

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ  
تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسِرَّحُوهُنَّ

سَرَاخًا جَمِيلًا ﴿٤٩﴾

*Al-Ahzab (The Confederates) 33:49*

### **O You Who Believe!**

- When you marry believing women.
- And then divorce them before you have touched them, no period of 'Iddat is required to count in respect of them.
- So give them a present.
- And set them free in a handsome manner.

## **Commentary**

Allamah Taba Tabai (AR)

Some of the following verses are about the wives of the Messenger and some are for the general Muslims and their wives.

God says, " *O you who believe! When you wed the believing women, then you divorce them before touching them, there is no iddat (term) on them which you should reckon; so make some provisions for them and send them away in a gracious manner.*"

The verse refers to those women that are taken legally into marriage, and "touching" here, means sexual penetration. The word "provisions " here means that they should be paid according to their dignity and status; and "gracious manner" refers to the fact that there should be no acrimony.

In short it means that in a marriage if the divorce takes place before copulation then there is no (obligatory waiting term) iddat for the women and they should be well compensated and given their freedom in the best possible manner.

Surah Baqarah's verse 237, " *And if you divorce them before you have touched them and you have appointed unto them the mahr (bridal money) then pay half of that.*"

This verse will decide the issue of divorce without consummation and the bridal money fixed or other wise.

### **A Discussion on Tradition:**

In the book Faqeeh Umru bin Shimir and Jabir have quoted Imam Muhammad Baqir explaining the verse being discussed. It says he said,

Oblige them to the best of your capacity with goodness for they revert to pain and sadness and their enemies ridicule them. Since God is merciful; he feels shy and befriends those who are shy. Surely the best among you is the person who is merciful towards his wives.

Halbi quotes Imam Jafar Sadiq in the book Kafi about a person who had divorced his wife before copulation. The Imam said,

He is responsible for half the bridal money if some amount has been fixed and if nothing has been fixed then he should treat her in the best manner possible, as it should be done.

#### *Compiler says*

There are umpteen traditions on this subject explaining the verses of Surah Baqarah in this regard as we have read earlier.

Abd bin Hameed in Durre Manshur Quotes,

One person came to Imam Zainal Abideen and asked about a person who said, " If I marry so-and so woman whom I have divorced. Imam answered,

It is not so that God has mentioned Nikah before divorce as He says " O you who believe! When you marry the believing women and divorce them."

#### *The Compiler says*

This same tradition has been recorded in Majmaul Bayan on the authority of Habib bin Thabit and the same has also be recorded through Ibn Maja, Ibn Marduia and Masur bin Kharmah that the Messenger said,

There can be no divorce before Nikah ( Marriage) and there can be no freedom before enslavement.

#### *Compiler says*

Same has been recorded through Jabir and Ayisha, and Imam Baqir is quoted by Hazarmi in Kafi explaining the verse, " O my Messenger We have made wives permissible for you." He was asked how many women were permitted for the Messenger and the Imam answered, *as many as he pleased.*

In Durre Manthur again, a tradition is recorded from Halabi that Imam Jafar Sadiq explained the verse, " It is not lawful for you to marry other women after this, nor to exchange them." He said,

The Messenger had the right to marry his paternal and maternal cousins and those wives who had emigrated with him and he was permitted to marry the women presented by the believers without fixing any Mahr . No one else is allowed to marry in this way without dowry or women presented to him; and the same meaning pertains to the words " the woman who donates her soul to the Messenger."

Durre Manthur records on the authority of Ibn Saeed, Ibn Sheba, Abd bin Hameed, Ibn Jarir , Ibn Manzar and Tibrani that the Imam was asked about *those women* who donated their souls refers to the messenger's wife Umm Sharik Al Azdih who had noted her soul to the Messenger.

*The Compiler says*

The traditions have name Haula binte Hakeem, and Leila binte Khateem who were believers and their were many other women who had donated their souls to the Messenger.

Muhammad bin Qais is recorded as the narrator who said that Imam Muhammad Baqir had said,

An Ansari woman came to the messenger and asked, *O Messenger of God , Can't a woman select a man? I am a woman and do not have a husband for past some time nor do I have a son. Do you have a need? If you need a woman then I have donated my soul to you if you only accept me.* The Messenger praised her and prayed for her and then said, *O sister of the Ansars, may God give you the Best reward from his side and from that of His Messenger. Verily your men have aided me and I have an inclination for your women.* Hafsa told that woman, *Your modesty has decreased and your impertinence increased that you show open interest in men.*

The Messenger then said, *O Hafsa please stop! She is better than you because she had shown interest in the Messenger of God and you are belittling her!* He then turned towards the woman and said, *Help me and God will shower His blessings upon you. Because you donate your soul to me and made me happy God has made Paradise compulsory upon you. I will soon receive an order about you god willing.* God then revealed the verse , *" And a believing woman if she offers herself to the Prophet and the Prophet wishes to marry her—a privilege for you only and not for the rest of the believers."*

The Imam said, *thus God permitted the donating of her soul to the Messenger but for none else.*

It is recorded in Majmaul Bayan that after the woman had donated her soul to the Messenger, Ayisha said, "What has happened to this woman that she is donating her souls without any dowry?" This was when this verse was revealed. Ayisha said, "I find God acting quickly only for your benefit." The messenger retorted "He will act swiftly for your benefit too if you obey God."

In Majmaul Bayan again once again Imam Baqir and Imam Jafar Sadiq are recorded to have explained the verse "You (O Muhammad) can postpone (the turn of) whom you will of them (your wives) and you may receive whom you will." By saying "She who only hopes cannot marry and she who comes to take shelter marries."

#### Mir Ahmed Ali (AR) and Aqa Mahdi Puya (AR)

*Quru* means menstrual period. The divorced woman is required to keep herself in waiting for three menstrual periods, during which the husband has to support and care for her. In the course of these three months, if it is found out that she is pregnant, then the parental propriety of the offspring is established. Above all, the door of reconciliation remains open. If there is real love between them, the husband can take the wife back before the expiry of *iddat* (prescribed period of waiting). Such a practical arrangement is not available in any religion except Islam.

The legal rights given to women by Islam brought a revolutionary change in human society for the first time. So far woman was a wicked creature, the agent of the devil, and therefore was treated like a chattel, occupying the lowest position in the family and community. Islam gave women an honourable status, similar to men. It was a dynamic change, unknown to history, because it was never even considered, in pre-Islamic period, that women could have rights over men.

"But the men are a degree above women", refers to the natural differences which separate men from women. Allah is all-wise, therefore, particularly in the case of divorce, man can initiate the course of divorce, but a woman cannot. She, no doubt, can go to a *qadhi* to obtain separation on the ground of unbearable maltreatment and demand dissolution of marriage by surrendering her right to *mahar* (dowry). This provision is reasonable because it prevents women from obtaining separation on flimsy grounds.

Islam gives women the right of choosing her life-partner. No one can compel her to accept any man as her husband. The matter lies entirely on her independent judgement. So she does not have the right to take the initiative for annulment of wedlock. Yet she has a recourse. She can go to a *mujtahid* or *hakim sharah* and obtain separation and then marry again whomsoever she likes.

Faridah is the dowry known as mahar. Even if the marriage is not consummated the husband must make provision for the divorced woman, according to his means, whether he is rich or poor.

"He in whose hand is the marriage tie", according to the holy Ahl ul Bayt, is the wali - father or grandfather of the wife, and if none of them is available, the legal authority - hakim sharah.

The wife is entitled to receive the amount of dowry directly; but if she is a minor her guardian (wali), on her behalf, shall receive the payment. It is unreasonable to say that the husband himself is the wali, because he is the person who must pay the dowry; and it is the wife or her guardian who is paid, or approached for half refund (if dowry has been paid in advance) or for foregoing the full amount. The husband cannot plead for the concessions due to himself.

As far as shariah is concerned, the rules of breaking a marriage contract are clear. The seeker of spirituality is advised to go beyond the call of shariah, with generosity and good-naturedness, to help the divorced wife. Man, who has the upper hand over woman, must reflect the fadhl of the bountiful beneficent. "Allah sees what you do", refers to the mutual kindness and charitable disposition with which the members of the brotherhood of the believers in Allah should deal with each other; and it is a warning to the husbands if they foolishly believe that they can hide any evil intention while dealing with their wives.