaps nothing can illustrate the point better than the Qur'anic statements which describes the righteous people as those who pray: "*Our Lord Grant unto us wives and offspring who will be the joy and comfort of our eyes, and guide us to be models of righteousness*" (Qur'an, 25:74)

This is the basis on which all the wife's obligations rest and from which they follow. Therefore, to fulfil this obligations, the wife must be faithful, trustworthy, and honest. More especially, she must not deceive her mate by deliberately avoiding conception lest it deprive him of legitimate progeny. Nor must she allow any other person to have access to that which is extremely the husband's right. i.e. sexual intercourse/intimacy. A further explanation of this, is that she must not receive or entertain strange males in her home without his knowledge and consent. Nor may she accept their gifts without his approval. This is (probably) meant to avoid jealousy, suspicion, gossip etc., and also to maintain the intergrity of all parties concerned. The

husband's possessions are her trust. If she has access to any portion thereof, or if she is entrusted with any fund, she must discharge her duty wisely and thriftily. She may not lend or dispose off any of his belongings without his permission.

With respect to intimacy, the wife is to make herself desirable; to be attractive, responsive, and co-operative. A wife may not deny herself to her husband, for the Qura'n speaks of them as a comfort to each other. Due consideration is of course given to health and decency. Moreover, the wife is not permitted to do anything that may render her companionship less desirable or less gratifying. If she does any such thing or neglects herself, the husband has the right to interfere with her freedom to rectify the situation. To insure maximum self-fulfilment for both partners, he is not permitted to do anything on his part that may impede her gratification.

### RECOMMENDATIONS

For any marriage to last long, in peace and harmony there must be a true love, affection and trust. However, for the in-coming marriages to be fruitful and of blessings to our society; marriages that will be without rampant and frequent separations and divorces in them, the under mentioned recommendations need to be adhered to.

Abdul Hakim broadly explained in one of his books "Al-lub", that any marriage that will have a lasting effect must have nine attributes. Three on the part of the husband, three on the part of the wife, three common to both of them.

On the part of the husband: he should be superior in education (more educated than she is), older and wealthier.

On the part of the wife: she should be more patient, more beautiful is and more loving than he is.

As for the attributes which should be common to both of them, they are that they should share the same religion, same social status and should speak the same language

### CONCLUSION:

If the above mentioned suggestions are to be observed sincerely and faithfully the rampant and constant cases of divorce in our society would be reduced to a minimum or eradicated completely; but because of the fact that majority of the marriages contracted nowadays are without Islamic or faithful intentions, they easily break and divorce result. And even where the marriage is contracted based on the Sunnah of the Prophet (SAW), when a difficulty or misunderstanding arises the right measures for reconciliation tend to be forgotten. Therefore, the misuse and misapplication result into such cases where there will be no confidence or trust between the couples which ultimately leads to the breakup of the marriage.

### NOTES:

- 1). A. Yusuf Ali, The Glorious Qur'an, text, translation and commentary (1934), chapter 4:129, pg.221
- (2) Ibid pg. 904
- (3) Ibid pg. 190

- 4). Hollands jurisprudence, pg. 240
- 5). Guniyat el-Talibeen, chapter: Manners of marriage, pg. 139
- 6). Malik's Muwatta.
- 7). A. Yusuf Ali: The Glorious Qur'an; Text, Translation and commentary, chapter 2:231. pg. 91-92
- 8). This has been explained in "Fatawi Moughhir". pg. 309
- 9). Ihya' u - al - Ulum of Ahmad al-Gazali, pg. 176
- 10). A. Yusuf Ali. The Glorious Qur'an, Text, translation and commentary, Ch 2:228. pg. 89-90
- 11). "THE MUHAMMAD LAW", stated the lord of the privy council, on a question of what is legal cruelty between man and wife, "would probably not differ materially from our own", Abdul-Qadir, 1886.

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A. Yusuf Ali, The Glorious Qur'an text, translation and commentary, (1937) chapter 4:129, pg. 551

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