

### The injunction relating to fighting in the 'sacred' months:

The second of the three verses under comment here proves that fighting is forbidden in Rajab, Dhul-Qa'dah, Dhul-Hijjah and Muharram, the four 'sacred' months. In the same way, there are several verses of the Holy Qur'ān where fighting has been very clearly forbidden during the sacred months, for instance: 'مِنْهَا أَرْبَعَةٌ حُرْمٌ ذَلِكَ الدِّينُ الْقَيِّمُ': 'Four of them are sacred. That is the right religion' (96:36). Then there is the saying of the Holy Prophet ﷺ in the famous address of the Last Ḥajj: 'منها أربعة حرم ثلاث متواليات ورجب مضر' : 'Four (months) from among them are sacred, out of which three are consecutive and the (fourth) is Rajab of *Mudār*'. These Qur'ānic verses and *ḥadīth* narrations prove that fighting is *ḥaram* in the four months mentioned and this forbiddance is good for ever.

In this connection, 'Atā ibn Abī Rabāḥ, a leading early exponent of Qur'ānic exegesis declared on oath that this injunction is there to stay for ever. Several others among the respected Successors (*Tabi'īn*) regard this injunction as provenly unabrogated, but in accordance with the ruling of the majority of Muslim jurists as stated by al-Jaṣṣāṣ, this injunction is one of the abrogated ones as maintained by a consensus of jurists and fighting is no more forbidden in any month.

Now comes the question as to which verse of the Holy Qur'ān abrogates this injunction. Jurists have taken different positions in this respect. Some say the verse 'فَاتْلُوا الْمُشْرِكِينَ كَافَّةً': 'And fight the disbelievers, all of them' (9:36) abrogates it. Many others regard the verse 'فَاتْلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ': 'Slay the disbelievers wherever you find them' (9:5) as its abrogator. They have taken the word: *حَيْثُ* here in the sense of 'anytime' meaning thereby that the disbelievers should be killed in whatever month or time they are found. Some have said that the abrogator of this injunction is the very conduct of the Holy Prophet ﷺ since he himself besieged the city of Ta'if during the 'sacred months' and it was during the 'sacred months' that he sent the noble Companion 'Amir al-Ash'arī on the military expedition of *Awtās*. On these grounds, Jurists in general, regard this injunction as abrogated, al-Jaṣṣāṣ calls it *وهو قول فقهاء الأمصار* : 'This is what the majority of the jurists says'.

Rūḥ al-Ma'ānī, under comments on this verse, and al-Baydāwī, under the explanation of the first section of Sūrah al-Barā'ah have

reported a consensus of the community on the abrogation of the forbiddance of fighting during the 'sacred months' (Bayān al-Qur'ān). However, al-Tafsīr al-Mazharī answers all these arguments by saying that the sanctity of the 'sacred months' is clearly present in the verse known as *Āyah al-sayf* or the Verse of the Sword, that is :

إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَوَاتِ  
وَالْأَرْضِ مِنْهَا أَرْبَعَةٌ حُرُمٌ

'The number of months, with God, is twelve (mentioned) in the book of Allah, the day that he created the heavens and the earth; four of them are sacred' (9:36).

Of the verse relating to fighting, this verse was the last one to be revealed and the Address of the Last Ḥajj which was delivered only 80 days before the Holy Prophet ﷺ passed away clearly indicates the sanctity of the 'sacred months'. For this reason, the verses quoted cannot be regarded as abrogative of this injunction. Moreover, the siege of Tā'if did not take place in the month of Dhul-Qa'dah. It was in Shawwāl, therefore, this too cannot be regarded as its abrogator. But, it can certainly be conceded that the absolute forbiddance of fighting in the 'sacred months' which seems to reflect from the verse referred to holds an exception whereby it would become permissible for Muslims to defend themselves, or counter attack the aggressor if disbelievers themselves start the fighting during these months. This much, then, can be termed as abrogated, which finds a clarification in the verse الشُّهُورِ الْحُرَامِ : 'The holy month for the holy month' (2:194).

The gist of the discussion is that initiating a fight during these months is forbidden for ever, but in the event that disbelievers mount an attack on Muslims, then, Muslims are permitted to fight back in their defence. Al-Jassās has reported the narration of the blessed Companion Jabīr ibn 'Abdullāh who said that the Holy Prophet ﷺ did not fight in any of the 'sacred months' until such time that the initial fighting was started by the disbelievers.

### The evil consequences of Apostasy

Towards the end of the verse (217), it has been said that the act of turning into an apostate after having become a Muslim shall be dealt with under the injunction حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ : that is, they shall be those whose deeds have gone waste in this world and in the Hereafter.

Here are some injunctions relating to the apostates:

1. Some examples of 'deeds going waste in this world' are that the wife of an apostate goes out of the bond of marriage; if a relative of an apostate dies a Muslim, he gets no share in the inheritance; all obligations such as prayers and fasting fulfilled in one's state of Islam are reduced to nothing; for such a person funeral prayers are not offered and he or she is not buried in the graveyard meant for Muslims.

'Deeds going waste in the Hereafter' means that one gets no reward for acts of worship and enters the Hell to stay there for ever.

2. Should an apostate become a Muslim once again, at least this much is certain that he could hope to salvage himself away from Hell in the Hereafter, while during the remaining tenure of his life in the mortal world, the injunctions of Islam will be operative for him. But, there is a difference of opinion among jurists about what would happen to a person who has already done his Hajj - would it be obligatory on him, given the capability, to do it all over again, or would it not? Similarly, in the Hereafter, would the reward for his previous religious performances, such as prayers and fasting, revert back to him, or would they not? Imām Abū Ḥanīfah says that it is obligatory on him to do his Ḥajj again and he does not subscribe to the opinion that he will be rewarded for his previous prayers and fastings while Imām Shāfi'ī differs on both issues.

3. For one who is basically a disbeliever, the position is that the reward for his good deeds in a state of disbelief is held in abeyance. If there comes the time when he embraces Islam, he gets a matching reward for all such deeds, but in the event that he dies an infidel, everything goes waste. The *Ḥadīth* statement: 'أسلمت على ما أسلفت من خير' : 'You have embraced Islam with all the good deeds which you have performed earlier' means just this.

4. In short, the fate of an apostate is worse than that of an original disbeliever. This is why *Jizyah* can be accepted from an original disbeliever while a male apostate who does not return to Islam is killed. If the apostate is a woman, she is imprisoned for life. The reason is that their conduct insults Islam and the insult of such a binding authority deserves no less a punishment.

## Verse 219

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعَةٌ  
لِّلنَّاسِ زَوَائِدُهُمَا أَكْبَرُ مِنْ نَّفْعِهِمَا

**They ask you about wine and gambling. Say, "In both there is great sin, and some benefits for people. And their sin is greater than their benefit. (Verse 219)**

**Commentary:**

This verse forms part of the series of questions asked by the noble Companions. These are as they appear in this Surah along with the answers given. Here, the question is about wine and gambling which has been answered by Allah Almighty by pointing out that the use and practice of these two things breeds major sins while people may also get some benefits from them, but the sin they release is far too grave than the benefit they give, implying that both these are worth abandoning.

Since these two issues are very serious, they need a somewhat detailed inquiry into their nature and the injunctions relating to them.

**The prohibition of wine, and related injunctions:**

When Islam came, drinking was common practice as part of the general state of *Jāhili* customs. When the Holy Prophet ﷺ emigrated to Madīnah, people of that city were also accustomed to wine and gambling. Common people were infatuated with these in view of their obvious benefits. They had no idea of the evils inherent in these practices. However, it is the usual practice of Allah that there are, in every nation and in every country, sensible people who use reason to control their temperaments. They would not go near an emotional urge if it goes against the dictates of reason. In this regard, the station of the noble Prophet ﷺ was way high, for he had a built-in distaste for things which were going to be declared *ḥaram* later on. Even among the blessed Companions there were some who had not touched wine during the days it was an open practice. It was after reaching Madīnah al-Tayyibah that some Companions became deeply concerned about the evil effects of these two involvements. It was due to this concern that Sayyidnā ‘Umar al-Fārūq and Mu‘ādh ibn Jabal along with some Anṣārī Companions presented themselves before the Holy

Prophet ﷺ and told him how wine and gambling not only spoil man's reason but also cause financial loss and sought his advice in this connection. It was in answer to their question that the present verse was revealed. This is the first verse in which the elementary step to stop Muslim from wine and gambling was taken.

What the verse says is clear from its translation, and its explanation which follows immediately. It may be added here that the word, 'Ithm' or sin includes everything that may become a preliminary to sin. For instance, wine dulls senses and weakens the power of reason, something basic to human excellence. Human reason acts as a brake against human indulgence in evil deeds. Once reason is blocked out, the door is opened for all sorts of evil deeds.

It will be noted that drinking has not been clearly identified as something unlawful in this verse, but its evils has certainly been pointed out, which may lead man into many sinful activities. In a way, this takes the form of a good counsel urging man to abandon it. That is why, soon after the revelation of this verse, some noble Companions took this good counsel of the Holy Qur'ān so seriously that they stopped drinking then and there. There were some others among them who thought that the verse, in fact, has not declared wine as *ḥaram*; it has, instead, identified it as a cause of sin in as much as it does lead to evils religiously undesirable, so, if they can manage to keep themselves immune from such evils, what harm could there be if they continued drinking? Consequently, so they did, until came a day when the blessed Companion, 'Abd al-Raḥmān ibn 'Awf رضى الله عنه invited some of his friends from among the noble Companions at his home. When dinner was over, everybody started drinking wine as usual. In the meantime, came the time for *Maghrib ṣalāh*. Everybody stood up for *salah* and selected one of them to lead the prayers. The Imam began his recitation from the Holy Qur'ān, but drunk as he was, he recited the Sūrah al-Kāfirūn all wrong. Thereupon, the second step against drinking was taken and the following verse was revealed:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرُبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَىٰ

O those who believe, do not go near *Ṣalāh* when you are intoxicated. (4:43)

Here, drinking was declared to be absolutely unlawful at the time

of the *Ṣalāh*. Other times remained open. Some of the noble Companions had totally stopped drinking following the revelation of the first verse deducing from it that something which stops one from *Ṣalāh* cannot hold any good at all. And now that *Ṣalāh* has been prohibited in a state of intoxication, one should keep his distance from that which deprives one from *Ṣalāh*. However, since wine was not forbidden clearly and explicitly during hours other than those of *Ṣalāh*, there were some who continued drinking during other hours until when there occurred yet another incident. This time it was the blessed Companion, 'Itbān ibn Mālīk who invited some Companions, Sa'd ibn Abī Waqqāṣ being one of them. Once the dinner was over, wine was served in accordance with the custom. Then, turning to another customary Arab practice at that time, the intoxicated party started talking poetry and began reciting their respective accomplishments and excellences. The Companion Sa'd ibn Abī Waqqāṣ recited a *Qasīdah*<sup>49</sup> poem in which he satirized the Ansār (helpers) of Madīnah and eulogized his own tribal affinities. This made an Ansāri youngman angry and he hit Sa'd with a jaw-bone from a camel causing severe injury on his head. Sayyidnā Sa'd came to the Holy Prophet ﷺ and complained against that Ansāri youngman. At that time, the Holy Prophet ﷺ raised his hands in prayer and said: اللهم بين لنا: في الخمر بيانا شافيا , that is, 'O Allah, give us a clear and conclusive guidance in the matter of wine'. Thereupon, the third verse regarding wine, that of Sūrah al-Mā'idah, was revealed with details declaring wine to be absolutely unlawful. The verse is as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ  
الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ۝

O you who believe! wine and gambling and stone altars and drawing of lots with arrows are only an abomination, a work of Satan; so shun it, that haply you may prosper. (5:90)

### The gradual forbiddance of wine

Being supreme in His authority, Allah alone knows the real wisdom behind all divine imperatives, but a close look into the Islamic legal code reveals that the Shari'ah of Islam has left ample room for

49. An Arab poetical form introduced by the modern poet, Garcia Lorca in the West.

human emotions when following its dictates. This is to give man the least possible inconvenience. The Holy Qur'ān has itself said: لَا يُكَلِّفُ اللَّهُ لَبِئْسًا إِنَّهَا: 'Allah does not obligate anyone beyond his or her capacity' (2:286). It was the demand of this mercy and wisdom that made Islam go slow on forbidding wine.

The gist of the Qur'ānic history of forbidding wine through a gradual process is that it has revealed four verses on the subject. As said earlier, one of these verses belongs to Sūrah al-Baqarah, the explanation of which you are reading through now. Here, wine has been identified as sin-prone, a corrupting agent. The mention of wine has been left at that point. It has not been 'forbidden'. This, in a way, is a manner of saying that the habit of drinking is worth leaving, but the direct command to quit drinking was not given.

The second verse لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَى: 'do not go near *ṣalāh* when you are intoxicated' (4:43) appears in Sūrah al-Nisā'. Here, wine was declared to be unlawful during *ṣalāh* hours. At other times, the choice remained open.

The third and the fourth verses belong to Sūrah al-Mā'idah. In these two, as mentioned earlier, wine was declared to be unlawful clearly and absolutely.

The Shari'ah of Islam used the method of gradual prohibition of wine for the simple reason that it would have been much too hard on human temperament to cut away from the habit of a life-time, specially so the habit of addiction to intoxicants. Scholars have said: نظام العادة أشد من نظام الرضاعة: that is, it is harder to change an ongoing habit for man than it is for a child used to suckling at his mother's breast. So, moving wisely, Islam first stressed on its evil, then prohibited it only at the time of *ṣalāh* and finally after the passage of a certain time, it was absolutely forbidden.

However, the wisdom that required a gradual process before the prohibition had equally required that once the prohibition is promulgated, it should be implemented with its full force. That is why the Holy Prophet ﷺ, in the early stages, warned people against the use of wine and told them how it invited divine punishment. He said that wine was the source of evils and indecencies and one who indulges in it can go on to commit even the worst possible sins.

In a *ḥadīth*, he said 'Wine and Faith cannot be combined.' These narrations appear in al-Nasā'ī. In the *Jāmi'* of al-Tirmidhī, there is a narration from the blessed Companion Anas which reports that the Holy Prophet ﷺ has cursed ten people in relation to wine, being the crusher or presser or squeezer, the distiller, the user, the server, the carrier, the receiver (the one for whom it is carried), the seller, the buyer, the giver (as gift), and the one who uses the income arising from it. This verbal teaching and persuasion was not all that he stopped at, he took practical steps and made a legally binding proclamation that whosoever has any wine in possession should deposit it at an appointed place.

### **The matchless obedience of the blessed Companions**

As soon as the first order came to them, the noble Companions, obedient and responsive as they were, lost no time and took out all wine stored in their homes for personal use and poured it out on the streets then and there. Sayyidnā 'Abdullāh ibn 'Umar, رضى الله عنه has reported that at the time when the proclaimer appointed by the Holy Prophet ﷺ went around the streets of Madīnah announcing that wine was forbidden, whoever had a vessel of wine in his hands, threw it away right where he was and whoever had cups or goblets or flasks of wine in the house, brought these out and smashed them off. Sayyidna Anas was happily busy serving wine to a gathering of friends at that time. Present there were great Companions like Abū Ṭalḥa, Abū 'Ubaydah ibn Jarrāh, Ubaiyy ibn Ka'b and Suhayl رضى الله تعالى عنهم اجمعين. When the voice of the proclaimer struck their ears, everybody present said, 'Now, pour all this wine down on the ground and break all cups and goblets and ewers and pitchers.' In some narrations it is said that it was immediately with the announcement that wine had become unlawful that everyone who had a cup of wine reaching close to his lips was electrified and threw it away right there. That day, wine was flowing down the streets of Madīnah like a stream of rainwater, and as a result of that, it remained usual in the streets of Madīnah for a long time that rains would reactivate the smell of wine soaked in the ground, as well as its colour, which would show up on the surface.

When people were ordered to deposit whatever wine they had at a given place, not much was left there to deposit except the limited stock

of wine casks and bags, available in the market for commercial sales. So obedient were the noble Companions that they deposited those too at the designated place without the least hesitation. The Holy Prophet ﷺ went there personally and slit many leather wine-bags with his own blessed hands and let the rest be slit apart by other Companions.

Another Companion, a businessman who imported wine from Syria happened to be on a business trip in Syria. He had taken his entire capital with him against which he bought a stock of wine for commercial sales. When he returned with his cargo, he came to know that wine had been declared *haram* before he could enter the city limits of Madinah. Having heard about the ban on wine, the Companion who was a model of devotion and sacrifice, and who was also returning home after investing all his capital and labour hoping to make a big profit out of it, quietly stacked it on a wayside hillock, came down to see the Holy Prophet ﷺ asking him about this stock of his: 'What should I do?' The Holy Prophet ﷺ ordered him, in accordance with the Divine command, that he should tear out all those leather bags and pour the wine in them down on the ground. This wonderful lover of Allah and His Messenger did not hesitate for a moment. Using his own hands, he poured forth all his invested capital on the sands of that hill-slope. This too is a great miracle of Islam, and a demonstration of mind-boggling and virtually unrivalled obedience that came about during this episode. Imagine how difficult it is to shake off the habit of being used to something while these people were chronically habituated to consuming wine and could not stay away from it even for a little while. For them, it was just that command from their Lord proclaimed by His prophet which brought about such an instant change in their habits that they started hating the same wine and gambling they were so addicted to.

### **Islamic strategy for a social change**

The verses above and the events connected with them present before us a model of active Muslim response to the law making wine unlawful. One may call it a miracle of Islam or a unique outcome of prophetic teaching and training or the inevitable end-product of Islamic methodology of social change, the fact is that its effectiveness was phenomenal. Compared to this was the attempt at prohibition made in the United States with the support of experts, lobbies, law,

media and constitutional amendment which failed in the face of much increased use of liquor making the authorities cancel their plans. What is the secret behind this enormous difference?

The secret is that Islam has never depended on law alone as the tool of social reform. Law not being sufficient, it has first prepared and fine-tuned the minds of its people tempering their attitudes with the golden prescription of a deep devotion to and worship of their Creator, moderation in worldly living and a genuine concern for the life to come. The great revolution brought in this manner produced matchless men who would eagerly come forward to sacrifice their life, property, honour, anything and everything at one call from their prophet. This task of preparing men who would match the mission continued throughout the Makkan period by means of rigorous spiritual training. Once such a devoted group of people was ready, then came the law. No doubt, the Americans too did their best utilizing the vast powers of the media, but they had everything with them except the concern for the life to come while the concern for the Hereafter was the very life-blood of Muslims.

The golden prescription is still there, very much valid, waiting for peaceless people round the world to use it. Let the wise think.

### **The good and evil of wine**

The 'good' in wine is popularly known as a certain taste and a feeling of well-being, professed increase of temporary energy, and a given glow on the face. Being transient, these benefits hardly stand against the array of evils it breeds. Take the human body first. Drinking causes mal-function of the stomach, reduces desire to eat, affects facial contours, inflates the waistline, hurts the liver and the kidneys and becomes a contributor to all sorts of diseases. Reason does not work under the influence of hard drinks which goes beyond the time one claims to have become sober. The hangover turns out to be as bad. Wine, a tempting stimulant and a much romanticized poison works slowly, in spite of the spirited defence put up by its users. The fact is that drinking not only harms them but affects their children as well.

Socially, drinking may become the cause of mutual malice and enmity which is a great evil in the sight of Islamic law. It is for this reason that the Holy Qur'an particularly mentions this evil in Sūrah al-Mā'idah:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ

The Satan only wants that hostility and hatred come to stay between you through wine and gambling. (5:91)

One of the most harmful drawbacks of drinking shows up when a person under its influence lets out his guarded secrets. It becomes much more disastrous if the culprit happens to be a state functionary in possession of vital government secrets. Passing these out to an enemy agent can cause great damage to the state through a coup, a political loss or a challenge to national defence. Clever spies are always on the look out for such opportunities.

So, the habit of drinking is not only an evil in itself but a mother of other evils as well making men ready to commit the worst possible crimes against their fellow-beings.

The physical evils of drinking are too well-known to recount here while its spiritual evils are equally obvious. Wine is harmful because the Holy Qur'an says: *وَصَدِّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ* : 'It prevents you from remembering Allah and from the *Ṣalāh*'. Then, the question asked by the Holy Qur'an is: 'Would you then desist?'

### The forbiddance of wine: A complete view

Upto this point, we have discussed four verses of the Holy Qur'an which deal with the unlawfulness of wine, and its forbiddance. It seems appropriate that yet another mention of intoxicants made by the Holy Qur'an in *Sūrah Al-Nāhl* in a different context should be brought into focus here so that we have all Qur'anic statements concerning wine and intoxicants in one complete frame of reference. The said verse is as follows:

وَمِنْ ثَمَرَاتِ النَّخِيلِ وَ الْأَعْنَابِ تَتَّخِذُونَ مِنْهُ سَكَرًا وَرِزْقًا حَسَنًا إِنَّ فِي ذَلِكَ لَآيَةً لِّقَوْمٍ يَعْقِلُونَ ۝

And of the fruits of the palms and the vines, you take therefrom an intoxicant and a good provision. Surely, in that there is a sign for a people who understand. (16:67)

In verses preceding the one above, mention was made of Allah's blessings which cause production of human food through unique mechanisms. It was said:

وَإِنَّ لَكُمْ فِي الْأَنْعَامِ لَعِبْرَةً نُّسْقِيكُم مِّمَّا فِي بُطُونِهِ مِنْ بَيْنِ فَرْثٍ وَدَمٍ لَبَنًا  
حَالِصًا سَائِغًا لِلشَّارِبِينَ ۝

And surely in the cattle there is a lesson for you; We give you to drink of what is in their bellies, between filth and blood, pure milk, sweet to drinkers. (16:66)

The text uses the word, '*nusqikum*' which means 'We gave you milk to drink' implying that it needs no further human processing. Following this, it was said that man procures things to eat, as well as, makes things which benefit him. Here, the hint is that human processing plays some part in procuring what he eats and in making what he uses to his advantage. And it is as a result of the entry of the human factor that two types of things were produced. One of these is an intoxicant known as wine while the other is 'a good provision', such as the dates and the grapes which can be used fresh off the palms and vines or can be dried and stored for later use. In short, Allah Almighty, in His perfect creativity, gave man fruits such as dates and grapes and gave him the added right to use them as food. Now what he makes out of them is his choice, either make intoxicants out of them and thereby spoil his reason, or use them for food and energy. According to this explanation, this verse cannot be used to argue in support of the lawfulness of intoxicating wine. The reason is simple. Here, the purpose is to describe the gifts of nature and to point out to the different forms in which they could be used which is all part of the same Divine blessing. For instance, consider all that man eats and things man uses to his advantage. There are many who use these in ways that are impermissible but, the incidence of someone using things wrongfully does not preclude a blessing from remaining a blessing. So, the context of the statement needs no details as to which use is permissible or impermissible, however, there is a subtle indication embedded here too. If we look at how '*sakar*: intoxicant' has been counter-poised by '*rizqan ḥasana*': 'a good provision', we would realize that an intoxicant is not a good provision. The majority of commentators take *sakar* to mean something that intoxicates. (Rūḥ al-Ma'ānī, Qurtubī and Jaṣṣāṣ)

There is a consensus of the *Ummah* that these verses are Makkan while the unlawfulness of wine was revealed later on in Madīnah

al-Tayyibah. Even though wine was lawful at the time these verses were revealed and Muslims used to indulge in wine generally yet, even at that stage, a hint was made in the verse that indulging in wine is not good. Later on, came the Qur'ānic command which clearly and forcefully made wine unlawful.

### The prohibition of Gambling

The word, *maisir* is an infinitive and lexically means 'to distribute'. One who distributes is called *yāsir*. During the days of *Jāhiliyyah*, several types of games of chance were common in Arabia. In one of such games, they used to slaughter a camel following which they would gamble while distributing shares from the meat. Some used to get more than one share while others remained deprived of even one. The one who thus remained deprived had to pay for the whole camel. The meat was, of course, distributed among the poor; the gamblers did not use it themselves.

The catch in this particular game of chance was that it benefited the poor while, at the same time, it demonstrated the philanthropy of the gamblers. That is why this game was considered a matter of pride by them. Anyone who would not participate in it was chided as miserly and wretched.

It is because of the relevance of distribution that *Qimar* is given the name of *Maisir*. All Companions, and Successors to them, hold the unanimous view that the word, *Maisir* includes all forms of *Qimār* or gambling and that all of them are *ḥaram* or unlawful. Ibn Kathīr in his Tafsir and al-Jassās in *Aḥkam al-Qur'ān* report that the blessed Companions 'Abdullāh ibn 'Abbās, Ibn 'Umar, Qatadah, Mu'awiyah ibn Ṣāliḥ, 'Atā and Tā'wūs said: *أليس القمار حتى لعب الصبيان بالكعب والجوز* that is, *Qimār* (of all kinds) is *Maisir* - even the games of children with dices and walnuts.

Sayyidnā Ibn 'Abbās said: *المخاطرة من القمار* that is, *Mukhāṭarah* (to put something on stake) falls under *Qimār* (*Jassās*). Ibn Sirīn said: 'That which involves stakes is included in *Maisir*' (*Rūḥ al-Bayān*).

*Mukhāṭarah* or 'stake' is a deal which revolves between profit and loss, that is, there may be a chance that one gets a lot, and also, that one gets nothing. This is very much like what we find in all sorts of modern lotteries. All these types are included under *Qimār* and *Maisir*

or gambling, and are *ḥaram*. Therefore, *Maisir* or *Qimār* or gambling has been defined as a deal in which the act of making a person the owner of something of value depends on a contingency the two sides of which are equal, and consequently, there are two equal possibilities of taking total profit or absorbing total loss (Shāmi, *Kitab al-Khatar wa l'ibahah*, volume 5, page 355). For instance, it is quite possible that the penalty falls on A, and it is also possible that it falls on B.

To sum up, the rule is that all kinds and forms in vogue - in the past or current today or likely to emerge in the future - shall all be called *Maisir* and *Qimār* and gambling. Prize-awarding cross-word puzzles (in which the participants are charged a fee) and commercial lotteries, the generally known among whatever other forms they may have, are all included under gambling. However, should there be a prize offered by one side only, stipulating that it will be given to one who performs a certain feat, that would not matter subject to the condition that no fee is taken from that person. The reason is that, in this case, the deal does not hang between benefit and harm, but hangs between benefit and no-benefit.

Therefore, in authentic *ahādīth*, chess and backgammon and their likes have been declared unlawful where money or property is staked in a win or lose situation. Should there be money staked in playing cards, that too will be included under *Maisir*.

In Ṣāḥīḥ Muslim, there is a report from the blessed Companion Buraydah رضى الله عنه which states that the Holy Prophet ﷺ said that one who plays backgammon is like one who dyes his hands in the flesh and blood of pork. Sayyidnā 'Alī كرم الله وجهه said that chess is included in *Maisir*, that is, gambling. Sayyidna 'Abdullah ibn 'Umar said that chess is much worse than backgammon. (*Tafsīr Ibn Kathīr*)

During the early days of Islam, gambling was permissible like drinking. When the verses beginning "عَلَيْتِ الرُّومُ" in Sūrah al-Rūm were revealed where the Holy Qur'an foretold that the Byzantines have no doubt lost to their rivals - the Persians, but, after a few years, the Byzantines will prevail once again. When the disbelievers of Makkah denied the prophecy, Sayyidnā Abū Bakr al-Siddīq رضى الله عنه challenged them with a bet, something like *Qimār*, proposing that should the Byzantines prevail in so many years the disbelievers will have to pay a

certain amount. The bet was approved. When this prophecy of the Qur'an actually came to pass, Sayyidnā Abū Bakr made sure that he got the waged amount from the disbelievers and brought it to the Holy Prophet ﷺ who expressed his pleasure with what had happened but asked him to give away the bet-money in charity. This is significant because Allah had kept His Messenger ﷺ protected from something that was permissible at that time but was going to be made impermissible later on. This is why he always kept aloof from wine and gambling, and there were particular ones among the noble Companions who also remained protected against these. It appears in a narration that the angel Jibra'il told the Holy Prophet ﷺ that Allah Almighty likes four character-traits in Ja'far al-Tayyar. He asked Sayyidnā Ja'far al-Ṭayyār as to what these four traits were. He said, 'Till now, I have never talked about these before anyone. Now that Allah Almighty has told you about them, I submit and relate these four to you. I saw that wine ruins reason, so I never went near it. I saw that idols cause no benefit or harm to anyone, so I never indulged in idol-worship even during the days of *Jāhiliyyah*. Since I have an acute sense of honour concerning my wife and daughters, so I never committed adultery. Then, I realized that lying is unbridled meanness, and a terrible disgrace, so I never told a lie even in *Jāhiliyyah*'. (Rūḥ al-Bayān)

### **Social ill-effects of gambling**

The Holy Qur'an has said the same thing about *Qimār* or gambling as it has said about wine, that is, in it, there are some benefits as well, but the harm it brings is greater than its benefits. Everyone knows this sort of benefit can make a pauper an overnight millionaire, but there are very few people who know how evil the practice is economically, socially and spiritually.

In gambling, speaking briefly, the gain of one person is dependent upon the loss of the other. The total gain of the winner is an outcome of the total loss of the loser because this transaction does not increase the (national) wealth or production. The amount of wealth remains as it was. What happens through this game of chance is that one is sucked dry of his wealth which then reaches the other, therefore, *Qimār* is a blanket undoing of a people, and the death of human morality. Isn't it that man, who should be an agent of public good, a

model of sympathy and sacrifice, stoops to the level of a beast while gambling, and starts seeing his life in the death of his brother, and finding delight in his distress, and searching for gain in his loss, and goes about harnessing all his abilities to promote his selfishness? Contrary to this are the permissible forms of transactions in trade where parties buy and sell releasing profits for both. Then, wealth circulates and increases through exchange of commercial commodities and the buyer and seller both find it beneficial.

To begin with, gambling is harmful because the addicted gambler comes to be deprived of the very habit of earning his livelihood, because he always keeps dreaming that he will simply sit and grab what belongs to the other person in no time through a bet, specially so as it involves no hard work. Some scholars have said that gambling has been called *Maisir* (as derived from the word 'yusr' meaning 'easiness') because one can easily take possession of what belongs to the other through it. Even if gambling deals revolve around a small number of people such as two or four, their harmful effects mentioned above show up very clearly. But, here we are in this modern age, called 'the age of progress' by those handicapped by superficial vision and lack of insight into its aftermath, where we see wine of all sorts given new names and labels, where ever-new kinds of interest and ever-innovative corporate methods to promote it have been invented, commandeered and given the safe name of 'banking'; so it is with gambling where thousands of dubious forms have found currency. Some of these are so highly collective that the amount of contribution from a whole nation keeps adding up bit by bit, and in case there is a loss, that gets spread out over everybody and thus does not become conspicuous. When an amount from this total 'take' reaches the hands of one person, his gain appears to be prominent, therefore, people tend to look at his personal gain but pay no heed to the collective loss of their nation or country. Consequently, they are trapped into believing that these new kinds may as well be valid, although present here are all those harmful effects which are found in gambling confined to a small group of two or four people. Looked at from another angle, the harm brought by this large-scale gambling is much worse than that released by the older form of gambling, for its evil effects are far-reaching and spell out the ruin of a whole nation. As evident, the natural result of this practice will be that wealth belonging to the common people of the community will go on decreasing while the

capital of some capitalists will go on increasing further. Inevitably then, the entire wealth of the nation will shrink and come to be concentrated into the hands of a limited number of individuals and a limited number of families. This can be witnessed everyday in stock markets and in other forms of *Qimār*. Now, Islamic economic strategy has an important principle of its own. It declares that every deal which siphons the wealth of a whole community out into the coffers of a few capitalists is *ḥaram*, unlawful and forbidden. The Holy Qur'an itself, while stating the principle of the distribution of wealth, has proclaimed: كَيْلًا يَكُونُ ذُكُورًا لِلأَغْيَابِ مِنْكُمْ . It means that the principle of distributing spoils of war among different segments of the society given by the Holy Qur'an aims to make sure that wealth does not shrink and concentrate in the hands of a few capitalists.

Gambling, like wine, becomes the cause of mutual disputes reaching the limits of hatred and animosity, so fatal in a civilized society. To quote once again, the Holy Qur'an mentions the evil of gambling in the following words:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخُمْرِ وَالْمَيْسِرِ  
وَيَصَدَّكُمْ عَنِ الذِّكْرِ اللّٰهِ وَعَنِ الصَّلٰوةِ

The Satan only wants hostility and hatred to come to stay between you through wine and gambling, and to prevent you from remembering Allah and from the *Ṣalāh*. (5:91)

The effect of gambling, like that of wine, is that one gets recklessly involved in it, becoming unable to attend to the remembrance of Allah, and the prayer. Perhaps, this is why the Holy Qur'an has elected to mention wine and gambling side by side in an identical manner since *Qimār* or gambling has an intoxicating pull of its own which makes one ignore the concern of what is good or bad for him.

As partly mentioned earlier, the basic evil in gambling is that one can falsely devour what belongs to others through this method without any reasonable compensation or brotherly consideration. This is what the Holy Qur'an prohibits in the following words: لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ : (And do not eat up each other's property by false means) (2:188).

The destroyer of many a home, the ill effects of gambling do not remain restricted to the gambler alone. They affect his whole family and become contagious to a much larger social circle because people may have entered into transactions, contracts and loan deals with him which will hurt all concerned in the event of his becoming insolvent.

Finally, in the background of rising social addiction to various *Qimār* forms, it is useful to keep in view that this evil distorts one's natural attitude to work and rivets it on imagined gains. Rather than concentrate on his physical or mental skills to increase his earnings steadily, one starts getting fixed on finding ways and means to usurp the earnings of others.

That is why the Holy Qur'an has said: *وَإِنَّهُمْ لَأَكْبَرُونَ مِنْ نَفْعِهَا* that is, the evils of wine and gambling are greater than their benefits.

### **Some juristic rules and related notes:**

In this verse, the acknowledgement of some benefits of wine and gambling has been combined with the instruction to desist from them which helps us deduce the rule that the presence of material benefits in some thing or act is not contrary to its being declared *haram* under the Islamic law. We know that a certain medicine or food item is called harmful if its harmful effects are far stronger than its benefits. If this was not so, nothing in this world, not even the worst, would turn out to be totally devoid of any benefit. A deadly poison, the snake and the scorpion and the wild beasts, they all have their benefits but, speaking generally, they are called harmful and people are told to watch out against them. Similarly, keeping in view the essential sense, things the evils of which are greater than their benefits are declared *haram* or unlawful under the Shari'ah. None of the crimes such as theft, robbery, adultery, kidnapping and fraud are devoid of some benefit, for had they been totally benefitless no sane person would ever go near them, even though the most perfect people in all such crimes are those known for their tact and intelligence. This tells us that some or the other benefit does show up in all crimes but, since their harmfulness is greater than their benefit, no sane person stands up to declare them as useful and permissible. It is under this principle that the Shari'ah of Islam has made wine and gambling unlawful.

2. This verse also provides the rule that the elimination of evil takes precedence over the acquisition of benefit, that is, should something give a certain benefit along with causing some harm, it becomes necessary to abandon the benefit in order to stay safe against the harm. In other words, a benefit which comes with harmfulness attached to it is ignored.

## Verses 219 - 221

وَيَسْأَلُونَكَ مَاذَا يُنفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ  
 الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ۝ فِي الدُّنْيَا وَالْآخِرَةِ وَيَسْأَلُونَكَ عَنِ  
 الْيَتَامَىٰ قُلِ إِصْلَاحٌ لَهُمْ خَيْرٌ وَإِنْ تُخَالِطُوهُمْ فَارْحَمَانِكُمْ  
 وَاللَّهُ يَعْلَمُ الْمُفْسِدَ مِنَ الْمَصْلِحِ ۖ وَلَوْ شَاءَ اللَّهُ لَأَعْتَبْتُمْ ۖ إِنَّ  
 اللَّهَ عَزِيزٌ حَكِيمٌ ۝ وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُوْمِنَ ۖ  
 وَلَا مَهْهُ مُؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعَجَبْتَكُمْ ۖ وَلَا تَنْكِحُوا  
 الْمُشْرِكِينَ حَتَّىٰ يُوْمِنُوا ۖ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ  
 وَلَوْ أَعَجَبْتَكُمْ ۖ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۖ وَاللَّهُ يَدْعُوا إِلَى الْجَنَّةِ  
 وَالْمَغْفِرَةِ بِإِذْنِهِ ۖ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ۝

And they ask you as to what they should spend. Say, "The surplus". This is how Allah makes His verses clear to you, so that you may ponder on this world and the Hereafter. And they ask you about the orphans. Say, "To work for their good is good. And if you live with them jointly, they are, after all, your brethren. And Allah knows the one who makes mischief distinct from the one who promotes good. And if Allah had wished He would have put you in trouble. Surely, Allah is Mighty, Wise.

And do not marry the 'Mushrik' women unless they come to believe; and a Muslim slave-girl is better than a 'Mushrik' woman, even though she may attract you; and do not give ( your women) in marriage to 'Mushrik' men unless they come to believe; and a Muslim slave is better than a 'Mushrik' even though he may attract you. They invite to the Fire when Allah invites, by His will, to the Paradise and to forgiveness, and makes His verses clear to the people, so that they may observe the advice. (Verses 219 - 221)

The first part of verse 219 related to the question asked about wine and gambling, a detailed explanation of which appears in previous pages.

The second part of the verse appearing here relates to another question -- about how much should be spent in charity. The answer given is '*al-'afw*' which has been translated here as 'the surplus'. It means that one should not, by such spending, get into personal trouble in the material life of this world, or by wasting away somebody's due right, get into the pain of answerability in the life to come.

Verse 220 features yet another question in a series of several posed by the noble Companions. This question relates to the combining of the cost of maintenance of orphans. Since there was general lack of carefulness about the rights of orphans in pagan Arabia, as elsewhere, warning was given that consuming what belongs to the orphans is like filling bellies with embers of Hell. Consequently, the recipients of this warning were so scared that they, out of preventive measure, started preparing and storing meals given to orphans separately. In case the child ate less, food was left over and, naturally so, got decomposed. The reason: It was not permissible for them to use food which belonged to the orphans, nor did they have the right to give what belonged to the orphans in charity. This was a matter of sheer discomfort and a source of loss to the orphans as well. Therefore, the situation was brought to the notice of the Holy Prophet ﷺ following which came the guidance given in this verse.

It is being said here that the purpose is not to compromise the welfare of the orphaned children. Since their welfare is served better through a joint expense system, there is nothing to worry about, for they are brothers-in-faith and brothers do share.

The above permission has been hemmed by a warning that Allah watches over the performance of guardians in this matter. He could have, by setting up a harder code of conduct, put them in trouble because He is All-Powerful. But, He has provided an easier code of conduct because He is All-Wise and does not obligate people with what they cannot do.

Verse 221 carries an injunction relating to marriage with *Mushrikin* (those who associate partners with Allah). The commentary which follows explains the injunction in some detail.

### **Inter-Marriage between Muslims and *Kāfir*s is Prohibited**

In the verses under discussion an important ruling has been given. It states that the marriage of Muslim males with *Kāfir* (disbelieving in

Islam) females and the marriage of *Kāfir* females with Muslim males is not permissible. The reason is: *Kāfir* males and females become the cause that leads man into the Hell. Marital relations demand mutual love and harmony and without these the real purpose behind such relationship remains unrealized. If such close relations of love and affection are established with *Mushrikīn* or disbelievers, the inevitable effect will be that Muslims may emotionally tilt towards *Kufr* and *Shirk* or, in a lesser degree, the very abhorrence of *Kufr* and *Shirk* may just not remain there in their hearts. Consequently, they too, may get involved with *Kufr* and *Shirk* and thereby end up in Hell. Therefore, it was said that these people call everyone to come to Hell while Allah Almighty calls man to Paradise and to His forgiveness and, for this purpose, states His injunctions openly and clearly so that people follow the wise counsel. Let us consider a few points at this stage:

1. If the word, *Mushrik* in this verse is taken to mean non-Muslims as a whole it would be necessary to exempt non-Muslim women of the *Ahl al-Kitab* (the people of the Book) from the purview of this injunction, because it is expressly stated in another verse that:

وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ

And good women from among those given the Book before you  
(marriage with whom is lawful for you). (5:5)

But if the word *Mushrik* is taken to mean specially those non-Muslims who are not from amongst the *Ahl al-Kitāb* (People of the Book i.e. the Jews and the Christians), this verse needs no exception, because it covers only those non-Muslims who do not believe in any prophet and scripture.

2. Let us take the second important point. The Qur'ān forbids marital relations between Muslims and disbelievers for the reason that such close relations could become the source of involvement in *Kufr* and *Shirk*. Now this is apparently true of all non-Muslim groups. Why then, the women from amongst the *Ahl al-Kitāb* (the Jews and the Christians) have been excluded?

The answer is obvious. The difference the people of the Book have with Islam is relatively lesser and lighter as compared with other non-Muslims. Islamic belief is tri-polar, that is, *Tauhid* (Oneness of

God), *Ākhirah* (Hereafter) and *Risālah* (Prophethood). Out of these, if we consider the belief in *Ākhirah*, even the Jews and Christians from amongst the people of the Book agree with Muslims in accordance with their original faith, wherein, very similarly, it is *kufr* (infidelity) even in their original faith to attribute partners with God. That the Christians, in their love for Sayyidnā ʿĪsā عليه السلام, and in their over-enthusiasm towards respecting him, entered the borders of *Shirk*, is a different matter.

Now the basic difference that remains is that they do not believe in Muḥammad as His Messenger ﷺ. In Islam, this belief is cardinal. Without it, no one can become a true Muslim. However, the fact remains that the difference the people of the Book have is lesser and lighter as compared with other non-Muslim groups. Therefore, the danger of corruptibility is not that great here.

3. A question may be raised here that the difference between the people of the Book having been declared lighter, it was made permissible for Muslim men to marry their women. So the converse of this proposition, that is, the marriage of Muslim women with non-Muslim people of the Book, should also be permissible. But a little reflection will be sufficient to establish the basic difference between the two situations. Women are somewhat weaker by nature. Then the husband has been given a controlling and care-taking role. So the likelihood of a woman being impressed by his beliefs and views is not that remote. Therefore, should a Muslim woman stay in a marriage relationship with a non-Muslim *Kitābī*, (Christian or Jew) the chances of her belief being spoiled are strong.

Contrary to this, should a non-Muslim *Kitābī* woman (Jew or Christian) live married to a Muslim man, it is unlikely in principle that her ideas will impress the husband. Is someone takes to a converse position in total disregard of the normal principles and falls prey to his wife's instigation, it will be because of his own fault.

4. Let us clarify another doubt which may be raised here. The marital relations may influence both the parties equally. Therefore, if there is an apprehension that a Muslim spouse will be influenced by his or her counterpart in the matter of faith, there is also a counter possibility that the non-Muslim spouse will be influenced by his or her

Muslim spouse, whereupon he or she will embrace Islam. Both possibilities being equally open, the marital relations between Muslims and non-Muslims should not have been prohibited.

But the wisdom behind this prohibition is that where the danger of a harm and the hope of a benefit are equally applicable, then the reasonable attitude will be to pay more attention to preventing harm than to seeking benefit. There is a well-known Persian saying: عقلمند تریاق بیقین وزهر بگما نخورد i.e. A wise man does not eat the antedote with certainty and the poison with doubt. On the basis of this principle, the hope of the non-Muslim spouse embracing Islam has been ignored, and the apprehension of a Muslim spouse being impressed by the anti-Islamic faith or behaviour has been effectively taken care of.

5. The fifth point worth considering is that the meaning of the permission to Muslim men to marry Jewish and Christian women under formal *nikāh* (marriage contract) is simply to state that such *nikāh*, if made, will become valid and the children born out of this wedlock will be legitimate. But there are statements in *aḥādīth* which prove that even this *nikāh* is not viewed with favour. The Holy Prophet ﷺ has said that a Muslim should seek to marry a woman who fully observes Islamic faith and conduct -- so that she becomes for him a source of strength in their joint pursuit of their faith, and their progeny may have the opportunity to grow up under their care as practising Muslims. When marriage with a non-practising Muslim woman was not looked at with favour, how would it become favourable in the case of some non-Muslim woman? This is why Sayyidnā 'Umar al-Fārūq رضی اللہ عنہ , on learning that such marriages are finding alarming currency in Irāq and Syria, stopped these with an executive order which pointed out that such marital relations cause corruption in Muslim families both religiously and politically. (Kitāb al-Athar-lil-Imam Muḥammad). The effect of such marriages in contemporary times when non-Muslim people of the Book, the Jews and the Christians, have a record of political deception, political marriages, entry into Muslim families with persuasion techniques and spying objectives is too obvious and has been admitted by Christian writers themselves as reported in some details by Major General Akbar in his book, *Hadīth-e-Difā'*,

with proper references. It appears that Sayyidnā ‘Umar رضى الله عنه was virtually looking into the future as it would come to be.

Specially in our days, there is another important reason for avoiding marital relations with the People of the Book. If the lives of a majority of contemporary Europeans (and Americans), who are called Jews and Christians, and are registered as such in their census records, were researched it will be discovered that an enormous lot of them have nothing to do with Christianity or Judaism. They are atheistically irreligious. They do not believe in Sayyidnā ‘Īsā عليه السلام, or in the Bible. They do not believe in Sayyidnā Mūsā عليه السلام, or in the Torah -- not even in God or a Day of Judgment. It is obvious that such people do not come under the purview of the Qur’ānic injunction permitting marriage (with the people of the Book). *Nikāh* (marriage) with their women is absolutely *ḥaram* (unlawful). It is clear that such people do not qualify for the exception given in the Qur’ānic verse :

وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ

And good women from among those given the Book before you  
(marriage with whom is lawful for you).

Therefore, *nikāh* (marriage) with their women, like those of other non-Muslims, is absolutely *ḥaram* (unlawful).

### Special notes from Bayān al-Qur’ān by Maulanā Ashraf ‘Ali Thānavī

1. It is not correct to marry women from among the group of people who, on the basis of their name and identity, are considered from among the people of the Book but are not proved to be so after a scrutiny of beliefs. For instance, common people these days take white westerners to be generally Christians although some of their beliefs have turned out to be totally atheistic under critical observation. How can people who do not believe in God, in the prophethood of Jesus Christ and in the Bible as revealed scripture be Christians?

Marrying a woman from such a group of people is not correct. Those who marry women from the West without finding out what is involved therein make a gross mistake.

2. Similarly, it is not correct to give a Muslim woman in marriage to a man who, in his outward status, is supposed to be a Muslim but whose beliefs are identical with those of a non-Muslim. And should

such corruption of beliefs occur after having been married, the *nikāh* or the marriage-contract breaks *ipso facto*. For instance, a large number of Muslims, in ignorance of their religion and under the influence of the so-called 'modern thinking', ruin their beliefs. It is, therefore, obligatory for the guardians of a girl that they should first investigate into the beliefs of the proposer before they accept the proposal.

### Verses 222 - 223

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذَىٌّ فَاعْتَرِزُوا لِلنِّسَاءِ فِي  
 الْمَحِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّىٰ يَطْهَرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ  
 حَيْثُ أَمَرَكُمُ اللَّهُ إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ  
 الْمُتَطَهِّرِينَ ۝ نِسَاءُكُمْ حَرْثٌ لَّكُمْ نَفَاتُوا حَرْثَكُمْ أَنَّىٰ شِئْتُمْ  
 وَقَدِمُوا لِأَنفُسِكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُّسْلِمُونَ وَبَشِّرِ  
 الْمُؤْمِنِينَ ۝

And they ask you about menstruation. Say: "It is an impurity. So, keep away from the women during menstruation; and do not have intimacy with them until they are cleansed. But when they are cleansed, then go unto them from where Allah has commanded you. Surely Allah loves those who are most repenting, and loves those who keep themselves pure. Your women are for you a soil to cultivate. So, come unto your soil from where you will, and advance something for yourselves, and fear Allah and know that you are to meet Him and give good news to the believers." (Verses 222 - 223)

### No sexual intercourse during menstruation

The basic purpose of these verses is to declare the prohibition of having sexual intercourse with a woman in a state of menstruation. If someone committed sexual intercourse in such a state either unknowingly or carelessly, he has to make *Taubah* (repentance). In this context it has been said in the verse 222 that "Allah loves those who are most repenting."

The verse 223 points out to the lawful ways of having sexual intercourse with one's woman. The permission of such intercourse has been subjected to two conditions. Firstly, it should take place at a time when the woman is pure from her menstruation. Secondly, carnal intercourse is not allowed at all. This verse begins with a comprehensive remark: "Your women are for you a soil to cultivate." Here the woman has been compared with a soil, while the husband has been compared with a cultivator. This is to indicate that the sexual intercourse has not been allowed for satisfying the sexual lust only, but also to make it a valid source for having children. By using this expression the Holy Qur'ān has given a subtle indication to the prohibition of carnal intercourse, even with one's wife, because it can never be a productive act, and there is no question of 'cultivation' therein.

Subject to these two conditions (namely, the purity of the woman from her menses, and avoiding the carnal intercourse) one can enjoy whatever way he wishes to have sexual intimacy with his wife. In this context, it has been said, "Come to your soil from where you will". It indicates that in so far as the ultimate place (of penetration) is a 'soil' (which stands for the female vagina which is productive like a soil), one can elect whatever way he likes to reach this ultimate place. Thus, lying over the woman or beside her or beneath her, acceding to the vagina from any side, front or back, sitting or kneeling -- all these and similar other positions are allowed while performing sexual intercourse subject to the two conditions mentioned above.

#### Verse 224

وَلَا تَجْعَلُوا اللَّهَ عُرْضَةً لِأَيْمَانِكُمْ أَنْ تَبَرُّوا وَتَتَّقُوا وَتُصَلِّحُوا  
بَيْنَ النَّاسِ وَاللَّهُ سَمِيعٌ عَلِيمٌ ۝

**And do not make Allah, through your oaths, a barrier against your doing good, fearing Allah and setting things right between people. And Allah is All-Hearing, All-Knowing. (Verse 224)**

The Verse warns those who swear in the name of Allah that they will not do some vituous deeds or that they will not effect a compromise between two groups. The Verse reminds them that by this

behaviour they are using the name of Allah as a barrier against the good deeds, which is a severe violation of the sanctity of the name of Allah, and they must avoid it in any case.

### Verse 225

لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ بِمَا  
كَسَبَتْ قُلُوبُكُمْ وَاللَّهُ غَفُورٌ حَلِيمٌ ۝

Allah does not hold you accountable for what is ineffectual in your oaths, but holds you accountable for what your hearts have caused. And Allah is Forgiving, Forebearing. (Verse 225)

### Note:

The *laghw* or ineffectual oath has two meanings:

(i) In the first case it means a false oath sworn without volition over something in the past, or it could have been sworn with volition while the oath-taker considers it to be true in his supposition. For example, guided by his information and supposition, one ends up declaring on oath that a certain person has arrived while that person had not arrived in reality. Similarly, if someone swears on oath for something in future unintentionally, while he has been actually wanting to say something else, but the words of oath come out of his lips mistakenly, this type of oath also falls in this category. All these three types are not an act of sin and that is why they are called *laghw* or ineffectual. This act will not be reprehensible in the Hereafter (*Ākhirah*). As compared to this, the oath which has been declared reprehensible is the one that has been uttered intentionally knowing it to be false. This is known as *ghamūs* (perjury), and is an act of sin, but according to the Ḥanafīyyah, it does not require *kaffarah* or expiation. Therefore, *laghw*, in the sense explained earlier, involves no *kaffarah* more obviously, (because it is not a sinful act). The verse under discussion exclusively takes up these two categories that carry no *kaffarah*.

(ii) *Laghw* also means that which has no *kaffarah*. It will be called as *laghw* because it does not entail the liability of *Kaffarah* in this world.

Given this meaning, the word, *laghw* is inclusive of *ghamūs*, which being an act of sin, however, does not require *kaffārah*.

As compared to this, the oath that requires *kaffārah* is called *mun‘aqidah* (that which is established, confirmed: *fait accompli*). For instance, if someone intentionally declares on oath to the effect that he or she would or would not perform a certain act, then, acting contrarily requires *kaffārah*. (Bayān al-Qur‘ān)

### Verses 226 - 227

لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ  
اللَّهَ غَفُورٌ رَحِيمٌ ۝ وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ  
عَلِيمٌ

**Those who swear to abstain from their wives have four months of waiting. Therefore, if they revert back, Allah is Most-Forgiving, Very-Merciful. And if they resolve to divorce, Allah is All-Hearing, All-Knowing. (Verses 226 - 227)**

#### Note:

If someone takes an oath that he will not have sexual intercourse with his wife, the case has four situations:

- (A) No time-limit was fixed.
- (B) A time-limit of four months was fixed.
- (C) A time-limit of more than four months was fixed.
- (D) The limit was identified as less than four months.

So, situations A, B and C are termed in Shari‘ah as ‘*Ilā’* (إلأ). The injunction covering these situations is: If the oath-taker breaks his oath within four months and resumes sexual intercourse with his wife, he will have to come up with *kaffārah* for his oath while his *nikāh* (marriage) remains intact. And should it be that the time-limit of four months did expire and the oath-taker did not break his oath, an irrevocable divorce on his wife will become effective, that is, taking her back without remarriage does not remain correct any more. However, if they, by mutual consent, enter into marriage this will be correct. *Halālah* (an intermediary marriage of the woman with a third person) is not required. The injunction in the fourth situation is: If the oath is

broken, *kaffārah* will be required and if the oath is completed, the marriage, even then, will remain valid. (Bayān al-Qur'ān)

### Verse 228

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ  
يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ  
الْآخِرِ وَبِعَوْلَتِهِنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا  
وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ  
وَاللَّهُ عَزِيزٌ حَكِيمٌ ۝

And the divorced women shall keep themselves waiting for three periods. And it is not legal for them to conceal what Allah has created in their wombs, if they do believe in Allah and in the last day. And their husbands are best entitled to take them back in the meantime if they want a settlement. And women have rights similar to what they owe as recognized, though for men there is a step above them. And Allah is Mighty, Wise. (Verse 228)

### A great verse defining the status of man and woman

This verse contains a rule of Shari'ah concerning the mutual rights and duties enjoined upon men and women and explains the degree of their role. Important details of this very rule appear before this verse, and again, after the verse, through several sections.

### The place of women in Islam

At this point, it seems pertinent to explain to some extent the status given by Islam to women. If understood in its full perspective, it will certainly lead to the conclusion that a just and moderate social system would not have required more than this. It may be noted that this is the crucial place, any deviation or departure from which becomes a great danger for man's life here and in the Hereafter.

Deliberation would reveal that two things serve as the necessary basis for the survival and development of this world. These are: woman and wealth. But, a look at the other side of the coin shows that this twosome is also a source of disturbance, bloodshed and tribulation. Further deliberation would easily help one reach the

conclusion that although these two, given their real place in life, are instrumental in the progress of this world, yet, as and when, they are aimlessly moved away from their real place, they are capable of shaking the world like an earthquake.

The Qur'ān has given man a way of life, a system. Both these human factors have been assigned their correct respective places in a way that they yield the maximum benefits to the total exclusion of peacelessness. The proper place of wealth, the sources of its acquisition and the ways of spending it, as well as, a just system of the distribution of wealth is a regular field of knowledge. A detailed discussion of this subject will *Inshā Allāh* appear on some other occasion . My published treatise entitled, 'The Distribution of Wealth' could serve as an indicator of basics.

Being discussed here, at this point, is woman and her rights and duties. About this, the verse under reference states: As there are rights of men over women which must be given, so there are rights of women over men which must be given. However, the quantum of difference that must be recognized here is: Men have a 'step' above women. Almost the same subject has appeared in *Sūrah Al-Nisā'* in this manner:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا  
مِنْ أَمْوَالِهِمْ

Men stand care-takers of women, since Allah has made some of them excel the other, and because they have spent of their wealth. (4:34)

### **The status of women in pre-Islamic society**

Before Islam, in the age of ignorance (*Jāhiliyyah*), it was common practice that women were equated with articles of home use. They would be bought and sold like cattle. She had no right whatsoever in relation to her marriage. She had to go where she was sent by her guardians. Far from being entitled to some share in the inheritance from her relatives, she herself was treated as a piece of inheritance like any other household item. She was considered as something owned by men while she owned nothing. And, even that which she allegedly owned she could not spend without the permission of men.

However, her husband had all the right in the world to spend that which belonged to her as and how he elected to do so. She did not even have the right to question. So much so that some groups from amongst the European countries which are considered to be among the most civilized in the world today had reached the limit where they did not even accept that women were human beings!

Women had no place in religion. They were considered unfit for worship, and for Paradise. In some synods of Rome, it was decided after mutual consultations that she was a dirty animal which had no soul. Usually, it was considered permissible for a father to kill, or even, bury her daughter alive. In fact, this act was judged to be a mark of honour and a standard of nobility. There were some who held the opinion that anybody who killed a woman did not have to pay blood-money or be charged with retaliatory action. And should the husband die, the wife too was burnt alive with his dead body. Following the birth of the noble Prophet ﷺ and before his prophethood, in the year 586, France showed its compassion for women by passing a resolution, of course after great deliberation and controversy, that woman is after all a human being, but she has been created for the sole purpose of serving man!

In short, the whole world, and all nations and religions that inhabited it, had been treating women with callousness that makes one tremble with fear. For this poor creature, there was no reason, no justice, anywhere.

Ransomed be our lives for him who came as mercy for the worlds (ﷺ), and for the true religion which opened the eyes of the people of this world, taught man to respect man, made justice and equity the law, men were made responsible for the rights of women parallel to their own rights on them. Woman was made free and independent. She became the owner of her life and property, similar to men. No man can, even if he be a father or grandfather, force a woman to marry someone. Should she be given in marriage without her consent, the act remains dangling on her consent. If she says no, it stands annulled. No man has any right to spend anything from that which belongs to her, without her consent and approval. After the death of her husband or after having been divorced by him, she becomes independent and she

cannot be compelled by anyone for anything. She gets a share in the inheritance of her relatives just like men. To spend on her and to keep her happy has been declared an act of *ibādah* (worship) under the blessed law of Muḥammad, on him be peace and blessing. Should the husband fail to give the rights due, she could, through an Islamic court, force him to do so or to divorce her.

### **Man's guardianship is essential for peace and order**

Not giving women their due rights was ranked as injustice, oppression, stinginess and villainy which was erased by Islam. Similarly, leaving them to go their way with an unbridled liberty from the guardianship and care of men, and to make them earn their own sustenance and life support amounts to wasting her rights and destroying her genius. Neither does she deserve that fate in view of her physique nor does that great mission of bringing up children and the charge of family management, which has been naturally entrusted to her, deserve it.

In addition to that, women are, when deprived of the guardianship and care of men, a great danger for the whole human society, a situation that is bound to create all sorts of disturbances, including riots and bloodshed, as a matter of daily routine. That is why the noble Qur'an, while stating the mandatory rights of women, also declared *وَالرِّجَالُ عَلَى النِّسَاءِ كَذَرَجَةِ* that is, men are a step above women which, in still other words, amounts to saying that men are responsible for them as their caretakers.

As it was in the first age of ignorance before Islam, all nations of the world, by keeping women as a household item or a dumb animal, had fallen prey to this mistake. So it came to pass that, following Islam's age of decadence, there started a later age of ignorance. Here the first mistake is being matched by yet another mistake, as a reaction in the opposite direction, when efforts are being made continuously to get rid of even this much degree of precedence men have over women. As a result, obscenity and shamelessness became common, the world became a home of conflicts and disorder, and bloodshed became so cheap that the first age of ignorance remained no match anymore. There is an Arab saying: *أبْجَاهِلٌ إِمَّا مَفْرُطٌ أَوْ مَفْرُطٌ* which means: The ignorant man never stays on moderation. If he decides to stay from acting excessively, he slides into a behaviour of neglect.

This is the prevailing attitude in the world of today. There was that time when they were not even prepared to call or understand women as a member of the human race. Now they have advanced to the limit that the 'yoke' of man's guardianship and caretaking of women, which is perfectly wise and suitable universally for men, and women, is being thrown away, the ill consequences of which are becoming visible everyday. And believe it, unless they bow down before this noble statement of the Qur'an, such disorders will go on increasing day by day.

Governments today make new laws incessantly to bring peace into the world. New institutions are established for this purpose. Millions are spent but the source of disorders goes unnoticed by them. If a Commission of Inquiry was to be established to determine the causes of disorder, bloodshed and internecine wars, it is likely that the cause of more than fifty percent of such crimes will turn out to be woman and her unbridled freedom. But, in the contemporary world, the prevailing pursuit of desires has confounded even the best of minds. No corrective check against the worship of desires is even entertained.

May Allah Almighty enlighten our hearts with the light of faith and help us act according to the guidance given in His Book and in the conduct of the Holy Prophet ﷺ because that is our blessed capital both in in this world and in the Hereafter.

### **A Conflict and its Resolution**

We find out from this verse that the Qur'an tells the husband and wife about duties assigned to each, whereby men have been placed under obligation to give women their rights, in the same manner as women have been placed under obligation to give men their rights. This indicates that each party should watch out on the fulfillment of its respective duties rather than go after demanding rights. And should they succeed in doing so, the very issue of demanding rights will cease to exist, because the duties of men are the rights of women and the duties of women are the rights of men. When duties are taken care of, rights will be automatically fulfilled. These days the root of all troubles lies in the attitude of people who are alert to their rights but negligent of their duties.

As a result, rights are demanded on a war footing as is evident

from the current confrontation between governments and masses, husbands and wives and between other authorities and their challengers. This indicator of the Qur'ān has modified the confrontational aspect of the issue by stressing that everyone should make all possible effort to fulfil his or her duties and when it comes to his or her own rights try to overlook any infringements gently, forego and forgive. If this teaching of the Qur'ān could become common universal practice, homes, families, even countries and governments will find that most of their conflicts have been resolved for good.

### **Man's higher position over woman is for discipline only**

A universal system in the world, the human nature and the best interests of women themselves required that men be not only given a particular sort of controlling and care-taking right over women, but that it be rather made incumbent on them. This is what has been stated in the verse *الرِّجَالُ كَوَامِلُونَ عَلَى النِّسَاءِ*: 'Men stand care-takers of women.' But, this does not necessarily entail that all men are superior to all women because being superior in the sight of Allah wholly depends on belief and good conduct. In Divine dispensation, the increase or decrease in degrees operates in synchronization with the degrees of belief and conduct. Therefore, in matters relating to the Hereafter, it is not necessary that men alone should continue to have that step or degree above women. This too is possible and, as elaborated in Qur'ānic verses and *Hadith* narrations, this is what would come to pass -- that some women, through their obedience to and worship of Allah, will become superior to many men with their degree of precedence rising higher than many a men.

Although the Holy Qur'ān, while describing the injunctions of Shari'ah, according to its own clear stress, declares that men and women are absolutely equal and the injunctions where there is some difference have been expressly explained, but the address is generally to men and the gender used is masculine. This treatment, however, is not peculiar to the noble Qur'ān. Governments too, use the masculine gender in their laws fairly commonly, although the law is universally applicable to men and women both.

One immediate reason for this is the very difference identified in the verses of the noble Qur'ān, that is, for men there is a step above women.

The second consideration, perhaps implied here as well, may be

that *satr* (concealment) is better even when there is a discussion about *mastūrāt* (women: the concealed ones). But, when women realized that the noble Qur'ān does not address them directly at various places like it does address men, the venerated mother of the faithful, Sayyidah Umm Salmah رضى الله عنها pointed this out to the Holy Prophet ﷺ and thereupon the following verse of the Sūrah Al-Ahzāb was revealed:

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَنَاتِ وَالْقَنَاتِ

Submitting men and submitting women, believing men and believing women, obedient men and obedient women ... (This appears in details in Nasā'ī, Musnad Aḥmad and Tafsīr Ibn Jarīr etc.)

where women were clearly and expressly identified along with men which implies that the status of women is no less than men in obedience to Allah and in His worship, in being near Him and His approval, and in the ranks of Paradise.

According to a report in Tafsīr Ibn Kathīr, some Muslim women came to the the blessed wives of the Holy Prophet ﷺ and asked about the general absence of any mention of Muslim women in the Holy Qur'ān, while it does mention men at several places, and also refers to the blessed wives of the Holy Prophet ﷺ from among women. Thereupon, the verse referred to above was revealed.

To sum up, it can be said that a certain measure of precedence and authority in regulating the affairs of worldly life is for the good of women and that wisdom so dictates. Other than that, there is no difference in the reward and retribution for deeds, good or bad, and in the degree of merit attained in the Hereafter.

The same subject appears in the noble Qur'ān with much more clarity in the following manner:

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْأُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً

And whosoever male or female, does a righteous deed, while he (or she) is a believer, we shall assuredly get him (or her) to live a goodly life. (16:97)

After these preliminary remarks let's ponder over the words of the original verse under discussion. It was said: وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ : "And women have rights similar to what they owe" that is, their rights are

incumbent upon men similarly as the rights of men are incumbent upon them. Here the rights of women were mentioned before the rights of men, one reason for which is that man after all, given his physical power and God-given precedence, manages to wrest his rights from women anyway. The concern should be for the rights of women since they cannot habitually wrest their rights by force.

There is yet another hint here which suggests that men should take the first step to give the rights of women. However, the similarity and equivalency declared by the use of the word *mithl* (مِثْلٌ : like, similar) in the text here could just never mean that the kind of job men do should also be done by women, or vice versa, because the distribution of work and respective duties for men and women are naturally different. In fact, it means that it is obligatory that rights belonging to both be observed equally and mutually and that the punishment for any negligence or shortcoming be also equal.

It is worth observing at this point how the noble Qur'an has, in a sentence so small, miniaturized a whole roster of rights and duties since all rights women have over men and all rights men have over women are included under the sense of this verse. (Muhit) Simply by adding one more word بِالْمَعْرُوفِ (*bi l'ma'rūf*: justly, uprightly, kindly, courteously, according to the practice approved by the Shari'ah, or simply - "as recognized", a closer expression used in the accompanying translation of the verse) the possible occurrence of mutual controversies was eliminated. It was established that rights should be given using the *ma'rūf* method because the meaning of *ma'rūf* includes that which is neither prohibited nor impermissible under the dictates of the Shari'ah nor does it have any element of hardship or excess under common habit or custom or *'urf*. The purport is that observing the routine of legal provisions is not enough, instead, it will be examined that, according to *'urf* or customarily approved practice, the other party does not in any case suffer from pain or loss. That which is judged to be a source of pain and loss, in view of *'urf*, will be forbidden and remain impermissible, for instance, coldness, indifference or such behaviour or conduct which causes pain. These can hardly be covered under an article of law but the word *bi l'ma'rūf* does encompass them. After that it was said: وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ: 'Though for men there is a step

above them.' The well-known meaning and sense of this verse is that despite the rights of the parties being equal, Allah Almighty has bestowed upon men a certain degree of precedence and authority over women. That there is great wisdom in doing so has been hinted at by the use of the words "وَاللَّهُ عَزِيزٌ حَكِيمٌ": "And Allah is Mighty, Wise" towards the end of the verse. Giving the meaning of this sentence, Sayyidnā 'Abdullāh ibn 'Abbās رضى الله تعالى عنها has added that Allah Almighty has given men a degree of precedence as compared to women, therefore they should act with much more forbearance. Even if women fall short of giving them their rights, the degree of their precedence is such that they should bear by it, be patient and do nothing to desist from giving them their rights. (Qurṭubī)

### Verses 229 - 230

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ ۝ فَإِنْ طَلَّقَهَا فَلَا تحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ۝

Divorce is twice; then either to retain in the recognized manner or to release in fairness. And it is not lawful for you to take back anything from what you have given them, unless both apprehend that they would not be able to maintain the limits set by Allah. Now, if you apprehend that they would not maintain the limits set by Allah, then, there is no sin on them in what she gives up to secure her release. These are the limits set by Allah. Therefore, do not exceed them. And whosoever exceeds limits set by Allah, then, those are the transgressors.

Thereafter, if he divorces her, she shall no longer remain lawful for him unless she marries a man other than him. Should he too divorce her, then there is no sin on them in their returning to each other, if they think they would maintain the limits set by Allah. And these are the limits set by Allah that He makes clear to a people who know (Verses 229 - 230).

### Commentary

The injunctions governing *ṭalāq* (divorce) and *nikāh* (marriage) appear in several verses throughout the Qur'ān but the verses mentioned here consist of cardinal rules of procedure in cases of divorce. To understand these, it is necessary to know the status of *Nikāh* in the Shari'ah of Islam.

### Marriage, divorce and the rules governing them

One commonly known aspect of *Nikāh* (marriage) is that of a mutual transaction and contract similar to transactions in buying and selling and in loans and payments. The second aspect is that of *Sunnah* and *'Ibādah*. On this, there is a consensus of the whole *ummah* that *nikāh*, being far above ordinary transactions and contracts, has the status of *'Ibādah* and *Sunnah* (the act of worshipping Allah and following in the footsteps of the Prophet ﷺ). Therefore, in order that *nikāh* be duly solemnized, there are, by the consensus of the *ummah*, some peculiar conditions which are not found in ordinary transactions of buying and selling.

First of all, *nikāh* cannot take place between any man and any woman. Governing this, there is an absolute law of the Shari'ah under which several categories of men and women cannot be joined together in the bond of marriage.

Secondly, for all transactions and contracts, in order that they be concluded and finalized, witness is no condition. A witness is needed when parties differ, but *nikāh* is not such a transaction. Here, in order that it be concluded, the physical presence of witnesses is a pre-condition. If a man and woman, the two of them mutually agree to have their marriage solemnized without witnesses, and even if, any one of the two never differs or retreats, that marriage is, according to the Shari'ah, still invalid, unless both respond to the proposal and acceptance before witnesses. However, the *Sunnah* is that '*nikāh*' must

be solemnized with a public announcement. Similarly, there are many other conditions and rules of decorum that are either necessary or *masnūn* in marriage.

According to Imām Abū Hanīfah, and several other leading Muslim jurists, the aspect of *'Ibādah* (worship) and *Sunnah* in *nikāh* dominates over the aspect of transaction and contract. Evidences from the Qur'ān and *Sunnah* support it.

After this brief familiarity with the real nature of marriage, let us understand divorce. The outcome of *ṭalāq* (divorce) is to terminate the transaction and contract of *nikāh* (marriage). Just as the Shari'ah of Islam, by giving *nikāh* the status of an act of *'Ibādah*, has kept it at a level higher than common transactions and contracts and has imposed on it several restrictions, very similarly, the termination of this deal has not been left free, as in common transactions, where the parties may terminate the deal as and when they elect to do so, and go on to make a fresh deal with someone else. It has rather made a pointedly wise legal framework which has been described in the verses under reference.

According to the drift of Islamic teachings, the transaction and contract of *nikāh* should be for the whole life-span. The point of departure where it has to be broken or terminated should never be reached because the discontinuation of this deal affects not only the parties involved but goes on to destroy children, and their children, and at times, it may even cause whole families and tribes to end up with disturbed relations, which in turn, badly infects the whole society. Therefore, the teachings of the Qur'ān and *Sunnah* have taken all necessary steps to remove impediments that may cause the breaking of this deal. The focal drive of instructions given in the Qur'ān and *Sunnah* covering all problems and situations relating to the married couples is that this relationship should always keep on becoming stronger and stronger and may just never break. Should disagreements crop up, instructions were given to first try and understand each other's point of view and talk it out, and in the event of failure, ways of restraint, hard advice and warning were identified. Should the tussle become serious and these elementary steps do not bring a resolution of crisis, the parties were then expected to set up a

panel for arbitration comprising of the members of their immediate families who could help patch up the differences. The emphasis on making members of the family as sole arbitrators in the verse **حَكَمًا مِّنْ أَهْلِهِ وَ حَكَمًا مِّنْ أَهْلِهَا**: 'Then send one arbitrator from his people and one from her people' is certainly very wise since the tussle, if it escapes the immediate family circle, will only aggravate the situation and the parties may draw further apart.

But there are occasions and situations when all efforts for reconciliation fail and the parties in conflict rather than benefit by the desired results of the *nikāh* relationship, feel that being married together is a mutual punishment. Under such conditions, terminating this husband-wife relationship becomes, in itself, a way-out promising comfort and peace for the parties. Therefore, the Shari'ah of Islam did not, as did some other religions, patently confirm that the marriage relationship must remain unbreakable under all conditions. Going a step ahead, it has framed a specific law for divorce and the dissolution of marriage. The right of divorce was given to man alone in whom the ingredients of thought, end-perception and forbearance were more pronounced than in a woman. This free choice was not given in the hands of women so that the disposition of being overtaken by transitory emotions, which is more pronounced in women as compared to men, may not become the cause of divorce.

But women too, were not totally deprived of this right lest they are left with no alternative but to keep groaning under the cruelty of her husband. She was given the right to take her case to a court presided by a judge who qualifies as such under the rules of Shari'ah, present her complaint, prove her case, and get the marriage annulled, or secure a divorce. Then, as it is, Allah Almighty did entrust man with the free choice of divorce, but at the very first instance, it was declared that the use of this choice was very much detested and disapproved in the sight of Allah. It was permitted only in extreme situations of compulsion. It appears in *Hadith*: **أبغض الحلال إلى الله الطلاق**: Divorce is the most detested of lawful things with Allah.

The second restriction placed stipulated that this choice should not be used in extreme anger or fleeting displeasure. It was due to this wisdom that the pronouncing of divorce was forbidden during the

period of menstruation, as well as, during a *ṭuhr* (the state of purity) in which the husband has had sexual intercourse with the wife. The pronouncing of divorce during menstruation and in a *tuhr* marked by intimacy was forbidden on the basis that it would become the contributing reason to elongate the 'iddah or 'waiting period' of the woman, which will aggravate her pain and worry. For these two situations, the noble Qur'ān has this to say: **طَلَّقُوهُنَّ إِعْدَتِهِنَّ** that is, divorce -- if it has to be given -- should be given at a time when the 'iddah of the woman does not become longer without any reason. If divorce became effective during menstruation, that particular menstruation will not be counted in 'iddah. The count of 'iddah will begin from the next menstruation. And in a *ṭuhr* marked with intimacy, the chances of pregnancy exist, which would elongate the period of 'iddah, upto the time of delivery. Another reason for fixing the time of *tuhr*, mentioned earlier for the pronouncement of divorce is that it is quite possible that in the meantime the anger goes away, forgiveness and recompense follow and the very idea of divorce is withdrawn.

Now under the third restriction, the method adopted in breaking the marriage- contract and its annulment was not kept identical with that of the transactions and contracts of common buying and selling activity which releases the parties concerned of all obligations instantly once the contract is annulled. The first deal is all over and everybody gets the option to enter into another contract with some other party. In fact, in order to sever the marriage-relationship, *ṭalāq* has been subjected to three stages. Then it was topped with the restriction of 'iddah since a lot of residual effects of the *nikāh*-relationship will remain active until the completion of 'iddah. Another marriage will not be lawful for the woman. Some restriction on the man would also continue.

The fourth restriction stipulates if divorce was given once or twice in clear and unambiguous words, *nikāh* did not break instantly on the pronouncement of *talaq*; the marriage relationship continues till the completion of 'iddah. If the husband revokes the *ṭalāq*, the previous *nikāh* will remain valid.

This choice of *rujū'* (revocation or the act of taking back one's divorced wife) was restricted to only one or two *ṭalāqs*, so that some

cruel husband may not make a practice of giving *ṭalāqs*, and then take her back and keep her as some captive. Therefore, came the injunction: If someone pronounces the third *talāq* as well, he now has no choice of *rujū'* (revocation), that is, he cannot take his wife back. In fact, even if they wish to remarry after mutual agreement, their being joined together in marriage a second time is not lawful, except in a peculiar manner which has been described later on.

The verses under study consist of important injunctions relating to this system of divorce. Now let us ponder over the words of these verses. In the beginning of the verse it was first said: *أَلطَّلَاقُ مَرَّتَيْنِ* that is, '*ṭalāq* is twice'. Then, in the process of these two *ṭalāqs*, a certain flexibility was provided by virtue of which the marriage was not totally annulled; instead, the man has the choice to return to his wife and retain her in his marriage. Or, he may elect not to do his *rujū'* (revocation) from the earlier pronouncements, allow the *'iddah* to be completed and once the *'iddah* is over, the marriage relationship will be terminated. This subject was stated in the words *فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ* *بِإِحْسَانٍ* (then either to retain in the recognized manner or to release in fairness) that is, either, one must revoke divorce and retain his wife in his marriage, or, allow her *'iddah* or the waiting period to be completed nicely and generously so that she can become free.

The third *ṭalāq* (pronouncement of divorce) still remains unmentioned while the text takes up another problem in between, which generally comes up for discussion under such conditions. The problem is that there are some cruel husbands who neither wish to retain their wives, nor care about their rights, nor give them divorce. The wife is placed in a situation of duress while the husband, taking advantage of her helplessness, demands some money or property from her, or as a last resort, demands that the *mahr* (dower) be forgiven, or returned in lieu of divorce. The Qur'an declares this to be *ḥaram* (unlawful). It was said:

وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا

that is, it is not *ḥalal* (lawful) for you that, in return for *talāq*, you take back from them money or *mahr* (dower) or anything else given by you.

However, one exception was made in which forgiveness or return of

*mahr* (dower) was made permissible. Where the woman feels that she cannot do justice to the rights of her husband because of difference in temperaments and the man too, feels the same way, then this becomes a situation in which it is also permissible that divorce be given or taken in lieu of the forgiveness or return of *mahr* (dower).

After dealing with the above problem, the third *ṭalāq* was mentioned in this manner فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَتَرَكَ زَوْجًا غَيْرَهُ that is, if that person goes on to pronounce the third *talaq* as well (something not liked by the Shari'ah), the transaction of *nikāh* shall stand totally annulled. He has exhausted his choice to revoke his divorce and take his wife back. And since he transgressed the limits of Shari'ah by unnecessarily giving the third *ṭalāq*, he must now have his punishment whereby it is not possible for them to remarry each other even if both of them agree to do so. Now, in order that they could remarry each other, the condition of such *nikāh* is that the woman (after completing her period of *'iddah* following *ṭalāq*) should enter into marriage with another man, fulfil matrimonial obligations and live with this other husband. Thereafter, if by chance that other husband also divorces her (or dies), she could remarry the first husband after completing her *'iddah*. The last sentence of the verse says:

فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَكَمَا

Should he too divorce her, then there is no sin on them in their returning to each other.

### Detailed injunctions regarding three divorces at a time

A close look at the style of the noble Qur'an makes it explicitly clear that the right method of pronouncing *ṭalāq* stipulated by the Shari'ah is that one should, at the most, reach the limit of two *talaqs* and it is not appropriate to reach to the extent of a third *ṭalāq*. After the use of words الطَّلَاقُ مَرَّتَيْنِ in verse 229, the third *ṭalāq* is identified in the words فَإِنْ طَلَّقَهَا (Then, if he divorces her) wherein the letter ان (if) is note-worthy. Here the hint in question is visibly present. Otherwise, the third *talāq* could simply be expressed by saying الطلاق ثلاث: 'The divorces are three.' Now the text, to the exclusion of expressions to this effect, has an expression of its own which carries a clear hint that one should not reach the stage of the third *ṭalāq*. This is why Imām Mālik

and several other jurists did not just permit the third *ṭalāq*. They call it *ṭalāq al-bid'ah* (the innovated *ṭalāq*: divorce without the authority of the Qur'ān and *Sunnah*). Some other jurists have ruled that three *talaqs* are permissible only on condition that these three *talaqs* be pronounced separately in three *ṭuhrs* (the state of post-menstrual purity). In the terminology used by these jurists this too has been termed as *ṭalāq al-sunnah*. But none of them are proposing by this term that giving three *talaqs* in this manner is desirable, and is according to the *Sunnah*. In fact, this was given the name of *talāq al-sunnah* as opposed to *talāq al-bid'ah* for the simple reason that this form does not amount to *bid'ah* (an innovation in settled religious practice).

The gist of that which stands proved regarding the *talāq* count, on the authority of the guidance given by the Qur'ān and *Sunnah*, and the practice of the Companions of the the Holy Prophet ﷺ and their followers is this: When no option, except that of *talāq*, is left, the best method of pronouncing *talaq* is to pronounce one *ṭalāq* during the state of *ṭuhr* (purity) in which sexual intercourse has not taken place. Then, let this one *talāq* stay as such. As soon as the *'iddah* finishes, the *nikāh* relationship will automatically be finished with it. The Muslim Jurists have called it *al-ṭalāq al-ahsan* and the respected Companions of the Holy Prophet ﷺ have declared it as the best method of *ṭalāq*.

Ibn Abi Shaybah has reported from Sayyidnā Ibrāhīm al-Nakha'ī that the noble *sahābah* favoured the method in which, after giving one *ṭalāq*, nothing is done thereafter and the *'iddah* of *ṭalāq* -- three menstruation periods -- are allowed to expire so that the woman would become free.

From the words of the noble Qur'ān mentioned earlier, the permission to pronounce upto two *ṭalāqs* can also be deduced, but by the use of the word *مَرَّتَانِ* (twice) it has been pointed out that two *talaqs* should not be given in one utterance and at one time but should be given separately in two *ṭuhrs* (states of purity). The use of *الطلاق طلاقان* (Two *ṭalāqs* are permissible) could also have helped prove the permission of two *ṭalāqs* but the word *مَرَّتَانِ* suggests that the two *ṭalāqs*

should be given at two separate occasions, that is in two separate *tuhrs* (states of purity).<sup>50</sup> (Rūh al-Ma'ānī)

In short, the limit of two *talāqs* stands proved from the words of the Qur'ān. Therefore, by consensus of Imāms and *fuqahā'* (Muslim Jurists), this *talāq* is included in *Sunnah*, that is, it is not a *bid'ah* (innovation). That the third *talāq* is undesirable is clearly indicated in the Qur'ānic diction itself. That this is undesirable has not been questioned by anyone.

As to how detested and reprehensible the third *talāq* is stands proved by a *ḥadīth* of the Holy Prophet ﷺ. Imām al-Nasa'ī reports on the authority of Maḥmūd ibn Labid that:

أخبر رسول الله صلى الله عليه وسلم عن رجل طلق أمراته ثلاث تطليقات  
جميعا فقام غضبانا ، ثم قال: أيلعب بكتاب الله وأنا بين أظهركم حتى  
قام رجل و قال: يا رسول الله ألا أقتله ؟

The noble Prophet ﷺ was told about a man who had divorced his wife by pronouncing three *talaqs* simultaneously. He rose in anger, then said: 'What is this game being played with Allah's Book while I am present amongst you?' In the meantime, a man stood up and said: Yā Rasūlallāh! should I not kill him? (Nasa'ī, Kitāb al-Ṭalāq, vol.2, p. 98)<sup>51</sup>

Based on this, Imām Mālik and some other leading *fuqahā'* (jurists) have ruled that the third *talāq* is absolutely impermissible and that it is *talāq al-bid'ah* (a divorce based on innovation in religious practice and not supported by the Qur'ān and *Sunnah*). Other Imāms, by saying that three *talaqs* given in three *tuhrs* (states of purity) are included under *sunnah talāq*, have though excluded it from the purview of *talāq al-bid'ah*, but there is no difference of opinion as to its being undesirable.

50. The use of the adverb, 'twice' to stand for the Qur'ānic word, '*marratan*' in the accompanying translation is to cover this element of sequence and deferment for, lexically, 'twice' means -- on two occasions or two times.

51. Ḥāfiẓ Ibn al-Qaiyyim has ruled that the *isnad* of this *ḥadīth* is *sahīh* according to the conditions prescribed by Muslim (*Zad al-Ma'ad*). 'Allamah al-Mardini, in his *al-Jauhar al-Naqi*, calls the *sanad* of this *ḥadīth* -- *sahīh*, Ibn Kathir terms the *isnad* as excellent and Ibn Hajar finds this 'narrated by the reliable'.

To summarize, it can be said that the three stages of *ṭalāq* (divorce) established by the Shari'ah of Islam in the form of three *ṭalāqs*, do never mean that crossing these three stages are necessary or better. Instead, the intent of the Shari'ah is that the very initial step towards divorce is a detestable and reprehensible act. If such a step has to be taken under dire compulsion, it is only proper that its lowest possible stage, that is, one (pronouncement of) *talāq* be considered sufficient, allowing 'iddah (the waiting period) to take its course. Once the 'iddah is over, this very one *talāq* will become sufficient to sever the husband-wife relationship and the woman shall become free to marry another person. This method of *ṭalāq* is called *aḥṣān*, that is, the best. In this method there is wisdom, and an element of advantage as well, since the option of reconciliation will remain open for the parties concerned in the event only one *ṭalāq* has been given in clear words to that effect. Only taking the *ṭalāq* back before the expiry of 'iddah will be sufficient to sustain the *nikāh*. And after the 'iddah has expired, the *nikāh* will, no doubt, be broken and the woman set free, but there still will remain room for reconciliation between them, and should they reconcile and wish to remarry each other, the fresh *nikāh* could be solemnized immediately.

But, should a person who does not stick with this method of *aḥṣān ṭalāq* and goes on to pronounce one more *ṭalāq* in clear and unambiguous words during the period of 'iddah, he then, completes two stages of the severance of *nikāh*, which was unnecessary, and certainly not approved by the Shari'ah. However, two stages stand completed anyway. But the position, inspite of the completion of these two stages, stays where it was, that is, the choice of *raj'ah* (revocation) or return (to one's wife) during the period of 'iddah remains open and a fresh *nikāh* could be made by the mutual agreement of the parties concerned after the expiry of the period of 'iddah. The only difference is that the husband has, by reaching the count of two *talaqs*, broken one more chain of his choices and arrived at the borderline from where the pronouncement of just one more *ṭalāq* by him would end the matter for ever.

For one who has gone through these two stages of *ṭalāq*, the instruction given later is: *فَأَمَّا كَإِذَا بَعَّرْتُمُوهُنَّ أَوْ تُسْرِعْنَ بَأْحْسَانٍ*: 'Then either to retain in the recognized manner or to release in fairness.' Here two

injunctions have been communicated through the words **فَإِمْسَاكٌ يُعْرَضُونَ**. Firstly, revocation during 'iddah does not require fresh *nikāh*; instead, only *imsāk*, that is, retaining one's wife by revoking the *ṭalāq* is sufficient. If this was done, the marriage relationship will stand reinstated on the very basis of the previous *nikāh*.

Secondly, through this, the husband was instructed to take steps to effect his *raj'ah* (revocation) only if he intends to correct the situation and looks forward to living in peace and harmony; if not, he should pass this option so that the marriage relationship ends following the completion of 'iddah. The concern here is that *raj'ah* (revocation) may not be done just to harass the woman without any intention of correcting the situation.

To match this, it was said: **أَوْ تَسْرِيحٌ بِإِحْسَانٍ**. The word, *Tasriḥ* means to untie, to free, to release. Through this, it was pointed out that in order to sever relations, no additional *ṭalāq*, or for that matter, no other action is necessary. That the 'iddah (waiting period) expires without revocation is, in itself, sufficient to end the marriage relationship.

Abu Dawud reports on the authority of Abū Razīn al-Asadī that, following the revelation of this verse, a man asked the Holy Prophet ﷺ: 'Allah Almighty has said: **الطَّلَاقُ مَرَّتَيْنِ** (Divorce is twice). Why the third *ṭalāq* was not mentioned here?' He said: 'The expression **تَسْرِيحٌ بِإِحْسَانٍ** (To release in fairness) which follows immediately, is the third *ṭalāq*.' (Ruh al-Ma'āni). It means, according to the consensus of 'ulamā', that the act of the total severance of marriage relationship which would come out of the third *ṭalāq*, would be taken care of by this mode of action, that is, by not revoking the divorce during the period of 'iddah. Now, just as, by placing the restrictive condition of **يُعْرَضُونَ** (in recognized manner) along with **إِمْسَاكٌ** (retaining), the instruction was given that the wife, if retained after the revocation of *ṭalāq* pronouncement (*raj'ah*), should be retained in good grace. Very similarly, by placing the restrictive condition of **بِإِحْسَانٍ** (in fairness) along with **تَسْرِيحٌ** (release), the instruction was given that *ṭalāq* is the dissolution of transaction and gentlemen go through their transactions and contracts in good taste and manners and in the event dissolution of contract becomes necessary, that too, should not be done with anger or altercation, instead, that should be done with charity, kindness and grace, for instance, while saying goodbye to the divorced wife, let her depart with some presents, such as clothing and its likes. This is mentioned in the Qur'an:

وَمَتَّعُوهُمْ عَلَىٰ الْمَوْسِعِ قَدْرَهُ وَعَلَىٰ الْمُقْتِرِ قَدْرَهُ

So, give them benefit -- the rich man according to his means and the poor one according to his means. (2:236)

And, if he, in spite of this, elects not to do so, rather, going a step farther, pronounces the third *ṭalāq* as well, he now has reached a dead end where he has, quite unreasonably and unnecessarily, done away with all his options, ignoring in that process, graces allowed by the Shari'ah. The punishment he now deserves is that *raj'ah* (revocation) will not be possible, and without the wife marrying someone else, the couple's being re-united in marriage will also be not possible.

### Three divorces given unlawfully are effective

The immediate, rational and conventional answer to this question is that the nature of an act in being a crime and a sin does not stop it from taking effect anywhere. Killing unjustly is a crime and a sin. But one who is shot with a bullet, or struck with a sword, gets killed after all. His death does not wait to discover if the bullet was fired legally or illegally. Stealing is a crime and a sin by the consensus of all religions, but that which has been stolen as such leaves the possession of the owner anyway. Similarly, all sins and crimes are hemmed in by the same situation -- that their being sin and crime does not stop them from taking effect.

In accordance with the dictates of this principle, the false steps taken, such as, the ignoring of concessions given by the Shari'ah and shooting upto three talaqs unnecessarily, bypassing all choices of *ṭalāq* one has, no doubt, became a cause of anger for the Holy Prophet ﷺ as stated in the previous report, and for this reason, this act was considered 'undesirable' by the consensus of the *ummah*, and 'impermissible' by some; but, in spite of all this, someone has taken such a step, it should bring forth the same effect as would be that of a permissible *ṭalāq*, that is, three talaqs become effective and not only the choice of *raj'ah* (revocation) but also the very choice of fresh *nikāh* stands negated.

And the decision of the Holy Prophet ﷺ is a testimony that he, in spite of his showing anger against giving three divorces, enforced the three talaqs, several incidents relating to which appear in books of *aḥādīth*. The '*ulamā*' who have written regular books on this subject

have collected these incidents therein. Recently, '*Umdah al-Athath*', a book written on this subject by Maulanā Abū al-Zāhid Muḥammad Sarfarāz has been published and is sufficient enough. Quoted here are only three *aḥādīth*.

The report by Maḥmud ibn Labid mentioned earlier with reference to al-Nasa'ī does record the expression of extreme anger by the Messenger of Allah on the giving of three talaqs at one time, so much so, that some *ṣaḥābah* (Companions) thought that the person deserved being killed. But this is not reported anywhere that he ruled the man's *ṭalāq* to be a revocable *ṭalāq* and let the man have his wife back.

On the contrary, the second report that follows clearly indicates that the Holy Prophet ﷺ has enforced the three simultaneous talaqs of Sayyidnā 'Uwaymir in spite of displeasure. Very similarly, Qādī Abū Bakr ibn al-'Arabī has, in relation to the previously quoted *ḥadīth* of Mahmud ibn Labid, reported that the Holy Prophet ﷺ had enforced his three talaqs similar to the three talaqs of Sayyidnā 'Uwaymir. His words are:

فلم يردده النبي صلى الله عليه وسلم بل امضاه كما في حديث عويمر  
العجلاني في اللعان حيث امضى طلاقه الثلاث ولم يردده

So, the Holy Prophet ﷺ did not reject it. He enforced it instead. As it appears in 'Uwaymir al-'Ajlanī's *ḥadīth* of *li'ān*, the Holy Prophet ﷺ had enforced his three talaqs and had not rejected it.

The second *ḥadīth*, that of Sayyidah 'Ā'ishah رضى الله عنها appears in Ṣaḥīḥ al-Bukhārī in the following words:

ان رجلا طلق امرأته ثلاثا فتزوجت فطلق فستل النبي صلى الله عليه وسلم  
اتحل للاول قال حتى يذوق عسيلتها كما ذاقها الاول

A man pronounced three talaqs on his wife. When the woman married elsewhere, the other husband also divorced her. The noble Prophet ﷺ was asked: 'Is this woman *ḥalal* (lawful)?' He said: 'Not unless the other husband has had intimacy with her as was done by the first husband.'

The words of the the report indicate that the three talaqs were given at the same time. Commentaries on *Ḥadīth*, such as Fath

al-Bārī, 'Umdah al-Qārī, al-Qastalānī, confirm this reading of the report, that is, three ṭalāqs were given at the same time. And the ḥadīth carries the decision thereupon, that the Holy Prophet ﷺ made these three ṭalāqs effective and ruled that, unless there occurs marital intimacy with the second husband, she will not become lawful for the first husband, simply by having been divorced by the former.

The third report is that of Sayyidnā 'Uwaymir al-'Ajlānī, who did his *li'an* (لعان : sworn allegation of adultery) against his wife in the presence of the Holy Prophet ﷺ, and following that, he said:

فلما فرغنا قال عويمر كذبت عليها يا رسول الله ان امسكتها فطلقها ثلاثا  
قبل ان يامرہ النبي صلى الله عليه وسلم

So when they were through with *li'an*, 'Uwaymir said: 'I shall be telling a lie if I retained her'. Then, he gave her three talaqs before the Holy Prophet ﷺ could give his verdict. (Ṣaḥīḥ al-Bukhārī including Fath al-Bārī Ṣaḥīḥ Muslim page 289, volume1)

And Abū Dharr رضى الله عنه has, on the authority of Sayyidnā Sahl ibn Sa'd, reported this incident in the following words:

فانفذه رسول الله صلى الله عليه وسلم وكان ماصنع عند رسول الله صلى  
الله عليه وسلم سنة قال سعد حضرت هذا عند رسول الله صلى عليه وسلم  
فمضت السنة بعد في المتلاعنين ان يفرق بينهما ثم لا يجتمعان ابدًا

Then the Holy Prophet ﷺ enforced it, and that which happened in the presence of the Holy Prophet ﷺ became established as *Sunnah*. Sa'd says: 'On this occasion, I was present when this occurred before the Holy Prophet ﷺ. So, following that, the practice became common that they should be separated after which the two should never be united. (Abū Dāwūd)

In this ḥadīth, it is proved with full clarity that the Holy Prophet ﷺ has enforced the three simultaneously-pronounced ṭalāqs of Sayyidnā 'Uwaymir ruling these as three.

And in the previous report of Maḥmūd ibn Labīd as well, as corroborated by the report of Abū Bakr ibn al-'Arabī, it is mentioned that three talaqs were enforced but, even if this was not so, at least this much is not reported anywhere that the Holy Prophet ﷺ ruled it to be one revocable divorce pronouncement, and allowed the husband to retain his wife.

To sum up, the three *ahādīth* under reference prove that, despite the fact of three simultaneous talaqs which invited the extreme anger

of the Holy Prophet ﷺ, their consequence, in any case, was that all three talaqs were ruled effective.

### The action taken by Sayyidnā Fārūq Al-A'zam:

Now the above discussion proves this much that holding three talaqs as three was a decision of the Holy Prophet himself ﷺ. However, at this point, an incident related to Sayyidnā Fārūq Al-A'zam رضى الله عنه, which has been reported in Ṣaḥīḥ Muslim and several other books of *Hadīth*, raises a problem. The words are:

عن ابن عباس رضى الله عنهما قال : كان الطلاق على عهد رسول الله صلى الله عليه وسلم وأبى بكر و سنتين من خلافة عمر طلاق الثلث واحدة فقال عمر بن الخطاب: إن الناس قد استعجلوا فى أمر كانت لهم فيه أناة فلو أمضيना عليهم ، فأمضاه عليهم ، (صحيح مسلم ج ١ ص ٤٧٧)

It has been reported from Sayyidnā ibn 'Abbās رضى الله عنهما that during the times of the Holy Prophet ﷺ and during the first two years of the caliphate of Sayyidnā 'Umar رضى الله عنه three talāqs were taken as one. So, Sayyidnā 'Umar said: 'People are becoming haste-prone in a matter in which there was a room for deferment for them. Therefore, it would be appropriate if we enforce it on them.' Then he enforced it on them.

(Ṣaḥīḥ Muslim, page 477, volume 1)

This declaration of Sayyidnā 'Umar al-Fārūq was made publicly in the presence of *Ṣaḥābah* (Companions) and *Ṭabī'īn* (their successors) -- after consultation with *Ṣaḥābah* having expertise in *Fiqh*. Rejection or hesitation by any one of them has not been reported. Therefore, Imām Ibn 'Abd al-Barr al-Mālīki has reported a consensus on this; the following words appear in al-Zurqāni Sharḥ al-Mu'attā:

والجمهور على وقوع الثلاث بل حكى ابن عبد البر الإجماع قائلاً: ان خلافة لا يلتفت إليه ، (زرقانى شرح مؤطا ج ٣ ص ١٦٧)

The overwhelming majority of the scholars of Shari'ah is of the view that three simultaneous talaqs become effective. In fact, Ibn 'Abd al-Barr, while reporting *ijmā'* (consensus) on this, has said: 'The contrary of this is not worth consideration.' (al-Zurqāni: Sharḥ al-Mu'attā: page 167, v.3)

And Al-Nawawī says in Sharḥ Muslim: