

**THE LEGAL AND SOCIAL STATUS OF WOMEN IN THE  
HADITH LITERATURE**

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*This thesis has never been submitted to this or any other University*

iii

*This research is dedicated*

*To my late mother*

*and*

*To my Daughter*

*Rayan*

*with much love*

## ABSTRACT

This thesis covers the status of, and attitude to, the woman in Islam, as reflected by the literature of the Hadith. All previous works which have dealt with the status of the woman in Islam have attempted to cover vast areas and aspect ranging from the pre-Islamic era to our present time. However, no single work has ever been devoted to the position of woman as depicted in Muslim tradition.

Since the amount of material collected is so vast, it seems to the author that even a general survey of the status of woman from pre-Islamic times to our present day, is beyond the scope of this research, especially that this subject has already been discussed by many scholars. The literature of the hadith, however, has never been the sole corpus for this subject and hence is the major source for the present research.

The status of women is examined in this work following the different "stages" in the life of the woman. Hence the following aspects have been considered;

- a. the baby girl
- b. the young girl
- c. the married woman and the mother
- d. the divorced woman
- e. the widow
- f. the slave woman.

The six major books of Hadiths, and the books of Sunni, contain an enormous number of references to woman noted by the Prophet and his companions. These references usually refer to the status and legal position of women from birth to death, mainly based on actual facts which were brought to the attention of the Prophet.

In order to collect all the relevant references; all six books of the Hadith, were carefully examined, registered and classified. In addition, all relevant works available were read so that a sound background for the research can be established. Experts in the field of Islamic law were consulted on various aspect of this topic and were also to lesser extent relied on traditions and customs known to the author and her family.

Having dealt with a most sensitive subject which has been neglected up till now. The author aware of the incompleteness of this work, nevertheless, the author feel that the amount of materials examined and methods of analysis which were employed should give the reader on authentic insight into the life and position of the Muslim woman as depicted in the Hadith.

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## ABBREVIATION

The following abbreviations have been used throughout the research following A.J. Wensinck in his book (Concordance et Indices de la Tradition Musulmane).

- A.b.H.** = Aḥmad b. Ḥanbal (Al-Musnad)
- Bu** = Abū 'Abd allāh Muḥammad Ibn 'Ismā'īl, Al-Buxārī (ṣaḥīḥ).
- I.M.** = Al-Ḥāfiẓ Abū 'Abd allāh Muḥammad Ibn Yazīd Al-Qazwīnī,  
Ibn Mājah (Sunan)
- Muslim** = Abū Al-Ḥusayn Muslim Ibn Al-Ḥajjāj Al-Kuṣairī (ṣaḥīḥ).
- Mālik** = Mālik b. 'Anas Al-Medani (Al-Muwatta')
- Tir** = Abī 'Īsa Muḥammad Ibn 'Īsa Ibn Surāḥ al-Tirmidī (Sunan)

## TRANSLITERATION

The following transliteration has been used throughout the research.

### I. Consonants

k	ك	s	س	.	ء
l	ل	ص	ش	b	ب
m	م	ض	ظ	t	ت
n	ن	د	ذ	t̄	ث
h	ه	ط	ظ	j	ج
w	و	ز	ع	h̄	ح
y	ي	ع	ع	X	خ
lā	لا	g	غ	d	د
a	ا	f	ف	d̄	ذ
		q	ق	r	ر
				z	ز

### II. Vowels

#### Short Vowels

Fatha	َ	a
Damma	ُ	u
Kasra	ِ	i

#### Long vowels

ā	آ
ū	و
ī	ي

### III. Diphthongs

aw	او
ay	اي

# CONTENTS

<b>Abstract</b>		i
<b>Acknowledgement</b>		ii
<b>Abbreviations</b>		iii
<b>Transliteration</b>		vi-iv
<b>Introduction</b>		1
<b>Chapter One: The Status of Young Girl in Islamic Society</b>		<b>29</b>
1. Female infanticide before Islām		
2. The Status of Young Girls in the Hadith Literature		31
a. The Treatment of Girls		32
b. Equality between boys and girls		33
c. Rights of inheritance		34
d. the ceremony regarding new babies (ʿAqīqa)		37
<b>Chapter Two: Marriage in Islām (Nikāh)</b>		<b>45</b>
1. The encouragement to marry		
2. The age of marriage		48
3. Pre-martial connection with the women		50
4. The consent of the woman (Qubūl)		52
5. The engagement (Al-Ḥitba)		56
6. The task of the guardian (wālī).		57
7. Witnesses (ṣuhūd)		61
8. The dower (mahr).		62
9. The announcement of marriage (ʾĪlān).		68
10. Equality in marriage (Kafāʾa)		71
11. Women who devoted themselves to the Prophet		75
(Wāhibāt).		
<b>Unlawful Marriage</b>		<b>80</b>
1. The Temporary Marriage (Mutʿa).		
2. The Marriage of <u>Ṣigār</u> .		85

3.The Marriage of <u>Muhrim</u> .	86
4.The Marriage of <u>Muhallil</u> .	89
<b>The prohibition in Marriage</b>	<b>91</b>
1.Woman unlawful for reason of lineage.	
2.Woman unlawful because of suckling.	93
3. Non-Muslim and Slave woman	95
4. The marriage to prostitute.	98
5. Marriage during the <u>idda</u>	99
<b>The polygamy System</b>	<b>101</b>
<b>Chapter Three: The Married Woman</b>	<b>122</b>
1.The relationship between the married woman and her original family	
a.The duty of the woman towards her parents	
b.The duty of the family towards the married daughter	124
2.The duties of the woman towards her husband	131
a. The woman cannot receive anyone without his permission	132
b. the woman cannot go out without her husband's permission	133
c. the woman cannot fast without his agreement	136
d. the woman cannot spend his money without his knowledge	136
e. the woman should obey her husband ( <u>Al-nāsiz</u> )	138
f. the woman should save his honour	144
3. The rights of the woman in making conditions for her husband	147
4. The duty of the woman towards her children	149
a. The guardian	
1. The widow	150
2. The other relatives	151

	3. The guardian in the case of a divorce	153
	b. The conditions for the guardian	156
	c. The end of the guardians duty	157
<b>Chapter Four:</b>	<b>Divorce -Ṭalāq</b>	<b>167</b>
	1.Types of divorce	
	a.intermediate or single divorce (rajʿī)	
	b.ultimate or triple divorce (bāʿin)	170
	2.Self-redemption, (Ḳal)	178
	3.Mutual swearing (Liʿān)	184
	4.Temporary separation (Zihār)	189
	5.The vow of continence (ʾilāʾ)	191
	6.Other types of divorce	192
	a. the right of the woman to choose either to stay with her husband or to aske for divorce (Al-Ṭaxyir)	
	b. the right of the woman to divorce her husband as one of the conditions before sinning the marriage contract (Ṭamlīk al-Ṭalāq)	195
	7.The reasons for divorce	198
	a. for the woman	
	b. for the man	200
	8.Different pronouncements of divorce	202
	9.Lawful and unlawful divorce	203
	10.The forms of divorce	206
<b>Chapter Five:</b>	<b>The Widow (Al-ʾArmala)</b>	<b>216</b>
	1.The mourning of the widow (ʾIḍād)	
	2. Waiting period (ʾIdda)	222
	3.The marriage of the widow	223
	4.The dower (Mahr)	225
	5.The inheritance (mirāt)	227
	6.The maintenance (nafaqa)	228
<b>Chapter Six:</b>	<b>The Slave Women</b>	<b>234</b>
	1.Slavery during the time of the Prophet	



2.The slave woman as a concubine	242
3.The slave woman as a mother (Umm al- <del>W</del> alad)	249
4. The married slave woman	252
5. the relationship between the married woman and her master	255
6. Divorce of the slave woman	258

<b>Conclusions</b>	<b>271</b>
<b>Indexes: Arabic Terminology</b>	<b>284</b>
<b>Bibliography</b>	<b>291</b>

## INTRODUCTION

A Ḥadīth is a tradition related to the Prophet of what the Prophet said regarding many subjects and what he was asked about or what happened in his presence. In other words, Hadith literally means a story (xabar) or news of what the Prophet said (qāla) or did (fa'la) and what he approved of or disapproved of.(1)

Fundamentally, Hadiths are concerned with religious, social and legal matters. They deal with the family structure, personal relationships and the ways of the Muslim community as the Prophet wanted it to be.(2) In addition, they give us a view of early Islamic history because they recorded the military and political climate of the time and contain biographical details of the Prophet.(3) We can say that Hadith is a mirror of the history of Islam during the first century of the Hijra.(4) However, the purpose of the Hadith is to express the Prophet's opinion, his way, his attitude and his belief about various aspects of life. Stressing Muhammad leadership and authority.(5) Guillaume, described the Hadith saying that it is a major branch of Muḥammadan literature, which stands beside the Koran.(6)

There is no basic difference between the Ḥadīth and Sunna which is the Prophet's practice and custom, since both of them are handed down by the Prophet and deal with the same moral, religious and social rules as established by the Prophet. Also, both of them have a religious basis, therefore, they are not outside the Koran's teaching. The connection between Hadith and Sunna is that Sunna is what was practised by the Prophet and his companions while Hadith is the record of this practice.(7)

The slight distinction between them is that Sunna is covered by ijmā' (Consensus) of the earliest Muslim community which considered Sunna to be more reliable than the Hadith, in that Al-Imām Mālik said that Sunna was superior to the Hadith.(8)

Therefore, Hadith is considered to justify and confirm Sunna, which became the code of rules to be practised and followed by all Muslims.(9) However, in some matters we find Hadith without confirmation by the Sunna

Hughes mentioned a vital fact when he said that the word Sunna means what the Prophet did, said and accepted:

- a. Sunnat al-fi'l (the Prophet's action)
- b. Sunnat al-qawl (the Prophet's utterance)
- c. Sunnat al-t'aqrir (what the Prophet and his companions did not forbid.) (11)

In addition, the Prophet used to mention what he liked and preferred and did by "my Sunna". Therefore, it is generally agreed that Sunna and Hadith are considered to be one thing.(12)

The Koran, Hadith and Sunna (tradition) are the primary sources of Islamic law (Sari'a). First the Koran, then the Hadith and Sunna which are both regarded as secondary foundations of Islam.(13) The Prophet made it clear when he said "we follow only what we find in the Koran".(14) Rejecting anything that contradicted the Koran the Prophet said "Compare what is related on my authority with the Koran, if it agrees with it I have said it, and if it does not agree I have not said it".(14) Also he said "My sayings do not abrogate the word of God, but the word of God can abrogate my saying".(15) This point was generally agreed among the Muslim jurists al-Sāfi'i said "A tradition could be abrogated by another tradition and one sura in the Koran could be abrogated by another sura in the Koran".(16)

It is a fact that any conflict with the Koran meant that the Hadith had to be rejected.(17) al-Buxārī and other collectors were concerned about this point when they collected Hadith because the Koran, Sunna and the historical events were the primary

elements for checking the sound Hadith against the weak and unsound Hadith.(19)

The Prophet himself regarded the Koran as overriding his Sunna but at the same time he considered his Sunna as a vital guide for the Muslim community. He said "Keep my Sunna as a guide for you, first the Koran then the Sunna and you will never perish".(18)

The Koran encourages Muslim people to adopt the Prophet's tradition saying "You have a good example in God's messenger. You, whoever, hope for God and the Last Day" (33:20). Also, Muslims are recommended to obey God and obey the Prophet and they are told that when they disagree about anything to refer it to God and his Apostle" (7:62) means to the Koran and the Prophet's traditions.

Given that both the Koran and the Hadith fixed the rules of the religious and social life of the Muslim community, we may mention the slight dissimilarity between them:

- a. The language of the Hadith is inferior to that of the Koran, because the narrator concentrated on the general meaning of the Hadith, not on the exact word of the Prophet.
- b. The Koran is the text, while Hadith is its detailed explanation.(20)
- c. The Koran is God's words and is described as old while Hadith is the Prophet's words and is described as new(21)
- d. Hadith upheld Koranic teaching alongside the responsibility of human beings and free will.(22)

The Prophet expressed his opinion concerning many matters and he used to say that everything related to religion is to be referred to the Koran, but if anyone wanted his opinion concerning the affairs of the world he used to say "I am no more than a man".(23)

- e. The Koran is known as the book and the tradition of the Prophet is known as wisdom.(24)
- f. Watt mentioned another dissimilarity saying that traditions belong to a system of ideas



current in Arabia before Islam and concerned with man's life, while the Koran is concerned with the majesty of God.(25)

During his life the Prophet was the centre of the Muslim community and the head of the religious, political and moral system. Any problem, disagreement or any difficulty among Muslims had to be solved by the Prophet.

Suddenly, the Prophet passed away and his traditions were cut off. Serious difficulties appeared, many different theological sects arising, the development of law with the need for solutions for all these new occurrences and problems is called the Hadith.(26)

Al-Medīna is the place where Hadith arose, the Prophet lived there a decade (622-632) with his companions (al-Sahāba). Al-Medīna was called "Dār al-Sunna" owing to that it held more political, social and religious power(27) because after the passing of the Prophet his companions who complied with His utterances and acts, became the main source of the Prophetic Hadith and Sunna. These were increasingly demanded by the Muslim community.(28) Later, Iraq played an important part in what was called "Ilm al-Hadīth". Schacht had a different opinion regarding Iraq the "Home of Sunna" saying that Al-Medīna always depended on Iraq.(29) However, the majority of Muslim scholars did not support his opinion.

The companions preserved the Prophet's Hadith in their memory and orally. The second stage was to put the Hadith in writing.(30) However, the time at which the Hadith was written caused the main dispute between western and Muslim scholars. There were two Hadiths from the Prophet transmitted by Abū Dāwūd; the Prophet permitted the Hadith to be written, and the Prophet forbade the Hadith to be written.(31) The majority of Muslim scholars believed that a small part of the Hadith was written during the Prophet's time.(32)



It is a fact that the Prophet was afraid of having another book besides the Koran if his Hadith were written which might confuse Muslim people. Abū Baker had the same fear. Although he narrated some Hadith he collected nearly 500 of these that had been written and burned them.(33) Also 'Omar b. al-Xattāb had the same concern. He forbade narrators from narrating Hadith and imprisoned some of them,(34) but it seems that later he accepted the idea of writing the Hadith and 'Alī b. Abī Tālib allowed it, depending on the Prophet, who said "Write this science in the books".(35)

The official attempts to put the Hadith in writing started in Umayyad reign. However the Golden period of Hadith as a science was in the 'Abbasid age. When the efforts of the companions and their disciples the successors, and the jurists of al-Medina, Iraq, Syria, Egypt and the role of the collectors, laid down the foundation of 'Ilm al-Hadīth. This had to be taught and learnt from both a religious point of view and also as a part of Islamic law and culture. Two schools of Hadith were established in Damascus, the first called al-madrasa al-nuriyya in 569 A.H. and the second was al-madrasa al-'Ašrafiyya 626 A.H. There was a third school in Cairo in 622 A.H.(36)

The earliest collectors and narrators were the companions who compiled the first ṣaḥīfa (scripts).

1.They were:

- a. Saīd b. 'Abād Al-'Anṣārī
- b. Jābir b. 'Abdallāh
- c. 'Abdallāh b. 'Omar Ibn Al-'Āṣ his Ṣaḥīfa was described as the trust Ṣaḥīfa contains 1000 Hadith.
- d. Hammam b. munabah whose Ṣaḥīfa was known as the correct Ṣaḥīfa.(37)

2.'Urwa b. Al-Zūbier (648-717) one of the successors. He was 'Asmā' b. Abī Bakr's son, he narrated Hadith from his aunt 'Āiṣa the Prophet's wife.

3. Muḥammad b. Muslim Ibn Šihāb ʿAl-Zuhri (d 741). He narrated most of ʿAl-Medīna Hadiths,(38) Mālik mentioned many of his Hadith's.

4. Mālik b. ʿAnas ʿAl-Medani (715-795) was reported to be descended from the Kings of Ḥmyar, his grandfather was one of the successors. He was born in ʿAl-Medīna, spent most of his life in poverty, but when he became rich, he became fond of nice clothes and perfumes.(39) He was not only a collector of Hadith, but was also a great jurist. His book, ʿAl-Muwattaʿ was basically a book of law based on the Hadith of ʿAl-Medina, because he did not usually mention the whole chain of transmitters.(40) His book was described as the oldest, the best, the most correct and truthful book which was offered in the second century of the Hijra.(41) Mālik divided his work into 60 books according to subject, adding his own opinion and mentioning the opinions of the other jurists referring to them saying "that which our people believe", "that is the best I heard" and "it is our customs".

Mālik was a narrator, a thinker and a critic of other jurists. His great achievement was his school or madḥab and his book was regarded as the foundation of his rite. In addition, ʿAl-Muwattaʿ was said to have had a great influence on the other two Sunni Madāhib, ʿAl-Šāfiʿite and Ḥanbalite, since both ʿAl-Šāfiʿi and Ibn Ḥanbal were his disciples.

It took Mālik forty years to finish this book. In particular he collected Hadith from the Prophet and ʿAṭar from his companions following the Medinan belief that ʿAṭar from the companions were preferred. His book contains 10,000 Hadiths.(42) Schacht described the best chain of transmitters (ʿIsnād) as coming from Mālik, Nāfaʿ and Ibn ʿUmr.(43)

5. Aḥmad b. Ḥanbal (780-855) was born in Baḡdād and lived in ʿAl-Baṣra, therefore he is called sometimes ʿAl-Baṣri. He was the first to collect Hadith as a guide for making decisions.(44) His book 'ʿAl-Musnad' was arranged and compiled by his son ʿAbdallāh, who saved and published his father's book. Guillaume described his book as the most

important book of Hadith. It contains nearly thirty thousand Hadiths.(45) He collected them from the women of Muhammad's family.(46)

Unlike Mālik's book Ibn Ḥanbal arranged his book according to the name of some seven hundred companions,(47) whom he respected deeply. He said "they are the models of Muḥammad who fails to follow them commits a sin and he is an unbeliever".(48) He mentioned many unique Hadith and unlike the majority of Iraqi jurists, Ibn Ḥanbal held al-Medīna's beliefs. He kept firmly to the Hadith without becoming involved in discussion or arguments or expressing his own opinion (ra'y).

He was described by the majority as the strictest of the four Imāms of Sunni Madāhib, while others like al-Ṣarbāṣī described him as "the poet of religion and worship" saying that his supporters used violence against their opponents. al-Ṣarbāṣī described them saying that they were rude, rough and an insolent group.(49) However, concerning Ibn Ḥanbal's opinion towards the status of women. I must admit that I could not detect the narrow-mindedness and the stubbornness which some ascribed to Ibn Ḥanbal. On the contrary, sometimes his opinion regarding women is more enlightened than of Mālik and Abū Ḥanīfa. For instance, he accepted one man and two women as witnesses for marriage while others refused women as witnesses.(50) He refused divorce by a sick man and allowed his widow to inherit from him.(51) Also, he supported the woman who made conditions for her husband before marriage, not to move her from her place to another country and he allowed her to ask for divorce while other Imāms did not.(52)

One may believe that Ibn Ḥanbal was strict concerning what was lawful (Ḥalāl) and what was unlawful (Ḥarām) and his main battle was against al-Mūṭazila, the Anti-Hadith group. He said they should be killed because they were paganṣ also he believed that he who insulted the Prophet should be killed.(53) He founded the Ḥanbalite school, whose principles were adopted by al-Wahābiyīn in northern and central Arabia and who had a strong following in Syria and Iraq before the Ottomān



conquest.<sup>(54)</sup> Although he adopted *al-Medina's* belief one of his titles was mufti of Iraq.

6. *al-Šāfi'ī* Muḥammad b. 'Idrīs (767-820) was born in Ġaza in Palastine and was descended from the Prophet. He was Mālik's disciple in *al-Medīna* and mixed with the jurists of *al-'Irāq* especially *al-Šaybānī*, Abū Ḥanīfa's disciple. He spent his last years in Egypt where he died and was buried.<sup>(55)</sup>

*al-Šāfi'ī* was involved in judging and collecting the Hadith and he travelled to many places to hear Hadith and to collect them. His great reputation arose because of his arguments with the group of the Anti-Hadith.<sup>(56)</sup> "He argued in a very clever way about the establishment of the Sunna during the Prophet's time and insisted that Sunna is based on the Koran".<sup>(57)</sup> This role gave him the title of the defender of Hadith. Western scholars gave his efforts a great deal of attention and some of them wrote extremely important books about *al-Šāfi'ī* opinions and ideas, Authors such as; Schacht, Guillaume and Margoliouth.

*al-Šāfi'ī* principles are mixed between *al-Kufa* and *al-Medina* where 'Ijmā' and qiyās were used only in the absence of the Koran and the Sunna, while avoiding the personal opinion (ra'y). At the same time he held some Iraqi beliefs.<sup>(58)</sup> He was not always in agreement with Mālik since he preferred the Hadith of the prophet more than that of the companions. He founded the *al-Šāfi'īte's* rite which was described as the golden mean between the *Ḥanīfīte* rite and those of the *Mālikītes* and *Ḥanbalītes*.<sup>(59)</sup> He was known as a poet and linguist as *al-Šarbāṣī* mentioned.<sup>(60)</sup> He wrote many books; 'Kitāb *al-'Umm*',<sup>(61)</sup> '*al-Risāla*' and '*Aḥkām al-Koṣān*'.

7. Abū Ḥanīfa *al-Numān* (699-767) was of Persian origin and lived and died in Iraq. He founded the school of the *Ḥanīfītes* which is called the rite of Ray', because he dealt with the Hadith, according to his personal opinion instead of accepting the words of Hadith without argument.<sup>(62)</sup> In other words, in accordance with the spirit and the intention of the Hadith.<sup>(63)</sup> He has the opposite idea to that of *al-Medīna* concerning

the Hadith. He believed that what the Prophet said should be accepted without argument, but what the companions said should be chosen selectively and what the successors said should be examined saying "they are men and we are also men".(64) These opinions made Abū Ḥanīfa different to Mālik, Ibn Ḥanbal and to some extent, Al-Šāfi'ī. Some criticised Abū Ḥanīfa saying that he knows very little of Hadith,(65) and Mālik said "Ahl Al-ʿIrāq do not like our science and do not accept our opinion in their science".(66)

Levy, described the relationship between Abū Ḥanīfa and Mālik saying that "they had the same results and were different in detail only".(67) Others believed that the differences were much more serious referring to the blood bath between Ḥanīfites and Ḥanbalites who also slaughtered Šāfi'ites at ʿAṣfahān.(68) However, we can say that every rite, which was not a sect as Lammens defined it, had its own law (Fiqh) and members(69) and two of them had been officially accepted the Ḥanbalites in central and northern Arabia, and the Ḥanīfites in the ʿOttomān Empire, the other two rites were Mālikite and šāfi'ite were by choice.

That which made them similar was the fact that they were the Sunni Imāms who followed the Sunna of the Prophet and early companions and called themselves Sunnīs.(70) regarding the Koran and the tradition of the Prophet as the basis of Islamic law. Although Ahl al-ʿIrāq (Abū Ḥanīfa al-Šaybānī and Abū Yūsuf) used Ra'y and qiyās (analogy) as necessary(71) and Ahl al-Ḥijāz (Mālik, Al-Šāfi'ī and Ibn Ḥanbal) adopted ʿijmāʿ in general and qiyās in the absence of the Koran and the Sunna. This constituted the dissimilarity between them. However all of them belong to one stream, which is called Sunni orthodox.(72)

Both Abū Ḥanīfa and Mālik were beaten and put in prison by Al-Mansūr. Abū Ḥanīfa because he refused to cooperate with ʿAbbāsīd authority and rejected the position of judge in Baḡdād. He died in prison without leaving any books, but his disciples, Abū Yūsuf and Al-Šaybānī published, presented and explained their ideas.(73) Mālik was also beaten because he insisted that the divorce by force was unlawful by the Prophet



while the 'Abbasids permitted it.(74)

### The Transmitters of Hadith

The transmitters of Hadith were mainly the companions of the Prophet and were the only source of the Prophetical Hadith. Their disciples or the successors transmitted the Hadith from them.(75) The companions had their own opinions and sometimes they included their explanations when they transmitted Hadith. Their opinion is called 'Aṭar or Xabar. There were nearly 3,000 who lived with the Prophet and shared his decisions. Their 'Aṭar is based on the Koran, the Prophet's teaching and on their own experience.(76)

I named only those who I based on their authority. Firstly, the senior companions or the four caliphs the rightly guided:

a. *Abū Bakr* transmitted some Hadith from the Prophet. Some said there were 20, others said that 150 'Aṭar of his were found in different books.

b. *'Omar b. al -Ḥaṭṭāb* transmitted nearly 60 Hadith and it was said that 200 Xabar from him were discovered in the book of *Abū Naḥm Ḥāfīz*. Also, large numbers of 'Aṭar and many Hadith from the Prophet were officially pronounced by him.

c. *'Oṭmān b. 'Affān* transmitted nearly 9 Hadith and had some 'Aṭar.

d. *'Alī b. Abī Ṭālib* transmitted some Hadiths and has many 'Aṭar.(77)

Secondly, 'Abd Allāh b. 'Omar al-'Āṣ is regarded as a supreme transmitter.(78) He transmitted a large number of Hadith, nearly 270. He represented al-Medīna's authority and unlike the majority of the companions, Ibn 'Omar could read and write in Arabic and Syriac.(79)

'Abd Allāh b. al-'Abbās (d 688) was the Prophet's cousin. He was called "Ḥibr

Al-Umma".(80) He transmitted nearly 217 Hadith(81) and both Abū Dāwūd and A-Tirmidī published their books based on his authority. Ibn 'Abbās represents the Mecca authority and had his differences with al-Medīna's jurists. His disciples 'Aṭa and 'Ikrima, held his opinions (Aṭar) and transmitted them.(82) 'Anas b. Mālik served the Prophet for ten years in Al-Medīna and transmitted nearly 268 hadith from him.(83)

Abū Huraira (d 676) was called "The father of Tradition".(84) He transmitted the largest number of Hadith, nearly 446. Most of them were found in Ṣaḥīfa's Hammam, Aḥmad b. Ḥanbal's and al-Buxārī's books. His book 'Kanz al-Ulmā' contained 32,000 Hadiths.(85) He had his own 'Aṭar. Therefore, they were sometimes mixed up with the Hadith of the Prophet, which made western scholars criticise him severely and some even hesitated to rely on his authority.(86) al-Buxārī referred to some of his Hadith saying "these are from Abū Huraira's bag".(87)

'Abdallāh b. masūd al-anṣārī (d 652) is regarded as an acknowledged authority on the Koran and Hadith. He was close to the Prophet and served him in Al-Medīna.(88)

The Prophet's wives, they were the best sources because they were most acquainted with the Prophet's private life. Of all of the Prophet's wives, concubines and women who devoted themselves to him, 'Āiṣa's name is the most important.

'Āiṣa b. Abū Bakr considered to be a supreme transmitter of Hadith and most of the books of Hadith depend on her authority. She transmitted nearly 242 Hadiths from the Prophet.(89) She was involved with and showed great interest in narrating Hadith for 48 years after the passing of the Prophet. She transmitted the most private and unique Hadith from the Prophet. For same matters, her transmissions were the only sources of information, such as lawful and unlawful suckling, marriage without paying mahr for the bride, the consent of women in marriage. However, some of her Hadith contrast with the others

The other wives of the Prophet were less concerned with transmitting Hadith and

it was reported that only 73 Hadith were transmitted by them.<sup>(91)</sup> We recognise the names of Umm Salma, Maʿmūna Umm Ḥabība, Zainab b. Jahsh and Ḥafsa b. Omar b. al-Xattāb. Also, the names of Umm ʿAtya al-Anṣāriya and of Umm Salīm appeared in connection with specific matters.

### The collectors of Hadith.

It is obvious that the science of the Hadith owes a great deal to the men, who travelled to places like Al-Medīna, Mecca, Iraq, Egypt, Syria and elsewhere in order to hear and collect the sound Hadith of the Prophet and his companions, from the lips of the savants and, even from the ordinary people in the corners of the mosques or on the roads.<sup>(92)</sup> The movement of collectors had a religious influence therefore, it was generally agreed that he who travelled a road in search of knowledge God would prepare a way to heaven for himself.<sup>(93)</sup> These men were jurists and had deep religious beliefs and knowledge. This was used to accept or to reject thousands and thousands of Hadith.

My purpose is to name the collectors on whose work I rely, mainly the six books of Hadith. Abū ʿAbdallāh al-Buxārī, Muḥammad b. ʿIsmāʿīl (810-870) born in Buxāra, Persia. At the age of eleven he started to study and to learn Hadith. In order to collect the Hadith, he travelled for sixteen years to different places in Asia.<sup>(94)</sup> He found nearly 600,000 Hadiths and when he compiled his book 'al-Ṣaḥīḥ', which is regarded as the greatest among the six books of Hadith, he included only 4000 Hadiths.<sup>(95)</sup>

Muslim b. al-Ḥajjāj (817-867) born in Naysabūr in Persia is the second most important collector. His book 'al-Ṣaḥīḥ' contains 300,000 Hadiths and had the same value and respect as the Saḥīḥ of al-Buxārī.<sup>(96)</sup>

Abū Dāwūd, Sulaymān al-Sajistānī (817-888) was another important jurist and collector of Hadith and was Aḥmad b. Ḥanbal's disciple in Baḡdād. He lived and died in al-Baṣra. His book 'Al-Sunan' contains 4,800 Hadiths. He presented it to Ibn Ḥanbal,

who was pleased with it regarding it as trustworthy saying "Knowledge from the Koran and Abū Dāwūd is enough".(97)

Al-Tirmidī, Abū ʿĪsā (824-893) was Al-Buxārī's disciple and it was reported that he lost his sight because he mourned him for a long time. He was interested in Hadith and made long journeys to many places to collect them.(98) His book was known by different names like, 'Al-Sunan', Al-Jāma' al-Kabīr as Goldziher called it because of its value, and Al-Fihras called it Al-Ṣaḥīḥ.

Al-Nasāʾī, Aḥmad (d 915-916) was born in Xurasān like Bu and Muslim, but he lived in Egypt. He was described as having deep religious feeling. It was reported that because he supported 'Alī b. Abū Tālib he was persecuted and beaten severely in a mosque and kept in prison, which led to his death.(99) His book is called 'Al-Sunan' which was also known as 'Al-Mujtabī'.(100) It is considered to be a good book.(101)

Ibn Māja, Al-Ḥāfiz Abū 'Abd Allāh b. Muḥammad Ibn Yazīd al-Qazwīnī (d 886). His book 'Al-Sunan' was criticised and described as untrustworthy because he usually mentioned weak unsound Hadith and sometimes defended unreliable transmitters.(102) Therefore, his book should be read with caution and some did not consider it as one of the six books of Hadith and added 'Al-Muwatta', Malik's book, instead. Others mentioned al-Dārim's 'Sunan'.(103)

Although quoting some Hadith from his book, awareness of this point was taken into consideration. These six books of Hadith were considered to belong to the Sunni rites. They were compiled in the 3rd century of the Hijra and arranged according to the subjects. Every book was divided into different subjects or small books such as; the book of marriage, divorce, Ḥajj and so on. They contain biographical material, Koranic commentary, details of religious observance, in law commerce, political events and private behaviour of public life. In other words their main interest is the Sunna and the Prophet's Hadith.(104)



Ṣ. Al-Ṣāliḥ, divided the books of Hadith into four categories starting with:

- a. Ṣaḥīḥ Al-Buxārī, Muslim and Muwatta' Mālik, regarding them as most important.
- b. He regarded the works of Sunan Tirmidī, Abū Dāwūd al-Nasāī and Ahmad b. Ḥanbal Al-Musnaḍ as good but not on the same level as the first category.
- c. He described the works of Ibn Abū Ṣaybā, al-Taylasī and Al-Bayhaqī and Al-Ṭabrānī as good, but only the savants and the expert of ʿIlm Al-Ḥadīth could benefit from them because they used many kinds of weak unsound and rejected Hadith.
- d. The lowest level of books, were rejected since they were compiled by unreliable narrators in the last centuries and were full of false and unacceptable Hadith such as Ṭaṣānīf Ibn Mardwīya, Ibn Ṣāḥīn. (105)

The Ṣaḥīḥ of Al-Buxārī and of Muslim became known to people in the 4th century A.H. while the other books followed in the 5th and 6th century. (106) Besides these books there are also some good works recognised by the Sunni Maḍāhib such as; Sunan Al-Dārimī, Al-Daraqūṭī, Al-Baḡāwī and Miṣkāt Al-Maṣābiḥ for Ibn Al-Xatīb, but they were all considered of less standing than the six books. (107) In addition, Kitāb Rais Ahl Al-Maḡāzī' by Muḥammad b. ʿIshāq was mentioned. Although it is an historical work and not a book of Hadith, he did not give a complete chain and proper isnads. (108) However, he did give quite good information about the Prophet's career, his wars and his wives.

Muḥammad Ibn ʿOmar Al-Wāqidi Kitāb 'al-Maḡāzī'. It was generally agreed that his book cannot be trusted. Al-Ṣāfi described him as a liar and Ibn Ḥanbal considered him unreliable and Al-Buxārī rejected all of his tradition. (109)

## Woman's rights in the Koran

The subject of woman's rights is an age old matter as old as the universe. Every



society understands this matter according to its religious, principles and moral beliefs. Therefore, it is a serious mistake to judge any society without knowing what was acceptable and lawful at that specific time. This could be rejected and forbidden in one society, but might be accepted in another.

Before Islam, women's rights were in harmony with the pagan society, which fixed these rights and they were respected. They protected the woman at that time according to their belief.

Concerning Islamic times, women's rights took on a different meaning and attitude. The Koran preserved more than one Sura dealing with the rights of the woman, basically sūra: al-Nisā<sup>4</sup>, al-Baqara 2, al-Nūr 24, al-Rūm 30 and al-Talāq 65.

### 1. Sūra al-Nisā<sup>4</sup>

This sura concentrated on the rights of women regarding inheritance from her parents and relatives (4:6) and her receiving 1/2 of the male's entitlement (4:10). The right of the widow to inherit from her husband is portion 1/8 if she has children and 1/4 for the childless (4:11). One daughter inherits 1/2 from her father and more than two daughters get 1/3 each (4:10). One sister may inherit from her childless brother 1/6, more than one gets 1/3 (4:11). The right of wealthy orphans to control her money is after the age of maturity or marriage (4:5).

Polygamy is regarded as very difficult and regulated according to the Koran, which says that if a man fears that he cannot act fairly towards his four wives he should marry only one (4:2) adding that a man will never be able to be fair to all of them even if he so desires (4:128). There is an obligation for the man to give his wife her dower (4:3).

### 2. Sūra al-Baqara

Concerns the married woman in divorce and the widow. It says that the man may

keep or release his divorced woman after the idda by kindness (2:230). The divorced woman has the right to suckle her baby for two years (2:231). Also, in the case of divorce she has the right to get her dower (2:236) (2:240). A man has no right to take back his dower unless in the case of xal<sup>6</sup>(2:228). The widow has the right to remarry after the idda, meaning after four months and ten days (2:263).

### 3. Sūra QI-Nūr

It protects the woman from false accusation. It says that those who accuse their wives without having four witnesses are miscreants and shall be cursed and they should be flogged with eighty stripes (24:3). Also, a man was not to force his slave girl into prostitution (24:32).

### 4. Sūra QI-Rūm

It says "God created for you wives from yourselves that you might repose in them (30:20).

### 5. Finally Sūra al-Talāq

It says that the divorced woman has the right to spend her idda in her husband's house and he has to maintain her unless she was guilty of some scandal (65:1). Also, she has the right of maintenance for her baby for two years and her husband has to pay her during that time (65:5) this point is based on the mutual agreement of the divorced couple.

These are the main rights of the woman in the Koran as I believe them.

Concerning the Hadith, it is utterly misleading to concentrate on one Hadith from the Prophet, saying that the woman's rights are to be fed, clothed and housed and not to be humiliated or insulted by her husband. It is remarkable that most references

mentioned this Hadith. Others mentioned both the Koran and Hadith, concerning the woman's rights, like Hughes who said that "the Prophet did something towards improving the condition of women, but he did not make a complete change". He supported his opinion by saying that the Prophet decreased the number of wives to four and made it an obligation for the man to support his divorced wife during her idda. Also, to ask for four witnesses in the case of adultery to prove the charge against her. In addition, he mentioned that the Prophet made irreversable divorces less common by adding hard conditions. Finally, he mentioned 'Umm al-Walad.

These were the woman's rights, which Hughes ascribed to the Prophet but three of five were basically from the Koran, He was right about the last two.(110)

One might agree with Hughes that what the Prophet did for women was not a complete change, but this change directly affects the women's rights. Therefore, It can be said that women's rights in the Hadith were much more than Hughes and others mentioned. The Prophet used to be visited by women asking him to solve their problems caused either by their husbands or their families. He made a large number of rules and gave judgments which protect womens rights in, marriage divorce, as a widow and as a slave.

### **Western and Muslim scholars**

In general, there is a gap between the attitude of western scholars and Muslim scholars in dealing with the subject of women in Islam.(111) Some western scholars regarded the position of women in pagan Arabian society as a high and powerful one, they regarded it as better than the position they held under Islam.(112) In addition, some mentioned the change from maternal power in pre-Islamic times to a paternal power, which made the man the head of the family.(113) The Muslim scholars rejected

these opinions and stated completely the opposite, raising the status of women under Islam compared with that in pre-Islamic times. They insisted on the equality between the man and the woman.(114)

However, having said that, we could concede that some western works were quite interesting and useful. Some gave a good survey of the woman from pre-Islamic times until the time of Islam and others concentrated on the Prophet's biography. For instance, R. Levy 'the social structure of Islām' gave a good survey and some details about the Hadith and the slavery system. G.H. Stern 'Marriage in early Islām' gave quite unique information about the women, who devoted themselves to the Prophet. V.R. and L. Bevan Jones 'Women in Islām' is a good survey. W.M. Watt has many books about Islam and I dealt with 'free will' and 'Muḥammad At Al-Medīna' gave a rather interesting survey of the Prophet's wives. W. Muir 'the Life of the Prophet' is a survey of the Prophet's biography.

Western scholars have shown great interest in the science of Hadith. Some of them have been involved in lengthy discussions and arguments and others gave great favour to 'Ilm Al-Hadith such as A.J. Wensinck 'Concordance et Indices de la Tradition Musulman' which is a big dictionary of seven volumes. It dealt with the Hadith of the Prophet based on the six books of Hadith, and on Sunan . . .l-Dārīmī, Musnad Aḥmad b. Hanbal and Muwatta' Mālik. He has also written 'A hand book of Early Muhammadan Traditions' and 'The Muslim Creed'. In addition, J.D. Pearson 'Index Islamīcus' is a very interesting work. He mentioned the references which concern the Hadith from 1906-1955 and covered books and articles in different magazines. J. Robson had many articles about 'Ilm Al-Hadīth' and the collectors of the six books. He also translated Kitāb 'Miḥāṭ Al-Maṣābiḥ' for Ibn Al-Xatīb'.

Other scholars concentrated on the Hadith from a critical point of view, and ended-up by rejecting the whole Hadith, considering it unreliable and false.(115) Goldziher(116) is the Head of this movement and J. Schacht(117) H. Lammens shared



this opinion saying that the Hadith and Sunna only existed in the second century of the Hijra, 100 years after the Prophet, and most of the Hadith, which were referred to the Prophet, belonged to the later generation of the successors. They added that the majority of the genuine Hadith are unreliable.(118) A.Guillaume had the same opinion and regarded Goldziher's book 'Etudes Sur La Tradition Islamique' as the basis of any work on the science of Hadith.(119)

This movement held the same opinion as the anti-Hadith, who were Ahl al-Kalām and al-Mūṭazila who described the Hadith saying "It is a new fangled appeared in the first half of the second century of the Hijra".(120) They rejected the whole of Hadith and had long and severe arguments with Ahl al-Hadīth, especially al-Šāfi (121) and Aḥmad b. Ḥanbal(122), who had a bitter battle with them particularly al-Mūṭazila. Ahl al-Kalām wished to reject all the Hadith because they feared they could be on the same level as the Koran while al-Mūṭazila feared the power of traditions.

The difference between the western and the Muslim scholars, who rejected the Hadith, is that the Muslim scholars were a small and contemporary circle, arising in Iraq, while the Western scholars formed a large circle.(122) Ṣ. al-Šāliḥ(124) dealt with this point in detail and expressed the Muslim objection to Goldziher and his colleagues ideas. He achieved an interesting study about the time of the writing of the Hadith(125) and the stages which followed in collecting and writing them, from the Prophet's time until the appearance of the six books of Hadith in the ʿAbassīd age. He described the hard work of the collectors who examined and selected the sound Hadīth from among those that were weak and unsound. He ended his survey by saying that a small number of the Hadith were written during the Prophet's lifetime and others were kept in the memory of the companions and their successors.(126) However, western scholars are critical of the memory of this later group saying it was too weak.(127) On the other hand, some western scholars accepted some hadith and rejected others like Dozy. Others

regarded the six books as genuine, especially Ṣaḥīḥ al-Buxārī and Muslim, while others showed some doubt about the Hadith as an historical record.<sup>(128)</sup> Yet others accepted it and held the opposite opinion.<sup>(129)</sup> It is not my purpose to support the Hadith or defend its rules, but the opinion of Guillaume who judged the Hadith by only two words, drew my attention towards it. In his book 'The Tradition of Islām' he said "Much has been written on the status of the woman in Islam, Hadith in this as in so many other matters reflect the thought of the best and the worst minds". From numerous Hadith about the woman, Guillaume chose five Hadith to support his idea. He mentioned a Hadith from the prophet saying "I have not seen despite your deficiency in intelligence and religion any sharper than in captivating the mind of the resolute, is not the witness of a woman equal to half the witness of a man and when she is ceremonially impure she neither prays or fasts".<sup>(130)</sup> Basically, the Koran establishes these facts and not the prophet (2:281) the witnesses could be one man and two women "Lest one of them should err, the other may cause her to recollect". Also, the Koran mentions that only pure Muslim people are allowed to pray, fast and to hold or touch the Koran (book) whether they are males or females. This means that there is no difference between men and women concerning this point. For instance, a drunken man and those who are not clean (4:42). In addition, neglecting religious duties is regarded as a serious matter not only in Islam but in other religions. For example, in early christianity women could not attend church after giving birth and she had to be churched (ceremony) before she was considered clean again. Also, a jewish woman cannot fulfil her religious duties during her period and she can never hold the book of 'Tawrat'.

al-Baḥāqī, reported a Hadith from the prophet saying "your wives and your children are your enemies, so be careful with them".<sup>(131)</sup> This Hadith repeated the verses of the Koran (64:13.4) and (63:8), which regard children and money as enemies for man. The prophet explained the meaning of these verses saying that wives and children distract man's attention and make him neglect his religious duties. This

happened to the prophet himself when he was making a speech in the mosque. He saw his two nephews, *Al-Hassan* and *Al-Hussein*, who were wearing beautiful clothes. The prophet cut his speech and ran to cuddle both of them.<sup>(132)</sup> Therefore, we can say that the prophet did not specify only the woman concerning religious duties, but he wanted women to visit the mosque for prayer every day at the evening and for the two feasts even those who were menstruating. He stated that they can share the meeting and listen to the sermon and discussion.<sup>(133)</sup> In addition, the prophet said "If a man wants to fulfil his religious duties he should marry and if he wants to be pure, he should marry".<sup>(134)</sup>

The above Hadith, which Guillaume mentioned is not a secret Hadith since it was mentioned in some books of Hadith,<sup>(135)</sup> but if we accept it as a general judgement from the prophet about a woman's intelligence it would be misleading. This is because the prophet allowed her to be responsible for children since he said that each one of you has a responsibility, the father towards his family (maintenance and support) as the Koran says (4:33), and the mother to bring up her children (moral, physical and emotional). Some references described this Hadith saying that the woman is the queen of the household<sup>(136)</sup> while others said she is the ruler over the house of her husband and his children.<sup>(137)</sup> Also, the prophet gave the divorced woman the right to keep her baby with her as long as she remained unmarried. That means that she has full responsibility for her baby. The widow has full responsibility and the prophet paid tribute to these kinds of women, who devoted themselves to their children.<sup>(138)</sup> In addition, the Koran respect, considering her presence important in man's life. For example (30:20) "God created for you wives from yourselves that you might repose in them". (2:186) "Your wives are a *qan* for you and you are a *qan* for them". (4:1) "Oh men, venerate your Lord who has created you from a single soul and from it created its mate and from the pair of them has spread abroad many men and women".

Guillaume mentioned another Hadith from the prophet saying "The woman is like



a house and horse are bad omens". Then on the next page (p.154), he mentioned a contradictory Hadith saying "After women nothing was dearer to the Apostle of God than horses". The question is why he adopted the first Hadith as being derogatory towards women and reported the second without comment. However, 'Ā'īṣa denied this Hadith saying that the prophet did not say it, but he said that in Jāhiliyā they used to be superstitious.<sup>(139)</sup> Aḥmad b. Ḥanbal explained this Hadith saying that in case of bad luck or bad omens the man can divorce his wife who could not bear babies or who was unfaithful.<sup>(140)</sup> Muslim, mentioned it saying that she also could be aggressive.<sup>(141)</sup>

Ibn Ḥanbal said that the man can move from his house because of bad neighbours or because its small. Also, he can sell his horse and never fight or go to war with it. In addition, Ibn Ḥanbal reported a Hadith from the prophet saying "the Muslims who enter paradise without condition are the ones who do not superstitious, and do not gossip or steal.<sup>(142)</sup> We should mention that Guillaume considered Ibn Ḥanbal's book Al-Musnad' one of the most important books of Hadith.<sup>(143)</sup>

However, regarding women as a bringer of bad luck seems to be an international belief surviving from early history and Hughes said that it was a belief from pre-Islamic Times<sup>(144)</sup> when he mentioned the same Hadith.<sup>(145)</sup>

Another Hadith stated that when the prophet was informed that the Persians had made Kisra's daughter their leader, he said "A people that entrusts its affairs to a woman will never prosper". Regarding this Hadith as one designed to prevent women from becoming involved in political activity, it is important to note that this Hadith was mentioned in the <sup>4.0</sup>7th century between 622-632 when women's problems were not concerned with political ambitions.

Keith. Thomas gave some insight into women's treatment in the 16th-17th century England. He said "Women at that time were denied access to any of the normal means of expression".<sup>(146)</sup> In addition, it is a historical fact that women in European



society were isolated and prevented from holding basic rights a long time after the prophet's lifetime. Even now, in some places in the world, women still struggle for a voice in political life and even for equality with men.

I believe that even the Hadith which Guillaume chose being as favourable towards women should be considered as a compliment from the Prophet towards women. This is because Guillaume missed many vital Hadith which affect women's rights such as, The prophet stated that the man who accuses his wife of adultery, without having evidence or witnesses, and acts *liân* against her, has to pay her mahr whatever the circumstances. Also, he forbade anyone to insult her or her baby. The prophet had regard to the consent of the women to her marriage. He allowed her to deal with and to control her own money and so on.

Some references mentioned that the prophet was kindly disposed towards women and a close look at his attitude towards those women, who asked for his assistance, supports this idea.<sup>(147)</sup> The relationship between them and the prophet was open and simple without complications and formality, even the most private subjects used to be discussed with him.

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## CHAPTER ONE

### THE STATUS OF YOUNG GIRLS IN ISLAMIC SOCIETY

Guided by the Koran and his own opinion, the Prophet laid down the structure of Muslim society. The family, which is the mirror of the society was the first concern of the Prophet. He laid down the conditions for legal and illegal marriages. The Prophet was also concerned for the children, who were the main reason for the marriage and especially the girl.

#### 1. Female Infanticide before Islām

One must admit that the Prophet accepted some practices, which were current among the Arabs in pre-Islamic times. He also added new practices and sometimes, he abrogated some pagan customs. For instance, female infanticide was customary, before Islam not only in the Arabian peninsula, but in many other parts of the world. It should be said that female infanticide was not practised in the whole of Arabia. It existed among certain tribes such as: the Quzāa, Mudr and in some other places in the Hijāz.<sup>(1)</sup> This custom was maintained until the earlier days of the Prophet.

In the Koran and the Sunna, female infanticide was abolished and described as a great sin. The Koran mentioned the reasons for the burying of unwanted female children, stating the causes; as being economic, social and religious belief (17:31)\*

##### a. The Economic Reason

Hunger and famine were serious reasons for killing babies. In the Hadīth, the Prophet was concerned about this and he used to repeat the Koran's verse "Do not kill

your children on a plea of want, we provide sustenance for you and for them" (6:151). In order to help the poor and the orphans, the Prophet kept a fifth of his share of booty to provide support for poor Muslims.

It was mentioned that *al-Ṣāṣā'*, who in his endeavour to check this practice during the Prophet's time, had to buy nearly a hundred and eighty girls in order to save them from their poor fathers.<sup>(2)</sup> Actually, poverty could only be one of many reasons, because in this case poor people should bury their boys as well as their girls.

#### b. The Social Reason

It is believed that this reason is a vital one, because of the tribal system, with its special structure. This is shown by the conflict between the tribes which measured their strength by the number of their adult males, who were the warriors, in other words who protected them. As a result, the male child was the hope of his tribe, while the female could not afford any benefit. In addition, girls were the weakest part of the tribe, because as soon as their tribe was defeated, women and girls instantly became directly the captives of war, and the slaves of their enemies. That is, they became concubines or wives, who just bore children for their captors. This fact was considered a scandalous and shameful to their own tribe.

Therefore, one may say "that female infants were killed, in order to limit the number of women and children, also the animals whom the fighting men could not effectively protect", as Watt mentioned. Also the fathers preferred to kill their daughters in order not to marry them to strangers and therefore to husbands of unequal status.<sup>(3)</sup> As a result, the family used to regard it as a serious duty to find a groom of equal status, who was able to pay good mahr. The marriage of girls, who were only seven or eight years old, was normal practice, and survived into Islamic times and was a Sunna from the Prophet and his companions (Sahāba).<sup>(4)</sup>

Female infants used to be killed at the age of six years by the father, who cast



them into a pit in the desert or sometimes they were even killed as soon as they were born.(5)

### c. The Religious Reason or Belief

Female infanticide also arose from a religious motive people would sacrifice their children for the sake of what they worshipped.(6) The Koran describes these kinds of people as pagans and unbelievers (6:137-140).

In conclusion, it may be said that the burial of female children was sometimes due to poverty, but mainly to reasons of honour to protect them from humility and slavery. However it was not a general practice among all the tribes of Arabia.

## 2.The Status of Young Girls in the Hadith Literature

Throughout the Hadith and the Sunna the Prophet insisted on and concentrated on the religious rewards for anyone who took care of, and brought up girls. In addition, the Prophet stressed the responsibility of the fathers and brothers, the duty of males towards their daughters, sisters and other female relatives from the time of birth until marriage. The Prophet laid down the structure for the rights of girls within their families. He did this for two reasons:

- to save them from being killed.
- to encourage Muslims to treat their girls fairly.

The Prophet declared that "the gravest sins are to be pagan, to kill your infant for not eating with you and to have an affair with your neighbour's wife".(7) In the hadith, the Prophet said "God prohibits three things; the killing of an infant girl, unfaithfulness towards parents and to usurp the rights of others".(8) Mālik mentioned that the Prophet's words at the beginning of every expedition were "Do not kill the babies" as an

order to the soldiers.<sup>(9)</sup> Ibn 'Omar narrated that one day the Prophet saw a woman and a boy who had been killed and were lying on the road. Thereafter he forbade the killing of women and boys.<sup>(10)</sup>

### a. The Treatment of Girls

Although female infanticide was almost abolished among the Muslims, its effect was still strong and it was reflected in the feeling of anger shown by anyone who had a baby girl. The Koran described it saying "if anyone of them had a girl his face became black because of anger" (16:57-58).

The Prophet's aim was to encourage Muslim men to be pleased when they had a baby girl. Al-Bayhaqī narrated a unique hadith from the Prophet, who described the benefit of having a baby girl saying "the best children are the girls who are orderly, amusing, blessing and wailing".<sup>(11)</sup> Al-Nawawī reported that the Prophet used to show his feeling for girls by cuddling, kissing and playing with them. A man told the Prophet that he had never kissed any of his children. The Prophet said to him "He, who is not kind will not be shown kindness".<sup>(12)</sup>

The Prophet through his Sunna and his Hadith promised every Muslim who treats his girls well, that his reward will be paradise. Al-Bayhaqī mentioned a hadith from the Prophet saying, "whoever has a girl and was pleased, because of her, God will please him on the Last Day".<sup>(13)</sup> Another hadith was reported by Anas who narrated that the Prophet said, "He, who supports two girls till the age of maturity, will be with me on the Last Day".<sup>(14)</sup> Also the Prophet said "He, who treats his daughters well, will be saved from Hell fire".<sup>(15)</sup>

In the light of the Sunna, the responsibility for girls became an obligation for the family until their marriage, then it became the husband's duty. Anas narrated the meaning of responsibility, from the Prophet saying "Who looked after two girls till the age of maturity, educated, fed and clothed them, he will be with the Prophet on the Last

Day". That is in Paradise.(16)

Al-Hussein b. Al-Hassan reported the Prophet as saying "Any man who has two daughters and treats them as long as they live with him, he will be in paradise".(17) A similar hadith from the Prophet declares that "whoever had three daughters and was patient with them, fed them, brought them up and clothed them from his own money, they will save him from Hell fire at the Last Day".(18) Abbās b. Al-Walid Al-Dimaṣqī narrated that the general duty of fathers as the Prophet believed was "Be generous to your children and bring them up well".(19) While Abū Dāwūd completed these duties by another hadith from the Prophet saying "Whoever supported three daughters and educated them and gave them in marriage, will be in Paradise".(20)

Concerning this point the companion Umar b. Al-Khattab quoted the Prophet saying "If anyone has not given his daughter in marriage, by the time she reaches the age of twelve years and she commits sin, the guilt of that rests on him".(21)

### **b. Equality between Boys and Girls**

Ibn Šihāb narrated that the Prophet said "Whoever had a girl and did not kill her or humiliate her and treated her in the same as he treated his boy, will go to paradise".(22)

The Prophet demanded that boys and girls should be treated as equals. Al-Mamūn b. Baṣīr reported saying "Fear God, treat your children equally and be fair to them". Al-Nawawī regarded equal treatment as meriting reward because it followed the teaching of the Prophet(23), considered inequality as unjust and unfair towards both God and children.(24) It was reported that a man came to the Prophet asking him to be the witness of a gift he wanted to give to one of his sons. When the Prophet asked him if he gave all his children a similar gift, the man replied "No". Then the Prophet told him "Do not let me be a witness of injustice, I am the witness of truth and right, you should take back your gift from your son". Muḥammad b. Baṣār narrated from the Prophet saying,



"It is forbidden for a man to take back his gift, unless it was unequally distributed among his children".(26)

In the Hadith, the type of gift was not mentioned, and therefore, it can be anything whether of value or not. It could even be food, as illustrated by the poor woman who was begging from 'Ā'īṣā the Prophet's wife, 'Ā'īṣā who could not find anything to give her except one date, told the Prophet that the woman divided the date equally between her two daughters. She herself did not take anything. Listening to 'Ā'īṣā, the Prophet said to her "whoever suffers for anything on account of these daughters, and still treats them with kindness will be saved from Hell".(27)

Al-Tirmidī, in his book 'Sunan', mentioned that some jurists believed that equality between boys and girls should apply even to kisses. Jurists such as Sufyān al-Tourī said that the father should be fair with his daughter by giving her as much as he gives his son. Jurists such as Aḥmad b. Ḥanbal stated that gifts should be given on the same basis as inheritance, namely twice as much for the boy.(28)

### c. Rights of Inheritance

Concerning this point, it seems that the Hadith and the Sunna adopt the verse of the Koran in general, saying that the boy has twice as much as the girl. If the girls were more than two, they get two thirds and if there is only one girl, she gets half (4:10). The girl is considered to be an heir and her right to inheritance from her family was clear in the Koran and the Sunna. Abū Huraira made it clear when he narrated that the Prophet had said "If the child cries he inherits legally".(31) However, Jābir b. al-Mussawār related that the prophet said "When a boy has raised his voice he is entitled to his share of inheritance and to be treated as an heir".(32) Two important hadiths were found:

a. regarding the rights of one girl, an interesting hadith by the Prophet is worth mentioning. It was reported that Saād b. Abū Waqāṣ, was a very rich



man who had one daughter. When he fell sick he asked the Prophet about his inheritance, saying that he wanted to give away 2/3 of his money to the poor as charity. The Prophet condemned this, so that Saād asked if he could give away half of his money. Again the Prophet condemned this even. Afterward, he mentioned a third, the Prophet replied "You could but, it is too much for charity".(29) The Prophet added, "to leave your heirs rich is better than to leave them poor and forced to beg from people".(30) This means that the Prophet preferred the right of one girl to be more than the half.

b. there is another hadith concerning the right of inheritance for two girls. It has been said that after the death of Saād b. al-Rabi' who had two daughters, his brother took everything and left the two orphans and their mother with nothing. When the widow appealed to the Prophet, he ordered the uncle to give the two girls two thirds of their father inheritance.(33) This means that the Prophet gave two girls two third from their father's money more than the Koran allowed (4:10). Ibn Siḥāb narrated that Jābir b. Abd Allāh had seven sisters, who had lost their father. When Jābir fell sick the Prophet visited him. He told the Prophet that he wanted to give his sisters a third or a half. The Prophet told him to give them two thirds and added "You will not die because of this sickness".(34)

Only in the case of inheritance, the Sunna of the Prophet concerning his daughter Fāṭima, was not a model to be followed. Ā'isā said that "The Prophet did not leave a single dinar, dirham, camel, goat or will".(35) It was reported that Fāṭima claimed her right to inherit from her father as it stated in the Koran. The Prophet's property consisted in land in Fadak, the fifth share of the Prophets booty in Xeiba and What is called Medina's ṣadaqa (charity).(36) Abū Bakr, the Caliph who was the successor of the Prophet, refused to give Fatima anything saying, "The Prophet left all his property to be used as alms (Charity)".(37) Ibn Ḥanbal explained this sentence by saying that only

poor Muslims can inherit from the Prophet.(38) During his life the Prophet fixed an amount of money and property as expenditure for his family for each year, from selling the palm of banī ʿAl-Nadīr and if any money remained he put it into the public money (Bayt ʿAl-Māl).(39)

Stern mentioned that the Caliph Abū Bakr refused to give Fāṭima anything from the Prophet's property because, he believed that women should not inherit land. It seems that this was the custom in Medina as reported by Stern.(40) In pre-Islamic times, it was out of the question for the daughter to inherit land from her family.(41) Tradition, mentioned that Fāṭima was upset and stopped talking to Abū Bakr till she died six months after the passing of the Prophet. When the Caliph ʿOmar b. ʿAl-Xaṭṭāb succeeded Abū Bakr, he kept Xeib and Fadak and gave ʿAlī, Fāṭima's husband, the Sadaqa of ʿAl-Medīna, after he claimed for his wife's right.(42)

Being the Prophet's daughter, Fāṭima was a special case. It could be as Abū Bakr believed that the Prophet has no heirs and no one not even his daughter could inherit from him, his property being the inheritance of all Muslims, especially the poor. Also, it could be the influence of Medinian custom which influenced both Abū Bakr and ʿOmar b. al-Xaṭṭāb to keep the lands and give ʿAlī Medina's Ṣadaqa which produced a regular income.

In the light of Ḥadīth and Sunna, the girls who have the right to inherit from their family are; daughter, sister, niece "son's daughter" and also the cousin the uncle's paternal daughter. It was reported that Abū Mūsā and Salmān b. Rabyʿa who were followers (Tābiūn) were asked about the rights of the sister and the daughter in inheritance. They replied "Half for each"(43), when Ibn Masūd ʿAl-Anṣārī, companion (Ṣaḥābi) was asked he said, "As the Prophet said the daughter gets half and the niece gets one sixth and the remainder is for the sister". When Abū Mūsā heard this judgment he said "Do not ask me as long as we have Ibn masūd among us".(44) Mālik. mentions the right of the niece in case the heir was one girl, who gets half and the niece

one sixth. If there is a male with them nieces can not inherit anything.<sup>(45)</sup> 'Omar b. Al-Xattāb allowed the cousin, the uncle's daughter, to inherit if there is no one else<sup>(46)</sup>, that means that her right to inherit is less than that of the other three.

#### d. 'Aqīqa

Salma b. 'Amār al-Dahabī related that he heard the Prophet saying "along with a boy there is an 'aqīqa; that is to shed blood on his behalf and remove injury from him". 'Aqīqa is a kind of danger threatening the new born baby. In order to save the baby three things should be done: to sacrifice an animal; to shave the baby's hair; the baby should be given a name.<sup>(47)</sup> On the seventh day after his birth, 'Aqīqa is a custom surviving from pre-Islamic times and was practised in Islamic times with some modifications. The name is still the same although the Prophet did not like it. 'Amr b. Šu'ā' b reported that the Prophet said "God does not like the 'uqūq" since the word 'Aqīqa is similar to 'Aqūq<sup>(48)</sup> (He, who mistreats his parents). In Islamic times 'Aqīqa was practised in accordance with new rules. Barīda said "when a boy was born to one of us in the pre-Islamic period, we sacrificed a sheep and smeared the head of his baby with its blood. While in Islam we started to sacrifice a sheep on the seventh day and shaved the baby's hair then smeared it with Zāfarān. Abū Dāwūd added that Razin said "We give the baby a name".<sup>(49)</sup> So, Sunna abolished the act of smearing the head of the baby with the blood of the animal and changed it to smearing the head with zāfarān instead.<sup>(50)</sup> There is a unique hadith, which was transmitted by Hamām, reporting that the Prophet said "sacrifice an animal for the boy on the seventh day, shave his hair and smear it with blood". Abū Dāwūd criticised this hadith, saying that Hamām was confused because the majority were agreed about the use of zāfarān instead of the blood.<sup>(51)</sup>

Some stated that this ceremony was only for boys, as in Pre-Islamic times, but, it was found that some hadith mentioned that it was performed for both girls and boys.



However, there are some hadith, which only mention the boy; furthermore, Al-Ḥassan Al-Baṣrī said that 'Aqīqa is only for boys, and not for girls.(52) However, Umm Kūrḥ said that she heard the Prophet say "two sheep are to be sacrificed for the boy and one for the girl". Ibn 'Omar used to sacrifice for both his girls and his boys. In addition, Mālik, Al-Ṣafī ī and A.b. Ḥanbal believed that 'Aqīqa should practised be for both girls and boys.(53) It was mentioned that Fāṭima shaved her baby's hair and gave the weight of the hair in silver as ṣadaqa to poor people.(54) Ibn Ruṣd said that Fāṭima did the same for all of her daughters and sons,(55) but Mālik mentioned only her sons.

The Prophet established a new practice for 'Aqīqa. 'Āiṣa said that boys used to be brought to the Prophet and he would invoke a blessing on them, then soften some dates and rub their palates with them.(57) It was said that 'Abd allāh b. Al-Zūbeir was the first child to be born in Islam, after the Hijra, to Al-Medina. His mother, 'Asmā' b. Abū Baker, and 'Āiṣa's sister brought him to the Prophet to be blessed. At that time, the Muslim people were very happy because of this new born baby, as they were worried that the Jews were using black magic against them to prevent them from having new babies. It was a long time before 'Abd Allāh b. Al-Zūbeir was born.(58) The above practice became a Sunna, 'Anas mentioned that the Prophet used to ask for a date, but later any kind of sweet was acceptable. After the passing of the Prophet, babies were usually brought to a devout man or woman for anointing and blessing.(59) Karīm said that the proclamation of Allah's name should be made into the ear of the baby.(60)

Among the Sunni Doctrines there are different opinions about 'Aqīqa. Some such as Al-Zāhriya (sect) said it is a duty, following the Sunna.(61) However, the majority, believed that 'Aqīqa is more likely.(62) Since the prophet kept saying "Who like", or 'who wish".(63) Mālik said "'Aqīqa was not an order from the Prophet, but if people want to practice it, it is alright. He added "it is a custom among our people".(64) On the other hand, Abū Ḥanīfa stated that 'Aqīqa is not a duty, not a Sunna, but rather a choice.(65)



There is a slight difference of opinion about the number of animals which should be sacrificed. For instance, Abū Dāwūd and Ibn ‘Abbās mentioned that the Prophet sacrificed one ram on the seventh day for both of his nephews, Al-Ḥasan and Al-Ḥusain.<sup>(66)</sup> However, Al-Nasā’ī said that the Prophet sacrificed two rams for his nephews.<sup>(67)</sup> Mālik said that one animal should be sacrificed for a girl and the same for a boy, but, A. b. Ḥanbal and Al-Sāfi’ī said that it should be one for the girl and two for the boy. It seems that the majority support the second idea.<sup>(68)</sup>

It would seem that different kinds of animals can be sacrificed either a sheep<sup>(69)</sup> or a goat<sup>(70)</sup> as it was in, pre-Islamic times. Mālik said "a sheep is the best for ‘Aqīqa", others said it is either a cow or a camel. The majority believed that a camel is the best, then a cow and the last is a sheep. ‘Alī b. Abī Tālib said that the Prophet sacrificed a sheep for his nephew, Al-Ḥasan,<sup>(71)</sup> while Al-Ḥarīṭ Al-Tamīmi said that he heard his father saying that ‘Aqīqa can even be a bird.<sup>(72)</sup>

There are some conditions about the quality of the animal. The majority believed that it should be in good condition, which means that it must not be ill, skinny, injured or one-eyed. The meat cannot be sold, nor can its skin, but, people can eat it and they can give it away as sadaqa (charity). However, the baby must never come into contact with either its blood or eat its meat.<sup>(73)</sup> Umm Kruz reported that the Prophet said "there is no harm if these two animals [which were sacrificed for the boy] are either male or female". Others said they should be of the same sex.<sup>(74)</sup>

Some hadith mentioned that the ‘Aqīqa sacrifice should be made on the seventh day for the new born baby.<sup>(75)</sup> Mālik said that the day of the birth never counts, and that means the sacrifices should be made on the eighth day. Also, it could be on the second or the third of the seventh day. Mālik added that the ‘Aqīqa ceremony could be in the early morning or late morning and even at night.<sup>(76)</sup> Others preferred the ‘Aqīqa ceremony to take place in the early morning immediately after birth.<sup>(77)</sup> ‘Aqīqa is well considered in the books of Hadith and its mentioned in a special place in the books of

Mālik, Abū Dāwūd and Ibn Ruṣd.

**e. the name of the baby**

The second step after the 'Aqīqa ceremony was to name the new born baby. The Prophet was concerned about the names of the babies. 'Amro b. Al-'Awām narrated that the Prophet said "In the Last Day you will be called by your names and your father's names, so have good names".(78) 'Ā'īsa narrated that the Prophet disliked certain names and he changed many names whether for girls or boys, because he hated the meaning of these names. For example, the Prophet rejected four names for boys, which were Nāfa', yassār, Rabāḥ and 'Aflāḥ.(79) Also, he did not accept that anyone should call his boy Qāsim, like his first son, who died before Islam. Ibn Abū 'Omar transmitted that the Prophet said "call yourself by my name, but not by my boy's name because I am Abū Al-Qāsim [which means literally the divider]. God sent me to judge between you".(80)

The Prophet did not like certain names for girls such as Barra and 'Āṣīya. 'Īsa b. Ḥamad reported that Abū Salma called his daughter Barra and when the Prophet knew this he said to him "do not declare yourselves pure, for God is best informed about those of you who are obedient". He added "call her Zaineb instead."(81) Also, Ibn 'Abbās narrated that the Prophet changed the name of his Jewish wife, to Juwayriyya, as her real name was "Barra". The hadith recorded that he changed her name because he disliked people saying that he had come from being with Barra'".(82) Ibn 'Abbās mentioned that the real name of Zaineb b. Jahš, one of the Prophet's other wives, was also Barra. Barra might have the meaning that she had abandoned God(83) and was disobedient to him.(84)

'Āṣīya was the name of Ibn 'Omar's daughter and the Prophet changed it to Jamīla, telling her "You are beautiful, so I will call you Jamīla, meaning beautiful. Since 'Āṣīya means disobedient.(85)

The Prophet regarded losing a baby as harmful and painful, but at the same time

he considered that the patient parents would be rewarded. At a special meeting, which was arranged at the woman's request<sup>(86)</sup> the Prophet said "He, who has lost three of his children before they reached the age of maturity, will be protected by them from the fire as by a curtain and will go to paradise because of his piety towards them".<sup>(87)</sup> When the Prophet mentioned the word "three children" a woman said "or two children". The Prophet replied "or two".<sup>(88)</sup> It seems that the Prophet mentioned both the mother and the father.<sup>(89)</sup> Ibn Māja mentioned that the Prophet regarded one child, two children and three children as being a similar reward for their parents,<sup>(90)</sup> but the majority mentioned three children as Abū Huraira narrated.<sup>(91)</sup>

The Prophet prayed over the body of a dead woman, who died while she was giving birth, which is regarded as a kind of respect for her. In addition, the Prophet stated that if any injury or attack caused an abortion for a pregnant woman, compensation should be paid, he said the reward should be a male or female slave of the best quality.<sup>(92)</sup>

Concerning the subject of circumcision it is clear that there is no doubt about this custom as a Sunna for the boy. But, concerning the girl there is no hadith from the prophet about this point and among the Sunni Imāms only Al-Šāfi'ī mentioned it saying that "it is likely" this is the only information we have.<sup>(93)</sup> However, circumcision for a girl is a pre-Islamic custom which is still practised now in some parts of Africa, and in some Muslim countries it is considered to be as a Sunna.<sup>(93)</sup>

Chapter One - Notes.

1. Ḥamad 'Alī Ṣ, Muhadarāt fī Tarīx Al-'Arab, p.118-119.
  - Sūra Al-Nahl
  - Sūra Al-Isrā'
  - Sūra Al-'In'ām
2. V.R. & L. Bevan Jones, Women in Islām, p.10-15.
3. Watt, W. M., Muhammad At Medina, p.270.
4. See Chapter of Marriage "The Age of Marriage".
5. Ḥamad 'Alī, S., p.119.
6. Levy, p.91, "The grave is the best bride groom", Pre-Islamic belief.
7. Bu, Ch.20, p.300, Book No. 68.
8. Muslim, Ch.5, H14, p.1341.
9. Mālik, Ch.3, H11, p.448. Book No. 21.
10. Op cit., Ch.3, H8, 9, p.447.
11. Ibrāhīm Ibn Muḥammad Al-Baihaqī, Kitāb Al-maḥāsin wa Al-maṣāfi, p.599.
12. A.b.H, Al-Musnad. 11: 6935.
13. Al-Baihaqī, p.599.
14. Abū Dāwūd, ch.1838-H5148, p.459.
15. Muslim, Ṣaḥīḥ, Ch.46, H2028, p.147, Book No. 45.
16. Op cit, p.149.
17. I.M., Ch.3, H3670, p.1210, Book No. 10.
18. Op cit., Ch.4, H3669, p.1209.
19. Op cit., Ch.3, H3671, p.1211.
20. Abū Dāwūd, Ch.1838, H4147, p.459.
21. Robson, J., Misqāt Al-Maṣābiḥ p.667.
22. Abū Dāwūd, Ch.1838, H5149, p.458.
23. Al-Nawawī, p.284.
24. Muslim, Ch.3, H9, p.1242, Book No. 24.
25. Op cit., Ch.3, H13-16-18-19, p.1242-1244.
26. I.M., Ch. 1, H2376-2377, p.795, Book No. 14.
27. Karīm, Misqāt Al-Maṣābiḥ, p.192.
28. Tir, Sunan, Ch.30, H1267, p.649-650, Book No. 13.
29. Mālik Ch.3, H4, p.763, Book No.37.
30. Ibid.
31. Abū Dāwūd, Ch.1076, H2920, p.176.



- 32.Muslim, Ch.17, H2750-51, p.919. Book No. 23.
- 33.I.M. Ch.2, H2720, p.909. Book No.23.
- 34.Abū Dāwūd, Ch.1064, H2887, p.164, Book No. 12.
- 35.Op cit., Ch.1045, H2863, p.152.
- 36.Muir, W., The Life of Muhammad, p.535-536. Al-Nasāī, p.59.
- 1.Keibar 1/5 share of the prophet - half was for his family needs and the other part was for poor people.
  - 2.The confiscated lands of Banī al-Nadīr. The produce of these was used to the prophets needs for his family.
  - 3.Fadaq, the fruit of this land were served as a fund for indigent travellers.
- 37.Bu, Ch.3, p.486.
- 38.A.b.H., 1:78.
- 39.Bu, Ch.3, p.486.
- 40.Stern, p.164.
- 41.Esposito, J.J., "women's Rights in Islām," Islamic Studies Journal 14 (1975), VXIV, p.99-114.
- 42.Bu, Ch.3, p.486, Book No. 69.
- 43.I.M. Ch.2, H2721, p.909.
- 44.Bu, Ch.8, p.285.
- 45.Malik, Ch.1, p.504, Book No. 27.
- 46.Op cit., Ch.2, H2, p.762, Book No. 37.
- 47.Al-Husayen b. Al-Mubāarak, Al-Zubaydī, Kitāb Al-Tajdīd Al-Sarīḥ bi 'Aḥdāt Al-Jāma' Al-Saḥīḥ V1, p.125.
- 48.Robson, p.884, 'Aqīqa Ch.IV.
- 49.Op cit., p.885.
- 50.Ibn Rushd, p.377.
- 51.Robson, p.884.
- 52.Abū Dāwūd, Ch.1040, H2839, p.139.
- 53.Mālik, p.501, Book No. 26.
- 54.Robson, p.885. The weight was nearly one dirham or a part of a dirham.
- 55.Ibn Rushd, p.376.
- 56.Mālik, Ch.1, H3, p.500.
- 57.Muslim, Ch.5, H22-26-27. p.1689, Book No. 38.
- 58.Al-Zubaydī, p.125.
- 59.Muslim, Ch.5, H22, p.1689.
- 60.Karīm, p.190.
- 61.V.R. & L. Bevan Jones, p.20.
- 62.Ibn Rushd, p.376.

- 63.A.b.H., 11 : 6713.
- 64.Mālik, Ch.1-2, H1-2-4-7.
- 65.Ibn Rushd, p.376.
- 66.Abū Dāwūd, Ch.1040-H2841, p.140.
- 67.Robson, p.885.
- 68.Ibn Rushd, p.376.
- 69.Robson, p.885.
- 70.Abū Dāwūd, Ch.1040, H2843, p.141.
- 71.Op cit., Ch.1040.
- 72.Mālik, Ch.2, H5, p.501-502.
- 73.Op cit., Ch.2, H2, p.501.
- 74.Robson, p.885.
- Abū Dāwūd -p.140.
- 75.Karīm, p.190.
- 76.Mālik, Ch.1-2, H1-2-3-4-7, p.501.
- 77.Ibn Rushd, p.377.
- 78.Abū Dāwūd, Ch.1777, H4948, p.394, Book No. 35.
- 79.Muslim, Ch.3, H19, p.1687. Bok No. 38.
- 80.Op cit., Ch.1, H7, p.1682.
- 81.Abū Dāwūd, Ch.1777, H4953, p.395.
- 82.Muslim, Ch.3, H16, p.1787.
- 83.Op cit., Ch.3, H18, p.1787.
- 84.Robson, p.995.
- 85.Muslim, Ch.3, H14, p.1686.
- 86.Al-Nawawī, p.172.
- 87.Bu, Ch. 92, p.347. Book No. 23.
- 88.Muslim, Ch.46, H150, p.2987.
- 89.Al Nawawī, p.172.
- 90.I.M., Ch.57, H1603-1606, Book No. 6.
- 91.Bu, Ch.64, p.334.
- 92.Robson, p.742.
- 93.Zubad Ibn Rislān, Matīn al Zabad/Gāyāt al-Bayān. Explanation of Al-Šāfi's opinions, p.14,  
Chapter of Al-Siwāk.

## CHAPTER TWO

### MARRIAGE IN ISLAM (NIKĀH)

#### The Encouragement to Marry

Marriage is one of the Prophet's sunna. He did not agree with anyone who always fasts and never thinks of getting married. Almost all the books of Hadith, reported that the Prophet said "I Fast, I break fast, I pray, I sleep and I marry because it is my sunni".<sup>(1)</sup> Marriage is regarded as vital principle for any young Muslim man.<sup>(2)</sup> The Prophet said, "marriage is one of the sunna, whoever inclines towards anyway other than that of my sunna, he is not of me",<sup>(3)</sup> which means that who refuses to marry acts against the sunna of the Prophet, who rejected the idea of celibacy for men. Therefore, the Prophet considered marriage as a religious and social duty for any Muslim. The Prophet encouraged the men to marry, especially before an expedition, if they wanted to take part in the fighting.<sup>(4)</sup> In addition, the Prophet cursed effeminate men and masculine women who refuse to marry.<sup>(5)</sup>

Another hadith from the Prophet shows the religious value of marriage. It was reported that he said "Whoever wants to be pure when he meets his God, should marry". In that way marriage is regarded as a method of preserving the health and ensuring the proper behaviour<sup>(6)</sup> of men and women. Al-Tirmidī mentioned a unique hadith from the Prophet that was transmitted by Abū 'Ayūb saying, "Four Sunan are from the Prophet; shy, perfume, toothbrush (siwāk) and marriage".<sup>(7)</sup> Another reference added circumcision.<sup>(8)</sup> Anas narrated that the Prophet said, "When a man marries he has fulfilled half of his religious duty, so let him fear God regarding the remaining half".<sup>(9)</sup> Abū Huraira reported another hadith from the Prophet saying, "there

are three men whom it is right for God to help; the one who fights in God's faith, the slave whose master promises to set free when he can pay the sum and the one who marries desiring to live a chaste life".(10)

Besides the religious aspect of marriage there is another reason, which is social, because marriage in itself, has the object of saving women and men from adultery (zina) also to prevent women from getting lost as Ibn 'Aqīl said.(11) The Prophet believed "that marriage is the best for lovers".(12) Ibn Mas'ūd Al'Anṣārī said that the Prophet regarded marriage to be vital in preventing men from looking for foreign women and to preserve him from immortality.(13)

The Sunna and the Hadith encourage men to marry, in addition they consider marriage as a serious responsibility and one which should be undertaken if at all possible. The Prophet said, "Whoever cannot marry, he should fast because in fasting men can control themselves, it is the best solution for controlling their desires.(14) While the Prophet insisted on the necessity of marriage he also emphasized certain important points in connection with it about the suitable brides.

- a. the young woman(15)
- b. the woman who can bear children(16)
- c. the free woman(17)
- d. the pious woman(18).

a. the Prophet preferred men to marry virgins saying "Because they have the sweetest mouths, the most prolific wombs and are most satisfied with little".(19) While a woman who is not a virgin always remembers her first husband.(20) It was narrated that when the Prophet saw Jābir b. 'Abd Allāh, he asked him "Why did you not marry a virgin girl, instead of a non virgin. With a virgin you could sport and who could sport with you".(21)



b. the Prophet regarded children as the reason for marriage, in that he encouraged men to marry the affectionate child or the fruitful woman. He said "Marry women who are prolific, for I shall be the instrument for increasing your members in the nation".(22) Abū Dāwūd mentioned that a man came to the Prophet telling him that he wanted to marry a woman of high rank and very beautiful, but she could not bear a child. The Prophet said to him "No" three times.(23) 'Abd allāh b. 'Omar narrated from the Prophet saying "Do not marry women for their beauty, which may spoil them, do not marry women for their money, which may make them disobey".(24)

c. the Prophet did not encourage the marriage to a slave woman in case the man was able to marry a free woman. As the Koran mentioned (4:24), then Jābir said that the Prophet accepted marriage between a slave woman and a free man if the latter was unable to pay the dower of a free woman,(25) besides some Sunni Doctrines like Ibn 'Omar and Mālik insisted on the Muslim slave woman only as the Koran said.

d. as the Prophet stated the best type of women are the pious, depending on a famous hadith from the Prophet saying "A women is married for four reasons; for her money, her family, her beauty and her religion. So marry one who is religious and propose to her."(26) Ibn 'Omar reported from the Prophet saying, "All the world is a commodity and the best of the commodities of the world is a virtuous wife".(27)

Another hadith described the Prophet's attitude towards women, Abū 'Umāma quoted saying "After fear of God a believer gains nothing better for himself than a good wife, who obeys him if he gives her a command, pleases him if he looks at her, is true to him if he asks her to do something, is sincere towards him and guards his property if he is absent".(28) These are the characters of the ideal woman as required by the Prophet. It was reported that he told one of his companions (Ṣaḥābī) "You should marry, because the best of this community are women".(29)

Although the Prophet refused the idea of celibacy and turned down 'Otmān b. Mazūn's request, therefore it was said "If the Prophet allowed him not to marry we

would be castrated". Under some circumstances the Sunna gave some substitutes for men unable to marry. They are three; fasting, paying and fighting in God's faith. While **Al-Šāfi** believed that whoever cannot live without women, should marry but if he can keep paying it is better for him<sup>(30)</sup>. His idea is contrary to the Prophet's sunna. **Āiṣa**, the Prophet's wife, had a favourite month for marriage. She said that the best month for marriage is šawwāl, because the Prophet married her in this month. <sup>(31)</sup> Also it could be by coincidence that the Prophet married Umm Salma in this month.<sup>(32)</sup>

### The Age of Marriage

Throughout the Sunna and the Hadith, the Prophet did not fix the age of marriage for the girl, therefore there is no specific age recommended. However, there was a practice of child marriage. For instance, the Prophet married a child wife **Āiṣa**. Muslim said "The Prophet married **Āiṣa** when she was seven years old, and he had intercourse with her when she was nine years old. On the wedding day **Āiṣa** brought her toys with her".<sup>(59)</sup>

On the other hand **Al-BuXārī** mentioned that **Āiṣa** was six years old when the Prophet married her and he cohabited with her when she was nine years old and had attained the age of puberty, (Sinn Al-Bulūġ).<sup>(60)</sup> **Al-Bajḥaqī** said that the Prophet preferred marriage after puberty saying "Give your children in marriage".<sup>(61)</sup> Also, **Āiṣa** said that "Any girl attaining maturity at the age of nine years old becomes a woman".<sup>(62)</sup> Furthermore umm Salma, the other wife of the Prophet, said "If the girl has attained maturity she should hide and cover herself like her mother."<sup>(63)</sup>

In the hadith, there is no record of marriage between a minor and her wali yet, this marriage was never considered unlawful or forbidden.<sup>(64)</sup> In fact, there are varying opinions as to what the age of the maturity is, for example, **Omar b. Al-Xattāb** reported a

hadith by the prophet saying that "The girl should marry when she reaches twelve years of age, if she commits sin, the guilt of that rests on her father".<sup>(65)</sup> There is no hadith by the Prophet concerning the age of maturity either for the girl or the boy. But as a Sunna he recommended the age of fifteen for warriors<sup>(66)</sup> and for the girl, the age of nine, as this is how old 'Ā'īṣa was when he married her.

In the Koran (4:5) the age of marriage is mentioned, but it is not clear, in that it concerns orphans and when they can have control of their property. Abū Ḥanīfa believed that the age of marriage for both the boy and the girl is fifteen. Unless the evidence of maturity has been reached at an earlier age.<sup>(67)</sup> It seems that in the case of the girl, the age of maturity depends upon each girl and her physical fitness, which is the decisive point for marriage, in other words, her majority or puberty is the appearance of the menstrual flow. If this does not appear by the age of nine the girl should wait.<sup>(68)</sup>

Marriage between two minors is valid when fathers have arranged it even if the boy does not have money or cannot have control of his property, but his guardian can pay the mahr on his behalf.<sup>(69)</sup> In Mecca, an informal promise of marriage was acceptable between the respective parents of a boy and a girl, whatever the age of the girl, as long as the groom waited until she attained maturity before cohabiting with her.

It was reported that 'Ā'īṣa bint Abū Baker, had been promised to Jubair b. 'Adī b. Nawfal, but later her father Abū Baker broke his promise when the Prophet asked for her hand in marriage. Abū Bakr told the Prophet "Give me time till I steal her away from them".<sup>(70)</sup> 'Ā'īṣa was six years old at that time. This kind of promise is called (wa'ad) made particularly when a girl is under the age of puberty, is just a confidence or gentlemen's agreement, but no arrangement for marriage is made, nor is the amount of mahr settled.

Wa'ada or dakara was practised in the early days of the immigration (Hijra), but later in the Medīnan period it became or was changed to an engagement (Xitba). However, the basic belief was still strong among the families, especially the father or the



nearest male relatives, who were concerned to find a suitable man to marry their girl when she reached the age of maturity.(71)

Regarding the respective ages of the man and the woman, it is clear that in the Sunna big differences of age were not considered. For instance, the Prophet was nearly fifty when he married Ā'īṣā who was nine years old, his other wife Ḥafṣa b. 'Omar b. Al-Xattāb was twenty years old. Jūwā'riyya also was twenty years old,(72) while Ma'ymūna was twenty six years old and 'umm Ḥabība was thirty years old(73). Also, 'Omar b. Al-Xattāb had a child wife. She was 'Umm Kulthūm the niece of the Prophet and the daughter of Fātima. 'Omar was nearly the same age as the Prophet.(74) However, Al-Nasā'ī mentioned an unusual and unique hadith, related to the Prophet, when Abū Baker and 'Omar b. Al-Xattāb proposed to Fātima, the Prophet's daughter. It says that the Prophet said "She is too young". When 'Alī b. Abū Tālib proposed to her, the Prophet accepted his engagement. It is not clear how old Fātima was when she married.(75)

Al-Nasā'ī reported another hadith from the Prophet saying "A man and a woman should be of similar age".(76) This might be a new way of thinking for the Prophet. However his marriages were a special case. Since most of the reference insisted upon political reasons in addition to the social ones.(77)

### Pre-marital Connection with the Woman

As a first step towards marriage, the Prophet believed that a man should see the bride before proposing to her. 'Anas b. Mālik narrated that the Prophet recommended men to see the woman before marrying her. This will help to make their relationship a lasting one.(33) So, there is no harm from the view of Sunna, Abū Huraira quoted from the Prophet saying to a man who was engaged to a woman from Al-Anṣār "Look at her, there is something in the eyes of Al-Anṣār".(34)



The question is, of which part of a woman may the future groom look. Jābir narrated from the Prophet saying, "When one of you seek a woman in marriage and then if he is able to have a look at whom he wishes to marry let him do so".<sup>(35)</sup> The Prophet mentioned that a man may look at the eyes, the face and the hands of the woman.<sup>(36)</sup> While Al-Buḫārī mentioned a hadith about the face.<sup>(37)</sup> Concerning this point, there is more than one opinion within the Sunni Doctrines. For instance, Aḥmad b. Ḥanbal said "there is no harm if a man looks at the woman, provided that he does not look at her forbidden parts".<sup>(38)</sup> While Abū Ḥanīfa believed that it is lawful to see the brides face, hands and feet, Mālik said that a man may look at the woman and this is considered lawful. He may look at her face and her hands only.<sup>(39)</sup>

During the time of the Prophet the idea of seeing the woman before marriage was unusual and therefore some parents disliked it. They were surprised that their daughter would permit the future groom to look at her in accordance with the Prophet's advice. She acted following the sunna saying "if the Prophet ordered you to look then look, if not please do not".<sup>(40)</sup> There is fairly general agreement among the companions that the face and the hands are what the groom could look at. This idea was held by ʿĀiṣa, Ibn ʿAbbās and Ibn ʿŪmar.<sup>(41)</sup> Amar b. Šuʿāb reported that The Prophet said "A man must not look at what is below the navel and above the knee".<sup>(42)</sup> ʿAlī b. Abū Tālib narrated that the Prophet told him "Do you know that the thigh is a private part. So do not even look at the thigh of any person alive or dead".<sup>(43)</sup> Besides the groom, a woman may see the bride and then describe her to the groom, if he can not see her. It was reported that the Prophet sent ʿUmm Sālīm to engage a bride for him. He told her "Look at her heel and smell her mouth".<sup>(44)</sup> It can be said that the act of looking at the woman was limited by two conditions; first it should be a glance, second it was permitted only for the purpose of marriage otherwise it was immoral.

It was mentioned that the Prophet said "God curse the one who looks and the one

who is looked at".\*(45) This could mean that a woman also may not look at a man. However the Prophet disliked that way, since he used to ask his wives to hide themselves from strangers. In addition, the Prophet hated the woman who described the beauty of another woman to her own husband as if he had looked at her.(46) However, the Prophet said "If a man glanced accidentally he should turn his eyes away".(47)

There is no clear hadith about the right of the woman and whether it is lawful for her to look at the groom as part of her consent. Since this point was not established it could be intended for the non-virgin, because it was mentioned that she can choose her groom. Besides there are many hadith which encourage men to look at the bride and nothing is mentioned to encourage women to look at the groom.

### **The Consent of the Woman to Marry (Qubūl)**

The consent of the girl regarding her marriage is not clear enough, even if we consider the only hadith of the Prophet which says "The girl who is a virgin should consent to her marriage by keeping silent and the non-virgin by the announcement of her acceptance".(125) 'Ā'īṣa explained this hadith saying "A virgin is usually shy, so she can express her consent by her silence, according to the Prophet's opinion".(126)

Depending on the Prophet's hadith, it is important to differentiate between the virgin girl and the non-virgin in the matter of consent:

#### **1. Consent of the virgin girl**

This means the minor, who is under age. There are two points of views on the matter.

- a. that of the jurists of Al-Medīna
- b. that of the jurists of Al-Kufa.

a. because of the doctrines of Al-Medīna it was believed that the marriage of a virgin should be in accordance with her father's agreement, therefore her marriage in this case is valid and acceptable even if she does not like it. Mālik held this view saying "It is our custom in the marriage of a virgin".(127) Al-Šāfi'ī and Aḥmad b. Ḥanbal also supported this opinion,(128) this means that three schools in Sunni Madhīb stated this.(129) This means that the virgin cannot cancel her marriage, because she did not ask for her consent. In addition, the father can arrange her marriage if he believes that it is a good one for her,(130) since "her marriage is completely in his hands" as Mālik said.(131) The rules are the same for an orphan girl, especially if she is under the age of puberty. She is treated like the virgin girl. The orphan girl might marry at the age of nine years old and she cannot choose.(132) Also the slave girl cannot do anything about her marriage, since her master controls everything, as Mālik said.(133) Taking 'Ā'isa's marriage as an example, she was very surprised when women were making preparations to marry her to the Prophet. She was nine years old and we can understand from her words that she did not have any idea about what was going on. This means that her father Abū Baker, gave her in marriage to the Prophet without asking for her consent.(134) Sulaymān b. Yāsir said "the father has the right of jabr, which means he can force his daughter to marry.(135) Within the Medīnan doctrines there is an agreement that the right of Jabr is only enforced by the father and the grandfather "wali mujbir".(137)

Some references mentioned that there are some later hadith or tradition from the Prophet, who tried to abrogate the jabr with the virgin girl, giving as an example when the Prophet asked Fāṭima for her consent, before marrying her to 'Alī b. Abū Tālib. She kept silent and he considered that as an acceptance.(137)

However, one should say that Fāṭima was not too young even her age though is not really was not well known. Some say she was fifteen others seventeen or twenty one years old. That means she was a virgin but not a minor. However Al-Šāfi'ī kept to the



idea of the Jabr of the father. Some reference mentioned that he did not know about the later hadith of the Prophet.(138) It seems that Al-Medīna did not change its belief about the Jabr of the father. While in Mecca the jurists held the opposite opinion and Ibn ‘Abbas, who usually represents Meccan opinion supported the doctrines of Al-Kūfa.(138)

b. The jurists of Al-Kūfa considered the consent of the virgin girl as a vital condition for the validity of the marriage, regarding the lack of consent as unlawful marriage. Also, they gave her the right to cancel or to ask for the cancellation of the marriage if she did not accept it.(139)

Abū Ḥanīfa built his opinion upon views expressed by Ibn ‘Abbās who narrated that a virgin girl came to the Prophet complaining about her father forcing her to marry without her acceptance. He said that the Prophet gave her the right to choose either to cancel her marriage or to accept it.(140) It seems that the jurists of Al-Kūfa found another hadith to support their idea, they quoted from Abū Huraira who narrated from the Prophet saying "none, even the father can force the virgin girl and the non-virgin to marry without her acceptance".(141) They also gave the orphan girl the right to refuse or to accept her marriage.(142)

Another opinion in the Sunni doctrines concerns, who can give away the young virgin in marriage. Ibn Māja made it clear that the father has the right to do so.(143) Mālik said also that only the father can give her in marriage, while Al-Šāfi allowed the father and the grandfather (from fathers side) to have this right, unlike Abū Ḥanīfa who allowed anyone who is her guardian be it her father or any relative, but when she reaches the age of maturity she can choose.(144) Ibn Ruṣd mentioned that Mālik agreed with Abū Ḥanīfa concerning the consent of virgin girls, in one case only which is when the girl is mature and a spinster then her consent is accepted by Mālik.(145) Although Tir mentioned that Aḥmad b. Ḥanbal, the founder of the Ḥanbalite school, allowed the marriage of a virgin against her consent,(146) it is noticeable that Ibn Ḥanbal expressed



his opinion in his book "Al Musnad", that both free and slave-virgin girls have the right to renounce their marriage if their father forced them to marry and if they were not asked. In addition, he mentioned that the Prophet cancelled the marriage of an orphan, who was forced to marry,<sup>(147)</sup> saying that the orphan should accept her marriage and that she could cancel it even after the ceremony.<sup>(148)</sup> Relying on this opinion, Ibn Hanbal had similar ideas to Ahl Al-Kūfa.

## 2. Consent of the non-virgin

She is a divorced woman or a widow<sup>(149)</sup> and some said she could be one who has come of age<sup>(150)</sup> such as a spinster. Unlike the case of the virgin girl, there is general agreement between the jurists of Kūfa and of Medīna about the rights of the non-virgin, because the Prophet was clear about her right to accept, to reject, to cancel and even to choose her husband.<sup>(151)</sup> The Prophet said "she has to speak in order to prove her acceptance<sup>(152)</sup>, therefore she has much more right in marriage than her father.<sup>(153)</sup> That means her father cannot force her to marry according to his wishes.<sup>(154)</sup> It is a fact that the Prophet cancelled many marriages of non-virgins who did not accept their marriage,<sup>(154)</sup> Ibn 'Omar mentioned that her acceptance is vital<sup>(155)</sup> and Abū Huraira reported that her permission is important because her opinion is considered.<sup>(156)</sup> The non-virgin orphan also has the right to refuse the marriage.<sup>(157)</sup>

However, we should mention that the non-virgin still needs the permission of the wali. For instance, 'Omar b. Al-Xattāb offered his daughter Ḥafṣa in marriage to Abū Baker and 'Otmān b-'Affān, who did not accept, knowing that the Prophet wanted to marry her.<sup>(158)</sup> The main point of this story is that 'Omar did not ask for the consent of Ḥafṣa, although she was a widow. Also nothing was mentioned about the daughters of the Prophet, Ruqaiyya and 'umm Kulthūm, who were divorced by the sons of Abī Lahab and then 'Otmān b.'Affān married the one after the death of the other.<sup>(158)</sup>

## The Engagement (Al-Xitba)

It is a meeting, which joins the families of the bride and the groom, plus their relatives and friends. It is a Sunna in which the Prophet arranged its essentials and gave it a religious frame. The main reason for Al-Xitba is to propose to the guardian (wālī) of the bride, and following his acceptance the engagement is concluded. Abū Huraira narrated from the Prophet saying "Every ceremony which does not contain the name of God "Taṣāhhūd, is not blessed".(48) It is customary in the light of the Sunna to begin with an expression of praising God, for any important matter, such as marriage, buying etc. The companion 'Abd allāh b. Maṣūd said that the Prophet taught Muslims two kinds of speech (Xitba) one for praying and the other for any important matter they need.(49) the verses of the Koran(50) mention that the responsibility of the man towards the woman and vice versa is to fear God and to obey God and his Prophet. At the end of these pronouncements the Wali declares the acceptance of each party and they announce the agreement about the dower (mahr). Due to that Al-Xitba is called Kirāt Al-fātiha(51) The ceremony ends with the blessing of every one present. Abū Huraira mentioned the words of congratulation saying "Bārak allāh laka wa Bāraka 'Alīka wa Jama' bynakūm fī Al-Xir".(52)

Al-Xitba is considered as the first step towards marriage which might follow or not according to the agreement or disagreement between the two families. Due to that some jurists like Sūfyān Al-Tourī said "Marriage is lawful without Xitba".(53)

In the Hadith the Prophet said "A man cannot become engaged and should not seek marriage upon the seeking of his brother, unless his brother has changed his mind.(54) This means that a man cannot propose to the same woman to whom his brother has already proposed. Mālik explained this point saying "A man cannot propose to the woman who has accepted his brother's offer or proposal, but he could if the woman rejected his brother".(55) A woman could receive many proposals even from

two brothers at the same time, besides which any one can propose to her without condition<sup>(56)</sup> and she or her wali has the right to choose the best one for her.<sup>(57)</sup> However when she or her wali start to discuss the Mahr with the groom, that means almost an acceptance. In which case the brother of the groom should not interfere between them.<sup>(58)</sup> The Sunna here does not permit competition between brothers.

### The Task of the Guardian (Wali)

The function of the wali in the valid marriage is vital in the Sunna and the Hadith. It is clear that there is no marriage without the presence and agreement of the wali,<sup>(78)</sup> whether the bride was free or a slave who either was or was not virgin.<sup>(80)</sup> 'Ā'īša reported from the Prophet saying "Any marriage without the presence of a wali is unlawful marriage".<sup>(79)</sup> Depending on this hadith there is almost general agreement within the Sunni doctrines about the need for the wali during the marriage contract.

The questions are:

- a. who can be the Wali?
- b. what are his duties?
- c. what are the conditions for being a wali?
- d. how many wali should be present at the marriage?

#### a. Who can be a wali?

The wali could be the father who is the nearest man to the bride. Mālik said that the father if he is alive, is more lawful as wali than any other man <sup>(84)</sup>. However the wali can be the grandfather, uncle (paternal-maternal), cousin,<sup>(82)</sup> nephew, brother, even the son of the bride or any relative or a person of her tribe or any person of authority.<sup>(83)</sup> It is related in a hadith from 'Omar b. Al Xattāb who said "The woman



cannot marry unless she has the permission of her wali or her family or the Sultan".(84) 'Āiṣa also said "For whoever does not have a wali, the Sultan is her wali".(85) The Prophet by virtue of his position, was a wali for many brides.

Traditions reported that when the Prophet married Umm Salma her wali was her son and that this was in accordance with the wishes of the Prophet.(86) Other references mentioned that Umm Salma's wali was either her son or her nephew.(87) Sometimes a wali can be the groom himself. 'Āiṣa said "If the wali will not be fair to the orphan (his minor) he should marry another woman".(87) Marriage between the guardian and his ward increased during the time of the Prophet. The reason behind that was to control the property of the orphan, and often this led guardians to mistreating their wards, some of them refusing to pay mahr or legal mahr for their wards which is customary for any other bride. Because of that 'Āiṣa preferred the guardian to marry another woman if he was unwilling to pay the mahr of his ward as the koran stated (4:2).(88)

#### b. the duties of the wali?

The wali, as the main person in the marriage contract is the only one who can make arrangements for the marriage and draw up its conditions. He also discusses the mahr, which the groom must pay,(89) and is the one who gives permission for the bride to marry.(90) It is part of his duties to ensure that the marriage is suitable and that the bride can be properly maintained.(91) It is acceptable for the wali to ask another man, "The good man" to marry his daughter. For instance, 'Omar b Al-Xattāb asked both of his friends, Abū Baker and 'Otmān b. 'Affān, to marry his daughter Ḥafṣa, who was a widow. Both of them hesitated to propose to her because they knew that the Prophet wanted to propose to her.(92)

After the passing of the Prophet, the Caliph 'Omar b. Al-Xattāb, was grew stricter about the role of the wali in marriage. It was said that he had whipped and separated a



man and a woman who had married on a journey without the presence of a walī. 'Omar considered this marriage unlawful.<sup>(93)</sup> During the time of the Al-Šāfi'ī, some believed that a walī should only be involved in the marriage of a woman of noble birth and not in the case of a woman of low birth. Al-Šāfi'ī rejected this belief because he considered the wali as an institution not so much in terms of dignity and honour, but in terms of protecting women from evil and stupidity besides being a public guarantee of genuine marriage.<sup>(94)</sup>

c. the conditions for being a walī?

Ibn 'Abbās who was the first who held and recommended the position of the walī in marriage<sup>(95)</sup>, believed that a wali should have a good reputation, since a bad walī means a bad marriage.<sup>(96)</sup> Also the Sunni doctrines laid down some conditions for the wali, such as:

- he must be a Muslim because a non-muslim father cannot dispose of his Muslim daughter in her marriage.<sup>(97)</sup> Also as a sunna a walī cannot be a pagan because it was well known that sa'ad b. Al-'Āṣ gave 'Umm Ḥabība in marriage to the Prophet, instead of her father, Abū Sufyān, who was a pagan at that time.<sup>(98)</sup> The Koran stated that no walī is permitted between a Muslim and a pagan (4:143) and the Sunna added that there cannot be a walī between Muslims and non Muslims, such as Christians and Jews.
- another condition is that a walī should be mature and not a young person or a child.<sup>(99)</sup>
- as a Sunna, a walī must be male because a woman can never be a walī and so she cannot marry herself without the acceptance of her walī. Abū Huraira reported from the Prophet saying "A woman cannot give another woman in marriage and the prostitute is the one who marries herself".<sup>(100)</sup>
- a walī should be of sound mind and of blameless character, and he should be a free man, not a slave.<sup>(101)</sup> Some of these conditions were of general agreement among the Sunni rites, such as those that dictated that the wali should be a mature male muslim.

However, concerning the conditions of good reputation and freedom, these were not demanded in all the Sunni Madāhib. For instance, Abū Ḥanīfā accepted the slave walī. Besides some rejected the wicked walī and others allowed him. On the other hand, Mālik believed that it is not important for a walī to be an adult unlike Abū Ḥanīfā and Al-Šāfi'ī, who said that this condition is vital.(102)

d. how many walīs should be involved in the marriage contract?

There must be only one walī, because if two walīs give a woman in marriage, there is a general agreement that the first marriage is lawful while the second contract is unlawful. As the Prophet stated "The woman is for her first marriage and her first man". if he converted to Islam. Aḥmad b. Ḥanbal believed that if the woman had two marriage contracts at the same time, both of these contracts were invalid,(103) on the other hand, we have two opinions, in the case of the woman, who has had intercourse with her second husband.

Mālik said that the second marriage is lawful, while Al-Šāfi'ī said that she is still lawful for the first husband even if she has had intercourse with the second husband. Besides some jurists gave the woman the right to choose between the two men, as Omar b. 'Abd Al-'Azīz Ibn Rušd described this opinion as heretical(104).

Only in the Prophet's marriages, a walī sometimes was not present, Mālik mentioned that the Prophet married Umm Salma without a walī because her son was too young, but we should mention that the Prophet was a special and exceptional case as Al-Šāfi'ī said.(105) Also Abū Saīd Al-Xudārī mentioned that the Prophet was an exception saying "there is no marriage without a walī, witnesses and a Mahr except for the Prophet".(106)

## The Witnesses (Ṣuhūd)

Another condition of the marriage contract is the presence of the witnesses along with the walī. Their presence ensures that the marriage is regularised and that the inheritance rights of the woman are made clear.<sup>(107)</sup> Ibn 'Abbās narrated saying "there is no valid marriage without a wali and two witnesses",<sup>(108)</sup> and he reported from the Prophet saying that "The fornicators are those who marry each other without evidence".<sup>(109)</sup>

The presence of the witness is requested to make the marriage public, otherwise the marriage is considered to be a secret one (nikāḥ al-sir) which is invalid according to the Sunna.<sup>(110)</sup> Furthermore, without witnesses at the marriage, sexual intercourse between the couple is regarded as unlawful, in other words it is adultery and fornication.<sup>(111)</sup> Whether the bride is a virgin or not, no one can marry without the presence of witnesses as the Sunna stated.<sup>(112)</sup>

- a. the conditions for the witnesses.
- b. the number of witnesses required.

### a. The conditions

There is a difference of opinion in the Sunni doctrines about the conditions for the witnesses, especially their regulation, Abū Ḥanīfa believed that bad witnesses should not be completely rejected, as their presence is more important than their reputation. Unlike Aḥmad b. Ḥanbal who refused the presence of bad witnesses.<sup>(113)</sup> Also more than one reference mentioned that the witnesses should be good enough for their duty, insisting on two good witnesses as Ibn 'Abbās mentioned.<sup>(114)</sup> Abū Ḥanīfa and Al-Ṣāfi'ī believed that the witnesses should be free people, while Aḥmad b. Ḥanbal accepted slaves, as witnesses.<sup>(115)</sup> Furthermore, Al-Ṣāfi'ī and Aḥmad b. Ḥanbal mentioned Islam religion as a vital condition for any witness, unlike Abū Ḥanīfa who said that the witnesses can

be non Muslim 'Ahl Al-Kitāb' if the bride was a Jew or a Christian.(116) Abū Yūsuf, Abū Ḥanīfa's disciple said that the witnesses should be free people, Muslim and have good reputations.(117) It seems that these are almost the same conditions as for the Walī except that unlike the walī, witnesses can be women.

#### b. the number of witnesses required

During the marriage there should be two witnesses. Abū Ḥanīfa said that they could be two men or one man and two women.(118) Mālik did not reject this opinion and he mentioned from 'Omar b. Al Xattāb that the use of one man and one woman as witnesses is illegal and unlawful, 'Omar described it saying "it is a secret marriage.(119) If I had been there I would have stoned them".(120) Al-Šāfi'ī and Aḥmad b. Ḥanbal said that the witnesses could not be women only men,(121) other reference mentioned that Ibn Ḥanbal accepted one man and two women as witnesses.(122) In Al-Kūfa, the two witnesses must be present at the same time. While Mālik in Al-Medīna said that witnesses could be present one after another and this was acceptable.(123) The witnesses must be present when the proposal and the acceptance are made and most importantly when the consent of the walī was given during the marriage contract.(124)

### The Dower (Mahr)

The Koran explained the reason behind the mahr saying "there is mahr for her on account of her private part having been made lawful (4:3). Mahr is a gift to the bride, which must be paid by the groom. It is necessary for any valid marriage, but this requirement is only in its announcement. In other words, the settlement of mahr should be in the marriage contract, but it is not vital to mention the value and the amount. The amount of mahr was not fixed in the Koran or in the Hadith. But as a Sunna, if the



amount is fixed in the marriage contract, it should be respected. The Prophet said "Who postpones the payment in a dishonest way is a Zānī (adulterer)".(160) There is another hadith from the Prophet which further reenforce this point "A man should fulfill his promise".(161) Abū Yūsuf said "Mahr is for the woman if she wants it. She can even keep herself from her husband if he does not pay her mahr before the marriage".(162) That means that if the mahr was fixed, it is called mahr al-Musama. It should be paid and the man can not delay it.(163)

At the time of the Prophet, the payment of mahr was regarded as vital and the Prophet had to pay the mahr of some bride from the 1/5 of his share in the booty. In the case of poor people, widows and orphans the Prophet had the duty of paying the mahr which was fixed in the marriage contract, in case the groom could not pay.(169) Only a poor man can delay the payment of mahr and instead of delaying the whole payment he can pay a part of it and delay 2/3 or 1/3 of the remainder, the rest must be paid if the husband dies or divorced his wife.(165) This is to make it easier for a poor man and to encourage him to marry.(166) The Prophet did not state any limit for the amount of the Mahr also he did not try to fix any minimum or maximum amount. However, Jābir narrated that the Prophet fixed the minimum of the mahr payment at ten dirhams. But Ibn Ruṣd disputed about this hadith, saying it was weak, and that there should be no disagreement about the amount of mahr amongst the Sunnī jurists.(167) In the Hadith the Prophet accepted that "any kind of mahr might be paid, except for three kinds, the mahr of prostitute, the price of a dog and the price of wine".(168) Actually the amount of mahr can be of high or low value basically as much as the groom can afford. The Koran mentioned "A hundred weight" (4:19). As a Sunna, the mahr could be, an iron ring, a piece of barley or even two handfuls of dates.(169) In the case of a poor groom, who could not pay his bride anything, the Prophet recommended him to teach her twenty sura from the Koran as a mahr for her.(170) Aīṣa and Omar b. Al-Xattāb said that the Prophet did not pay more than five hundred dirhams as mahr for most of his wives and

he received the same payment for his daughters.<sup>(171)</sup> Concerning this point, it seems that the Prophet paid different amounts of mahr for his wives. For instance, Al-Kalbī mentioned that the Prophet paid his first wife Xadija twelve and half 'uqīyya "500 dirhams". But Stern does not agree saying "It is too much for Muhammad's financial situation during that time".<sup>(172)</sup> Another reference said that Xadija's mahr was twenty camels.<sup>(173)</sup>

In addition, it is not known how much Hafsa's mahr was, and there is some confusion about 'Aīsa's and Umm Salma's mahr. Some references mentioned that Umm Salma's mahr was furniture for a house at a cost of fifty dirhams,<sup>(174)</sup> on the other hand Ibn Māja said that the furniture was for 'Aīsa,<sup>(175)</sup> but Ibn Sa'ād said that 'Aīsa's mahr was four hundred dirhams paid by her father, Abū Baker because the Prophet could not afford it.<sup>(176)</sup> Stern mentioned that Zainab b. Jaḥš did not get any mahr saying that she said "I was not as the other wives of the Apostle of God for he married them with their dowries and their wali, but God married me to the Apostle".<sup>(177)</sup> Furthermore, it was reported that Majmūna b. Al-Hārit and Raihāna b. Zaid, and Umm Ḥabība all had a mahr of twelve and half 'uqīyya<sup>(178)</sup>. It is believed that Majmūna devoted herself to the Prophet. It is well known that these categories of women usually married the Prophet without mahr.<sup>(179)</sup> Most of the books of Hadith reported that Umm Ḥabība had the highest amount of mahr. It was four thousand dirhams paid by the Negus of Abyssinia on behalf of the Prophet as a present.<sup>(180)</sup> When the Prophet married Ṣafiyya b. Ḥayya, he did not pay her anything regarding her freedom from capture as a mahr for her.<sup>(181)</sup> Stern concluded that for the mahr of a widow "It seems that she rarely receives a mahr in the form of money, but has to be satisfied with small gifts such as household utensils or chattels".<sup>(182)</sup> However, this might not be regarded as the general practice because the Prophet did not classify his wives since they were all widows before he married them, except 'Aīsa the only virgin wife<sup>(183)</sup> and Zainab b. Jaḥš who was divorced.

Regarding the mahr of the Prophet's daughters, there is no information about the

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be a weight of golden seed of a value of  $3\frac{1}{3}$  dirhams as Ibn Ḥanbal said or  $5\frac{1}{3}$  dirhams as Ibn 'Ishāq said.(194) Another mahr was the value of two sandals and when the Prophet asked the woman if she was pleased to give herself and her property for a pair of shoes she replied "Yes" so the Prophet announced the marriage as being legal.(195) Ibn Māja mentioned that the meaning of two sandals could be as one that the mahr did not determine or it might be part of the mahr or an advance on the mahr.(196)

Sometimes mahr can be in the term of the acceptance of Islam, as was the case of a woman called Umm Salīm and Abū Talḥa, who embraced Islam, and due to that, she accepted his proposal.(197) Saīd b. Al-Musayyab, who was from the followers, (Tābiūn), and although he was a very rich man, he received two dirhams as a mahr for his daughter.(198)

It seems that the amount of mahr was decided by agreement between the groom and the walī of the bride.(199) In other words mahr should be according to the economic position of the groom, whether he is rich or poor.(200) Aḥmad b. Ḥanbal believed that the payment of mahr is not the aim of the marriage because money is not the main consideration saying "The most important factors are good manners and good conduct which are much better than mahr, which could be shoes and other things of little importance easy to be left and forgotten, since marriage is not an institution for buying and selling goods".(201) However, Al-Šāfi'ī had a different opinion. He believed that mahr is an important element in the marriage contract because it is an essential part of the validity of marriage and this it should be followed.(202) He added his own opinion about the marriage of the Prophet to Šafiyya, whose mahr was her release, he said "none except the Prophet can release a woman, considering her mahr as her release "therefore no one can marry a woman without a mahr.(203) On the other hand, Mālik believed that mahr is a right for any woman who met alone with a man in a private place, and so he supports any woman, who claims mahr under these circumstances.(204)



So the woman can have her mahr in three cases:

- a. if she claims it
- b. in the case of divorce
- c. on the death of her husband.

Sometimes the amount of mahr was not fixed in the marriage contract and the marriage is valid without it. This is according to 'Ā'isha who reported that "the Prophet recommended her to marry a girl to her groom without paying her anything".(205) What about the right of the woman if she wanted to claim for her mahr or if her husband wanted to divorce her or if he died? In this case, the right of the woman is ensured by what is called (Mahr al-miṭāl), copy dower, customary dower. The Prophet did not mention it specifically, but he did mention that "the woman is married for her beauty, rank, wealth and religion, but religion is the best reason".(206)

The Sunni doctrines regarded the amount of Mahr al-miṭāl from a different point of view according to the bride's beauty or rank and wealth.(207) Usually, the amount recognises the social position of the bride, her background, lineage as Abū Ḥanīfa and Al-Sāfi and Ibn b. Ḥanbal who believed that the main point of mahr al-miṭāl is that it is the same as the mahr of the bride's sisters, cousins and aunts.(208) While Mālik added the beauty of the bride beside her rank and wealth.(208) other references mentioned another point for Mahr al-miṭāl according to whether the bride is a virgin or a non-virgin.(209) However, Abū Baker b. Ṣā'ba reported an important hadith saying that a woman lost her groom before sexual intercourse took place and he did not announce the amount of the mahr. The Prophet allowed the woman whose name was Barō' b. Wāṭiq to have mahr, and to inherit from her groom.(210) That means that Mahr al-miṭāl is a Sunna as the Prophet stated. Mālik mentioned one condition of Mahr al-miṭāl, he believed that the woman cannot claim it until the marriage has been consummated or if the sexual intercourse took place between a man and woman who

claims mahr.<sup>(211)</sup> ‘Abd Allāh b. ‘Omar and Zaid b. Tābit had the same idea.<sup>(212)</sup>

To conclude, it may be mentioned that the Koran and the Sunna deal with mahr in slightly different ways compared to pre-Islamic times when mahr was in two parts:

- a. a payment to the father of the bride was called Mahr or purchase price.
- b. another payment to the bride herself was called simply Ṣadāq.<sup>(213)</sup>

In Islam, these two parts were joined together and the payment was made directly to the bride, who has the right to own her mahr whether it was money or property. It has been said that this was the way towards financial independence for the woman.<sup>(214)</sup>

During the Prophet's time, the whole amount of mahr was likely to be paid to the bride. However, if the groom could not afford it, it was acceptable to pay part of the mahr which was called fasten (mu‘ajjal) and delay the other part until the woman claimed it or was divorced and for the widow this was also called defer (mū‘ajjal).<sup>(215)</sup>

### The Announcement of the Marriage (Ī lān)

Another important condition of the valid marriage is for it to be in public, involving the presence of others to witness it and to be certain that the marriage is well known to everybody. Therefore, in addition to the essential involvement of the walī and the witness, the entertainment and the wedding feast (walīma) are the best ways of announcing the marriage.

As a Sunna, the Prophet believed that the best element in marriage is its publicity and the more it is proclaimed the greater is its merit. Without any witnesses and proclamation, marriage is nothing other than clandestine, sexual relations amounting to fornication and even though there is mutual consent it is still a secret marriage, which the Prophet<sup>(216)</sup> and the Caliph ‘Omar b. al-Xattāb, rejected and did not permit.<sup>(217)</sup> ‘Āiṣa transmitted that the Prophet said "Make this marriage public now, solemnise it in the

mosque and play tambourines in honour of it".(218) Sunna stated that the songs and the drums at a wedding make the distinction between what is lawful (Hallāl) and what is unlawful (Haram), as the Prophet said.(219) The best way of announcing it is often effected by the beating of the drum and the singing. Both of these receive sanction from the tradition, when it was performed in the presence of the Prophet and his companions. Usually, the songs were religious in theme and were about the matyers of the great battles like Badr. Abū Bak̄er b. Abi Šaj̄ba reported saying that the Prophet was at a wedding listening to the girls singing and mourning their fathers who had died in the battle of Badr and then they said "we have a Prophet who knows or who can predict the future". The Prophet stopped them(220) saying "Do not say that, only God knows the future".(221)

‘Aīsa narrated saying that when a bride was conducted to a man from Al-Anṣār, the Prophet asked her "Have you no amusement, I wish you had sent with her someone to say "we have come to you, we have come to you - so may God preserve us and you".(222) ‘Omīr b. Sa'ad was surprised when he saw two companions of the Prophet, Abū Masūd Al-Anṣārī and Qarza b. Kāb at a wedding where girls were singing. He said "Is this being done in the presence of two who are companions of God's messenger and were present at Badr"? They replied "The Prophet gave us the permission to have entertainment at the wedding and we have been given a licence for this entertainment, you can stay or leave".(223) Usually, women and children attended this ceremony. The Prophet was pleased to see them at the wedding saying "You are the ones I most love".(224) The Prophet was concerned to have groups of people at the wedding as a kind of publicity. ‘Anas b. Mālik said "on the wedding day of Fāṭima The Prophet sent me to call Abū Baker, ‘Oṭmān b. ‘Affān, ‘Omar b. Al-Xaṭṭāb and a few from Al-Anṣār to join him at the wedding of his daughter".(225)



## The Marriage Feast (Walīma)

The Prophet made it a Sunna when he encouraged Muslim people to hold the walīma as a necessary rite for the marriage. It is another type of publicity and it should usually be held by the groom.

The walīma as the Prophet arranged it, could be any sort of food, according to the grooms wish and ability.(226) It was reported that when the Prophet knew that 'Abd allāh b. 'Awf, who was a very rich man, married without holding a walima, he said to him "God bless you, you could give a walīma even though only a goat".(227) The Prophet himself gave a walīma every time he married but he varied the food. For instance, when he married Ṣafiyya, he offered hais (as a mix of butter plus date and flour and dried) with two mounds of wheat.(228) and he asked his guests to bring their food with them.(229) Al-BuXārī mentioned that the Prophet gave a walīma with two mounds of barley.(230) 'Anas b. Mālik narrated that the Prophet gave a walīma without meat or bread.(231) When the Prophet married his cousin Zaineb, he slaughtered a goat. 'Anas said "It was the biggest walīma ever held, people ate meat and bread to their hearts content, until their stomachs were full.(232)

The Prophet stated that the invitation to a walīma should be accepted as a duty for all Muslims.(233) One of the companions invited the Prophet to his walīma and his bride served them.(234) Regarding the length of time for a walīma, the Prophet said "The food of the first day is a duty, for the second day it is a Sunna and the third day is to make me hear of it and anyone who makes men hear of what he did, God will make him hear of it".(235) This hadith shows that the Prophet preferred a walīma to be held for two days only, refusing the excesses of some people, who held a walīma for many days. Abū Huraira criticises the invitation to a walima saying "The worst food is that of walima, because the rich are invited and the poor left out". He added that however, who refuses an invitation disobeys Allāh and his messenger".(236) He who received two



invitations at the same time, was advised by the Prophet to choose the first and the nearest one<sup>(237)</sup> indoors. Also the Prophet said that for good discipline in the walīma the guest should eat and drink what the host provided without asking questions. Al-Bayhaqī said "A Muslim would obviously give him only food and drink which were lawful in his opinion".<sup>(238)</sup> On the other hand, the Prophet disliked the one who comes to any walīma without invitation saying "pious people never come to any walima unless the owner of the house gives them his permission, otherwise he should not come".<sup>(239)</sup> Although walīma is a sunna, the Prophet distinguished between the good and the bad walima, Abū Huraira narrated from the Prophet saying "The invitation of two people, who are in rivalry with one another should not be accepted and the food they provide should not be eaten". Along the same lines Imāra b. Husseīn reported that the Prophet said "the food which is provided by profligates is forbidden and the invitation should not be accepted".<sup>(240)</sup>

The Sunnī doctrines regarded the walīma as a Sunna. However, according to some of them, it is regarded as recommendable (mustahab) while others said it is compulsory (Wājib)<sup>(241)</sup> duty, like the visiting of sick people<sup>(242)</sup> and therefore, the walīma should be accepted from a religious point of view.<sup>(243)</sup> However, walīma was another legacy from pre-Islamic times.<sup>(244)</sup>

### Equality in Marriage (kafā'a)

The subject of equality between the groom and the bride is not very clear in the tradition because, some references insist that there is no evidence for the Kafā'a in the hadith and certainly not in the Koran. While other references show some evidence of it. Actually, there is a contradiction between the traditions in that some show that the Prophet rejected the idea of Kafā'a like Bilāl, the muḍīn<sup>(245)</sup> of the Prophet, who said

"The Prophet recommended me to go and tell the parents of the bride that the Prophet orders you to accept me for your daughter". It is well known that Bilāl was a negro and that he married the sister of 'Abd Al-Rahmān Ibn 'Awf, who was a very rich and powerful man.(246) However, we should mention that Bilāl held a very important position as one of the companions (Ṣaḥāba), and as the first, who called Muslim people to pray in the mosque. In other words, from a religious point of view, Bilāl was equal to 'Abd Al-Rahmān b. 'Awf in importance. In addition, the Prophet recommended and arranged the marriage between his cousin Zainb b. Jaḥṣ and Zaid b. Al-Ḥārith, who was his liberated slave. But the Prophet adopted Zaid and he was called Zaid b. Muḥammad at the time when the marriage was arranged.(247) Also in this case, the religious point should be considered.

A unique hadith from the Prophet was mentioned by Tir saying "If a man makes a proposal of marriage to you and you are satisfied about his religion and character, marry him, if you do not it will be a very serious discord (Fitna)".(248) This hadith caused argument among the Sunnī Doctrines because it contained two elements: religion and character, therefore, we have two different explanations:

### 1. In Al-Medīna

Mālik in his book 'Al-Muwatta'' had nothing to say about Kafā'as regards to character, but he insisted on the religious aspect as the main condition in Kafā' for any solid marriage. Also he rejected the social distinction upon which Kafā'is built. He even encouraged marriage between non-Arab men and Arab women.(249) This was the opinion of Mālik'Imām Al-Medīna. Aḥmad b. Ḥanbal refused the idea of Kafā' and when Mubaṣir transmitted a hadith from the Prophet, saying "Only the equal marry the women, only their walī gives them in marriage". Aḥmad b. Ḥanbal denied this hadith and he said "Mubaṣir is a liar".(250) However, Ibn Ruṣd mentioned that Ibn Ḥanbal rejected marriage between Arab women and non-Arab men (mawālī). (251)

## 2. In Al-Kūfa

Abū Hanifa gave Kafā' prominence and a wide meaning, he understood Kafā' to be a combination of many elements. Although he did not deny the religious aspect, he considered other facts such as ancestry and wealth as also did Al-Šāfi'ī.(252) The Hanifite school encouraged and preferred marriage between Arabs only, refusing the union with non-Arabs, who came into Islam and rejected marriage between Qurayš<sup>v</sup>(253) (the Prophet's tribe) and other tribes saying "Qurayš<sup>v</sup> are only the Kafā' of Qurayš<sup>v</sup>".(254) In addition, Abū Hanifa believed that (mahr al-miṭṭal) copy dower is a type of Kafā'a because its value takes account of the position of the bride's family. Mālik and Al-Šāfi'ī denied this reason for Kafā' because the father can give his daughter in marriage for less than the mahr of her sisters or aunts.(255) Some references explained the source of Kafā' in Al-Kūfa by saying that the area was ready for the great development resulting from various influences, one of which was the Persian background, from which Abū Hanifa came, they regarded noble descent, and heroic achievement as important parts of Kafā'a. In addition, the influence of pre-Islamic practice cannot be ignored. Also the increased in the numbers of the (Al-Mawālī) non-Arab in Iraq was much greater than in Al-Medīna.(256)

Abū Hanifa formed his opinions as a result of the above circumstances and he adopted some hadith from the Prophet. It was reported that three men proposed to a woman called Fāṭima b. Qais, they were, Muāwiya, Abū Jahm and 'Usāma Ibn Zaid. When she asked the Prophet he told her "Do not marry Muāwiya because he is miserable, and has no money and do not marry either Abū Jahm since he usually beats his wives and is constantly away. Marry 'usāma he is the best of them".(257) The Prophet took account of many points in this Hadith such as good manners, which should be expected of any groom and this we can include as part of Kafā'a describing Muāwiya as a miserable poor man that made money also include as part of Kafā'a .

Ibn Ruṣd mentioned that within Sunni Madāhib there is general agreement, saying



that freedom is one of the conditions of Kafā'ah because a slave girl had the right to choose to leave or to stay with her husband if and when she was set free by her owner. As the Prophet said.(258) In addition, most Sunni doctrines regard fitness as a part of Kafā'ah(259) and also poverty is regarded as an element of Kafā'ah or equality, most said that if a man could not support his wife she could ask for a separation, only Abū Ḥanīfa did not accept this idea. Beauty was not considered as a condition of Kafā'ah(260) However, Kafā'ah was mentioned by the companions 'Omar b. Al-Khaṭṭāb of 'Ā'ishā and Saād b. Al-'Āṣ. 'Omar said "Orphans should marry their peers", Saād b. Al-'Āṣ said "marry their equals" and 'Ā'ishā said "choose the equal for you and marry them".(261) Al-Hedāya, mentioned that "A guardian has the right to separate his daughter from her husband, if he is less inferior than she is, in order to remove the dishonour or they might otherwise sustain by it".(262)

There is general agreement that a woman can refuse an unequal marriage and no one can force her into such a marriage, but others said her father could do so in the case of minors. Sunni Madāhib understood Kafā'ah as being confirmed by religion, as known in Al-Medīna, besides good background (Nasab), wealth and good manners and money (Hasab) as known in Al-Kūfa.(263) For instance, the man who drinks alcohol, who always threatens his wife with divorce, who earns unlawful money, is a wicked man, the woman can refuse to marry him.(264)

However the Sunna is not far from the spirit of the koran which insists that all Muslims are equal and no one is better than another except by his faith alone. This was the belief of the Prophet, who regarded pious people as equals. This was also the opinion of Madīnan jurists, but later in Kūfa a good position in society and wealth became a part of Kafā'ah



### Women who Devoted themselves to the Prophet (Wāhibāt)

A woman can make a proposal to marry a specific man,(265) not only to the Prophet but to any pious man. Also she or her walī can propose to several men and the one accepts her, he will marry her. In addition, sometimes her family can make a proposal on her behalf, such as her father or any of her male relatives.(266) This idea was active during the Prophet's time, but the women, who devoted themselves to the Prophet, had an especially glorious reputation and a special position because they proposed to the Prophet, and thus were mentioned in the Koran (33:50) which permitted the Prophet to accept or reject these women. Stern said that this kind of offer was made by these women, without precedent, of respect for the Prophet as the head of a new religious community.(267)

One may say that this kind of marriage was specially for the Prophet. Since almost all the Muslim books reported that a woman is unable to devote herself in marriage, except Al-Ṣāfi'ī who might accept this.(268)

Through the traditions, it is recognised that even at the time of the Prophet, some people did not accept the practice of women who devoting themselves to the Prophet. It was reported that 'Anas b. Mālik was not pleased with his daughter who condemned this practice and considered it shameful, 'Anas said to her "this woman is better than you. So she devoted herself to The Prophet". 'Anas regarded these women with respect and admiration.(269) 'Āiṣa was surprised and kept saying "The woman who devotes herself to the Prophet does not feel shy" until the Koran mentioned "You may defer any of them you wish. If you desire any you have set aside no sin is changeable to you". (33:49-50) After this verse, 'Āiṣa said "It seems to me that your God hastens to satisfy your desire".(270)

The new point in this marriage, is that women who bestowed themselves on the Prophet, did not ask or receive mahr. Stern said that 'Āiṣa complained because these

women married without mahr. She said "they should be ashamed to offer themselves without receiving a mahr".(271) But other references mentioned that sometimes the woman could receive mahr such as Maʿmūna who devoted herself to the Prophet, and who got mahr not from the Prophet, but from her brother-in-law, Ibn ʿAbbās who arranged this marriage for her.(272) Therefore, this proved that there was no mahr from the Prophet himself.

These women were considered to be the wives of the Prophet, not his concubines like Māriya and Raiḥāna. They had the same superior status and they were veiled,(273) but of those who devoted themselves it was said that Maʿmūna was the only one who had a room alongside the other wives of the Prophet. It was said that she had her own tent.(274) Usually these women were adult, divorced or widowed. Actually it is not clear whether their marriage was with or without a guardian walī or witnesses. Abū Saʿīd al-Xudārī said "Only the Prophet can marry without these necessary elements of marriage".(275) al-Šafīʿī was of the same opinion.(276) The number of women, who devoted themselves to the Prophet is not clear. As well as Maʿmūna, some references mentioned that Zaineb b. Jaḥš also bestowed herself upon the Prophet.(277) Stern mentioned some important details about these women depending on Ibn Saʿād's book 'al-Tabaqāt'. Stern admitted that tradition is not entirely satisfactory in giving a clear idea about this matter. It said that the proposal of marriage to the Prophet could be made by the woman herself or by her family on her behalf, or even by some members of her tribe as in the case of the tribes of Kalb, Kilāb, Kinda and lait.

Stern mentioned some women starting with:

a. 'Asmā' b. al-Nuḥmān, she is said to have been proposed as a wife for the Prophet by her father. Ibn ʿAwn narrated that the Prophet sent ʿAbd al-Ruḥmān b. ʿAwwf to her tribe, Banī Kalb, saying that if the chief offered his daughter's hand in marriage, Muḥammad would accept. That means "promoting friendly relations between the Prophet and the various tribes".(278)

b. Xawla b. Al-Hudail of Beni Taglib. She bestowed herself upon the Prophet, but she died before the marriage was consummated and before she met the Prophet.(279)

c. Umm <sup>V</sup>Sarik, there is some confusion about her identity according to Stern's information. For instance, Al-Waqidi said she belonged to a Makkan tribe, the bani Amir b-luayy others said she belonged to Azd's tribe, while others still reported that she was one of the Al-Ansar.

d. Qutaila b. Qais, Stern was not clear about her position, but Ibn Saad stated that she is supposed to have devoted herself to the Prophet.(280)

e. Laila b. Al-Kazim, was one of the Al-Ansar, and when she devoted herself to the Prophet she was a grandmother. Her family was not consulted. Many things were reported about her. Some said that her family asked the Prophet to release her, not because they did not accept this marriage, but as Watt said "They were afraid that the Prophet was not interested and he would turn her proposal down".(281) This information related to a hadith of the Prophet, who when asked why he did not marry a woman from the Al-Ansar, replied "because they are jealous, gayer". The Prophet hesitated to accept Laila b. Al-Kazim because she was described as a proud woman, therefore the Prophet wondered if she would cope with his wives, especially <sup>V</sup>A'isa, who held a special position among the Prophet's wives and as Stern said "she would not regard a woman from the Al-Ansar as having the same status as herself". Besides, the Prophet was concerned about good relations with the Al-Ansar.

f. Watt mentioned another woman from the Al-Ansar whose family also asked the Prophet to release. Her name was Habiba b. Sahl, this was also because the Prophet was not interested.(282)

g. Xawla b. Al-Hakam, related to the clan of Hasim, devoted herself to the Prophet after she lost her husband, Otmān b. Mazun, who was killed in the battle of Uhud. The Prophet rejected her. However, she served the Prophet and spent her last



days under his roof, but he did not marry her.

h. It is remarkable that only Maymūna b. Al-Ḥārīt was well known among all the women who devoted themselves to the Prophet. Some references state that the Prophet accepted her offer as a friendly gesture towards her brother-in-law Ibn 'Abbās. She was a widow.(283)

One may say that she was a good example of the status of the women who devoted themselves to the Prophet.

i. Ḥanī b. Abū Tālib. It has been said that she was the last woman who devoted herself to the Prophet. She was his cousin. When the Prophet proposed to her, she refused because of her children. Later, after they had grown up, Ḥani bestowed herself upon the Prophet, who did not accept her because of the citing of sūra Al-Aḥzāb (33:49) which made the marriage with a paternal cousin, who had not emigrated with the Prophet, unlawful for him. Also (33:51) stated that the Prophet could not have any more wives than he already had or change the wives he already had.

One should admit that the information about these women is scarce and brief, especially in the books of Hadith, there is only one hadith about a woman, who devoted herself to the Prophet. Her name is not mentioned. However the Prophet was not interested and he gave her in marriage to another man, who was too poor to give her mahr so the Prophet told him to teach her twenty sūra of the Koran.(284) In addition, some books of Hadith mentioned 'Anas b. Mālīk and his respect for the women who devoted themselves.(285)

Apart from that Mālīk did not say anything about this subject, neither Aḥmad b. Ḥanbal, even when the name of Maymūna appeared in the case of the "marriage of muḥrim". In almost all the books of Hadith,(287) none mentioned that she was one of the women, who devoted themselves to the Prophet. Ibn 'Ishāq(288) and Ibn Saād mentioned her and Zaineb b. Jaḥš who said that she did not marry the Prophet like his other wives by mahr and walī because "God married me to the Apostle".(289) The



successor Sa'īd b Al-Musayyab mentioned an important issue. He said "any woman, who devoted herself to the Prophet and was accepted cannot marry again".(290) According to this information and how the books of Hadith deal with Ma'jūmūna and Zaineb b. Jahš, we can say that the women who devoted themselves to the Prophet had the same status as the legal wives of the Prophet seeing as they were called the mothers of the believers, and could not marry again after the passing of the Prophet.

Stern mentioned that the marriage between the Prophet and the women who devoted themselves to him, was unlike that which he practised with other wives. It might be because there was no walī, no mahr as Zaineb b. Jahš said.(291) Some western references were confused about the marriage which joined the Prophet and the bestowed women. Stern said that H. Lammens read Al-Ṭabarī, who said that the Prophet contracted a mut'a marriage with a woman called 'Aliya b. Zubyān from the tribe of Bani Kilāb. Also Lammens reported from Ibn Sa'ād, who mentioned that the Prophet remained with her for a time, then he divorced her".(292)

Drawing upon these two sources, Lammens jumped to conclusions, saying that mut'a marriage was contracted with the woman, who devoted themselves to the Prophet. Stern rejected this idea and also Al-Ṭabarī's story describing it as unreliable for two reasons:

- a. the term of divorce was given in Ibn Saad's report. While mut'a does not necessarily entail divorce.
- b. it was clear that the Prophet forbade mut'a marriage at that time.(293) Also, Watt denied any connection between muta and the marriage of the devoted women. He said that mut'a is another thing.(294)

In conclusion, the marriage between the Prophet and the devoted women was regarded as different to the marriages the Prophet contracted with his other wives. But in the Books of Hadith this kind of marriage is regarded as a normal marriage just like

the others. Also women were greatly respected and had high status, no distinction being made between them and the other wives of the Prophet. Although not all of these women were mentioned, it was said that the Prophet cohabited with some of them.(295) However, it was an exceptional kind of marriage for the Prophet. Abū Saïd Al-Xudari said "only the Prophet can marry without wali, witnesses and mahr".(296)

### The Unlawful Marriage

1. Muta marriage.
2. The Marriage of Šigār.
3. The Marriage of Muħrim.
4. The Marriage of Muhalil.

### The Temporary Marriage (Nikāh al-Mufa)

This kind of marriage was called muta, because it is a marriage for pleasure only, not for having children and raising a family.(297) It is different from the normal marriage in certain aspects, such as:

a. it does not need a wali or witness, divorce or publicity, and also the man and the woman cannot inherit one another. Also the man has no authority over his woman.

b. Muta marriage needs only mutual consent between a woman and a man. They make an agreement to live together for a limited time, which could be one night, three days or a couple of months according to their desire.(298) When the time comes to an end, the man can leave the woman, even before the end of the period of the

agreement because nothing ties him to the woman. He has no duty towards her and she has nothing to ask for, such as mahr or security.(299) At the time of the agreement, the woman usually receives a present from the man. this present might be anything such as a coat, a date, one dirham or even an old dress.(300)

c. the woman in mutá marriage is called "ṣīga", form, she has no right to claim anything. Levy described her, saying "the woman is a gift for hire".(301) She is never considered as a legal wife according to the Sunni schools. She never counts among the legal wives, (302) but if she had children from this marriage they are considered legitimate and they inherit from their father.(303)

### Mutá during the time of the Prophet

Mutá was deep-rooted among the Arabs in the pre-Islamic period and it was definitely still practised during the early period of Islam, as Ibn 'Abbās narrated. The new practice of mutá during the time of Islam was that it started to be used at specific times and under specific circumstances. Ibn 'Abbās said "It is practised because of the rarity of women and in a difficult situation".(304)

These two factors used to face the soldiers while on expeditions. The Companion, Ibn Masūd Al-Anṣārī said "The Prophet allowed mutá when we were fighting and our wives were not with us, so we asked the Prophet "shall we not undergo castration "then he allowed us to practise mutá even with a present such as an old coat".(305) Ibn 'Abbās mentioned another occasion or reason for mutá. He said "A stranger meets a woman in her country and decides to stay with her during this time. She protects his goods, cooks his food and if they want they can extend the time or give up".(306) Due to that some references named mutá "union of passengers".(307)

All the references agreed that mutá was allowed for the soldiers by the official

permission of the Prophet.(308) Ibn 'Abbās said "It was not certain if this was a special permission for some group or if it was for everyone".(309) The companion, Ibn 'Omr, said "mutá was allowed, it was not adultery".(310) Therefore is regarded as lawful marriage(311)

It was certain that the Prophet allowed mutá on three occasions. These are:

a. in the campaign of Xeibar 7.AH

there is an agreement among the books of Hadith that the Prophet allowed mutá by official licence for Muslim soldiers.

b. during the conquest of Mecca 7.AH.

Mutá was allowed only for three days, Šabra b Mabd said "A woman accepted my old coat and refused the new coat of my friend because I was younger than him. I spent three nights with her, after that I heard an announcement from the Prophet prohibiting muta saying "you who believe, do not make unlawful the good things which God has made lawful for you".(312) This means that only wives and what the right hand possesses "mā malakat <sup>9</sup>amānū ...kum" are lawful. After the prohibition, the Prophet recommended men to leave these women and to leave their presents with them.(313)

c. the year of 'Awṭās 8 AH.

Salma b Al-Akwa reported that mutá was allowed during this time for three days.(314) But this period was not clear in all the books of Hadith, only Muslim,(315) Tir(316) and Aḥmad b. Ḥanbal(317) mentioned it while other books, reported that the conquest of Mecca was the last time, before mutá was forbidden forever. 'Alī b. Abū Ṭālib has a famous hadith saying that "in Xeibar the Prophet forbade mutá, the eating of the domesticated asses,(318) entering the houses without permission and beating the women of Xeibar or taking their money".(319)

Some references reported that at the time of Hunain, mutá was permitted, but on this occasion it was said that it was practiced with the captive woman, with whom it was lawful for Muslim soldiers to have intercourse with. Abū Saīd Al-Xūdārī said that these



women were lawful because their husbands were pagans. So captured women became "What the hand possesses" as concubines.(320)

However, it is definite that in the farewell pilgrimage the Prophet announced that mutā was forbidden and prohibited for the Last Day, according to Rabīʿ b. Sīra who transmitted this Hadith.(321) Later when Ibn ʿAbbās was asked about mutā being allowed he said it was lawful. Then it is said that ʿAlī b. Abū Tālib the son-in-law of the Prophet reminded Ibn ʿAbbās that the Prophet forbade mutā in Xeibar, hearing that Ibn ʿAbbas had changed his judgement.(322)

Mālik in his book 'Al-Muwattaʿ' entitles the chapter simply nikāḥ al-mutā without including any comment, just mentioning two hadiths;

- a. one by ʿAlī who said that the Prophet prohibited mutā in Xeibar.(322)
- b. another one by ʿOmar b. Al-Xattāb who forbade it saying, "it is mutā, if I had been the first there I would have stoned him".(324)

It seems that mutā survived and was practised after the passing of the Prophet, during Abū Baker's and part of ʿOmar b. Al-Xattāb's reign.

- a. Ibn ʿAlī Omra Al-Anṣārī said "mutā was practised during the time of the Prophet, Abū Baker(325) and "At the time of ʿOmar mutā became officially forbidden".(326) ʿOmar considered mutā as a form of prostitution. Also he was the first one to threatened to use the punishment of stoning. After ʿOmar, Ibn Al-Zūbeir in Mecca adopted his judgement by threatening Muslim people who practised mutā with stoning.(326) Schacht mentioned that mutā was not prohibited only in the time of ʿOmar b Al-Kattāb, but also in the last days of the Prophet and the early day of Al-Zūhri, who transmitted most of the Madīnan traditions banning mutā.

Al-Ṣaybānī said "Mālik and Al-Ṣāfi ʿī did not advocate lapidation as a punishment for mutā". Al-Qurtubī explained that by saying "because Mālik did not consider mutā as ḥarām, unlawful, on the other hand Al-Ṣāfi ʿī described it as a disliked practice makrūh."

Among Hijāz, jurists there were different opinions of mutā:

a. in Medīna, most Medīnian traditions were against mutá. Later even Málík changed his judgment and ended up by rejecting it.(327)

b. in Mecca, it seems that mutá was defended and recommended by two important companions, Ibn 'Abbās and Ibn Masūd Al-Anṣārī.(328) However, with specific conditions, but later it was reported that Ibn 'Abbās changed his opinion and he announced mutá as prohibited. This was before he died.(329)

In the Koran mutá is mentioned "give them their salary for a limited time ʾIla'ajal musamā' (17:28) some described this verse saying "it is obscure".(330) During the earlier days of Islam there were two kinds of mutá:

- a. enjoyment of pilgrimage (Mut'at al-Ḥajj),
- b. enjoyment of women (Mut'at al-Nisā').

Since 'Omar b Al-Xattāb forbade mutá the Sunnī Madāhib adopted his judgment and mutá was cancelled among Sunnī followers, but in the Šī'ites rite mutá survived and it practised till now, relying on Ibn 'Abbās and Ibn masūd who allowed it as lawful and šī'ite Imāms recognised it.(331) The main reasons for the dispute about mutá are:

- the limited time, which is mentioned in the marriage agreement. The Sunnī rites stated that without fixing any time the marriage is valid.

- mutá marriage is considered a secret marriage or (nikāḥ al-sirr) as 'Omar b. Al-Xattāb described it,(332) because it is arranged without the presence of the gurdian and witnesses, which are the main conditions for valid marriage as believed by sunnī schools. Therefore mutá marriage is bātil (باطل).

However, mutá has some restraints like the normal marriage. For instance, it could not be with two sisters or during the 'idda, the woman has to spend two courses. The time of 'idda is similar to that for a slave woman means less than the 'idda of the woman in the normal marriage which is three months.(333)

In conclusion, mutá is a kind of marriage between two mature people normally an unmarried and non-virgin woman. Al-Imām Jāfar said that mutá marriage for a virgin

woman is disliked (makrūh). Whatever may be said about mutā being a form of prostitution, and whatever the status of the woman, she is definitely not a prostitute as some references mentioned.(334) She should be ʿafifa, have a good reputation.(335)

Mutā was a form of marriage, which was permitted by the Prophet for specific occasions then he forbade it. The Sunnī rites adopted this judgment while the Šīʿites rite have retained the practice, as still lawful until now, and still with limited time, but they fix it for a long period such as ten years or twenty even till ninety nine years. Some references mentioned that mutā marriage is a religious prostitution being practised on some occasions such as a feast in Mecca in pre-Islamic times. Others said it is legal prostitution, as Šīʿites believe.(336) While Ibn Ruṣd mentioned that Ibn ʿAbbās regarded mutā lawful as said in the Koran, and was supported on this issue by people in Mecca and Al-Yemen.(337)

### The Marriage of Šigār

It is another kind of prohibited marriage. The Prophet refused it saying "There is no šigār in Islam.(338) It was called šigār because the marriage does not include a mahr, in other words mahr had been removed from the marriage agreement. Šigār is an exchange between two men, each of them marrying the daughter or the sister of the other, on the condition that neither of these women takes mahr. This exchange is considered as a mahr in order to avoid paying the mahr as Ibn ʿOmar narrated.(339) In this case, the wives themselves are regarded as the mahr.(340)

It seems that there is an agreement between all the Sunnī doctrines about the prohibition of this kind of marriage. Some books of Hadith mentioned that šigār was among daughters,(341)while others said it was among sisters and daughters.(342) Whatever the reference stated all admitted that the father usually arranges šigār.



One may recognise some slight differences between the four Imams of Sunni Madāhib regarding the details of ṣigār:

a. Al-Šāfi'ī and Aḥmad b. Ḥanbal rejected this marriage even if it is corrected by (mahr al-miṭāl), copy dower, because from the beginning the marriage is unlawful.(343)

b. Abū Ḥanifa and Mālik believed that if the mahr is announced ṣigār becomes a normal and valid marriage. Mālik said that ṣigār could be corrected by the announcement of mahr.(344)

Ṣigār is another legacy from pre-Islamic times and it was practised during the earlier days of Islam when the Prophet considered it ḥarām, unlawful.(345) Some references described ṣigār saying that "it deprived the woman of her right to mahr, which is her own possession.(346) It seems that ṣigār survived until the Umayyad age. Even the prohibition of the Prophet was clear yet, ṣigār was practised by two of the Prophet's relatives, Al-'Abbās b. 'Abdullāh b. Al-'Abbās and 'Abd Al-Raḥmān b. Al-Ḥakam, who exchanged daughters. It was reported that the Caliph Mu'āwīya separated the couples, regarding their marriage as unlawful.(347)

### The Marriage of Muḥrim(348)

There is a unique hadith from the Prophet transmitted by Abū Huraira which say "The marriage of muḥrim is unlawful, he cannot become engaged or marry even if it was on his behalf".(349) 'Oṭmān b. 'Affān said that "there is no marriage for the muḥrim whatever the circumstances".(350) Ibn 'Abbās mentioned a remarkable hadith, saying "When the Prophet married Maymūna, he was muḥrim".(351) This hadith or the announcement caused some confusion, because it could cancel the hadiths of Abū Huraira, and Ibn 'Omar, in other words, the Medinian Doctrines.(352) Because of that



there is a serious contradiction between the Sunnī Doctrines, especially because Ibn 'Abbās did not change his report and insisted on his words.

It was well known that Ibn 'Abbās arranged the marriage between the Prophet and Maymūna, both of them relatives of Ibn 'Abbās. Ibn 'Abbās said when the Prophet visited Mecca the marriage took place.<sup>(353)</sup> This hadith contrasts with another hadith from 'Ibān b. 'Otmān b. 'Affān, who was the prince of the pilgrimage (Amīr Al-Hajj). It was reported that a man wanted to give his daughter in marriage during the season of the Hajj. When he asked 'Ibān b. 'Otmān, he told him "I see you are such a rough 'Irāqī, 'Ārābī because I hear the Prophet saying " Muhrim cannot marry".<sup>(354)</sup>

Maymūna herself related that "When the Prophet married me, he was lawful not muhrim".<sup>(355)</sup> That means she denied Ibn 'Abbās's hadith, saying that the Prophet married her on the way between Mecca and Al-Medīna at a place called Sarf.<sup>(356)</sup> This seems that, when the Prophet left Mecca after the pilgrimage, Maymūna joined him on his way to Al-Medīna, and that they married this time. Yazied b. Al-'Ašamm, Maymūna's nephew supported his aunt's story and the successor Saīd b Al-Mūsayyah, said "Ibn 'Abbās imagined.<sup>(357)</sup> Some references explained the reason behind this confusion, saying that as long as Ibn 'Abbās represented Meccan jurists, they believed that the marriage of muhrim was regarded as lawful. Also other references state that in Iraq, the marriage of muhrim was accepted.

It seems that this idea originated from 'Ibān b. 'Affān, who said to the man who wanted to celebrate his daughter's wedding during the Hajj season "you are such a rough Iraqi, 'Ārābī. Muslim said "If 'Ibān meant rough 'Ārābī that means he is ignorant of the Sunna of the Prophet. In addition, if he meant "rough 'Irāqī that meant that in Iraq they accepted the marriage of muhrim.<sup>(358)</sup>

There is another explanation. It could be that this marriage was only lawful for the Prophet, like another exception made only for the Prophet who could marry more than four wives, thus he had nine legal wives, and who sometimes married women who

devoted themselves to him without walī or mahr. These exceptions were allowed by the Koran and were only for the Prophet (33:50). Al-Šāfi‘ī(359) and Abū Saīd Al-Xūdārī(360) repeated the same point. Also, Al-Tirmidī made two points about the marriage of muhrim.

a. the marriage of muhrim is disliked.(361)

b. the permission, where he narrated Ibn ‘Abbās's report.(362)

Mālik, who represented Madīnian opinion, did not mention anything about the marriage of muhrim in his book 'Al-Muwatta‘a', [Kitāb al-Nikāh], but only in [Kitāb al-Ḥajj](363) He mentioned five hadiths which regarded the marriage of muhrim as unacceptable. He reported that the Prophet sent two men, to marry him to Ma‘mūna while he was in Al-Medīna before going on pilgrimage to Mecca.(364) This information is further contradicted by the well known fact that Ma‘mūna devoted herself to the Prophet. In addition, Mālik concentrated on refuting the idea of the marriage of muhrim by mentioning four hadith from the companions ‘Abd Allāh b. ‘Omar and ‘Omar b. Al-Xattāb, who separated a couple because the man was muhrim when he married.(365) Also he mentioned the opinion of Saīd b. Al-musayyab and Sulaymān b. Yasār (a freed man of Ma‘mūna who said that the muhrim cannot marry.(366) Yasār reported that "the Prophet married in Medīna and that he was not muhrim.(367) Only in one case can the muhrim marry as Mālik stated. He said "The muhrim can take back his divorced wife during the ‘idda".(368)

The confusion about the marriage of muhrim was regarded as a vital problem and generally as a negative or weak point in the traditions. Schacht mentioned it to support his ideas about the huge discrepancies in the Hadith. He said that the marriage of the Prophet was an important event in the life of the Prophet. Although the transmitters did not report it correctly.(369)

One may say that there was no mistake in the transmissions, but that there were two opinions about the marriage of the muhrim, one of which was formulated by a jurist

from Al-Medina and the other from Mecca jurists. Ibn'Abbās and later Al-Kūfa's jurists held his opinion as Tir reported.(370)

### The Marriage of Muḥallil

It is a kind of normal marriage, with a walī, witnesses and mahr, but its background is unlawful.(371) This marriage is concerned with the triple divorce. According to the Koran (2:229) and the Sunna, a man who divorces his wife twice can take her back if he wishes. But if he divorced his wife three times (triple divorce), he cannot take her back unless she has married another man, in the mean time who has divorced her. In this case, she could remarry her first husband.(372) The Koran mentioned this kind of marriage, without cursing or forbidding it.

Throughout the Sunna and the hadith, the Prophet tried to lay down some conditions in order to prevent the man from pronouncing divorce.(373) Also Watt said that the Prophet wanted to give women the freedom to remarry.(374)

The Prophet disliked the marriage of muḥallil. Ibn'Abbās and 'Alī b. AbūTālib reported that the Prophet cursed both the muḥallil and the muḥallahū.(375)

a. muḥallil is the man, who marries a woman in order to make it lawful for her to marry her first husband again.

b. muḥall lahu is the first husband, who divorced his wife by triple divorce, then wants to remarry her.(377)

The Prophet was not pleased about this marriage because it is arranged on condition of divorce.(378) It is clear that a muḥallil man marries a woman by niya, decision to divorce her afterwards. The Prophet did not like this and he described the muḥallil by saying "He is like an ox who is brought in for a purpose".(378)

Although the Prophet cursed the one who contracts this marriage he did not forbid



it. He insisted that when the muhallil married the triple divorced woman, sexual intercourse should take place. Otherwise the woman is still unlawful for her first husband.(379) Ibn Al-Zubier narrated that a woman came to the Prophet telling him that her husband Rufā' Al-Qurazi had divorced her three times then she married another man who, could not have sex with her. She asked the Prophet if she could remarry her first husband? The Prophet replied "No".(380) This was because the Prophet did not believe her story. Mālik reported another hadith saying that a man asked Al-Qāsim b. Muḥammad whether if a man who had married a triple divorced woman, and had suddenly died before he had had intercourse with her, she could remarry her first husband. The answer was "no she cannot do so".(381) Some of the companions held the Prophet's opinion about the marriage of muḥallil, especially 'Omar b. Al-Xaṭṭāb who, was strict saying "If I catch Muḥallil and mūḥallahu I will stone them.(382) While Ibn 'Omar described this marriage saying "it is adulterous".(383)

However, among the Sunni doctrines there are different opinions Ibn Ruṣd mentioned that Mālik considered the marriage of Mūḥallil as fasid, not correct(384) and even if the mūḥallil changed his mind and decided to keep the woman for himself and not to divorce her, he cannot live with her unless he divorces her and then marries her under a new contract.(385) Al-Šāfi'ī and Abū Ḥanīfa regarded the marriage of muhallil as acceptable, and so the nīya al-ṭalāq, decision of divorce which is the reason behind this marriage, is not important.(386) Abū Ḥanīfa defended this marriage saying that the Prophet cursed it, but did not forbid or prohibit it.(387)

In general, the majority of jurists disapproved of the marriage of muhallil regarding it as a sort of trick, and both muhallil and mūḥallahu are tricks(388) in that they used this marriage in order to (taḥlīl), make lawful the triple divorced woman, who was forbidden to her husband.(389) Therefore some said that the Prophet cursed the one who contracts this marriage just he cursed the tattooed woman and the usurer.

Concerning the rights of the woman in this marriage it is arranged with her



consent. If she does not accept then there is no way for her first husband who lost his rights over her when he divorced her by the triple divorce to reclaim her. She can refuse, and can remarry him if she wants, as soon as she gets a divorce from her second husband, and after the idda has lapsed.(390)

### **The Prohibitions in Marriage**

- a. women unlawful for reason of lineage
- b. women unlawful because of suckling
- c. non-Muslim women and slave women
- d. the marriage of the prostitute
- e. the prohibition of Marriage during the idda

#### **a. women unlawful for reason of lineage.**

This matter is based completely on the Koran. Certainly the Sunna in general are based on the teaching of the Koran and explain its verses. However, there are some points there are not mentioned in the Koran or which have only been mentioned very briefly. The Sunna remedied such deficiencies and clarified obscure points.

The Koran lists the women whom men may not marry, starting with their mother, daughters, sisters, aunts paternal and maternal, beside nieces, foster mother, mother-in-law and stepdaughters. In addition to this list the man may not be married two sisters at any one time.(4:22) Also the Koran regarded the marriage with the step-mother as a big sin.(4:21) These kinds of women were prohibited for reason of lineage(391). The Prophet's actions and words were the way of explaining and fixing the koranic verses.

In pre-Islamic times the Arab used to allow marriage with the stepmother. Although the verse of the Koran was clear, it seems that this was still practised. Therefore it was considered a crime against religious belief. **Al-Barā'** reported that the Prophet sent him to cut the head off, and take the money of a man, who married his stepmother.<sup>(392)</sup> This form of marriage was still practised even at the time of the Caliph **'Omar b. Al-Xattāb**. It was said that **'Omar**, told the man, who married his stepmother, "She is as your mother, this is the worst kind of marriage".<sup>(393)</sup>

Concerning, the marriage of two sisters and the stepdaughter, traditions mentioned that **'umm Ḥabība**, the Prophet's wife, asked him to marry her sister. The Prophet said to her "Do not offer me your sisters or your daughters".<sup>(394)</sup> The Prophet explained clearly that a man must choose one of two sisters. He can never keep both of them marrying them together.<sup>(395)</sup> If he wants to marry the sister of his wife he should divorce his wife first.<sup>(396)</sup>

**Tir**, mentioned a unique hadith reputedly from the Prophet saying "A man can marry the daughter of his wife, if he has not had sexual intercourse with the mother, but he cannot marry his wife's mother whether he did have intercourse with her or did not".<sup>(397)</sup> The companion, **Zeid b. Tābit**, was asked if a man who married a woman and then he divorced her without having sex with her, could marry her mother. He replied "he could not".<sup>(398)</sup> The other companion, **'Abd allāh b. Masūd**, was asked, while he was in **Al-Kūfa**, if the man can marry his wife's mother if he has not had intercourse with her daughter. At first he told the man that he could but then he went to **Al-Medīna**, where he heard different opinions, so that **Ibn Masūd** had to go back to **Al-Kūfa** to inform the man, that he could not marry his wife's mother.<sup>(399)</sup> **Mālik** mentioned this hadith without any comment. Therefore, he said that if a man married a woman he can never marry her daughter, and he has to leave both of them because they are regarded as unlawful for him. **Mālik** explained that the issue is marriage and not adultery, because adultery is outside the marriage tie, as the Koran stated (4:22). He

ended by saying "this is what I have heard and this is our custom".(399)

The Prophet stated another Sunna. When Abū Hūrraira and Abū Saīd **Al-Xūdari** transmitted a hadith saying that they heard the Prophet declaring the marriage, which joins a woman and her aunt "paternal or maternal", as unlawful and forbids such a marriage to men.(400)

#### **b. Marriage prohibited because of suckling**

The second type of women, who were unlawful apart from reasons of lineage (4:23) was the reason of suckling. A very famous hadith from the Prophet says "that suckling prohibits what the lineage forbids". In other words, to suckle is the same as to give birth.(448) The Prophet explained the meaning of this prohibition saying "If two men were suckled together by one woman, they became brothers and they cannot marry each others children".(449) Ibn 'Abbās narrated that the Prophet was advised to marry the daughter of his cousin, Ḥamza b. 'Abd **Al-Mūṭalib** The Prophet said that he cannot marry her because she was considered as his niece, since he was suckled at the timee with her father.(450) Another hadith said that when 'Umm Ḥabība, the Prophet's wife, asked him to marry her sister, 'Aza, the Prophet told her that her sister was unlawful for him. Then she said to him that there was a rumour that he wanted to marry the daughter of Abū Salma, Dūrā. The Prophet said to her that she was unlawful for him because he was suckled with her father by one woman called **Tūbiya**.(451) So, whoever is suckled together becomes sisters and brothers, therefore, they can visit each other any time. In addition, the husband of the woman, who suckled a girl, can visit this girl without any prohibition because the Prophet regarded him as an uncle. He said this when 'Āiṣa refused to receive 'Aflah **Al-Qāys** the husband of her foster mother, and that she said "The woman suckled me not the man".(452)

As a Sunna, the Prophet laid down some rules for suckling. Ibn 'Omar reported that the Prophet declared that "suckling is only for the one who is still in bed and who is



not more than two years old.(453) Also, suckling is only supposed to be in case of famine and starvation".(454) Abū Saīd <sup>Al-Xudari</sup> narrated a similar hadith from the Prophet saying "consider who your brothers are for fostering is the consequence of hunger. Fostering applies only to infants and not to children, who are able to take solid food".(455)

Although the Prophet limited the age of suckling to two years of age, he gave special permission to a woman called Sahla b. Sahl, who had an adopted boy called Sālēm. The Koran no longer regarded the adopted child as the real child for his adopted parents, saying "call them by the name of their fathers" (33:4). Sahla asked the Prophet for his opinion of Salem, who became stranger owing to her, but whose husband was not pleased at having a young boy in his house. The Prophet said to her "suckle him five times and he will become as well as your son".(456) Mālik said that Sālēm's case was unique and special.(457) The previous hadith did not place limitations on the suckling and the age of the child. For instance, 'Ā'īṣa used to agree that a woman can suckle anyone without considering his age if she wants him to visit her as a maḥram. It seems that some companions did not accept this practice. 'Omar b. <sup>Al-Xattāb</sup> and 'Abd Allāh b. Masūd accepted suckling for the baby under two years old only. Also Mālik(458) and Muslim reported that the Prophets wives rejected 'Ā'īṣa's opinion, saying that the Prophet did not recommend it and Sahla had special permission. 'Ā'īṣa used to ask her sister 'Umm Kūltūm and her nieces to suckle any man whom she wanted to visit her as maḥram.(459)

The Sunni Imāms, Abū Ḥanīfa, Mālik and <sup>Al-Ṣāfi</sup> do not regard the suckling of one who is more than two years old as unlawful.(460) and neither do Abū Huraira, Ibn 'Omar, Ibn 'Abbās and the wives of the Prophet, except for 'Ā'īṣa. The slight difference between Abū Ḥanīfa and Mālik concerning suckling, which prohibits marriage, in that Abū Ḥanīfa fixed the time of weaning to two years and six months while Mālik made it two years and one month only or two years and three months as it was reported.(461)



The other opinion was held by 'Ā'īṣā who regarded suckling for any age<sup>(462)</sup> does make marriage unlawful.

The other point, which rose among the Sunnī doctrines was about the quantity of suckling and when it makes marriage unlawful. There are two hadith by the Prophet transmitted by 'Umm al-Faḍl who narrated that the Prophet announced "that suckling once or twice do not matter."<sup>(463)</sup> 'Ā'īṣā reported from the Prophet saying that suckling once or twice or once sip either twice sips do not matter.<sup>(464)</sup>

'Ā'īṣā narrated a unique hadith about the number of sucklings which make marriage unlawful. She said that the Koran fixed the number at ten times, then the ten times was abrogated to five. This verse was the last which the Prophet read before he passed away.<sup>(465)</sup> 'Ā'īṣā's hadith was not easily accepted by some Sunnī jurists. For instance, 'Abd allah b. al-Abbās, 'Arwa b. al-Zūbier and Sa'īd b. al-Mūsayyab<sup>(466)</sup> and Mālik stated that suckling even for one sip makes the marriage unlawful, but it must be for one, who is under two years of age.<sup>(467)</sup> Abū Ḥanīfa held the same opinion, while al-Šāfi'ī considered these sucklings and over unlawful, because the Prophet regarded one or two sucklings as lawful, as 'Ā'īṣā reported.<sup>(468)</sup> Others such as 'Ā'īṣā and Ḥafṣa, the Prophet's wives, accepted up to ten sucklings.

Nāfā' reported that Sa'lem b. 'Abd allah b. 'Omar told him that 'Ā'īṣā sent him to her sister 'Umm Kūltūm, to suckle him when he was a baby. 'Ā'īṣā asked her sister to suckle him ten times to make him maḥram for her. Sa'lem said that 'Umm Kūltūm suckled him three times then she felt sick before she reached the ten times. Therefore, he could not visit 'Ā'īṣā.<sup>(469)</sup> In addition, Nāfā' narrated that Ḥafṣa sent 'Aṣīm b. 'Abd Allāh b. Sa'īd to her sister Fāṭima, to suckle him ten times. He was a baby at that time. Fāṭima did suckle him and he could thus visit Ḥafṣa at any time.<sup>(470)</sup>

### c. non-Muslim women and slave women

Concerning the matter of women who were considered as "What your right hand

possesses".<sup>(401)</sup> Sunna divided these groups of women on the basis of religion and freedom; Muslim, non-Muslim and Slaves. The Koran forbids any man from marrying or having sex with a married woman (4:22). The Prophet said "Whoever has intercourse with a married woman will not be acceptable among us". This whether the woman was pregnant or not.<sup>(402)</sup> The women, who were in the category of what the right hand possesses or concubines, were usually captives of war or slaves. The Koran stated that Muslims do not marry the non-believing women till they become believers (2:221).

In the light of the Sunna, according to the Koran, the Prophet believed the difference in faith would cause the dissolution of the marriage. During the earlier days of Islam, many cases of separation occurred between couples because of differences of faith. Ibn 'Abbās reported that the Prophet announced that "If a man becomes a believer before his wife, he must leave her in case she does not embrace Islam. Besides, a woman should separate herself from her non-Muslim husband. For instance the Prophet dissolved the marriage of his daughter, Zaynab when her husband, Al-Rabi' b. Al-'As was still a pagan. Later after two<sup>(403)</sup> or six years<sup>(404)</sup>, when he converted to Islam, the Prophet restored their marriage. Some references state that new contract was drawn-up<sup>(405)</sup>, others mention that it was by the same contract, as narrated by Ibn 'Abbās<sup>(406)</sup>, the second is more accurate<sup>(407)</sup> the Prophet split up and gave back many women, and when the husbands converted to Islam, their women came back to them, even if they had a second husband<sup>(408)</sup>. Because, as the Prophet stated a woman is always lawful for her first husband if he is a Muslim.<sup>(409)</sup> It is worth mentioning that all the marriages, which the Prophet dissolved were between Muslims and pagans.

However, sunni doctrines had two opinions about the marriage between a Muslim man and a Christian or Jew. The companion, 'Abd Allāh b. 'Omar, refused marriage between Muslims and Christian women.<sup>(410)</sup> While Mālik stated that a Muslim man may only marry free women from Ahl Al-Kitāb, people of the book, such as Jews and Christians.<sup>(411)</sup> Mālik, believed that only Muslim slave women are lawful for a Muslim

man, while the slaves from Ahl Al-Kitāb are lawful as concubines, "What hand possesses" only. Besides, pagans could not be concubines.(412) Abū Hanifa and Al-Šāfi'ī had another judgment about this point. They accepted marriage between a Muslim man and a woman of Ahl Al-Kitāb. Al-Šāfi'ī explained or understood the verse of the Koran (2:221), saying it meant the pagan as distinct from a non-believer, which does not include Christians and Jews.(413) He confirmed that marriage to Christians and Jewish women is lawful.(414) Abū Hanifa mentioned one condition for marriage between a Muslim man and the Ahl Al-Kitāb saying "if the marriage is performed in the presence of two women of the bride's faith".(415) However, it was generally agreed that Muslim woman can never marry a non-Muslim man. Some references stated that there was a political reason for this prohibition, saying "the influence of the idolatry of the people of Arabia, during the time of the Prophet, lead him to do this".(416)

In general, the books of Hadith did not mention this point, but they concentrated on the marriage between a Muslim man and non-Muslim woman. However, the idea of such marriages was not generally accepted by the companions and the Sunnī doctrines, because some rejected it,(417) while others only accepted it for the free non-Muslims such as Christian and Jews,(418) while others still supported it without any conditions.(419) The Prophet himself married two Jewish women, Šafiyya and Juwayriyya, who were captive women. The Prophet had a Christian slave-concubine "Mariya".

### Marriage to slave girls

Following the Koran (4:24) the Prophet declared that a man may not marry a slave girl, unless he could not pay a mahr for a free woman. As a Sunna, Ibn'Abbās narrated that the Prophet disliked the idea of marrying a slave girl if a man already had a free woman.(420) Mālik held this opinion, adding "It is hateful for a free woman and a slave woman to be together" as 'Abd allāh b. 'Omar said.(421) Mālik stated that marriage



to a slave woman is disliked, but not prohibited. Therefore, a man can marry a slave woman but only under certain circumstances and in cases of necessity.

- if a free man cannot pay mahr for a free woman
- a man could marry a slave girl if he was afraid of a fornication (Zina).(422)
- Mālik reported another condition from the successor, Saīd b. Al-Musayyab, saying that a man can marry a slave girl if his free wife accepts this marriage. In this case, the free wife has 2/3 of his days, which means she can have 2 days and the slave wife has only one day.(423) ʿAlī b Abū Tālib mentioned the same idea.(424)

It was reported that the companion Ibn ʿAbbās, was against marriage to a slave woman, saying that if a man had a slave wife and then he married a free woman this marriage would cancel the marriage of the slave wife, making it a divorce for her. Al-Nasāʾī was not sure about this hadith, however he reported the same opinion from Al-Hassan and Al-maznī. Besides Ibn ʿAbbās declared that the Prophet hated the idea of keeping a slave and a free wife together. Also he said that a man may only marry one slave woman, because he cannot marry a slave if he already has a slave wife.(425) Jābir mentioned that a man cannot marry a slave if he already has a free wife, but he can marry a free woman if he has a slave wife and that he who can afford to pay mahr to a free woman should not marry a slave.(426)

Concerning this subject, it is vital to mention an important hadith from the Prophet who said "the man who sets free his slave girl and then marries her, will get two rewards".(427)

#### d. The Marriage to the Prostitute

Prostitution existed before Islam when a slave girls used to prostitute themselves in order to have money to give to their master. The Koran mentioned this fact saying "do not force your slave girl".(428) These kind of women still existed and were active during the time of early Islam. They had special places in markets and the public streets.



Usually, they stayed away from their tribes.(429) Prostitution was too strongly established to be removed or abolished. Therefore, the Prophet was against marriage between Muslim men and prostitutes. It was reported that a man came to the Prophet asking him if he could marry a prostitute named Īnāq, who was supporting him with her own money. The Prophet disliked the idea saying "Do not marry her".(430) When he was informed that she supported him the Prophet said "what she gains is forbidden and her money is unlawful.(431) Also, the Prophet declared that "the mahr of the prostitute is unlawful as is the price of the dog and the price of wine".(432)

#### e. Prohibition of Marriage during the ʿIdda

ʿIdda is a period of time, which should be observed and respected by any married woman who has lost her husband or who has been divorced. The Koran (2:231), (65:4) and Sunna regarded ʿIdda seriously, the most important aim of the ʿIdda is to be sure that a woman has not conceived by the previous husband. Watt explained saying "it is very important for a man to have definite knowledge of the physical paternity of their wife's children".(433) ʿIdda was a new system in the marriage structure in Islam, since it did not exist in the pre-Islamic period when women used to marry without observing ʿidda even if they were pregnant.(434) In the view of the Koran and the Sunna, ʿIdda has two elements;

a. the time for ʿIdda

b. the place where the ʿIdda should be spent.

a. the time of ʿIdda depends on the status of the woman. For instance, if she is a widow, her ʿidda is four months and ten days (2:234). While the divorced woman has an idda of three months or three courses (2:228). In the case of free women, while a slave woman's ʿidda is two courses or two months and five days, for a widowed and divorced. In cases of pregnancy, both the widow and the divorced woman have their ʿidda until their delivery, without any distinction between a free and a slave

woman.(436) The Sunna gave another type of 'idda for captive women and slave women, who were received by a man as a present or whom he purchased. Their 'idda is one month, it was called 'Istibrā' before a man has sexual intercourse with them.(437) Ibn 'Abbās narrated that the Prophet fixed the 'idda of the woman who asks for Xal' to one month only.(438) Another Sunna was for 'umm al-walad whose 'idda was fixed to four months and ten days. When she lost her master.(439) However 'Abd allah b. 'Omar said it is one month only because she was not considered to be a married woman.(440)

In general, 'Idda is required for any woman whether she is a slave, free, divorced or widowed or planning a further marriage or not. Therefore, the virgin girl who has separated from her groom before she has had sexual intercourse with him, does not have to observe the idda. Also a slave virgin girl does not have to observe the 'Istibrā'.

During the 'idda, a woman may not marry otherwise the marriage is considered unlawful. Also if she does marry before the end of her 'idda she must separate her self from her husband and spend her 'idda apart from both husbands. As 'Omar b. 'Al-Xattab stated in this case the woman can never live with the man who married her before the end of her 'idda.(441) Mālik reported that during 'Omar's reign a woman married during her 'idda. 'Omar beat her and her husband, and then separated them.(442) The Prophet, allowed the woman the right to receive proposals for marriage during her 'idda, but she could not arrange or discuss the mahr and the engagement until the end of the 'idda.(443)

b. the place, where the 'idda should be spent, the Koran was definite about this matter saying that the woman must stay in her husband's house during the 'idda unless she causes a scandal. In this case, she must leave her house (Sūra al-Talāq - 65). The Sunna adopts the same belief, but it deals with the divorced woman in two ways:

- the single divorced woman.
- the triple divorced woman.

Concerning the single divorced woman, there is general agreement about her in all the Sunni doctrines. She should spend her ʿidda in her house with her husband during this time. Watt said that this gives them a second chance for reconciliation if the husband decides to take his wife back. He can do so during this time.(444)

For the woman who has been triple divorced, there are two opinions about her. Some stated that she must stay in her husband's house, while others stated that she should leave the house immediately, because her husband cannot take her back if he wishes to do so, therefore, she is unlawful for him.(445) In fact, there was no clear hadith from the Prophet about the triple divorced woman neither did the Koran mention her directly. However, Abū Ḥanīfa insisted that the divorced woman whether she has been divorced once or three times, should spend her ʿidda in her husband's house and she may not leave it by day or by night.(446) Mālik held the same opinion saying "It is our custom".(447)

There is one good reason for ʿidda, which is to ascertain as to whether the woman is or is not pregnant. In the first case, the pregnant divorced woman whether she has been divorced once or three times should stay in her husband's house until she gives birth (65:4).

### **The Polygamy System**

"Polygamy has very old roots in Babylonian, Assyrian, Persian and Israelite practice. The Talmud formulated a rule to govern polygamy. This rule somehow found its way into Mohammedanism".(471) Islam by its two elements, the Koran and the Sunna, adopted polygamy and practised it according to two new conditions, these are;

- a. limiting the number of the wives to four maximum.
- b. to ensure equality and justice between all four wives.



a. The Koran established the right of the man to have four wives at the same time (4:2). Qais b. Al-Rabi reported that when his grandfather embraced Islam, he had ten women. When he informed the Prophet, he told him "Choose four of them, wherever you wish and then separate from the others".<sup>(472)</sup> Another man had eight wives before the advent of Islam and the Prophet recommended him to choose only four of them.<sup>(473)</sup> Concerning this point, there are two opinions held by the Sunni jurists. The question was, which wives can a man keep? In Iraq, they said that a man should keep the first four wives he had. Unlike in Medina where they believed that a man could choose any four wives he wanted<sup>(474)</sup> because the Prophet did not mention this point. In support of this opinion, it was said that a certain man, named Nawfal b. Al-Mugira, who had five wives, chose to be separated from the oldest wife, and this choice was acceptable in Al-Medina.<sup>(475)</sup> The Sunna deals with another point. It stated that a man cannot divorce all his wives, because the Prophet ordered Muslim men to choose four of their wives, not to divorce them all. Omar b. Al-Xattab was strict about this point. It was reported that he threatened a man with stoning his grave, if he did not take back four of his wives, after he had already divorced all of them.<sup>(476)</sup>

#### b. Justice and Equality

The Koran (4:2) allowed a man to marry four wives, but it added that if he could not be fair and deal equally between them, he should have only one wife. The Prophet used to say "God, I divide impartially that which thou hast put in my power".<sup>(477)</sup> Equality between the wives is the main condition for the man who has more than one wife. Abu Huraira reported from the Prophet saying "When a man has two wives and does not treat them equally, he will come on the Day of Resurrection with a side hanging down".<sup>(478)</sup> A similar hadith was transmitted by Abu Huraira, saying "Who prefers one wife to the other will suffer on the Last Day".<sup>(479)</sup> The Prophet used to divide his days between his wives each one of them had her special day.<sup>(480)</sup> He used to meet all



of them every night to take care of them<sup>(481)</sup> each one had her own room within the mosque of Al-Medina. The Prophet did not have a special room for himself.<sup>(482)</sup> Whenever the Prophet intended to go on a journey he used to cast lots among his wives. The one, who was chosen by lot, could join him. Once it was 'Āiṣā and Ḥafṣa who were chosen.<sup>(483)</sup>

When the Prophet felt sick in his last days, he asked his wives permission to stay in 'Āiṣā's room. All of them accepted. When the Prophet passed away 'Āiṣā was with him<sup>(484)</sup> and was buried in her room because the companion decided not to move him. His grave was where his bed was.<sup>(485)</sup> Due to that much was narrated about the special feelings, the Prophet felt for 'Āiṣā.<sup>(486)</sup> The Prophet treated all of his wives equally giving them all the same level of support, good treatment and sexual satisfaction.

### **The Woman's Right in the Polygamy System**

Although it is obvious that the man can marry without his wives permission or acceptance, the Prophet made it a Sunna permitting a woman to protest and to even ask for divorce if she did not want her husband to marry another woman besides herself. This fact was stated by the Prophet, who refused the marriage of his son-in-law 'Alī b. Abū Ṭālib, who was planning to marry bint Abi Jahl besides his wife Fāṭima. She complained to her father about the marriage.<sup>(487)</sup> The Prophet declared it in the mosque saying that the family of Abū Jahl asked for his permission to marry their daughter to 'Alī. The Prophet refused and he gave 'Alī the choice either to cancel his marriage or to divorce Fatima.<sup>(488)</sup> The Prophet did not accept another marriage for 'Alī, who did not take another woman until Fāṭima died.

One should be careful about this point considering that the Prophet had a special authority. But Al-Buxārī mentioned that the man can support his daughter and narrated

the Prophet's hadith about the new marriage of 'Alī.(488) This hadith proved that the walī or the woman can refuse another wife(489) but nothing mentioned about receiving the mahr in case the man insisted on marrying again. In addition if the man refused to divorce her, she could not prevent him but could only ask for Xal' by leaving her mahr and even more than her mahr.

The Koran and the Sunna mention some points about inequality acceptance saying "They arrange an amicable settlement (4:128). In case the woman accepted another, woman besides herself and for some reasons she wants to avoid divorce, preferring to stay with her husband, she has to accept inequitable treatment. There are two serious considerations:

- a. she might accept not to have sexual relations with her husband,(490)
- b. she also ceases to ask for any support or maintenance from her husband.(491)

Almost all books of Hadith stated that Sawda the wife of the Prophet, acted like this. It was reported that the Prophet had nine wives, but later on he started to divide his days between eight wives only(492) because Sawda cut off her sexual relations with the Prophet and gave 'Āiṣa, the youngest wife, her own day.(493) Sawda explained her action saying to the Prophet "Keep me. I have given my day to 'Āiṣa, perhaps I may be one of your wives in paradise."(494) There were two explanations for Sawda's action. It was said that she was afraid that the Prophet was planning to divorce her, some said that she was old.(495) Others like Ibn Sā'ad reported that it was because the Prophet had no confidence in her but this is not certain.(496) There was some confusion between Sawda and Ṣafīyya, whose name was mentioned as the one who had no turn among the Prophet's wives,(497) but the majority mentioned Sawda who voluntarily gave her day to 'Āiṣa. Sawda was the oldest wife of the Prophet. He married her after Xadija.

Mālik mentioned that a man had an old wife and he married a young woman as

well. He gave his attention to the younger wife and he also gave the first wife the right to ask for divorce (Al-Taxyir), but she accepted to stay with him although he preferred the new wife.<sup>(498)</sup> 'Āiṣa said that according to the Koran, if a woman wants to avoid divorce she can live with her husband without having sexual relations with him.<sup>(499)</sup>

The books of Hadith mentioned another case of an unequal acceptance between the four wives. It is when the man marries a new wife. This point was reported by Umm Salma, who narrated that when the Prophet married her, he stayed three days with her, then he asked her if she wanted him to stay seven days with her before dividing his days equally between all his wives.<sup>7</sup>Umm Salmā said that she only asked the Prophet to spend three days with her.<sup>(500)</sup> This hadith was the most important of all the Sunnī jurists which deal with it in different ways. Although the majority considered the matter of virgin and non-virgin brides, they were not agreed about how many days the man should spend with his bride after the wedding ceremony. Some quoted Umm Salma's hadith as evidence that the Prophet spent three days with her instead of seven, since she was a widow.<sup>(501)</sup> 'Anas b. Mālik supported this hadith by transmitting a hadith from the Prophet saying "It is a Sunna that if a man married a virgin woman he should stay seven days with her. If he married a non-virgin he has to spend three days with her".<sup>(502)</sup> However, there was another opinion, which conflicts with this. For example, some successors<sup>(503)</sup> and Al-'Ozāi believed that the man should stay three days with his virgin bride and two days with the non-virgin. Aḥmad b. Ḥanbal described this opinion saying it is very weak.<sup>(504)</sup> The third opinion was from Ahl Al-Kūfa, the people of Kūfa, who said that distinction between virgin and non-virgin brides was not necessary, therefore, the man should spend three days with his new wife whatever her condition.<sup>(505)</sup> Mālik confirmed that seven days with the virgin and three days with the non-virgin is customary.<sup>(506)</sup> Al-Šāfi'ī and Aḥmad b. Ḥanbal held the same opinion<sup>(507)</sup> and Tir described this saying "It is considered as more accurate than the other opinions."<sup>(508)</sup>

The traditions support the system of polygamy and explained its needs and the reasons, which made Islam and the Prophet, to accept this system as a cure for the social, and moral problems of the earlier days of Islam. For instance, the wars and the expeditions caused serious events and effects, during which many men were killed, leaving widows and orphans without support and shelter. Besides the big numbers of captive women who were sold as slaves. Add to all this were the effects ensuring from the infanticide of baby girls. All of these elements caused the increase of females over males. Transmitters mentioned something about the Prophet's idea concerning this fact saying "the Last Day is when the number of woman are much bigger than the men, when each man has fifty women".(509)



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30. Makdisī, G. p.326.
31. Tir, Ch.18, H1093, p.401, Book No. 9.
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33. Op cit., Ch.9, H1865, p.559.
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- 228.Robson, p.683.
- 229.ʿAlī, M.M., p.518.
- 230.Bu, Ch.70, p.438.
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- 239.Tir, Ch.11, H1099, p.404.
- 240.Karīm, p.663.

241.Op cit., p.662.

There are different occasions for celebrations

- a.Walīma, marriage feast.
- b.Ma'daba, feast for entertainments
- c.'Aqīqa, naming a baby
- d.Wakīrah for building a new house
- e.Naqīah for arrival of a traveller.

All of these feasts are mustahab except Walīma which is a Sunna.

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263.Al-Nasā'ī, p.135.

264.Ibn Rushd, p.13.

265.Bu, Ch.32, p.424.

266.Op cit., Ch.33, p.925.

267.Stern, p.75.

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- 279.Op cit., p.151.
- 280.Op cit., p.152.
- 281.Watt, p.399.
- 282.Op cit.,
- 283.Ibn'Ishāq, p.1003.
- 284.I.M. Ch.17, H1889, p.608.
- 285.Bu, Ch.32, p.424.
- 287.See chapter of marriage "the Marriage of Muḥrim".
- 288.Ibn'Ishāq, p.1003.
- 289.Stern, p.51.
- 290.Al-Nasā'i, p.55.
- 291.Stern, p.51.
- 292.Op cit., p.55-56.
- 293.Op cit., p.51-56.
- 294.Watt, p.395.
- 295.Al-Nasā'i, p.55.
- 296.Op cit., p.56.
- 297.Mālik, p.542, margin
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- 299.Levy, p.117.
- 300.Muslim, Ch.3, H26, p.1026.
- 301.Levy, p.117.
- 302.Watt, p.278.
- 303.Levy, p.115-117.
- 304.Bu, Ch.31, p.423.

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## CHAPTER THREE

### THE MARRIED WOMAN

H. Lammens mentioned that the difference between a slave woman and a free woman is that the latter has her family and her tribe to support her against her husband.<sup>(1)</sup> However, information concerning the relationship between the woman and her original family is limited, because the traditions usually deal with the married woman, who became completely her husband's responsibility.

Some hadiths from the Prophet showed that the relationship with the parents must be strong and close.

#### **The Relationship between the Married Woman and her Original Family**

##### **a. the duty of the woman towards her parents**

It is obvious that the basic teaching of the Koran emphasises the necessity for good treatment, good relationships and the proper concern of the children for their parents. The Prophet upheld these points by adding further details concerning the best way of dealing with parents. *Al-Hedāya* mentioned that the word parents includes, besides the father and the mother, the paternal grand-father and grand-mother.<sup>(2)</sup> While the Prophet named the mother and the father as of prime concern and he also mentioned the relatives in general.

The Prophet was concerned about the family ties when he said "God said to Al-Rahm (family tie) who attached you attached him and who cut you cut him" and "Whoever cuts-off his relationship with his family will never enter paradise".<sup>(3)</sup> There is another hadith from the Prophet saying that "the most preferable things for God are; praying, good relationships with and good treatment for the parent and fighting in the



way of God".(4) Al-Nawawī mentioned a similar hadith from the Prophet saying that the Prophet was asked which actions would reward the Muslim with paradise and keep him from Hell-fire. He replied "to obey God alone, to give Zakāt and to keep in touch with relatives".(5)

The Prophet declared that "He who wishes to enter paradise through the best door must please his father and his mother".(6) He gave the mother and the old parents his main attention Abū Hūraira narrated a remarkable hadith from the Prophet saying that when the Prophet was asked "who deserves the best attention" ? He said "Your mother (three times) then your father".(7) It was reported that 'Asmā' b. Abū Baker told the Prophet that her mother, who was polytheistic, visited her. 'Asmā' asked the Prophet if she could retain her relationship with her pagan mother. The Prophet told her "Keep your relationship with your mother, God did not prohibit talking to the one, who did not fight against you in religion".(8) One may believe that this hadith refers to the mothers only while the fathers and the brothers could be warriors.

Abū Hūraira reported a unique hadith saying that the Prophet declared that "May he be humbled (three times) the one who finds his parents in their old age, one of them or both and yet does not enter paradise".(9) In this hadith the Prophet did not distinguish between daughters and sons, making this a duty shared between them to take care of their old parents.

As an orphan, who lost his parents when he was a child, the Prophet showed his respect and kindness towards his foster-mother, Ḥalīma from Banī Sā'ad Ibn Baker, who nursed him till the age of five.(10) Transmitters mentioned that when she used to visit him, the Prophet used to invite her to sit on his coat and welcomed her warmly.(11)

The Prophet made an additional stipulation concerning the behaviour towards parents saying that "Any vow from the parents, due to be carried out by their children" this was a duty for the girls and boys towards their parents, an obligation during the life time and even after the death of their parents (12). These vows are usually religious

wishes such as; fasting, praying and performing the pilgrimage. It was reported that a woman came to the Prophet, asking him if she could fast on behalf of her mother, who died and a month of fasting is due from her. The Prophet allowed her to do this. When she asked him if it was lawful for her to perform the pilgrimage on behalf of her mother who died before she was able to perform it. The Prophet said "yes, you can".(13) It was mentioned that a woman asked the Prophet if she could perform the pilgrimage instead of her father, who was too old. The Prophet accepted this.(14)

According to Ibn 'Abbās, it seems that the brother could also carry out his sister's vows and vice versa. Ibn 'Abbās narrated that a man asked the Prophet if he could perform the pilgrimage on behalf of his sister, who had died. The Prophet told him "If she left a debt, would you pay it" ? the man said "Yes" then the Prophet said "so give to God his dues first".(15) Ibn 'Omar reported that a woman asked the Prophet if she could pray on behalf of her mother, who vowed to pray but had died suddenly. The Prophet permitted her to do so.(16)

As a Sunna, the married woman could give her parents a Ṣadaqa (charity). The Prophet encouraged his wives to do so. For instance, when his wife Ma'jūna, set free her slave girl, the Prophet told her that if she gave her slave girl to her maternal uncles, her reward could be more greater.(17) In addition, a woman told the Prophet that she gave her mother a slave girl as a ṣadaqa, but when her mother died she took back the slave girl as inheritance. She was wondering whether her reward is certain in this case. The Prophet told her that her reward was certain.(18)

#### **b. the duty of the family towards the married daughter.**

Ibn 'Abbās gave some informations about the development of the relationship between the married woman and her original family. He said that "the widow in pre-Islamic times was cut off from her family and her destiny was determined by her dead husband's family, while her family had no right to interfere".(19)

Through the Sunna and the Hadith, the Prophet is known as the father of four married daughters. He was described by Muir saying "As a father, the Prophet was loving and tender".(20) The Prophet's attitude towards his daughters established certain practices for the important role which the parents should have for the benefit of their daughters.

Under certain circumstances the presence of the parents is considered vital:

- a. to treat their daughter with concern and love
- b. in case of serious dispute between her and her husband
- c. in her sickness
- d. the support of the family
- e. to treat her children well
- f. the duty of the family towards its divorced daughter.

a. the close relationship between the Prophet and his daughter Fāṭima (21) expresses the warm feeling and the kindness which should exist between family and daughter.

‘Āīṣa gave interesting information about the deep link between the Prophet and Fatima. She said that when Fāṭima used to visit her father, he usually kissed her and took her hand and would make her sit by his seat. Also, when the Prophet went to see her she used to do the same.(22) In addition, Muir mentioned a touching hadith from the Prophet reporting that the Prophet said to his daughter Fatima a short time before he passed away "My daughter, I have received intimation of my approaching end". When Fatima burst into tears, the Prophet asked her "Why weepest thou?" my child be comforted, for verily thou art the first of my people that shall rejoin me". Hearing that Fatima dried her tears and smiled pleasantly.(23)

Unlike her sisters, Fāṭima held a unique position when the Prophet mentioned her, he placed her among the four perfect women who were Mary b.‘Imrān (Jesus's



mother), Xadija (the Prophet's first wife) and 'Āiṣa (his beloved wife).<sup>(24)</sup> Fāṭima had a special tie with the Prophet's wives. She used to be the intermediary on some occasions to make peace (settlement) between the Prophet and his wives, who used to send Fāṭima to discuss their demands with the Prophet instead of going to him themselves.<sup>(25)</sup>

b. in cases of dispute

The Koran stated that in case of dispute between the woman and her husband there should be two arbiters from their families to resolve the problem (4:35). The Prophet made it a Sunna that he was always ready to solve any argument between Fatima and her husband 'Alī. Sahl b. Sa'ad narrated that one day when the Prophet knew that Fāṭima had a dispute with 'Alī, the Prophet visited her and then tried to meet 'Alī in order to solve the problem. At last, he found him lying in the mosque and his clothes covered by dust. The Prophet told him "Wake up Abū Turāb".<sup>(26)</sup>

The companions expressed concern about their daughter. Traditions mentioned that Abū Baker and 'Omar b. Al-Xattāb were involved in the dispute which arose between the Prophet and his wives, especially 'Āiṣa b. Abū Baker and Ḥafṣa b. 'Omar b. Al-Xattāb. Although Umm Salma, one of the Prophet's wives, was upset because of 'Omar interfering in this matter, the Prophet allowed his wives to consider their parents opinion and to ask them for advice. Transmitters narrated how angry 'Omar and Abū Baker were. They even slapped their daughters and supported the Prophet.<sup>(27)</sup>

When 'Āiṣa was accused of adultery, she asked permission from the Prophet to return to her father's home.<sup>(28)</sup> Bu mentioned that 'Āiṣa complained that her parents did not act to support her against the rumour, but they kept silent while her father asked her to go back to her husband's house. In fact, her father was frustrated and he swore that he would cut-off his maintenance from Miṣṭāḥ, who was one of the group, who encouraged the rumour against 'Āiṣa.<sup>(29)</sup> Abū Ṣayba narrated that 'Āiṣa always repeated that her father would speak to her roughly any time she had a quarrel with the



Prophet.(30)

c. in cases of sickness

Al-Barā' described how tender Abū Baker was towards his daughter 'Ā'īṣa. He reported saying "I come with Abū Baker". When he arrived at Al-Medīna where 'Ā'īṣa was sick, suffering from fever, Abū Baker stood beside her bed saying "How are you my beloved daughter" and he kissed her cheek.(31) Ibn Ishaq added that when 'Ā'īṣa was ill, she stayed in her house and her mother nursed her.(32)

d. the support of the family

All books of Hadith and other sources give a lot of informations about the dower and how much the groom should pay to the bride, but very rarely was reported what the family might give their daughters as wedding gifts or what is called (Jihāz). Stern mentioned that the Prophet asked Umm 'A'īman to prepare Fatima's Jihāz which were a couch of woven palm leaves, a leather vessel and a leather cushion stuffed with fibre.(33) Al-Naṣā'ī reported that these were the Prophet's wedding presents to his daughter, Fāṭima.(34) On her wedding day, Fāṭima wore two burdas of striped clothes of good quality and two silver bracelets made yellow with zaffron. They were artificial because the Prophet disliked Muslims to wear gold.(35) In addition, Zaineb, the other daughter of the Prophet received from her mother Xadīja, a necklace made of onyx, on the occasion of her marriage. This necklace was mentioned when Zaineb's ex-husband, Al-Rabī' b. Al-'Ās, was captured by Muslim soldiers. Zaineb sent her necklace to be a ransom for his release, but the Prophet did not accept it and sent it back to her because it was a present from her mother.(36)

Besides the wedding presents, the Prophet used to give his daughters gifts from time to time. For instance, Ibn Nafil narrated that one day the Prophet received a gold ring from the Negrus of Abyssinia. He gave it to his daughter Zaineb saying "Take this

and you will look nice".(37)

Another remarkable sunna from the Prophet and his companions was reported that they used to support their daughter with regular maintenance. Ibn Ishaq mentioned that the Prophet used to include his daughter Fāṭima when he divided the booty among Muslim people. Fāṭima's share was two hundred Wasaq (wheat) and her husband's portion was one hundred.(38) Omar b. Al-Xattāb acted as the Prophet did towards his daughter. It was reported that when a dispute arose between the Prophet and his wives, who asked him to increase their maintenance, 'Omar gave his daughter Hafṣa some advice in order to save her marriage. He told her "Do not ask the Prophet for more than he can afford, do not protest in order not to offend him or stop talking to him, and ask me for whatever you want".(39)

The brothers were also likely to support their sisters. It was narrated that the Prophet encouraged a man to give his slave girl to his sister, telling him it would be much better.(40)

#### e. To treat her children well

Transmitters narrated how much Fatima's sons, Al-Ḥassan and Al-Ḥussein, were loved by their grandfather, the Prophet. Al-Nasā'ī reported that the Prophet used to call them "my sons" and when Fāṭima gave birth, the Prophet asked her husband 'Alī "What did you call my son".(41) It is due to that ḥādith, the son of the daughter was considered as a member of her original family.(42) Although Al-Ḥassan and Al-Ḥussein were the only nephews the Prophet had, at that time he had nieces from his daughters Fāṭima and Zaineb. However, only the son is mentioned while the girl of the daughter is not.

Among the Si'ites traditions, there are numerous Hadiths regarding the deep links between the Prophet and his daughter Fāṭima and her two sons. In addition, the Sunni traditions contained many, such references especially Al-Nasā'ī's and Tir's books. Mismār the slave of 'Amr. b. Saād, transmitted that the Prophet said "God, those are my

family".(43)

Al-Tirmidī mentioned that 'Ā'īṣa was asked, who was dearest to the Prophet. She said "Fāṭima". When she was asked who was the dearest among the man, she replied "It was her husband 'Alī".(44) A similar hadith was narrated but with different names, when 'Ā'īṣa(45) and her father, Abū Baker, were considered the dearest to the Prophet.(46) The companion Abū Huraira, narrated that the Prophet used to embrace Al-Ḥassan saying "God, I love him so I beseech you to love him and to love those, who love him".(47) Usāma b. Zeid reported saying that one day he saw the Prophet holding Al-Ḥassan and Al-Ḥussein to his lips and he said "these are my sons and my daughter's sons".(48) Ibn 'Omar narrated that the Prophet said "Al-Ḥassan and Al-Ḥussein are my off-spring in this world".(49)

By contrast with many hadiths about the nephews of the Prophet, It was hard to find any details about his nieces. Only once, Zaineb's daughter was mentioned in the book of Hadith, her name was ignored while some was hardly mentioned in few sources. Her name was 'Umayma.(50) Bu said that the Prophet used to pray in the mosque while he was holding her on his shoulder.(51)

#### f. The duty of the family towards its divorced daughter

The Prophet made it a Sunna when he declared that the best place for a divorced woman should be her family's house, because he believed that the family must have full responsibility for their daughter in case of divorce. It is the same duty which they had before her marriage, in other words to support and maintain her.

Surāqa b. Mālik narrated from the Prophet saying "Shall I not teach you the best way of charity, maintaining your divorced daughter, when she has been returned to you for she has no one to keep her except you".(52)

The Sunna laid down some rules which made the relationship between the married woman and her own family strong, when it stated that if there was any hurt or



attack against the woman, her own family had the right to receive compensation. Ibn <sup>v</sup> Sīhāb, said "the Sunna is, if a man hurts his wife, he should pay a blood-money". Mālik added that the husband would not be punished, if it was an accident.(53)

Mālik called the woman's own family (Al-'Usba). He believed that if a woman committed a crime, her relatives from her father's side should pay the compensation to the victims relatives saying "Since the days of the Prophet and till our days, the family should pay the compensation".(54)

On the other hand, if the woman was killed, the Sunna stated that her tribe gets the blood-money in case her husband or her children were from different tribes. Whether the situation was vice versa, Mālik said "If the father was killed by an accident and left only daughters, they can have the blood-money. But, if the man left a son, he will get all the compensation.(55) In case the married woman died, there are two situations:

i - if she left children

ii - if she did not leave any child or if she was childless.

i- if there are any children, they and her husband inherit, while her family can not have anything.(56) The Koran fixed one-quarter for her husband and the rest for the children. (4:12)

ii- if the woman had no children, her husband and her family share her inheritance. It is mentioned in the Koran that the husband gets half (4:12).

Concerning the share of the grandmother and grandfather there is some different opinions. The Prophet gave the grandmother 1/6. It was narrated that a grandmother came to the Caliph Abū Bak̄r asking for her right of inheritance from her daughter. Abū Bak̄r told her that there was nothing about her in the Koran, but some companions ensured him that the Prophet gave the grandmother 1/6, then Abū Bak̄r stated his right officially.(57)



Comparing between Ibn 'Abbās and Mālik, it was found that Ibn 'Abbās gave the grandmother 1/3, the rest to the grandfather apart from the 1/2 which is the husband's right.(58) whereas Mālik gave the grandfather 1/3, her husband 1/2 and the grandmother 1/6.

Concerning the right of the maternal and paternal uncles in inheritance, Mālik rejected their right, unlike Zeid b. Ṭābit who allowed them to inherit from their niece, the rest after the husband who gets 1/2, the grandmother 1/6 and the grandfather 1/6.(59)

The Koran and the Sunna mentioned some reasons which prevent the family from inheriting. These conditions are regarded as a general rule. The Koran stated that the pagan cannot inherit from the Muslim. The Prophet added that the Muslim cannot inherit from the pagan and vice versa.(60) Some jurists regarded both marriage and the inheritance as prohibited and unlawful with the pagan. This was Ibn 'Omar's opinion. Other companions and some successors believed that the Muslim can marry the non-Muslim woman like Jewish and Christian as long as she embraces Islam like Ṣafiyya and Juwāriyya the Prophet's wives. But, the marriage between non-Muslim men and Muslim women is out of the question.(61)

Mālik and Ḍal-Ṣāfi'ī mentioned that anyone who apostates Islam after he converted to it then his family cannot inherit from him or her and the property and money should go to the Muslim group, while Abū Ḥanīfa, Ahl Ḍal-Kūfa agreed with 'Alī b. Abū Ṭālab and Ibn Masūd who said that the Muslim relatives can inherit and in case he had none his fortune should go to the Muslim community (Bayt Ḍal-Māl). (62)

### **The duties of the woman towards her husband**

The Prophet stated the man's rights by the following in his farewell pilgrimage:

- a. the woman cannot receive anyone her husband dislikes.
- b. the woman cannot go out without her husband's permission.

- c. the woman cannot fast without his agreement.
- d. the woman cannot spend his money without his knowledge.
- e. the woman should obey her husband (Al-Nāsiz).
- f. the woman should save his honour (Zina - نساء ٤).

The Prophet ends his speech by saying "If she disobeys you, you can beat her and abandon her"<sup>(63)</sup> as the Koran stated (4:33).

a. to receive anyone without his permission

The Prophet laid down some conditions for men who may visit the woman in her house. Mawla 'Omar b. 'Al-'Āṣ narrated that the Prophet forbade men from visiting women while their husbands are away as he was not happy about the situation.<sup>(64)</sup> He said "The devil circulates in you like your blood when a man meets a woman alone".<sup>(65)</sup> Not only male strangers, but also some relatives are not allowed to visit her. 'Uqba b. 'Omīr said "A man asked the Prophet about the relatives of the women's husband. He replied "they are the same as the death, especially his brothers."<sup>(66)</sup>

The Prophet created a category of men who are able to visit the woman without any conditions. They are her mahram<sup>(67)</sup> such as; her father, brother, maternal and paternal uncles, father-in-law, nephew and those who have not reached the age of puberty. Jābir reported that the Prophet said "No man can spend the night in the house of a married woman unless it is her husband ...".<sup>(68)</sup> However she needs her husband's permission.<sup>(69)</sup> It was narrated that the Prophet was not pleased when some men visited 'Asmā' b. 'Omīr, Abū Bakr's wife, while Abū Bakr was absent.<sup>(70)</sup>

There are some types of men whom the Prophet was against anyone receiving. He described them saying "Men who behave and dress like women".<sup>(71)</sup> In another Hadith, the Prophet cursed these types of men and also women who behaved and

dressed like men.\*

To conclude, one can say that the main point of this matter is to prevent a woman from being alone with a man in a private place or an enclosed place with no mahram because the Prophet believed that "When a man and woman meet alone the devil will be the third party".(72) But, as the Sunna stated, women can mix with men in public places. For instance, in the mosque and at wedding feasts as the Prophet allowed.

b. going out of the house without her husband's permission

The Prophet allowed a woman to go out of her house without asking for her husband's permission in two cases:

- for a short time and for a necessary reason
- to the mosque

- a short time after the Prophet curtained off his wives it was narrated that 'Omar b. al-Xattāb saw some women. With them was Sawda, the Prophet's wife. Although it was night and dark, 'Omar recognised her because she was sizeable. When the Prophet was informed about 'Omar's suggestion of preventing women from going out the Prophet said "God allowed the women to do so for a vital reason."(73)

- Umm 'Āṭīya transmitted that the Prophet ordered women to go to the mosque on the occasion of two feasts saying "Women such as those who stay indoors, the young and spinsters and those who have a period and cannot pray, can join the prayer meeting".(74) If anyone does not have a dress the Prophet said "She can borrow her sister's dress".(75)

Ibn 'Abbās reported that the Prophet used to take his wives and his daughters to the mosque on the days of the two feasts.(76) Besides the occasions of feasts, women were allowed to go to the mosque every night, also they used to join the Prophet when



he was praying. It seems that they used to be in the last rows. According to Abū Hūrāira, who narrated from the Prophet, saying "the best rows for women are the last rows and the worst ones are those at the front".<sup>(77)</sup> 'Āiṣa mentioned that the rows for women in the mosque were at the back and were hidden by a curtain.<sup>(78)</sup> Ibn 'Omar announced that the Prophet allowed women to go to the mosque at night saying "If they want to go to the mosque, do not forbid them".<sup>(79)</sup> It was reported that 'Omar b. 'Al-Xattāb's wife used to say to him that she wanted to go to the mosque unless he did not allow her. 'Omar used to keep silent.<sup>(80)</sup>

After the passing of the Prophet, this practice was disliked by some companions such as 'Āiṣa, who said "If the Prophet had seen what women did in the mosque, he would have prohibited them from going there, as were the women of Israel."<sup>(81)</sup> In addition, Umm Salma, the Prophet's wife narrated saying that the Prophet preferred a woman to pray in her room rather than in the mosque.<sup>(82)</sup> On contrast, Ibn 'Omar insisted that the Prophet allowed women to go to the mosque at night. His son refused this idea and insisted on preventing women from exercising this right. Ibn 'Omar was angry and said to him "How dare you say no and the Prophet said yes".<sup>(83)</sup>

Mālik mentioned that the Prophet said "If the woman wanted to visit the mosque at night, she should not perfume herself."<sup>(84)</sup> Abū Huraira disliked women to apply perfume. He advised a woman to remove her make up saying that the Prophet preferred that.<sup>(85)</sup>

The Sunni jurists hold two opinions. Sufyān 'Al-Tūrī said "I hate the idea of women going out even on the two feast days". On the other hand, 'Al-Šāfi'ī believed that women may go to the mosque, as a Sunna, he preferred women to be without make-up when they go to the mosque but, none can cancel this right by preventing them from going. If they insist their husbands shall allow them.<sup>(86)</sup> Mālik holds the same ideas and in his book 'Al-Muwatta'', he mentioned Ibn 'Omar's opinion which supported the right of going to the mosque for women.



As a result, the woman was not prevented from going to the mosque and her husband should allow her according to the Prophet's sunna and Hadith.

### When a woman needs permission from her husband

1. any place she wants to visit
2. to go on pilgrimage

1. Ibn 'Abbās transmitted that the Prophet said "A woman should not travel without her mahram". This is supposed to be a general belief, only Abū Ḥanīfa said that a slave girl and Umm Al-Walad may travel without mahram".(87)

Among the hadith there is more than one opinion about how long and for how many days women may not travel without mahram.(88) Abū Huraira narrated from the Prophet saying "A woman may not travel for more than two days".(89) Others said that the Prophet refused her travelling without mahram even for one day and one night.(90) Ibn 'Omar narrated another hadith from the Prophet saying that a woman may not travel more than three days without mahram,(91) such as her father, brother, husband, or her son, or any other mahram.(92)

### 2. To go on pilgrimage

It was reported that a man, who prepared himself to take part in an expedition, told the Prophet that his wife wanted to go on pilgrimage. The Prophet told him "Go with her instead of going with the army.(93) When 'Ā'ishā complained to the Prophet that she did not do the 'Omra," the Prophet asked her brother to take her with him.(94) So, according to the Prophet, women may not perform the pilgrimage unless accompanied by a mahram or with her husband. If the woman has no mahram, Ahl Al-Kūfa and Sufyān Al-Tūrī were faithful to this idea saying that she cannot go to the Hajj(95), while Mālik and Al-Sāfi'ī dealt with the matter from a different point of view they

considered the woman, who had no mahram to go with her or if the husband was busy. Mālik said that a woman can go on the pilgrimage without mahram if the road is safe, and if she travels with a group of women.<sup>(96)</sup> The reason behind this judgment was a religious one. Mālik explained saying that "in order to get the opportunity to perform the pilgrimage".<sup>(97)</sup> There is a hadith from the Prophet, who encouraged people to travel in groups saying "Evil is with one or two persons, who travel alone, but not with three".<sup>(98)</sup> The spirit of this hadith support this idea.

c. not to fast without her husband's agreement

Fasting in Ramaḍān is a religious duty for any Muslim, man or woman. Therefore, a married woman does not need permission from her husband: however, if a woman wants to fast voluntarily for extra days in addition to Ramaḍān, the Prophet stated that she should ask the permission of her husband.<sup>(99)</sup>

It was narrated that a woman came to the Prophet, complaining that her husband beat her because she fasted. Her husband told the Prophet "she keeps on fasting and I am a young man who cannot control his sexual needs". The Prophet then declared that a woman may fast only with her husband's permission, if he is with her. But, if he is away, she does not need his permission.<sup>(100)</sup>

d. not to spend his money without his knowledge

Muḥammad b. Nāfi' narrated that the Prophet said "If a woman spent her husband's money without his permission and knowledge, he has half the reward and she is the guilty one".<sup>(101)</sup>

It was reported that some women asked 'Āiṣa and Ḥafṣa the Prophet's wives, if it is lawful for a woman to give charity from her house without asking her husband. Both 'Āiṣa and Ḥafṣa took up a small stick from the ground and said "Not even the weight of this".<sup>(102)</sup>

Another hadith originating from the Prophet says that "the food is the best of the property" this was when some women asked him if they can give food away without their husband's permission.(103) 'Ā'īṣā<sup>v</sup> narrated from the Prophet saying that "women can give food as ṣadaqa, but on condition that their family does not suffer". This was regarded as a reward for the man, by virtue of what he has earned, and comes from both the man and the woman.(104) Abū Dāwūd reported that the Prophet allowed women to give away as Sadaqa "Al-Rūṭab".(105)

Concerning this issue, it seems that a woman may not deal with her husband's money without his permission and this is regarded as a general rule. But how about her own money? Ibn 'Omar transmitted from the Prophet saying "A woman cannot spend her money without her husband's permission as long as she is married".(106)

Another contradictory hadith given by the Prophet stating that "the pious woman is the one who is good looking, pure and honest with her husband's money".(107) The Prophet spoke about the husband's money only.

There are differences between the transmitted and also among the Sunnī savants. Both end up with two different points of view:

- a. a woman may not do anything with her own money without her husband's permission.
  - b. a woman has the right to deal with her own money as she wishes.
- Mūsā<sup>y</sup> b. 'Ismā'īl reported that the Prophet said "When a woman is married she has no right over her money, because her husband is responsible for her and her money".(108) Abū Dāwūd explained the meaning of this hadith saying "her money" could have two meanings. It could be her husband's money and he gave it to her, or it could be her own money, but the Prophet disliked her spending it. Abū Dāwūd mentioned that she has to ask for her husband's advice according to a hadith from the Prophet who believed that she was not able to deal with her own money.(109)
- others believed in the opposite explanation, which gives the woman freedom to deal



with her own money, but not with her husband's money.

Al-Nasā'ī in his book 'Sunan' held this opinion and mentioned that when Ma'ymūna, the Prophet's wife released her slave girl she did not ask the Prophet and when he knew he was not angry with her. He just told her that it would be much better for her if she gave the slave girl to some of her relatives instead. In addition, Al-Nasā'ī mentioned an interesting point saying that when the woman reaches the age of maturity she has the right to control her own money.<sup>(110)</sup> This means that the Prophet meant the minor married woman when he declared that she cannot deal with her own money without her husband's permission. Al-Šāfi'ī mentioned that the married woman has the right to deal with her own money without any interference from her husband.<sup>(111)</sup> Levy held the same idea saying that there is no community of property between wife and husband because he controls his belongings and she controls hers.<sup>(112)</sup>

However, it seems that there is no obligation for a woman to discuss the spending of her money with her husband. But, it is usually preferable and likely for her to do so out of consideration for him. This was stated by Al-Nasā'ī<sup>(113)</sup> and Abū Dāwūd.<sup>(114)</sup> For example, Umm Salma, the Prophet's wife used to ask the Prophet if she could look after her children from her first husband by supporting them from her own money and the Prophet used to encourage her.<sup>(115)</sup>

e. she should obey her husband

a. not to abandon the matrimonial bed

b. the disobedience of a woman (Nūsūz Al-Marā')

Abū Hūraira narrated from the Prophet saying that "When a woman, who has been called to join her husband's bed and disobeys, then he spends the night angry. The angels curse her till the morning and, therefore, he who is in heaven, displeased with her till her husband is pleased with her".<sup>(116)</sup>

This hadith had general support from the companions especially 'Āiṣa, Ibn 'Abbās,



Ibn 'Omar and Abū Hūrāira, who reported that the Prophet said that "When a man calls his wife to satisfy his desires, she must go to him even if she is occupied at the oven".(117) Zeid b. Al-'Arqam transmitted the same hadith with a slight difference, saying if the man desired his wife, she should join him as a vital duty towards her husband.(118)

This point is regarded a serious matter concerning the man's right and Al-Buxārī mentioned that it is important, because child bearing is the main reason for the marriage, in addition to the sexual enjoyment, as Abū Hanīfa said.(119)

b. the disobedience of a woman (Al-Nāṣiz)

'Ā'isa<sup>v</sup> narrated from the Prophet saying "If I had ever ordered anyone to prostrate before another, I would have ordered the woman to do the same before her husband".(120) This hadith could be explained by one word, obedience which is a serious duty for the woman towards her husband.

Some jurist said that there are two types of women; the good who obeys God and their husbands and the bad who disobey their husbands.(121) The woman who disobeys her husband is called Al-Nāṣiz. Al-Zamaxṣarī explained the meaning of this word saying that "It is when a woman disobeys her husband, by refusing to have sex with him and not to feel confidence in him.(122) Al-Šāfi'ī gave the word Al-Nāṣiz a broad meaning saying "Al-Nuṣūz could be in words and in actions"(123), while others described this word in four ways: when the woman refuses to have sex; insists upon wearing make-up although her husband dislikes it; when a woman stops praying and neglects her religious duties; lastly any woman who leaves her house without her husband's knowledge and agreement is regarded as a Nāṣiz, unless it is a case of necessity.(124) Some said that the woman who makes her husband angry by paying no attention to his desires and orders is considered a Nāṣiz.(125)

It is very important to mention that Al-Nāṣiz is never regarded as being an

adulteress, whose punishment is stoning to death, but she might be described as stubborn, aggressive and behaving badly towards her husband.

During the Prophet's time, it was narrated that the wife of a man called 'Abd Allāh b. 'Al-'A'war, left her house and hid herself in the house of one of her husband's friends. When the husband returned from his journey he asked his friend to send her back to him. When his friend, whose name was Muṭraf b. Yaḥṣal, refused to answer him the husband complained to the Prophet. The Prophet sent a message to Muṭraf ordering him to send back the woman to her husband. The woman was called Ma'āza. She pleaded for mercy and forgiveness from the Prophet, who gave her his guarantee that she would not be punished by her husband. The Prophet was annoyed and said to the husband "If women defeat someone, they will treat them more badly".(126) Abū Hūrāira reported from the Prophet saying that "He, who makes a wife disobedient towards her husband, or a slave towards his master is not one of us".(127)

Al-Nāsiz was mentioned in the Koran (4:34) and in the farewell speech of the Prophet(128), before he passed away. The Sunnī doctrines adopted the same methods, which prevent the woman from disobeying her husband. These methods were three:

- a. to advise her
- b. to abandon her
- c. to beat her.

a. Ibn 'Abbās said that "A man can give his wife advice by his knowledge and by the teaching of the Koran".(129) This idea was based upon a hadith from the Prophet, who said "Give your wife a command as an exhortation. If there is any good in her she will accept it".(130)

b. the second method of dealing with the disobedient woman is to abandon her. It meant that a man should cut off sexual relations with his wife. Although he shares the bed with her, he could turn his face and ignoring her needs. This method was described

as the hardest kind of punishment because it is a psychological punishment, which would hurt her feelings as a female.(131) Other jurists said that a man should avoid his wife, not sharing the same bed, but staying at home and not leaving as the Prophet did.(132) Ibn Kat̄ir believed that a man should stop talking to his disobedient wife.(133) Some supported this idea, while others said that a man must speak to her as the Sunna stated, which was given by 'Anas b. Mālik and who transmitted it from the Prophet saying that "A Muslim may not abandon or stop talking to another Muslim for more than three days".(134)

The third way of abandoning a woman was strongly opposed by Al-Zamax̄ari, who said that some understood the word abandoning to have the same meaning as the abandoning of a donkey, which means that a man can tie his wife in the same way that he ties his beast, in other words, he can tie her foot with a rope.(135)

c. the final method of punishing Al-Nāṣiz is to beat her. Al-'Aqqād, discussed this issue in detail and he ended up with an interesting study. He mentioned the opinions of eight Muslim jurists with regard to their understanding of the facts of beating the women.

As a Sunna, it seems that beating women became an accepted fact, but at the beginning it was not one of the Prophet's opinions. There is a hadith by the Prophet, mentioning that a woman came to the Prophet complaining that her husband, Al-Walīd b. 'Ūqba, always beats her. She asked for protection and help. The Prophet said to her "Tell your husband that the Prophet backs you". However, she returned saying that her husband had beaten her again. The Prophet was annoyed and said "God curses Al-Walīd because he has sinned twice against me".(136)

'Ūmar b. Al-Xattāb had an effective role in the matter of beating. He explained the situation in Al-Medīna during the time of the Prophet, saying that "In the Jāhiliya, women were considered to be of little value, while in Islam, they have rights as the



Koran stated, but they are not allowed to interfere in men's affairs".(137) He added "There was a great difference between women of Al-Medīna and those of Mecca, because in Mecca women were dominated by men. While in Al-Medīna, women dominated their men. Afterwards, the women of Mecca who emigrated with their husbands to Al-Medīna started to initiate the habits and the manners of the Medinan women, who were called the women of Al-Anṣār". 'Omar believed that 'Āiṣa and Ḥafṣa, the Prophet's wives, were strongly influenced by the women of Al-Medīna and consequently they protested against the Prophet.(138)

Actually, much was said about the women of Al-Medīna and how honourable and proud they were. As a result, the Prophet did not marry any woman from Al-Anṣār describing them as ḡayāra (jealous).(139)

'Omar said that as a result of mixing with the women of Al-Medīna, the women of Mecca became emboldened towards their husbands.(140) It seems that the majority of women started to protest against their husbands and the dispute spread quickly between couples(141) even between the Prophet and his wives and 'Omar and his wife.(142) 'Omar was concerned about this development and he discussed the matter with the Prophet, regarding the change in women's behaviour as a serious event. Following that and adopting the Koran's teaching, the Prophet gave the man a licence to beat the women saying "Beat them though not severely, do not beat the face and do not curse them".(143) When 'Omar beat his wife, he said that "the Prophet stated that a man is never asked why he beats his wife".(144)

When men started to beat their wives it was reported that about seventy women had gathered together to complain to the Prophet's wives against their men. The Prophet said to them "my wives are not better than you".(145) 'Umm Kulthūm b. Abū Bakr narrated that the Prophet told the women "The good among you will not be beaten".(146)

Although the beating of a woman had been accepted by the Koran and the Sunna,



the Prophet was clear about the type of beating, that is it should not be harsh. However, the issue of beating has a different aspect. Each party adopted a specific hadith to support its own. There is a unique hadith from the Prophet saying "Hang your whip in a place where your family (i.e. your wife) can see it".<sup>(147)</sup> This hadith could be explained in two ways; either by being a simple method of punishment or as a threat to a disobedient woman. 'Asmā' b. Abū Baker narrated that her husband, Al-Zūbeir used to beat her severely. When she used to complain to her father, he kept telling her to be patient.<sup>(148)</sup> Ibn Wahab reported that one day, Al-Zūbeir beat 'Asmā' and another of his wives, by tying their hair together and beating them. 'Asmā' could not protect herself and, therefore, she was badly hurt.

Some jurists believed that a man may beat his wife severely, and also he can force her to have sex with him even if she does not want to do so, unlike those jurists, who said that a man can beat his wife with a siwāk (a toothbrush). Others said that a man can beat his wife with his hand wrapped in a handkerchief, which means leniently.<sup>(149)</sup>

There are some hadiths, according to 'Ā'īṣa, which proved that the Prophet did not allow a man to beat his wife severely. 'Ā'īṣa narrated from the Prophet saying "Are you not ashamed of beating your wife as you would beat a slave. How can he humiliate her by day and sleep with her at night".<sup>(150)</sup> 'Ā'īṣa added that the Prophet never beat woman or slaves.<sup>(151)</sup>

When the Prophet's wives disobeyed him he was very upset and withdrew from them, leaving them on their own but he remained at home. However, the Prophet's sunna was different from his hadith in that he did not beat any of his wives, especially 'Ā'īṣa and Ḥafṣa. Their punishment came from their fathers who smacked them.<sup>(152)</sup>

Whatever was said about beating, the majority stated that a man should not injure his wife, therefore, he must not cause her death.<sup>(153)</sup> Al-Imām Muḥammad 'Abdū said "We are ordered to be kind to women and to be fair to them, otherwise, we must release them willingly"<sup>(154)</sup> which means divorcing them. Al-Qurtubī said that if a woman

really loves her husband she will behave herself, but if she hates him she will not.(155)  
 In other words, if beating does not change the way of the disobedient woman, there is no other way. Mālik believed that if beating did not solve the problem, the couple could ask for judges or referees who could be from the relatives or they might be strangers, who could act Xal' without the permission of the couple.(156)

A similar opinion was held by Al-Šāfi'ī who said that "if Al-Mūšūz was from the man, the couple can ask for judges, if it was from the woman, the man can beat her. But, if Al-Mūšūz was from both, they can ask for Xal'.(157)

Although obedience of the woman towards her husband is always expected, the Prophet ordered some women not to obey their husband's wishes. This was for one reason only when a man asked his wife to obey him against God's will. Ibn'Umar reported that a woman came to the Prophet telling him that her son-in-law had ordered her to put a wig on her daughter's head, who had lost her own hair on account of illness. The Prophet did not allow her to do so saying that "God cursed the one who uses artificial hair and the one who makes it".(158)

f. the woman should save his honour, زنا (Zina)

It should be mentioned that both the Koran and the Sunna regarded any sexual relationship outside marriage including the concubinage system, as adultery and a great sin, and therefore, the couple should be punished. The Koran states that the punishment for adultery is one hundred stripes (24:1), but, in the case of the slave, it is fifty stripes (4:24). The Sunna adopted these two stipulations and added the punishment of stoning for the married adulterer and adulteress.

'Abāda b. Al-Šāmt narrated that the Prophet said "Take it from me, the unmarried adulterer and adulteress should be flogged with one hundred stripes and given one year in exile, and the married adulterer and adulteress, should be flogged and stoned".(159)

### 1. Married adulterer and adulteress

‘Omar b. Al-Xattāb said that punishment by stoning did not exist in the Koran. He added "the Prophet stoned and we stoned after him".(160) It was reported that ‘Alī b. Abū Tālib, punished a woman called Surāḥa Al-Ḥamadāniya by flogging her on Thursday and stoning her on Friday. He said "I flogged her following the Koran, and stoned her following the Sunna".(161) Ibn ‘Abbās reported that ‘Omar b. Al-Xattāb considered the accusation of adultery in three ways; confession, evidence and pregnancy.(162) The Prophet considered adultery by married people whether women or men, as unforgiveable. It was mentioned that the Prophet used to ask two questions before giving judgment; if the person was mad or not; if he or she was married or single.(163)

Abū Bakr Ṣayba reported that a woman from the Juhaina tribe committed adultery and became pregnant. The Prophet postponed her punishment until she gave birth. Mālik said that the Prophet allowed the woman to suckle her baby till she weaned him then someone took him away, and she was stoned.(164) However, Muslim in his book 'ṣaḥīḥ' mentioned that as soon as the woman gave birth she was stoned and her walī took her baby away.(165) But, ‘Alī b. Abū Tālib narrated that he postponed the punishment for an adulteress slave, due to her pregnancy. He did not flog her immediately after she gave birth. When the Prophet knew he said to ‘Alī "Well done".(166) It seems that the majority preferred not to stone the pregnant adulteress until she weans her baby. Mālik reported that during ‘Otmān b. ‘Affān's reign, a woman committed adultery was stoned as soon as she gave birth. ‘Alī b. Abū Tālib denied this judgment saying that she should not be stoned until she had weaned her baby, which means two years as the Koran stated. Bearing that in mind, ‘Otmān tried to cancel his decision, but the woman had already been stoned.(167)

Although stoning was practised during the Prophet's time and during the reigns of Abū Bakr and ‘Omar b. al-Xattāb and became a Sunna,(168) there is a hadith from the



Prophet showing his mercy towards an adulteress, who had been stoned. When he heard a man calling her names and cursing her, the Prophet said to him "Hold on Xālid do not insult her".(169) Muslim mentioned a similar hadith from the Prophet, saying "She repented in such a way that if her penitence had been distributed among seventy people of Al-Medīna it would have embraced them all".(170)

## 2. Unmarried adulterer and adulteress

The Sunna deals with the single adulteress and adulterer as the Koran stated that their punishment is to be flogged with one hundred stripes. The Prophet added a further stipulation when he stated that the guilty ones should be sent into exile for one year. It was not clear whether the man and the woman must be exiled for one year. Since there is only one hadith from the Prophet recommending a single man to be flogged and deported from his own town.(171) In this hadith, it was reported that the partner of the man was a married woman and she had been stoned after she confessed.

The Sunni Imāms had slightly different opinions about this matter. For instance, Abū Hanīfa stated that basically there was no exile for the woman. Also, Mālik rejected the idea of sending away the woman, saying that it is not safe for her, unlike Al-Šāfi'i who demanded exile for both the man and the woman.(172) Contradictory informations at the time of 'Omar b. Al-Xattāb were mentioned. Some mentioned that 'Omar did not exile anyone, while others like "Ahl Al-Kūfa" narrated that Abū Baker and 'Omar did exile the guilty.(173) Abū Hūraira reported that 'Omar exiled those who admitted adultery.(174)

The Sunni Imāms had different points of views about those who should be punished. For example: Abū Hanīfa believed that free people both Muslims and non-Muslims must be punished because the Prophet punished two Jewesses by stoning, unlike Mālik who stated that only native Muslims and free people should be punished by stoning on the other hand, Al-Šāfi'i dealt with the free in the same way.(175) The Koran



stated that only the adulterer and the pagan marry an adulteress, not the believers (24:2).

Regarding punishment, the Sunna distinguished between the virgin and the non-virgin woman instead of using the terms married and single. Ibn 'Omar narrated that the Prophet said "It means that if the adulterer marries the adulteress, she becomes lawful to him".(176) The marriage in this case is regarded as a solution after the punishment. 'Omar b. Al-Kattāb said "Who committed adultery, then she repented, could marry as any other pure Muslim woman".(177) Ibn Al-Muhana narrated that a girl admitted adultery and in a deep depression she tried to commit suicide. Her brother took care of her and cured her wounds and later her uncle kept her with him and then asked the caliph 'Omar about her situation. 'Omar said "Marry her to a good man and never gossip about her".(178) 'Omar prevented anyone from telling her secret. He told the father of a guilty girl "Keep her secret as long as you live otherwise you will be severely punished".(179) Mālik mentioned that a man proposed to a girl and her brother told him that she had committed adultery. When 'Omar b. Al-Kattāb knew, he was annoyed with the man and almost beat him, telling him "You should not tell the groom".(180) Mālik said that our sunna forbid a woman to become pregnant unless she is married or has been raped.(181) There is general agreement that any woman who is been attacked sexually should not be punished, but the rapist must be punished.(182)

### **The rights of the woman in making conditions for her husband**

The Prophet made certain conditions, which must be observed by the man towards his woman. When he was asked about the rights of the wife, the Prophet said "It is to treat her kindly (183) and to feed her as he feeds, to clothe her as he is clothed, not to beat her face, not to curse her and not to leave her except in the house".(184)

The question is what are her rights if she demands more than those given above. Mālik and other jurists discussed whether the woman can make conditions for her

husband or not. There are different opinions concerning this matter. 'Ā'īṣa<sup>v</sup> as an outstanding transmitter, narrated that the woman cannot make conditions for her husband. 'Alī b. Abū Tālib also believed that a woman cannot make any conditions because the conditions of God come first.(185)

The Sunni Imāms had different opinions. Abū Ḥanīfa believed that any conditions are possible if they are not in conflict with the main conditions of the marriage, which are: sexual enjoyment; bearing children; chastity, and any other conditions which do not break the marriage tie.(186) While Mālik said that there are some points which are obligatory for the groom, while others he can accept or reject.(187) For instance, Ibn 'Al-Musayyab said that the woman cannot force her husband to keep her in her own country if he wishes to move to another place. He made it clear saying that "A man can take his wife to any place even if he promised her not to do so, and even if she made this condition before the marriage.(187) 'Ā'īṣa<sup>v</sup> transmitted from the Prophet saying that "If a man was to order his women to go from the yellow mountain to the black mountain, and from the black mountain to the white one, it would be incumbent upon her to carry it out".(188) 'Alī b. Abū Tālib and some of Ahl 'Al-Kūfa held the same idea.(189)

It seems that the matter of taking the woman from her country, against her will was regarded in different ways. 'Omar b. 'Al-Xaṭṭāb, 'Al-Šāfi'ī<sup>v</sup> and Aḥmad b. Ḥanbal regarded a man's promises as an obligation for him.(190) 'Al-Šāfi'ī<sup>v</sup> explained the conditions, saying that they should not oppose the structure of marriage but should support and help it. These were conditions, such as the right of the man over his wife and the rights of the woman to good treatment and other rights which were mentioned in the farewell speech of the Prophet.(191) Aḥmad b. Ḥanbal believed that a man should respect his promises to his wife. For example: if he agreed not to marry another woman or not to move her from her country. If he did so, the woman could dissolve the marriage if she wished.(192) Mālik gave the woman four rights, making two of them obligatory and the other two optional for the man, who can accept or reject them. He

said that a man should be obliged to fulfil his promise to his wife if he promised not to divorce her or if he swore to set free a slave. But if he promised not to marry another woman and not to have an affair with another woman the man might not be able to fulfil these promises and there is no obligation for him to do so.(193)

Referring to the Prophet, he did not mention any specific conditions, but, in general, he said that "The main condition of marriage is to make sexual union legal". In other hadith about the conditions, the Prophet mentioned his son-in-law, Al-Rabī' Al-Ās, saying that he was fulfilling his promises and was honest.(194)

Abū Mas'ūd Al-Anṣārī mentioned an unlawful condition from Abū Huraira who referred to the Prophet saying that "A woman cannot ask for the divorce of her sister(195), whatever her sister, is a Muslim or a non-Muslim woman not only her own sister".(196)

To conclude, one can say that a woman can make some conditions for her husband at the time of the marriage contract. However, some Sunnī jurists accepted some conditions and rejected others, but the majority were positive conditions which help the marriage, but any conditions which might conflict with or which did not exist in the Koran were not allowed.

## **The duty of the woman towards her children**

### **The Guardian**

A guardian is required in two events; the death of the father and in the case of a divorce. Usually, the duties of the guardian are the same as those of the father. He should support and provide for the child and ensure that he is well brought up. If the child was rich the guardian can support him with his money, but if the child was poor the guardian must provide for his maintenance. The Koran (4:5) and the Sunna regarded this point. It was reported that a poor man came to the Prophet, saying that he had no



money, but he was a guardian for a rich orphan. The Prophet told him "Eat from your orphan's property, but do not take anything before you need it".(197) The Prophet regarded the duty of the guardian as a religious reward saying "The guardian of an orphan and I will be together in paradise".(198)

a. guardian for the orphan

b. in case of divorce

Following the teaching of the Koran and the Sunna the mother, whether a widow or divorced is the most suitable guardian for the newborn baby.

### 1. The Widow

Although the Prophet allowed and even encouraged the idea that the widow has the right to marry as soon as she has given birth,(199) at the same time he respected and raised the status of the widow, who does not take a second husband in spite of her ability to do so, because she devoted herself to bringing up her young children. 'Awf b. Mālik Al-'Asjaī quoted the Prophet saying that "I, and the woman whose cheeks are black shall be like these two fingers on the Day of Resurrection".(200) This woman, whom the Prophet mentioned, was a widow and though possessing beauty and respectability she confined herself to bringing up her orphan children, until they grew up and were married or died, as reported by Musadid.(201)

The Prophet raised the status of the woman of Quraysh saying "they are the most affectionate to their babies". Therefore, someone explained this hadith saying that if the widow marries she is not affectionate.(202) Ahmad b. Hanbal mentioned a well known poet in the time of the Prophet which says "Orphans in their infancy are the responsibility of the widows".(203) 'Alī b. Abū Tālib used to repeat this sentence.(204)

The traditions narrated that the Prophet proposed to his cousin Umm Hanna, who refused his proposal because of her young children. She said that she would either neglect her duty towards the Prophet or towards her children. The Prophet respected her



decision.(205) Among the majority of the Prophet's wives, who were widows, Umm Salma was the only one who had a newborn baby. When the Prophet proposed to her she was suckling her daughter. The Prophet married her after the baby had been sent to 'Asmā' b. Abū Bakr, who fostered her, then a woman from Al-Muhajirīn fostered the child.(206)

The Prophet thought that cohabiting with a woman who was suckling a child, might be dangerous for the baby's health. This kind of sexual relationship is called (ġila). It was reported that the prophet tried to prohibit sexual intercourse in order to save the baby from any danger as they believed in Mecca, where they thought that ġila caused cross-eyes. By contract, in Al-Medīna, they regarded ġila as normal and acceptable(207). The prophet recognised that the Persians and the Romans practised ġila without any harm or side effects to their babies, and therefore he allowed it.(208)

## 2. Other relatives

After the mother the responsibility towards orphans is with any of the relatives either male or female as follows:

The Aunt:

However, the grandmother, whether the mother's mother or father's mother, besides sister, can be a guardian. The Prophet regarded the maternal aunt as the most suitable person after the mother when he did not differentiate between her and the real mother.(209) It was narrated that Zeid b. Al-Hārīṭa, 'Alī b. Abū Tālib and Jāfar, had a dispute because of the daughter of Hamza who died. When they complained to the Prophet, Zeid said "I have the right to be a guardian since I travelled a long distance for her". While 'Alī said "She is my cousin and I married the Prophet's daughter". Jāfar said that "This girl is my cousin and her maternal aunt is my wife". The prophet decided to give the girl to Jāfar saying that "He has the right to keep the girl with him because he married her aunt, who is considered as good as the real mother.(210)

A similar hadith from the prophet was reported by Ibn 'Omar, who narrated that a man came to the Prophet telling him that he had committed a great sin. The Prophet asked him "Have you got a mother" ? The man replied "No", then the prophet asked him, if he had a maternal aunt. The man said "Yes". The Prophet said to him "so accord her good treatment".(211) In addition, it was narrated that 'Aīṣā, who did not have children, was complaining to the prophet that all her female friends had their nicknames, such as 'Umm Zeid, 'Umm 'Omar except her. The Prophet told her "call yourself 'Umm 'Abd allah, the name of your nephew". He was 'Abd allāh b. Al-Zūbeir, the son of her sister 'Asmā'.(212)

The paternal aunt also could be a guardian. 'Āīṣā, for instance, brought up her nieces who had lost their father and the Prophet was pleased about that considering this act as meriting rewards for the relative's duty.(213) However, Abū Yusuf mentioned that the Prophet regarded the maternal grandmother as a suitable guardian after the mother and even before the aunt "maternal or paternal".(214)

On the male side, the brother is considered as the nearest relative, before the grandfather and the uncle, paternal and maternal. The responsibility of the brother for his sisters was clear since the prophet kept mentioning "your daughters and your sisters should always be treated equally". The Prophet once said "The first, who deserve gifts from a married man are his daughter and his sister".(215) 'Amr b. Ṣū'ayb reported from the Prophet saying that "a man should start with his nearest relatives as those deserving charity".(216) The sister is the responsibility of the family as long as she is unmarried or an orphan. It was reported that Jābir b. 'Abd-Allāl was asked by the Prophet why he married a non-virgin woman instead of a young virgin girl. Jābir told the prophet that his father had been killed and he left him six sisters, therefore, he decided to marry a mature woman to take care of them. The prophet said to him "You are right".(217)

Aḥmad b. Ḥanbal mentioned a hadith from the Prophet saying "Treating the daughters and the sisters well is rewarded by Paradise".(218) In addition, Yūsuf b.

Mūsa related from the Prophet saying "Who takes care of three sisters and three daughters or either two sisters and two daughters will be in paradise with the Prophet".(219)

Sometimes, if the child had no relatives to take responsibility for him, the Sunna allowed a stranger to be his guardian.(220) If there was no one the Prophet, by virtue of the authority which he represented, declared saying "God and his Apostle are the guardians for anyone who does not have a guardian".(221) This means that the Prophet and his successors were responsible for the orphans,(222) who were the Prophet's main concern. He used to say "I am very careful about the rights of the two weaklings; the widow and the orphan".\*

### 3. The guardian in the case of a divorce

The Koran mentioned the right of the mother to suckle her new born baby for two years (2:233) without saying whether she is divorced or not, but it added that the mother should not be hurt by being separated from her baby. If the man had divorced his wife, he can discuss the matter of suckling the child with his divorced wife (2:233). It is the same in the Sunna. The Prophet mentioned that no one can separate a mother from her child. Abū 'Ayyūb narrated from the Prophet saying "Any one who separates a child from his mother, God would separate him from his friends on the Day of Ressurrection".(223) Within the Sunni'Imāms, there was no doubt about the right of a mother to take care of her newly born baby. Al-Zūbayrī said that "It is harmful to prevent a mother from suckling her baby".(224)

The Prophet gave one reason, which could prevent the mother (divorced or widow) from keeping her baby with her. This was stated as a Sunna and all the Sunnī doctrines adopted it. It was reported that a woman came to the Prophet, pleading with him, and saying "With my body I carried, nourished and cradled this son for nine months and now his father has divorced me and wants to snatch him from me". The



Prophet said to her "You are the most worthy one to have him as long as you remain unmarried. If you do you cannot keep your baby with you".(225)

In the light of the Prophet's judgment, the Caliph, Abū Bakr, held the same view saying "the mother is the most sympathetic, kind, merciful, tender and also the most well-wishing and attentive until she marries when she has no right to keep her baby with her".(226) Sābiq mentioned that 'Omar b. Al-Xattāb held a different opinion to Abū Bakr, but without explaining or giving any hadith from 'Omar and whether he accepted that if the woman remarried she is allowed to keep her baby.(227)

It is worth mentioning that only Ibn 'Omar held a different opinion concerning this point. He said that "If a woman married the child's uncle, who is her husband's brother, she can keep her baby with her, because the uncle is the same as the father. But, if the mother married a stranger she certainly loses the guardian's right".(228)

Apart from this condition, the Prophet considered the relationship between the baby and its mother. The transmitters narrated that a Jewish man asked the Prophet about babies. The Prophet said that "A child is half from his mother's flesh and blood and half from his father's bones and nervous system".(229)

Under certain circumstances the divorced mother can refuse to suckle her baby and, in this case, she is under no obligation to do so. She can also ask for payment for suckling her baby and the husband has to pay her. Also he should support his child by providing it with clothes, food (indeed any kind of expenditure) and treat it well.(230) The father has this responsibility as long as his divorced wife agrees to suckle the baby and this should be for nearly two years as the Koran stated (2:233).

In the matter of obligation or choice for the divorced mother there are two opinions among the Sunnī jurists; some said that she should suckle her baby while others believed that there is no obligation for her to do so. Mālik said that the obligation should be for the despicable mother only. While the honest one has the right to accept or to refuse unless the baby refuses to be suckled by another woman.(231) In this case,



his mother should suckle the baby, she could also be compelled to do so if there was no one else.(232) Neither the Koran or the Sunna approved of the separation of the mother from her baby, but in case of a dispute between the couple, the father can take his baby to another woman to be nursed and he must pay her. Usually, boys and girls were sent away to be suckled and nursed by a wet-nurse,(233) sometimes until the time of weaning, which might be two years or more.(234)

Whatever, the baby stayed with his mother or was sent away to a wet-nurse to be nursed, the Prophet stated that in the case of divorced parents, the child has the right to choose either of his parents to live with him. Abū Huraira narrated from the Prophet saying that after the age of seven years the child can choose between his mother and his father.

In accordance with the hadith girls and boys were able to choose. It was reported that a man was converted to Islam while his wife was not. This meant divorce between them. The prophet gave their daughter the right to choose between them. At that time the Prophet prayed saying that "God show her the right way" the girl chose her father.(235) Abū Huraira reported from the Prophet saying that he said to the child "This is your father and this is your mother, hold the hand of the one you wish to be with". The child took his mother's hand.(236)

There are two points about which there were no general agreement in the Sunni doctrines:

- a. the age at which the child can choose.
- b. the right of the girl and the boy to choose.

a. the Prophet did not fix the age when the child can choose between his parents, therefore the majority of the Sunnī doctrines fixed it between the age of seven and nine and eleven years for girls and at seven years of age for boys(237) unlike Abū Hanīfa, who fixed the age at nine for the girl.(238)

b. the hadith confirmed that both girls and boys have the same right of choice. While the Sunni Imāms had two opinions concerning this point; Al-Šāfi'ī and Aḥmad b. Ḥanbal adopted the hadith, unlike Abū Ḥanīfa and Mālik. Abū Ḥanīfa declared that the boy may not choose like the girl because his father deserves him more than his mother. This is for the benefit of the boy as Abū Ḥanīfa said. But, Mālik disagreed giving the boy the right to choose between his parents saying that "At the age of maturity he can choose".(239) Concerning the girl, Abū Ḥanīfa and Mālik held the same opinion saying that the girl cannot choose because her mother has first claim to her until she reaches her majority and is married. While Aḥmad b. Ḥanbal, said that the mother has the first claim to her daughter till the age of nine years. After that the girl should be with her father without being able to choose.(240) Al-Šāfi'ī, unlike the other Imāms did not make any conditions or rules and gave girls and boys freedom to choose. Also he gave the child the right to change his or her mind if they wanted to be with the other parent.(241)

Having said that it should also be mentioned that under certain circumstances, the Imāms preferred to keep the child with its father rather than the mother. This was in case the mother does not settle in one place and is always moving from one area to another. In this case, Mālik and Al-Šāfi'ī preferred the father to be the guardian. On the other hand, Abū Ḥanīfa considered that the mother can be the guardian if she wants to move to another city or country where she was married. However, if she wants to travel to a different country the father deserves to be the guardian.(242) Abu Yūsuf, who is Abū Ḥanīfa's disciple, explained this by saying that if a man married a woman from Al-Šām in her own country, he travelled with her to Al-Kūfa, where he divorced her, she has the right to take her baby with her to her country Al-Šām. Abū Yūsuf said "If her husband had not married her in Al-Šām she would not have taken her baby with her".(243)

### The conditions of the guardian

The main conditions for the guardian are; to be honest pious and to treat the

orphan kindly. The Koran and the prophet were concerned that the orphan's money and should not be misled or stolen. The guardian can have business dealings with this money he can also make use of it for the essentials of living, but the benefit must be for the orphan only (4:1,5). Also, the guardian should be sound in mind, because otherwise he would not be able to have this kind of responsibility. In addition, the guardian must be mature and fit; that is not sick, disabled or blind for the baby needs someone to take care of it.(244)

The Sunni jurists also made other conditions, some of them demanded a good reputation. However, it was mentioned that the Prophet allowed a bad guardian to give his minor in marriage that means he who could be a wali in marriage could be a guardian for an orphan.(245) The prophet did not mention anything about a slave being a guardian, therefore, the majority believed that a slave cannot be a guardian, because he is not free, and has duties towards his or her master, who can sell them at any time. Also a slave cannot deal with or possess money without his master's permission.(246) Mālik said that a female slave can be the guardian of her child, but she might be sold by her master, in this case if her husband was a free man he certainly could be the guardian of the child.(247)

To conclude, one can say that there is a similarity in the conditions for the guardian of the minor and the guardian in the marriage, with two exceptions; the wali for a marriage can never be a woman. While as a guardian for a minor she can be and was the most suitable person especially the mother. Also the guardian can be non-Muslim as the prophet stated. Mālik and Aḥmad b. Ḥanbal adopted this saying that Islam is not a prerequisite for being guardian of the minor, while in marriage, Islam is essential.(248)

### **The end of the guardians duty**

There was no time limit for the guardian's responsibility, but it ended when a child becomes able to take care of itself for washing, feeding and dressing. Abū Yūsuf

differentiated between the boy and the girl. He said that "When a boy is able to take care of himself, he does not need a guardian and when the girl reaches the age of maturity, there is no need for a guardian to look after her."<sup>(249)</sup> Al-Šāfi' mentioned that the age of majority for both boys and girls gives them the right to marry and also undertake responsibility for finance.<sup>(250)</sup> It is the same idea of the Koran (4:5).



### Chapter three - Notes

1. Lammens H., Le Bercean De L'Islām, p.276.
2. Karīm, p. 179.
3. Bu, Ch.13, p.111, Book No. 78. Al-Nawawī, p.72.
4. Op cit., Ch.1, p.108.
5. Al-Nawawī, p.73.
6. 'Azīzallāh, M., p.83.
7. Bu, Ch.1, p.108.
8. Karīm, p.181.
9. Bu, Ch.7, p.110.
10. Tor-Andorae, Muḥammad, p.46.
11. Karīm, F., p.184.
12. Bu, Ch.30, p.275, Book No. 83.
13. Robson, p.417.
14. Mālik, Ch.30, H97, p.359, Book No. 20.
15. Bu, Ch.30, p.275.
16. Robson, p.417.
17. Abū Dāwūd, Ch.555, H1690, p.177.
18. Robson, p.657, Book No. 3.
20. Muir, p.514.
21. The prophet lost all of his three sons in infancy. His four daughters survived. Their names were, Zaineb, Ruqaiyya, Umm Kulṭūm and the youngest was Fāṭima. Information about Fāṭima is plentiful unlike the other three.  
Zaineb, was the oldest, married Al-Rabī b. Al-'Āṣ and was separated from him for two or six years then she remarried him after he converted to Islām. She had a girl called 'Umayma. Information about Ruqaiyya and Umm Kulṭūm is scarce. They were always mentioned together both of them were divorced by the son of Abī Lahab. Then they married 'otmān b 'Affān successfully. First Ruqaiyya married him. She had a boy who died in infancy. After her death 'Otmān married Umm Kulṭūm who did not have children and died two years before the prophet. Fāṭima, was the only one to outlive her father. She married 'Alī b. Abī Ṭalīb and was the mother of Al-Hassan and Al-Hussein. Because of that she was the centre of attention in the Shiites rite and the Sunnī rites.
22. Karīm, p.190-195.
23. Muir, p.482, margin
24. Stabart, J.W.H., Islām and its Founder, p.124.
25. Muslim, H83, p.1891.

26. Bu, Ch.40, p.180, Book No. 79, "This became a title for 'Alī'".
27. Muslim, Ch.5, H31, p.1109.
28. Muir, p.299.
29. Op cit., p.303.
30. Muslim, Ch.13, H46, p.1084.
31. Al-Nasā'ī, p.101.
32. Ibn Ishāq, p.733.
33. Stern, p.55-56.
34. Al-Nasā'ī, p.135.
35. Stern, p.87. "Later only women were allowed to wear gold", Abū Dāwūd, Ch.1578, H9293, p.131, Book No. 28.
36. Hazrat Mirza Bashīr 'ud dīn M.A., The Life of Muhammad, p.189.
37. Abū Dāwūd, Ch.1578, H4235, p.130, Book No. 23.
38. Ibn Ishāq, p.775.
39. Bu, Ch.83, p.442-442.
40. Mālik, Ch.4, H9, p.968, Book No. 54.
41. Al-Nasā'ī, p.63.
42. Bu, Ch.24, p.29, Book No. 85.
43. Al-Nasā'ī, p.63-64.
44. Robson, p.1353, 57.
45. Muir, p.304, "Ā'īṣa the Queen of the Prophet's heart and home".
46. Muir, p.485, "Merily the chief one among all of you for love and devotion to me is Abū Bakr".
47. Robson, p.1353.
48. Op cit., p.1355.
49. Op cit., p.1354.
50. Gandefroy-Demombyres.M, L'evolution de L'huma'nité, "Moḥomet", p.254.
51. Bu, Ch.18, p.114, Book No. 78.
51. Al-Baihaqī, Al-Sunan Al-Kubra, p.127
52. I.M., Ch.3, H3667, p.  
Karīm, p.183, "The best charity is given away is to maintain a helpless poor daughter refused by her husband".
53. Mālik, Ch.6, H3, p.854, Book No. 43.
54. Op cit., Ch.11, p.286, Book No. 85.
55. Op cit., Ch.3, H1, p.882, Book No. 44.
56. I.M., Ch.15, H2647, p.884, Book No. 21.
57. Ibn Rushd, p.283.

58. Op cit., p.288.
59. Op cit., p.284, "Alī b. Abū Tālib gave the grandmother 1/2 and the grandfather 2/6.
60. Ibn Rushd, p.296.
61. Op cit., p.295.
62. Op cit., p.297.
63. Ibn Ishaq, p.968.
64. Al-Nasā'i, p.91.
65. Robson, p.663.
66. Bu, Ch. H11, p.453.
67. Al-maragī Abū Al-Wafa, "Mimā Ytsahal fih al-nisā'" M. Al-'Azhar 1973-1974, pp.493-498.  
"mahram is a man who is forbidden to marry her".
68. Robson, p.661.
69. Bu, Ch.86, p.445.
70. Muslim, Ch.3, H20, 21, p.38.
71. Bu, Ch.113, p.404
72. Al-Nasā'i, p.91.
73. Bu, Ch.115, p.454, "Vital reason", "Toilet used to be far away from the tents in open air".
74. Muslim, Ch.1, H10-11, p.605, Book No. 7.
75. Op cit., Ch.1, H12, p.606, "Sister means any Muslim woman".
76. I.M., Ch.165, H1309, p.415, Book No. 5.
77. Op cit., Ch.52, H1000-1001, p.319.
78. Levy, p.131.
79. Mālik, Ch.6, H12, p.197, Book No. 14.
80. Op cit., H14, p.198.
81. Op cit., H15, p.198.
82. Al-Nasā'i, p.131.
83. Op cit., p.132.
84. Mālik, Ch.6, H13, p.188.
85. Al-Nasā'i, p.133.
86. Tir, Ch.388, H539, p.419.  
Al-Šāfi'i, Al-Risāla No. 32, p.421.
87. Bu, Ch.26, p.465 margin.
88. Yāqūb Ibn Ibrāhīm, Abū Yūsuf Al-Kūfī, Kitāb Al-Xarāj, p.111 margin.
89. Bu, Ch.6, p.300.
90. Abū Dāwūd, Ch.559, H1723, 1724, p.191.
91. Op cit., Ch. 559, H1726, p.191. Book No. 5.

92. Tir, Ch.15, H1169, p.472, Book No. 10.
93. Bu, Ch.26, p.465, Book No. 28.
94. Bu, Ch.3, p.385, Book No. 25.
95. Tir, Ch.15, H1169, p.272-273.
96. Op cit., Ch.1169, p.273.
97. Mālik, Ch.82, H254, p.425-526. Book No. 20.
98. Op cit., Ch.14, H37, p.878 Book No. 54.
99. Abū Dāwūd, Ch.830, H2458, p.443. margin, Book No. 8.
100. Op cit., Ch.830, H2459, p.344.
101. Op cit., Ch.559, H1687, p.176.
102. Al-Nāsāi, p.193.
103. Karīm, p.219.
104. Bu, Ch.17, p.361.
- Abū Dāwūd, Ch.549, H1687, p.173.
105. Op cit., Ch.1687, H1686, p.176. "Al-Rutab is a mix of bread and vegetable".
106. Al-Nāsāi, p.60.
107. I.M., Ch.5, H1857, p.596.
108. Abū Dāwūd, Ch.1322, H3545, p.397 Book No. 12.
109. Op cit., p.397 margin.
- "A woman has to break fasting and stop praying during her period also she cannot be a witness without another woman and one man".
110. Al-Nāsāi, p.59 (maternal uncle).
111. Op cit., p.60.
112. Levy, p.97, Abū Yūsuf, p.53.
113. Al-Nāsāi, p.61, Book No. 6.
114. Abū Dāwūd, p.397.
115. Bu, Ch.14, p.490, Book No. 69.
116. Tir, Ch.10, H1109, p.465.
117. Muḥammad Naṣīr Al-dīn Al-'Albānī, Kitāb Ṣaḥīḥ Al-Jāma' Al-Sagīr, H947, p.548.
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123. Al-Ṣāfi 'ī, Aḥkam Al-Korān p.208.
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- 125.Al-'Aqqād, p.130.  
 126.A.b.H, 1 : 6882.  
 127.Abū Dāwūd, Ch.708, H2175, p.342 Book No. 7.  
 128.Tir, Ch.11, H1163, p.467. Book No. 10.  
 129.Al-'Aqqād, p.120.  
 130.Al-Nasāi, p.303.  
 131.Al-'Aqqād, p.116-125.  
 132.Muslim, Ch.5, p.1105, Book No. 18.  
 133.Al-'Aqqād, p.124.  
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 135.Al-'Aqqād, p.121.  
 136.A.b.H. 2 : 1303.  
 137.Bu, 77, p.31.  
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 138.Op cit., Ch.4, H33-34, p.1107. 110-111.  
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 140.Abū Dāwūd, Ch.670, H1347, p.330.  
 141.Hazrat Mīrza Bashīr ud dīn M.A., The Life of Muḥammad, p.203.  
 142.Muslim, Ch.5, p.1107.  
 143.Abū Dāwūd, Ch.699, H2142, p.338.  
 144.I.M., Ch.51, H1986, p.639, Book No. 9.  
 145.Op cit., Ch.51, H1985, p.638-639.  
 146.Al-'Aqqād, p.128.  
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 149.Op cit., p.130.  
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 151.I.M., Ch.51, H1854, p.638.  
 152.Muslim, Ch.5, p.1105, Book No. 18.  
 153.Al-'Aqqād, p.123.  
 154.Op cit., p.128.  
 155.Op cit., p.121.  
 156.Op cit., p.133.  
 157.Al-Šāfi'ī, Aḥkām Al-Korān, p.209.  
 158.A.b.H., 6 : 4283.

159. Muslim, Ch.3, H12, p.1316.
160. Mālik, Ch.1, H10, p.824. Book No. 41.
161. Ibn Rushd, p.364.
162. Mālik, Ch.1, H8, p.823.
163. Mālik, Ch.1, H2, p.822 Book No. 41.  
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164. Mālik, Ch.1, H5, p.822.
165. Muslim, Ch.5, H24, p.1324, Book No. 29.
166. Op cit., Ch.7, H34, p.1330.
167. Mālik, Ch.1, H11, p.825.
168. Bu, Ch.31, p.304.
169. Al-Šāfi'ī, Al-Risāla, No. 226-227, p.67.
170. Muslim, Ch.5, H24, p.132.
171. Op cit., Ch.3-4, H12-15, p.1316-1317.
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176. I.M., Ch.63, H2015, p.649.
177. Al-Tabarī, Kitāb Al-Tafsīr, p.583-584.
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183. I.M., Ch.3, H1851, p.584.
184. Op cit., Ch.3, H1850, p.594.
185. Tir, Ch.22, H1127, p.434. Book No. 9. //
186. Al-Šarqāwī, M., 'Al-Islām wa barāt Al-Marā'. Majallat Al-'Azhar 1874-1875, pp.298-304.
187. Mālik, Ch.6, H16, p.530, Book No. 28.
188. I.M., Ch.4, H1852, p.595.
189. Tir, Ch.32, H1127, p.434.
190. Ibid.
191. Muslim, p.1036 margin Book No. 16.
192. Al-Šarqāwī, M.
193. Mālik, Ch.6, H16, p.530.

- 194.Bu, Ch.52, p.433.
- 195.Op cit., Ch.53, p.933.
- 196.Mulsim, p.1029 margin.
- 197.Robson, p.716.
- 198.Abū Dāwūd, Ch.1838, H5150, p.460.  
Al-Nawawī, M.Kitāb Al-Sālihin, p.62.
- 199.Mālik, Ch.30, H83, p.589. Book No. 29.
- 200.Abū Dāwūd, Ch.1838, H5149, p.459.  
"black cheeks, because she gave up wearing make-up".
- 201.Abū Dāwūd, Ch.1838, H5149, p.459.
- 202.A.b.H, 14 : 7637.
- 203.Op cit., 1 : 26.
- 204.I.M. Ch.154, H1272, p.405, Book No. 5.
- 205.Stern, p.89.
- 206.Op cit., p.97.
- 207.Watt, M.W., Muhammed At Medīna, p.377.
- 208.Mālik, Ch.3, H16, p.607-608, Book No. 30.
- 209.Robson, p.741.
- 210.Abū Dāwūd, Ch.742, H2278, 79-80, p.380.
- 211.Karīm, F, p.184.
- 212.Abū Dāwūd, Ch.1786, H4970, p.402, Book No. 35.
- 213.Muslim, Ch.14, H45, D695, Book No. 12.
- 214.Abū Yūsuf, p.52.
- 215.I.M. Ch.41, H1955, p.628
- 216.Muslim, Ch.13, p.692, Ch.14, p.693.
- 217.Bu, Ch.18, p.81, Book No. 64.
- 218.A.b.H., 1 : 235.
- 219.Abū Dāwūd, Ch.1838, H5148, p.458.
- 220.Muslim, Ch.2, H42, p.2287, Book No. 53.
- 221.A.b.H., 1:323.
- 222.Levy, p.141, "pious foundation"awqāf"
- 223.Stern, p.97.
- 224.Bu, Ch.4, p.489, Book No. 69.
- 225.Sābiq, p.340.
- 226.Op cit., p.340.
- 227.Op cit., p.340 the margin.

228.Op cit., p.344.

229.A.b.H, 6 : 4438.

230.Levy, p.140.

231.Ibn Rushd, p.47.

233.Because of poverty some women offered to suckle children in order to make some money. This was practice both before and during Islamic times. These women usually suckled their own children with the others who were orphans or whose parents were divorced or were not. Ḥalīma b. Saād was the wet-nurse of the prophet and Umm Burda nursed the Prophet's son'Ibrāhīm.

232.Sābiq, p.345, 346.

234 Ibn Ishaq, p.104.

235.Sābiq, p.343.

236.Op cit., p.349.

237.Op cit., p.347.

238.Op cit., p.346.

239.Op cit., p.349.

240.Op cit., p.350.

241.Levy, p.140.



## CHAPTER FOUR

### DIVORCE (ṬALĀQ)

Divorce in Islam is lawful and is a right which may be exercised by the man and under some circumstances by the woman. Although neither the Koran or the Hadith stated that only a man can act and proclaim divorce, it is a Sunna and there is general agreement that the man has this right, and therefore the woman cannot reject it. By contrast the marriage contract should have the mutual consent of both the man and the woman or her walī (guardian). In divorce, neither she nor her walī can do anything to prevent the man's decision. Malik mentioned that the successor, Saīd b. al-musayyab said "divorce is for men and 'idda is for women".<sup>(1)</sup> Ibn 'Abbās narrated that this hadith is given by the prophet but, Ibn Ruṣd denied<sup>(2)</sup> that. On the other hand, Al-Šāfi'ī made it clear that the man has the right of divorce.<sup>(3)</sup>

#### Types of Divorce

There are two types of divorce according to the Koran and the Sunna:

- a. intermediate or single divorce (raj'ī)
- b. ultimate or triple divorce (bā'in)

#### a. intermediate divorce

According to the Koran, two divorce statements are sufficient (2:228) whereas in the Hadith three are considered necessary. Single divorce is when a man divorces his wife by either one or two pronouncements. It is not considered as a final divorce in that the man can take his wife back during the period of the 'idda if he wishes to do so. This right was fixed in the Koran, saying that their husbands have the right to take them back (2:228).

The period of the 'idda is usually three months for a free woman and two months for a slave woman, but, under some circumstances the 'idda could be longer. For instance, 'Omar b. Al-Xattāb stated that any divorced woman who has had one or two menstrual periods then stops menstruating should spend nine months in 'idda in case it turns out that she is pregnant. If not, she has to wait another three months then her 'idda is to be ended.<sup>(4)</sup> Mālik also mentioned that 'idda might be for one year for some women.<sup>(5)</sup>

During the time of 'idda, a single divorced woman must stay in her husband's house. Her husband has to provide for her maintenance. This rule is mentioned in the Koran (65:1) and was adopted by the Prophet. Also, the woman can inherit from her husband if he dies during this period. This was generally agreed amongst the jurists.<sup>(6)</sup>

Within the Sunnī Doctrines, there are two opinions about the relationship between the divorced couple and how far they can be together. For instance, Mālik said that a man cannot be alone with his divorced wife in spite of sharing the same house. He cannot enter her private room without her permission.<sup>(7)</sup> Also, he should not look at her hair. However, Mālik accepted the idea of sharing food between the couple with the attendance of some companions but, it seems that Mālik changed his mind about the act of sharing food together, as Ibn Al-Qāsim reported. By contrast, Abū Ḥanifa, allowed the single divorced woman to put on make-up and to have perfume, also she can leave her finger tips uncovered beside her husband during the period of 'idda. Some jurists supported this opinion and added that the man should have the permission of his divorced wife whether she wants him to sit with her or not.<sup>(8)</sup>

It seems that Abū Ḥanifa deals with this point as if the link has not yet been broken between the couple having regard to the fact that the man can take back his wife. This makes the single divorce a temporary separation depending on the man's wishes. If the man changes his mind about divorce he can take his wife without asking her or without her knowledge or consultation.

As the Prophet stated the man has three options and he must choose one of them during the ‘idda period:

- a. to keep his wife by having intercourse with her.
- b. to announce that he wants to take her back.
- c. to divorce her.

The Sunni doctrines were divided about the way of taking a wife back. Abū Ḥanīfa accepted the right to have sexual intercourse, simply without any declaration, unlike Mālik who insisted that the man should first declare that he wanted to take back his wife then he can have intercourse with her. On the other hand, Al-Šāfi‘i regarded the presence of witnesses as vital, while Mālik regarded it as preferable.<sup>(9)</sup>

The vital point about the ‘idda is its time. This is because as soon as the time has elapsed, the man loses his right over his divorced wife. It is a fact regarded by the Prophet, who, encouraged Muslims to consider this point. A hadith by the Prophet stated that a man called Māqal b. Yama refused to give back his sister to her husband, who had divorced her. It was a single divorce, and after the end of the ‘idda, her husband came to take her back, Māqal said that he refused because her husband had left her when he could have taken her back (this means during the ‘idda). It was reported that the Prophet reminded him of the teaching of the Koran (2:227-232). Thus, Māqal agreed to give back his sister to her husband.<sup>(10)</sup>

Some jurists said that the single divorced woman cannot marry another man if her first husband wishes to take her back again even after the end of the ‘idda. Mālik mentioned that ‘Omar b. Al-Xatṭāb stated that if a man divorced his wife while he was away, then he took her back without her knowledge, and she had already married another man after the end of ‘idda, she is lawful for her second husband. Mālik liked this idea saying that "This is the best opinion I have heard" adding that if the woman married after her ‘idda, whether she had intercourse with her second husband or not, her first

husband had no right over her. But, Mālik admitted that if her first husband wanted her before she married again, he deserves her more than anyone else.<sup>(11)</sup> Ibn Ruṣd mentioned that later Ibn Al-Qāsim reported that Mālik changed his judgment and considered the woman lawful for her first husband if she had not had intercourse with her second husband. However, it seems that Ahl Al-Medīna disagreed with Ibn Al-Qāsim and stood by Mālik's first opinion as it appeared in 'Al-Muwatta''.<sup>(12)</sup> On the other hand, 'Omar b. Al-Xattāb gave the right of choosing to the first husband. 'Alī b. Abū Tālib, regarded the right of the first husband whether sexual intercourse had taken place between the woman and her second husband or not. This was in case the first man took back his wife during the 'idda, but, the woman was not informed. It seems that the majority held 'Alī's opinion, such as Abū Hanīfa, Ahl Al-Kūfa and Al-Šāfi'i. These groups based their judgment on the Prophet, who said "Any woman who had been married to two men is lawful to her first husband."<sup>(13)</sup>

It is worth mentioning that the man does not need a new contract to take back his wife during the time of the 'idda. As a Sunna and by general agreement, he only has to declare his wish or to have intercourse with her as long as she is within the period of her 'idda.<sup>(14)</sup> After the 'idda, if the couple agreed to restore their marriage, they needed a new marriage contract.

#### b. ultimate or triple divorce

The second kind of divorce is called "triple divorce". When the man divorces his wife three times this makes him unable to take back his wife even if he wishes to do so, as triple divorce is regarded as irrevocable or final, (bā'in), (batta).<sup>(15)</sup>

In case the couple decided to restore their marriage, the Koran gives the solution.

It is called "Muḥallil" that is a man who marries the triple divorced woman, then divorces her, by this marriage the woman becomes lawful to her first husband as soon as she gets a divorce from her second husband "Muḥallil" (2:228-230). This sort of



marriage "The marriage of Muhallil" was disliked and the Prophet was not happy about it. However, it is regarded as lawful and is practised to the present day.

### **The development of triple divorce**

The use of the term "triple divorce" developed during the times of the Prophet, Abū Baker and 'Omar b. Al-Xattāb. In the beginning, triple divorce was considered as a single divorce if a man repeated the word divorce three times successively. The Prophet, according to Muḥammad b. Lab̄yd, was displeased with men who divorced their wives and then took them back. This was expressed when the Prophet says "They are mocking the limits set by God".<sup>(16)</sup> In spite of that he was very angry when he knew that a man divorced his wife, by declaring the word divorce three times successively. The Prophet said "Do you play with the Book of God. The excellent and magnificent while I am among you"? A man stood up and said "Oh. Apostle of God, shall I kill him" ? <sup>(17)</sup>

There is a hadith about Rūkāna b. 'Abd yazied, who divorced his wife by triple divorce in one sentence, then he regretted it, telling the Prophet "I swear by God I meant it to be only a single divorce utterance". The Prophet considered his divorce as a single divorce and save his marriage.<sup>(18)</sup>

The companion, Ibn 'Abbās, described the development of triple divorce saying "Triple divorce was regarded as a single divorce if it was announced by one sentence, and when the man divorced his wife three times within a period of time, it was considered a triple divorce and final".<sup>(19)</sup> Ibn 'Abbās added that this was the general practice during the time of the Prophet and Abū Baker and also during two or three years of 'Omar b. Al-Xattāb's reign.<sup>(20)</sup> It was mentioned that 'Omar advised men not to use the triple divorce pronouncement by one sentence as was the case in pre-Islamic times, but, it seems that no one respected his words.<sup>(21)</sup> On the contrary, people were abusing the divorce rules, and therefore 'Omar decided to punish their thoughtlessness by holding them accountable for these careless pronouncements.<sup>(22)</sup> Ibn Al-'Awām reported that

'Omar stated that triple divorce is to be regarded as final if announced by one sentence. The reason for this judgment was to prevent men from using the right of triple divorce in a careless way.(23) Ibn 'Abbās, was asked whether it was true that 'Omar b. Al-Xattāb changed the use of the triple divorce. He replied "Yes it was 'Omar who did so".(24)

Following this development, it is clear that there are three different opinions about triple divorce between the companions:

a. some supported 'Omar's decision, which did not differentiate between triple divorce by one sentence or by three sentences within a period of time. This information was reported by 'Otmān b. 'Affān.

b. the opposite opinion was proclaimed by 'Alī b. Abū Tālib, who said that triple divorce as final should be uttered in three sentences at separate times as the Sunna of the prophet stated. 'Alī's opinion was held by the majority of 'Iraqī jurists.(25)

c. a third point of view from the 'Imāms Mālik and Al-Šāfi'ī, who said that irrevocable divorce might be by either one sentence or three sentences, depending on the intentions of the speaker, because this was practised during the Prophet's time.(26) This means that if a man meant a triple divorce, it is a triple one and final and if he wished it to be a single one, it is as he wanted.(27)

Three sentences of divorce are the limit for making a final and irrevocable divorce. 'Abāda b. Al-Sāmet informed the Prophet that his grandfather divorced his wife one thousand times. The prophet told him that "Your grandfather did not fear God because three divorces are his right, and therefore (nine hundred and ninety seven) are considered unfair and aggressive, God may either punish or forgive him".(28)

Ibn 'Abbās was told that a man divorced his wife one hundred times. He said "It is nothing and makes no sense for what the man needs for uttering divorce is for it to be three times to make his wife unlawful to him, adding "They had made a mockery of God's verses".(29)

Ibn masūd Al-Anṣārī said that if a man divorced his wife eight times, it means nothing since he only needs three pronouncements divorce.(30)

### The rights of the triple divorced woman

There is a controversial issue concerning this topic "triple divorce" shown in the case of a woman called Fāṭima b. Qais, the wife of 'Amr b. Ḥafṣ Al-Maxzoumī.(31) It was reported that her husband divorced her by triple divorce when he was away from home. Later, his agent sent her some barley and Fāṭima was displeased at receiving the gift, particularly when her husband said "I swear by God, you have no claim on us".(32) Fāṭima narrated that she appeared to the Prophet demanding the right of lodging and maintenance from her husband.(33) She said that the Prophet answered her saying that as a triple divorced woman, she is entitled to no maintenance unless she is pregnant, and therefore the Prophet ordered her to move out from her husband's house and to spend the 'idda in another place.(34) Fāṭima reported that at first, the Prophet mentioned to her the house of 'Umm Ṣarḳ, but later, he changed his mind telling her that his companions were used to visiting this house. Therefore, he told her to stay in the house of Ibn 'umm Maktūm, who was a blind man, and the Prophet said that she could undress there. Finally, Fāṭima said that the Prophet told her "When you are in a position to marry again inform me". This meant at the end of three months (idda).(35)

This was Fāṭima's story which was unacceptable to some of the companions such as 'Omar b. Al-Xattāb, 'Ā'isa, Ibn 'Omar and Sa'īd Ibn Al-Musayyab (the successor). All of them denied Fāṭima's Hadith. For instance, 'Ā'isa disliked what Fāṭima reported to the Prophet.(36) She said "It is no good for Fāṭima to say that the Prophet told her that the triple divorced woman has no maintenance and no accommodation from her husband during the 'idda.(37) 'Orwa b. Al-Zūbeir narrated that another woman called Bint Al-Ḥakam, did the same as Fāṭima reported, and therefore she left her house directly after she was divorced by triple divorce. This woman said that "Fāṭima ordered us to leave



the house as the Prophet stated". 'Ā'īṣā was not happy about this and blamed Fāṭima, then advised the other woman, Bint Al-Ḥakam, to remain in her husband's house till the end of the 'idda.<sup>(38)</sup> On the other hand, 'Ā'īṣā admitted that Fāṭima was moved from her house in accordance with the special permission from the Prophet.<sup>(39)</sup> It was said that Fāṭima told the Prophet that she was afraid of someone attacking her in her lonely place thus, the Prophet allowed her to leave the house.<sup>(40)</sup> 'Ā'īṣā agreed with this fact saying that Fāṭima's place was lonely and she dreaded living in it.<sup>(41)</sup> Mālik also agreed that the Prophet had to arrange a suitable place for Fāṭima to spend her 'idda, but, the Prophet did not mention any maintenance for her.<sup>(42)</sup> In addition, 'Omar b. Al-Xaṭṭāb as a companion and a caliph, rejected Fāṭima's words strongly saying "We will not abandon the Book of God and the Sunna of his prophet for the words of a woman who she has perhaps forgotten".<sup>(43)</sup> The Koran states "and turn them not out of their house". (65:1) 'Omar was sure that the Prophet never allowed a divorced woman to leave her husband's house before the end of her 'idda, and therefore Fāṭima's hadith was inaccurate. Thus, 'Omar declared that both triple and single divorced woman has the same right of lodging and maintenance until the end of the 'idda period no matter whether she is pregnant or not.<sup>(44)</sup> Following this statement, the prince of Al-Medīna, Marwān b. Al-Ḥakam considered 'Omar's decision as a Sunna and a general custom. He did not accept Fāṭima's Hadith and prevented it being a model to be followed by another woman.<sup>(45)</sup> Hearing that Fāṭima continued to argue and keep to her story, she said "The Book of God, shall be between you and me".<sup>(46)</sup>

Sā'id b. Al-Musayyab said that Fāṭima caused confusion for most people because of her false story, explaining why the Prophet allowed her to move from her house. Ibn Al-Musayyab said that it was simply because she had so much disagreement with her husband's family.<sup>(47)</sup> Al-Šāfi'ī supported this opinion and this reason saying that if the woman misbehaved she should be moved from her house.<sup>(48)</sup> Therefore, Fāṭima's removal was considered as a special case and not a general judgment for the triple



divorced woman.

The argument about the rights of the triple divorced woman did not solve the matter particularly since there was no hadith by the prophet which could deny or support Fāṭima's claim. As a result, the three different opinions from the Sunnī doctrines were obtained. Abū Ḥanīfa, for instance, supported ʿOmar b. al-Xaṭṭāb who fixed lodging and maintenance for the triple divorced woman during the ʿidda<sup>(49)</sup> but, Abū Ḥanīfa believed that the divorced woman should never leave her house either by day or at night. Some companions such as Ibn ʿAbbās and Jābir b. ʿAbdallāh believed Fāṭima, and therefore they denied any rights for the triple divorced woman unless she was pregnant.<sup>(50)</sup> Muḥammad b. Saīd b. al-ʿĀṣ supported the above by saying that the woman should leave her house as soon as her husband divorced her by triple divorce. Aḥmad b. Ḥanbal held this opinion.<sup>(51)</sup> The third point of view was mentioned by Mālik and al-Sāfi'ī who stated that the woman has the right of lodging as the Koran stated (65:1) but, there was no maintenance for her<sup>(52)</sup> unless she was pregnant.<sup>(53)</sup> This idea was based on Fāṭima's hadith when the Prophet arranged a place for her to spend her ʿidda, but he did not mention any maintenance.<sup>(54)</sup>

Some sources mentioned that Ibn'Umm Maktūm was Fāṭima's cousin, and in this case, she spent the ʿidda with her relatives.<sup>(55)</sup> However, the Prophet disliked the idea of spending the ʿidda with the family and preferred a woman to stay in her house. Mālik made it clear saying that it is a Sunna for the triple divorced woman to stay in her husband's house with no maintenance (Nafaqa).<sup>(56)</sup>

Ibn'Umm Maktūm, was mentioned twice: first, in a hadith by the Prophet, who chose his house because he was blind as Fāṭima reported<sup>(57)</sup>; second, in another hadith by the Prophet, who asked his wives to cover themselves from Ibn'Umm Maktūm, when he visited the Prophet's house. The Prophet told his wives that "even if he is a blind man, you are not". His wives replied saying that there is no harm in seeing a blind man.<sup>(58)</sup>

### Divorce of the Pregnant Woman

Although it is lawful for the man to divorce his pregnant wife during pregnancy, the woman in this case has special rights.  $\text{Al-Sāfi}^{\vee}\bar{\text{i}}$  and  $\text{Aḥmad b. Ḥanbal}$  believed that a man can divorce his wife by a single divorce anytime he wants. Unlike in the triple divorce, he has to divorce her three times over three months.(59)

It was generally agreed, whether the pregnant woman was divorced by a single or a triple divorce, there was no question about her rights since her pregnancy protects her.

The Koran mentioned that the divorced woman must not hide her pregnancy (2:227) then she has the right of full support and accommodation from her husband until she gives birth (65:5). The Prophet made it a Sunna,(60) and therefore,  $\text{Mālik}$  said that "It is our custom".(61) These provisions for the pregnant woman applied until the time of her delivery. If there was any suspicion of pregnancy, the man should keep his wife in his house for nine months.(62) As soon as the woman gives birth, her status will change completely.

First, her idda is to be ended without observing the usual time.(63) Second, the divorce is regarded as irrevocable. This means that if her husband divorced her by a single divorce it is considered as a triple one. This information is based on  $\text{Al-Zūbeir b. Al-ʿAwām}$ 's hadith. He narrated that one of his wives persuaded him to divorce her by a single divorce. In order to please her he did so as she was pregnant at that time. A couple of hours later she gave birth. Being in an angry mode,  $\text{Al-Zūbeir}$  asked the Prophet to judge his case. The Prophet told him "It is too late, you should propose to her".(64)

This hadith contained two elements which were considered by the Prophet: First, the man loses his right to take back his wife after she gives birth; Second, the woman has the right to accept or to refuse to remarry her husband.

After delivery, the divorced woman has no right of maintenance or lodging unless the couple agree to keep the baby with his mother. In this case, she is eligible to have

payment as long as she nurses the baby, while the father pays her. This fact was stated in the Koran (2:232) and in the Sunna.(65)

### Divorce of the Virgin Woman

The Koran mentioned the divorce of the virgin woman from the point of view of the dower saying that she has the right to have half the amount of her mahr (2: 236).(66) This type of divorce was discussed by the companions of the Prophet from another point of view.

Ibn 'Abbās and Abū Huraira were asked about the man, who divorced his bride before he had intercourse with her and who later wanted to take her back. They replied that divorce is considered final even when the man said that he divorced her by a single divorce. Ibn 'Abbās explained his opinion saying "You sent away what you used to own".(67)

Other companions such as 'Abd allāh b. 'Omar and 'Amr b. Al-'Āṣ held the same opinion. It was reported that 'Atā b. Yassār asked Ibn Al-'Āṣ about the man who divorced his bride by a triple divorce. 'Atā believed that this type of divorce should be regarded as a single one, but, Ibn Al-'Āṣ was unhappy about this opinion and told 'Atā "You are a narrator,(68) you should know that the single divorce and the triple one make the bride unlawful to her husband(69) unless she marries another man "Muḥallil".

Mālik explained the meaning of the word "virgin" saying that the bride is considered a virgin for the groom if sexual intercourse did not take place between them. Therefore, the same rule applies to both the non-virgin and the virgin bride. Consequently, the man cannot marry his bride again unless with "Muḥallil". Also, the bride does not have to observe the 'idda, since she has not had sexual intercourse with her groom.(70)

## Divestitue

### Self Redemption (Ḫal')

Malik defined the word 'Ḫal'' as taking off a dress, regarding marriage as a dress<sup>(71)</sup>, following the Koran, which says "They are your garments and you are their garments" (2:187) on the other hand, Stern said that Ḫal' is "To cast off one's clothes".<sup>(72)</sup>

Ḫal' is a kind of divorce or separation, which is always in accordance with the woman's demand. Normally, the reasons for Ḫal' are either emotional, moral or religious. Under these circumstances, the woman can ask her husband to release her from the marriage tie, and in this case she has to be ready to redeem herself by repayment of her dower and even more. Al-Zuhdī said that "Ḫal' is a compensation for the husband in order to make him agree to divorce his wife".<sup>(73)</sup>

It is worth mentioning that the practise of Ḫal' was introduced during pre-Islamic times, when it was considered as simple as divorce. It was reported that a man called 'Amr b. Al-Tarāb gave back his son-in-law all his gifts to persuade him to divorce his daughter.<sup>(74)</sup>

In Islam, the Koran disliked the idea of taking back the mahr from the woman as a price for divorce (4:18-20), especially by the man who abuses his wife in order to force her to leave her dower for him (4:18). However, under certain circumstances the Koran allowed Ḫal' particularly for religious reasons "If the couple fear, they may not maintain God's bond" (2:229). During the Prophet's time Ḫal' was practised and he accepted that the woman can purchase her divorce. A good example was the wife of Tābit b. Qais.

In fact, there are two hadith about the reason for Ḫal'. For instance, Muḥammad b. Mu'amar narrated that she complained to the Prophet that her husband beat her and broke a part of her body. She ended her appeal by saying "I have everything he gave



me" and she asked for Ḫal'.<sup>(75)</sup>

Another reason for Tābit's wife asking for Ḫal' was reported by Ibn 'Abbās, who said that she told the Prophet "I do not reproach Tābit as far as his character and religion are concerned, but, I do not want to be guilty of infidelity in the eye of Islam". Ibn 'Abbās said that she hated her husband because he was very ugly.<sup>(76)</sup> On the other hand, Stern mentioned that the woman could not get on with Tābit.<sup>(77)</sup> Whatever the reasons were, the Prophet listened to the woman complaining. He said to her husband "Take back your gifts from your wife and separate from her". It was narrated that Tābit asked the prophet whether the judgment is right. The Prophet replied "Yes it is", then Tābit said that he gave his wife a garden. The Prophet said to him "Take back your garden". Having done that the wife went back to live with her original family.

It was clear that Tābit b. Qais and his wife were mentioned in every hadith about Ḫal'. For instance, I.M. mentioned three different names.<sup>(78)</sup> However, our main concern was that the woman can ask for Ḫal' for different reasons, and therefore the prophet did not make any conditions for the woman who wants Ḫal'. In the case of Tābit's wives, the Prophet did not question them about their reasons, and he was satisfied with their claiming.

Concerning this point, the transmitters insisted on valid and urgent reasons for demanding Ḫal'. For instance, Abū Huraira narrated from the prophet saying "Every woman who asks to be divorced from her husband without cause, the fragrance of the garden of Heaven is forbidden to her".<sup>(79)</sup>

Tōwbān narrated a similar hadith by the Prophet saying "Who withdraw themselves from their husbands and persuade them to divorce them for compensation are hypocrites"<sup>(80)</sup> Abū 'Īsa criticised this hadith saying "It is a strange hadith".<sup>(81)</sup>

Ibn Qusd<sup>v</sup> stated that whatever was said about the urgent and vital reasons for asking for Ḫal', the general opinion was concerned with any damages from the man to his wife<sup>(82)\*</sup> Also, whether the damages were for emotional reasons or not. Mālik, in

his book 'Al-Muwatta', mentioned the Xal' without dealing with the reason behind it. Tābit b. Qais wife, Habiba b. Sahl just said to the Prophet "I cannot live with him".(83)

### The Elements of Xal'

- a. the amount of compensation
- b. the type of Xal'
- c. the 'idda or period of waiting
- d. the consent of the husband

#### a. the amount of compensation

There is no doubt about the Prophet's opinion concerning this point. It was clear in the case of Tābit's wife, when she intended to pay more than the dower. The prophet did not accept this saying "only his mahr, no more".(84) Also, the Prophet said to Tābit "Take back your gifts".(85)

In the Koran, the amount of compensation was not mentioned, it just said "There is no blame on either of them, if she gives something for her freedom". (2:228). Whereas within the Sunni Doctrines, the amount was not generally agreed. Ibn Ruṣd mentioned three amounts of compensation: the woman could pay part of her dower which called "compromise"; she might pay all her dower which called "redeem"; She could pay more than her mahr which called "ransom".(86)

Mālik and Al-Šāfi' declared that there will be no harm if the woman gives her husband more or less than her dower in order to get a divorce.(87) In addition, Mālik said that a woman can give more than money or gifts as a price for her freedom. He said "her offer could be either to leave the guardianship of her child or to suckle the child". She might even give an unborn cow and if the animal is born dead, the man loses his right to compensation.(88) A slave or any kind of fruit could also be a kind of compensation.(89)

Nāfi<sup>ʿ</sup> reported that a woman called Ṣafīyya b. Abū<sup>ʿ</sup> Ubaȳd̄ gave her husband everything she possessed and when the companion ʿAbd Allāh b. ʿOmar knew, he made no objection. That means he allowed this practice.<sup>(90)</sup> The Caliph and the companion, ʿOtmān b. ʿAffān, supported this idea saying that "A husband can ask for everything his wife might possess even the ribbons binding her hair".<sup>(91)</sup> Abū Yūsuf said that the amount of compensation was never fixed. It might be three dirhams or one thousand, this depends on the agreement between the couple.<sup>(92)</sup>

The bride can also ask for Xalʿ from her groom before sexual intercourse takes place. The Koran allowed her to release herself from the groom saying that "she can leave her dower voluntarily" (2:237). Whether the woman has to pay high or low compensation, Mālik mentioned a vital point concerning this matter. He said that if it was discovered in which her husband abused and forced her to ask for Xalʿ because of his bad treatment, the woman has the right to get divorce without any payment and also has the right to retain her mahr and what she paid to her husband as a price for Xalʿ. Mālik added "This is our Sunna" (93).

### b.the type of Xalʿ

Within the Sunni jurists there are two opinions about the type of Xalʿ whether it is a divorce or a separation.

#### 1.As a separation

The companions, Ibn ʿAbbās and Ibn ʿOmar, regarded Xalʿ as a separation which is based on mutual agreement between the couple.<sup>(94)</sup> Also Abū Dāwūd, in his book 'Sunan' mentioned that the Prophet used the word separation in his hadith.<sup>(95)</sup> Two of the Sunni Imāms, Al-Sāfi<sup>v</sup> i<sup>ʿ</sup> and Aḥmad b. Ḥanbal, adopted this opinion and regarded Xalʿ as a separation.<sup>(96)</sup>

During the investigation of Xalʿ, some points which do not exist in the divorce

laws were found. These are:

a. the principle is that in Xal' the woman has to return her mahr instead of receiving it as in divorce.

b. it is generally agreed that Xal' should be by mutual consent between the man and the woman, whereas in divorce, the acceptance of the woman is not considered because the only decision is by the man.

c. the 'idda of the woman in Xal' is not generally agreed.

d. in the case of Xal', the woman can leave her house and cannot inherit from her husband as 'Otmān b. 'Affān stated.(97)

## 2. As a divorce

According to Ibn Ruṣḍ, Bu and Al-Nasā'ī, the other group considered Xal' as a divorce, reported that the Prophet said to Tābit b. Qais "Take back your garden and divorce your wife as a single divorce".(98)

This hadith which did not differentiate between the single divorce and Xal' makes Xal' meaningless and nonsense because it was derived from the power, which supposed to be possessed by the woman.

Despite the different opinions about whether Xal' is a divorce or a separation, it is vital to say that the majority Abū Hanīfa, Mālik, Al-Sāfi and Ibn Hanbal(99) mentioned a vital point concerning Xal', saying that whether it is considered as a divorce or separation, it is irrevocable for those who regarded it as divorce.(100) This is because a woman buys her freedom with her money. Therefore, as soon as the man receives any compensation, he immediately loses any rights over his wife.(101) Therefore, where the couple decide to come together again, they can do so by a new contract of marriage.

One of the Sunnī jurists, called Al-Nūmān, said that divorce is possessed by the man and Xal' is possessed by the woman.(102) A believe that this opinion gives a clear distinction between divorce and Xal' is emerged.



### c. 'idda

Ibn 'Abbās reported that the Prophet fixed the 'idda in case of Xal' by one course, in another words, one month.(103) However, Ibn 'Omar himself preferred the 'idda for the woman in Xal' to be the same as the idda of any divorced woman, which means three months. Also Saïd b. Al-Musayyab and Ibn Šihāb held this opinion.(104) On the other hand, Mālik mentioned another opinion, which may have been adopted from 'Otmān b. 'Affān, who said that the woman in Xal' does not need the 'idda on condition that her husband has not had intercourse with her recently. If so, she should stay in his house for one month as the Prophet stated. Otherwise she should leave the house immediately after Xal'.(105) Abū Dāwūd reported saying that soon after Xal', the woman went to her original family (106). Malik mentioned the same point.(107)

Regarding the virgin bride, she does not need to spend any 'idda. This rule is the same for any bride who divorced before sexual intercourse took place.(108)

### d.the consent of her husband

Regarding Xal' as the only way for the woman, who does not want to live with her husband, the question is how can the woman get the freedom, is it easy or not? The Koran mentioned the mutual agreement between the couple saying "When they fear" "they cannot maintain the bounds of God" (2:228).

While the jurists were generally agreed that the Xal' is based on the consent of the man, therefore, the woman cannot force him to release her(109) and so the only weapon she has is to persuade him as T̄wbān reported.(110) Apart from the money and any other property she owns, if money was the only weapon this would make Xal' available to the woman who could afford its burden. Sometimes the man might refuse a special offer and accept another.

Concerning any authority, which could order the husband to accept Xal' in the Hadith, one should to consider the Prophet's position, which has the power and is an

obligation for any Muslim. The presence of the Sultan or any authority when Xal' is taking place was mentioned by some jurists, such as Al-Ḥassan Al-Basrī and Ibn S̄rīa who said that Xal' should not apply without the permission of the Sultan<sup>(111)</sup>, while Omar b. Al-Xattāb allowed Xal' without the presence of the Sultan.<sup>(112)</sup>

The idea of presence of the Sultan could be helpful in some cases where an authority can be a referee between the couple to sort out Xal'.

### Who can ask for Xal'

Both the Prophet and the Sunni Doctrines did not make any conditions for the woman, who has the right to ask for Xal'. It was generally agreed that any free, mature married woman is entitled to ask for Xal', while the slave woman needs the permission of her master.<sup>(113)</sup>

It is remarkable that the character of the woman is not considered. Some jurists accept Xal' from the despicable and the negligent woman. Unlike marriage, the woman does not need a guardian, wali, to ask for Xal' on her behalf. She can act by herself without any permission, but in some cases her wali can ask for Xal' instead of her, as Ibn Ruṣd mentioned, following Mālik, who said that the father can undertake Xal' on behalf of his daughter as he acts in the marriage contract.<sup>(114)</sup>

### Mutual Swearing - Mutual cursing (Liān)

It was practised when a man accuses his wife of adultery but, he has no witness to support his accusation, as it is stated in the Koran (24:5,6,7,8,9). Qutayba b. Saād said that the man may not kill his wife's lover until he brings four witnesses (115), but when he has no one he acts by Liān instead of killing or punishing the lover<sup>(116)</sup>. In other words, Liān is a way of putting off the punishment of his wife and her lover by the husband as Al-Sāfi'ī said.<sup>(117)</sup> While Al-Nawawī defined Liān saying it is an accusation without witnesses.<sup>(118)</sup>

It was reported that during the time of the Prophet, a man called Hilāl b. 'Uwaymīra Al-Ajlānī was the first one who accused his wife of adultery and disowned her pregnancy. His wife kept denying his accusation.(119) At the beginning, the Prophet did not give any judgment till the verse of cursing came down (24:5/9) the Prophet ordered the couple to make mutual cursing in his presence.(120) Therefore, Liān should always be done in front of a judge or any authority.

Muslim, mentioned in his book 'Saḥīḥ' that Liān had to be in the presence of a Imām or judge as well as a group of people. In the earliest times of Islam, mutual cursing was usually carried out in the evening and in the best place in the town.(121) This place has to be the mosque and Bu mentioned the mosque(122). However, Ibn 'Abbās said that there is no punishment in the mosque(123) but, mutual cursing is not a punishment, it is simply a mutual accusation and cursing between a man and his wife.

As stated in the the Koran (24:6,7,8,9), the man should start the cursing since liān must always come from the man and not from the woman. Al-Ṣāfi'ī said that cursing by a woman is not acceptable.(124) The man should swear by God four times that he speaks the truth (24:5). At the fifth time, which is the final one, Ibn 'Abbās reported that the Prophet ordered the man to put his hand upon his mouth telling him "It is a way of making punishment obligatory".(125) At the fifth time the man says that the curse of God shall be upon him if he is lying (24:6). When the man has finished his cursing, his wife has to start. She should swear by God four times that her husband is a liar (24:7) and the fifth time that the worth of God be upon her if he is speaking the truth (24:8).(126)

After the mutual cursing took place, the Prophet said to the couple "God knows that one of you is a liar". Then he asked if either of them wanted to confess. The Prophet repeated these words three times. When no one confessed he gave his judgment(127) in the presence of a group of people.(128) Al-Ṣāfi'ī described them as pious people.(129)



Mālik said that as soon as the couple finishes the mutual cursing the separation has to come into effect. Both Mālik and Al-Šāfi'ī permitted separation without the judgment of a judge or Imām while Abū Hanīfa stated that when the judge gives his judgment the separation becomes effective as happened during the Prophet's time.(130)

Liān contains, besides the accusation of adultery another important aspect which is when the father disowns his child. Sometimes the child is used as evidence according to whether he looks like his father or like the lover of the woman. It was reported that a man disowned the pregnancy of his wife accusing her of adultery. The woman did not admit she had committed adultery, therefore, there was no evidence against her and no witnesses. The Prophet said "Look at her child when she gives birth". The child looked like the lover. When the Prophet was informed he was very angry saying "If I stone without evidence, I would stone this woman".(131) A similar hadith was mentioned by Robson as saying "If it were not for what has already been stated in God's Book, I would deal severely with her".(132) Ibn 'Abbās explained saying that there is no stoning without evidence.(133)

Another hadith was transmitted from the Prophet, about a man, who accused his wife of adultery and declared that she gave birth to a black baby, therefore he disowned the child. The Prophet listened to his accusation then he asked him whether he had camels and of what colour. The man said "Red ones". The Prophet wondered if there was an odd one among the camels? The man said there were some and the Prophet asked him how he explained that. The man said that it was a strain of which they had reverted. So the Prophet said to him "It was perhaps a strain to which the child had reverted as well". Finally, the Prophet rejected his accusation.(134)

### The Status of the Woman in Liān

The Sunna made a serious point about the woman in Liān "Al-mulā'ana". Abū Dāwūd described her saying "These woman in Liān is guilty of a public scandal, so she



cannot claim any right".(135) These women were mentioned in the Koran, saying that the man can turn them out of the house because they are guilty (65: ) "they commit a clear act of lawlessness".

a. Liān is considered as a final separation between the couple Ibn 'Abbās narrated that the Prophet stated that they can never come together again. This is called "Sunna Al-mulaānīn".(136) The majority adopted this fact without any objection, including the four Imāms of Sunna Madāhib. Although, Abū Ḥanifa had a further opinion saying that the couple can come together again on one condition; if the man repented he has to be punished by flogging with eighty strokes.(137) If she accepted him back the man should pay half the mahr for his wife(138) with a new contract of marriage.(139)

b. regarding Liān as a final separation, Ibn 'Abbās said that the couple can separate even without divorce.(140) The woman forfeits the right of maintenance and lodging unlike the divorced woman,(141) therefore, she has to leave the house immediately. Concerning her mahr, as the Sunna stipulaed, Ibn 'Omar, narrated that a man asked the Prophet about taking back his mahr. The Prophet told him "If you are honest, you have already had intercourse with her and if you are a liar you cannot have the mahr".(142) That means that she can keep her mahr. In addition, nothing is mentioned about 'idda for the woman of Liān.

c. another interesting point was stated by the Sunna concerning the child of Liān. The Prophet decided that any woman, who had had mutual cursing with her husband and he had disowned her child then the child should follow his mother having her name.(143) In addition, the Prophet declared that the woman cannot inherit from her husband(144) and her child cannot inherit from his father, who rejected him, but he can inherit from his mother and vice versa.(145) The Prophet was concerned about his point forbidding the woman from having an illegitimate child.(146)

Regarding Liān for the virgin bride, Ibn Māja mentioned in his book 'Sunan' that

a man from Al-'Anṣār married a girl told the Prophet that she was not a virgin. The Prophet asked her whether she was a virgin or not. She replied "Yes I am". The Prophet ordered them to have mutual cursing and she got back the mahr.(147)

Although Liān was described as a public scandal at the same time the Prophet prohibited any one from cursing the woman or her child.(148) If anyone insulted her, he would be punished with eighty strokes.(149) The Koran described them saying they are the miscreant since there are no evidence to condemn the woman. She might be guilty and also she might be honest, as long as she kept denying her husband's accusation. The Prophet was sure that one of the couples was lying. He used to say "Your reckoning is in God's hands for one of you must be lying".(150)

It is worth mentioning that Liān is not an option for the woman but is an obligation. It is a serious matter with a strong obligation, and she cannot refuse to take part and has to swear by God that she is honest and pure. Otherwise she puts herself in a dangerous situation which means punishment as Al-Šāfi'ī said.(151)

d. Following the Sunna, it was reported by Muḥammad b. Yaḥya, from the Prophet, saying that "Four types of woman cannot be in Liān; the Christian woman, who married a Muslim; the Jewish woman, who married a Muslim; the free woman, who married a slave; the slave woman, who married a Muslim.(152)

Among the Sunnī Doctrines there are two opinions concerning this issue. For instance, Ibn 'Abbās, Mālik and Al-Šāfi'ī believed that any couple whether both of them were Muslims or only one of them was a Muslim, free or slave, an honest or even a bad couple have the right to practice Liān.(153) Unlike Abū Ḥanīfa, who said that only Muslims and free couples can take part in Liān, because they have to swear by God four times. Also the slave is never stoned.(154)

However, the majority agreed that only the adult and the rational can take part in Liān, also the blind man, but concerning the dumb, there are two opinions. Mālik and Al-Šāfi'ī said that he can take part in Liān if he can express himself or if the other one

understands him. While Abū Hanifa refused Liān from a dumb man.(155)

Where the couple made Liān, and later the man admitted that he did not tell the truth, his punishment is eighty strokes(156) as the Koran stated (24:3).

### Temporary Separation (Zihār)

The meaning of the word Zihār is when a man tells his wife "You are to me as the back of my mother". This sentence itself does not mean a divorce for the wife but she becomes unlawful to her husband and he cannot touch her and have sexual intercourse with her unless he atones for his wrong doing.(157)

The Koran stated that the man can obtain forgiveness in three ways (58:1-2-3): he has to free a slave; he can observe day time fasting for two consecutive months; he can feed sixty needy people. These three different choices of atonement must be done voluntarily by the man, otherwise his wife is forbidden to him for as long as he does not atone.

The important point about Zihār is that it must be within a time limit of only four months, because Zihār turns into 'Ilā', when the man has to divorce his wife or has intercourse with her.(158) Zihār is described as a pagan formula of divorce, it was practised in pre-Islamic times. During the Islamic period Zihār changed from having been frequently practised as a divorce to a different meaning where the man has the chance to correct his mistake.(159)

The first use of Zihār in Islamic times was by 'Aws b. Al-Ṣāmet, who used it against his wife Xawla b. Mālik b. Ṭālabā, who was also his cousin. It was reported that she appealed to the Prophet, saying that her husband used the formula of Zihār against her after she had become an old woman. The Prophet could not give her any judgment telling her "I do not have any answer for you". Then she appealed to God saying "I have



very young children, if he takes them they will get lost and if I take them with me they will starve".(160) At this time, a verse about her was revealed in the Koran (58:1). Following this verse, the Prophet told her that her husband had to free a slave. She replied that he did not have any. Then the Prophet told her that her husband should fast for two months. She said that he is an old man and cannot fast for two months. Finally, the Prophet told her that her husband should feed sixty poor people. She said that they did not have any food even for themselves. The Prophet told her "I will help him with a date basket". She added "I will also give him a basket".(161)

A similar hadith concerned Salma b. Zarīq, who had intercourse with his wife after he used Zihār against her without making atonement. When he told the Prophet that he was poor and could not carry out any of the three conditions of atonement, the Prophet gave him a date basket. Robson mentioned that the Prophet gave him a camel load of dates, telling him "Feed sixty poor people and eat the rest with your family". When he returned to his tribe he told them "You would not help me, but the Prophet was generous to me and gave me Ṣadaqa (charity)".(162)

In the Sunni Doctrines, there are slightly different opinions about Zihār, for example, Abū Ḥanifa and Al-Ṣāfi believed that the formula of Zihār can be used as the back of the mother, sisters and all the other unlawful women.(163) While Bu mentioned in his 'Ṣaḥīḥ' that Zihār is only used for the back of the mother. Therefore, if a man said to his wife in anger "You are to me as my sister" or if he said "this is my sister" it does not make any sense. However, the Prophet was not happy and hated to hear a man calling his wife "my sister". The Prophet told him "Is she your sister? So do not call her like this".(164) In addition, it is only in the Koran that the mother was mentioned saying "they are not your mothers" (58:2).

The other opinion was about atonement and how many atonements the man must make. Mālik and Al-Ṣāfi said that only one atonement is demanded from the man even if he cohabits with his wife more than once before he makes the atonement. Unlike Abū



Ḥanifa, who said that as long as the man cohabits with his wife he must make more than one atonement.(165) It is worth stating that Zihār can only be used by the man. Mālik said that there is no Zihār for women.(166) In addition, it could be for one night, one month or more. But, if the man wants to keep his wife he has to make the atonement, otherwise his Zihār will become 'Ila' at the end of four months.

### The Vow of Continence ('Ilā')

It is when a man withdraws from his wife severing his relationship with her, especially sexual intercourse. This action was practised by the Prophet himself when he had a dispute with his wives and thus he swore to stay away from all of them for one month.(167) The Koran mentioned 'Ilā' saying that it should be for not more than four months (2:225) unless the man wants divorce (2:226). Al-Šāfi'ī explained 'Ila' saying that there is no unlimited withdrawal in Islam.(168) Therefore, after four months 'Ilā', the man should decide whether he wants either to divorce or to keep his wife. No formality is required. If he chooses divorce, he can have it without any formal pronouncement, and if he wants to end his 'Ilā', he can simply have intercourse with his wife without any arrangement.(169)

There is no clear hadith from the Prophet about this point but his sunna confirms the verse of the Koran (2:226-227). He swore to stay twenty nine days away from his wives and at the end of this time he stopped his 'Ilā' without any declaration and when 'Āiṣa told him that he swore to stay one month the Prophet said "The month is twenty nine days".(170)

The Sunni Doctrines had two opinions about the position with regard to 'Ilā' after the end of four months. Abū Ḥanifa said that 'Ila' in this case is considered a divorce,(171) regarding 'Ilā' as a final (batta) divorce. "This is because the man misuses

his right, when he deliberately avoids having sexual intercourse with his wife. In this case he was unfair to her".(172) While Mālik and Al-Sāfi<sup>ī</sup> regarded the end of four months as a single divorce, the man can take back his wife during the 'idda.(173) Mālik added further opinion, saying that if the man divorced his wife at the end of four months, he can take her back, but if he did not have intercourse with her before the end of the 'idda (means if he starts another 'Ilā) he can never take her back again. Malik agreed with Abū Ḥanifa's opinion, but first he gave the man another chance where 'Ilā is a final divorce.(174)

In addition, there is another argument about the 'idda and whether or not the woman should have the 'idda after the end of four months. Some said that the woman should have her 'idda like any other divorced woman, while Ibn 'Abbās and Jāfar b. Zeid said that the woman in the case of 'Ilā does not need to have the 'idda because four months without having sex with her husband is enough for her, since she had three periods during this time. Ibn 'Abbās said that she has already had her 'idda, which is supposed to be her purification and she had this during the 'Ilā.(175)

To conclude, it can be said that 'Ilā is limited to four months only. Further to this, it was reported that the caliph 'Omar b. Al-Xattāb decided not to separate the fighting soldiers from their wives for more than four months.(176) Basically, 'Ilā is considered as an instant separation but later as merely a suspended divorce(177) unless the man has intercourse with his wife within the time limit.(178)

### Other Types of Divorce

#### 1. Al-Taxyīr

#### 2. Tamlik Al-Talāq

#### 1. Al-Taxyīr

This kind of divorce is given in the Koran (33:27-28). It was also practised by the

Prophet. It was mentioned there were many reasons for the dispute, which arose between the Prophet and his wives. Some said that his wives started to protest against him, asking him for more expensive dresses and adorning, (179) at the time when the Muslim community had an increase of wealth. (180) Another reason was mentioned by Ibn Māja. He said that the Prophet gave a present to one of his wives Zaineb b. Jahsh, who rejected it. It was narrated that Ā'isha provoked the Prophet against Zaineb, by telling him that Zaineb did not respect him, (181) but Ahmad b. Hanbal denied this reason. (181) Others mentioned that it was because of jealousy between the Prophet's wives and his concubine Māriya as Muir mentioned. (182)

However, when 'Omar b. al-Khattāb was asked about the two wives, who protested against the Prophet, he said that they were Ā'isha and Hafsa. (183) According to the Koran's verses, it seems that the main reason was asking for more maintenance (33:37-38). First, the Prophet acted ʾIlā by swearing to stay away from all his wives for one month; second, he gave them the right to choose between the life of this world with all its luxuries, and if they chose the life of this world, he would dismiss them with the benefit of payment, or they could follow God and his Apostle and inherit the life of the Hereafter as the Koran mentioned (33:27-28). At the same time, the Koran gave the Prophet the right to divorce all his wives. If they would not accept the conditions of his living (66:4) saying that the Prophet could find other more pious women. (184)

Giving his wives the right to choose divorce, (Al-Taxyir) the Prophet started with Ā'isha, and he asked her to consult her parents before she decided. She replied "Prophet of God, do you want me to consult my parents about you? Certainly I want God, his Apostle and the Life of the next world". The Prophet asked all his wives the same question and all of them chose God, his Apostle and the life of the next world. (185) That means they accepted the Prophet's conditions and subsequently stopped complaining and protesting, therefore they rejected the idea of divorce.

Concerning this event, there is more than one opinion among the companions and



the Sunni Doctrines about the type of choice (*Al-Taxyir*). For instance, 'Aīṣa said "The Prophet gave us the opportunity to choose and we chose him, therefore this was not considered a reputation".(186) In addition, 'Alī b. Abū Tālib said that when the Prophet gave his wives the right to choose between the pleasures and vanities of this life and the life of the next world, he did not let them choose divorce as an alternative.(187) Muslim in his book 'Saḥīh' mentioned that divorce is not a choice according to 'Aīṣa's hadith.(188)

Some sources reported that the Prophet withdrew from his wives without ultimately divorcing any of them(189) as 'Omar b. Al-Xattāb said.(190) Other references reported that the Prophet divorced Ḥafṣa by a single divorce, then Gabriel came to him and told him to take her back, as Stern mentioned (191). Some references supported this describing Ḥafṣa as strong minded and obstinate like her father 'Omar b. Al-Xattāb,(192) adding that she was very temperamental.(193) Ibn Māja narrated from Sūwēd b. Saād, saying that 'Omar admitted that the Prophet divorced Ḥafṣa by a single divorce.(194) He blamed her because she followed 'Aīṣa, who protested against the Prophet, reminding her that 'Aīṣa's position was very different to her own, since 'Aīṣa was well known as the dearest wife of the Prophet.(195)

Although some mentioned that the prophet divorced Sawda and Raiḥāna(196) only Ḥafṣa's name was relevant to (*Al-Taxyir*) and even her case was not clear enough to prove that choice meant immediate divorce. Muslim commented on this information about Ḥafṣa saying "It was a rumour".(197)

In the case of the Prophet's wives, they did not choose divorce, but in other cases a woman can choose divorce herself and have her mahr as the Koran stated (33:27-28). Some Sunni jurists regarded choice as a single divorce as Ibn 'Abbās, 'Omar b. Al-Xattāb, Al-Sāfi and Aḥmad b. Ḥanbal believed.(198) Others said that choice is a final divorce for the woman, this opinion was held by 'Alī b. Abū Tālib and Abū Ḥanifa. While Mālik, held another opinion, he said if the woman chose herself (means divorce)



it is a final divorce for her and if she chose to stay with her husband that means a single divorce.(199) But, in his 'Muwatta'' Mālik agreed with Ibn Ṣihāb who said that if the woman chose her husband this is not considered as a divorce for her. One should mentioned that this is an accurate information,(100) otherwise according to Mālik's first idea,(201) all the Prophet's wives had been divorced once, then he took them all back, but there is no mention of this point in the books of Hadith, except Ḥafṣa's divorce. On the other hand, Abū Yūsuf, who is Abū Ḥanīfa's disciple, had another opinion. He said that choice has to be as the woman wants, it could be triple divorce or single divorce as she decided.(202)

## 2. Tamlik Al-Talāq

It is a kind of divorce, following an agreement between the man and his wife, when he accepts to give her the right to divorce herself at anytime if she does not want to be his wife. It is not clear whether this agreement has to be in the contract of marriage or not. Levy said it has to be(203) while there is no hadith from the Prophet about this point. Others described Tamlik as a kind of promise from the man to his wife.(204) The type of Tamlik was regarded in three ways:

- a. it is a single divorce
- b. it is a final divorce
- c. as the man wanted it.

a. three of the Sunni'Imāms, Mālik, Al-Ṣāfi'ī and Ahmad b. Ḥanbal, agreed with Omar b. Al-Xattāb, Ibn 'Abbās and Ibn Maṣūd who considered tamlik as a single divorce(205) even if the woman wanted it to be a triple divorce. A good example is from the companion, Ibn maṣūd Al-'Anṣārī, when a man came to him complaining that he gave his wife the right to divorce herself if she wanted, thus she divorced herself by a triple divorce. Ibn Māsūd said that it is one divorce for her and her husband has the

right over her during the 'idda. When 'Omar b. 'Al-Xattāb was informed about this story he said "God has done it for men, it is they who deliberately change God's making, and what God has put in their hands they transferred into the hands of women". 'Omar added "It is one divorce only".(206)

b. other jurists, like Abū Hanīfa,(207) held 'Al-Ḥasan 'Al-Baṣrī's opinion, which was unique and described as the only one which considered Tamlik as a triple and final divorce. Therefore, the couple need a "Muḥallil" to come back to each other.(208) It was mentioned that 'Al-Baṣrī based his opinion on a hadith from Abū Huraira, who transmitted it from the Prophet, but some references described this hadith as unsure.(209)

c. some companion such as Ibn 'Omar considered the type of Tamlik to be in accordance with the man's wishes. If he wanted it to be either a triple or a single divorce, it should be as he chooses as divorce is the right of the man. Although he gave his wife the right of Tamlik(210) Mālik believed that it is the man who decides the type of Tamlik, not the woman, saying "This idea is the best I ever heard and I like it".(211)

However, Mālik explained in his book 'Al-Muwatta'. Ibn 'Omar's opinion, who said that the woman, can choose the type of Tamlik, whether a triple or a single divorce, unless her husband denies saying that he wanted it to be a single divorce.(212) Mālik reported that a man came to Ibn 'Omar telling him that he gave his wife the right of divorce "tamlik", thus she divorced herself. The man asked Ibn 'Omar about the type of this divorce Ibn 'Omar, said "It is as she wanted it". The man said "Please 'Aba 'Abd 'Al-Raḥmān do not do it to me". Ibn 'Omar replied, "I have not done it, you have done it yourself".(213)

Some described Tamlik saying "It is a transfer whatever the man has by right to the woman, therefore she is able to decide the type of divorce, because when he gave her the right to Tamlik, he gave her the freedom to act as she likes".(214) Saīd b. 'Al-Musayyab mentioned that the woman holds the right to Tamlik while she still lives

with her husband as long as she does not want to use this right. Also she can give back this right to her husband.(215) Mālik said that the man should respect his promises about the Tamlīk,(216) unlike Al-Šāfi'ī who mentioned that the man can change his mind and take back his right of Tamlīk from his wife, unless she has used it and divorced herself.(217) Abū Ḥanīfa mentioned a serious consideration concerning the woman who has the right of divorce. He said that she cannot inherit from her husband, while Mālik said that she can inherit from her husband, but he cannot inherit from her. Ibn Rušd regarded this opinion as strange and unacceptable.(218)

Mentioning the two types of divorce, choice (Al-Ṭaxyīr) and Tamlīk, Al-Šāfi'ī said that both of them are the same and there is no difference between them, because they depend on the man's decision as to whether they are to be single or triple divorces. This is unlike Mālik, who distinguished between them saying that choice is a triple divorce and having the right is a single one.(219) In addition, in the case of choice the man gives his wife the right of choosing to divorce herself or to stay with him. This is in case the couple were involved in any kind of dispute as happened between the Prophet and his wives. Also, the woman can choose divorce when her husband is sick or mad, as Saīd b. Al-Musayyab said.(220)

Tamlīk is a kind of agreement between the man and his wife, who can have the right to divorce herself without a limited time for any reason she wants. Some mentioned an example saying she could use this right if her husband marries another woman.(221) As was reported, the woman can keep this right of Tamlīk until she decides to use it,(222) but, Abū Yūsuf said that the man can fix a specific time for his wife by giving her the right of Tamlīk for two days only and if she does not use it, she loses it.(223)

However, some jurists rejected this type of divorce saying that the right of divorce by women is not acceptable, because the right of divorce is with the hand of the man and is not acceptable for it to be in the hand of the woman.(224)



## The Reasons for Divorce for the Woman

There is no single reason for divorce and the man can pronounce it without conditions. He is never asked why. This right is not mentioned either in the Koran nor in the traditions, but is supposed to be generally accepted. In the case of divorce, the woman cannot force her husband to divorce her except that under some circumstances, she can get a divorce even without his consent, following the Sunna of the Prophet.

a. the Prophet gave an important reason for the woman having the right to ask for divorce that is if her husband married her without her consent.(225) The Traditions mentioned that the Prophet dissolved many marriages for a virgin and a non-virgin woman whose father or uncles or any of their relatives arranged their marriage without their acceptance.(226) Ibn 'Omar, reported that Zaineb b. 'Ouman b. Mazun was an orphan whose uncle arranged her marriage and forced her into it. When she complained to the Prophet he revoked her marriage. In this case the term of divorce was used.(227)

It is worth mentioning that the majority of the women whom the Prophet provoked their marriage were mature and non-virgin.(228) Also, as a Sunna, the father as a Wali can revoke his daughter's marriage. This relates to the information, which stated that 'Ausa arranged the marriage of her niece, Hafsa, Abu Baker's granddaughter while the father was absent, but when he returned he dissolved this marriage.(229)

### b. physical inability

In the Koran and the traditions, there is no mention of how long a woman has to wait for her husband, who cannot consummate the marriage, which was regarded as serious enough for the woman to ask for divorce.

The Sunni jurists had different opinions about this matter. Said b. Al-Musayyab said that the maximum time for the man, who cannot have intercourse with his wife, has to be one year. After that the woman can legally ask for divorce.(230) Abu Hanifa, stated that the woman should wait nearly one hundred or one hundred and twenty years



to separate from her husband who suffers from physical inability.(231) This means that Ḥanīfīte's school did not consider this reason as sufficient for demanding divorce from the woman. Mālik explained this point saying that the time limit did not apply to the man, who had had intercourse with his bride once then left her, because this case is considered as 'Ilā' and not as a physical disability.(232) But, if the man could not have intercourse with his wife, she must wait for four years before she asks for divorce.(233) Mālik mentioned that he asked Ibn Ṣihāb, who was one of the Sunnī jurists, about the time limit for the man. Is it from the day of the marriage or from the day when his wife sued him to the Sultan, asking for divorce? Ibn Ṣihāb said "from the day she sued him".(234) Aḥmad b. Ḥanbal and the Ṣī'īte rite held Mālik's opinion, regarding four years as the time limit. While Al-Sāfi'ī gave the woman seven years before she could ask for separation.

Same references said that this reason was not considered as giving full rights to the woman, because there was no hadith from the Prophet about this subject.(235) Although there was no direct hadith the Sunna considered this the right of the woman.

c. Mālik added another reason for the woman, when he said that she can ask for the dissolution of the marriage because of her husband's madness,(236) as Ibn Al-musayyab said.(237) In addition, Mālik mentioned a vital point saying that if a man hurt his wife and forced her to ask for Xal', this is a reason for divorce and not Xal'.(238)

d. The successor, Sa'īd b. Al-Musayyab mentioned another reason for the woman, saying if a man absents himself for a specific time and his wife knows where he is she has to wait for only one year and after that she can ask for a divorce.(239)

e. another reason for asking for divorce was that if the husband marries another woman.(240) This point is based on the Sunna of the Prophet, who asked 'Alī b. Abū Tālib, his son-in-law, to divorce his daughter, Fātima, if 'Alī decided to

marry b. Abi Jahl as well as Fāṭima.(241)

f. some mentioned that the woman can ask for a divorce if her husband refuses to pay her the mahr, which was fixed in the marriage contract.(242) This point is not clear enough, but it should be mentioned that the prophet described this type of man as an adulterer (Zānī).<sup>v</sup>(243) Furthermore, Mālik and Al-Ṣāfi'ī mentioned that the woman can refuse to give herself to her husband till he pays her the mahr, but they did not say if she can ask for a divorce.(244)

g. another reason for divorce, depending on the demand of the woman, is when the man is unable to support and maintain his wife. Saīd b. Al-Musayyab and Al-Ṣāfi'ī<sup>v</sup> described this reason saying that it is a Sunna from the Prophet.(245) Mālik held this opinion saying "This is what the savants beleived".(246) On the other hand, Al-Zūhri said that this reason should not be a cause for separation, and Al-Bayḥaqī supported this opinion saying that separation for this reason is 'Omar's Sunna not the Prophet's Sunna.(247)

### The Reasons for Divorce for the Man

The man has the right to divorce his wife without reason or plan and he does not need to explain why. However, it can be recognised that in certain cases the Prophet himself divorced and allowed it in cases of unfaithfulness, bad behaviour and illness. Although he described divorce saying "of the things which are lawful the most hateful to God is divorce".(248)

a. Ibn 'Abbās narrated that a man complained to the Prophet saying that his wife did not mind being touched by anybody. The Prophet told him "Make her a stranger to you". The man said "I am afraid, I might be seduced by her". The Prophet's verdict was "then feel the pleasure of her company". Al-Nasā'ī refused this hadith saying that it is not correct.(249)

b. it was reported that a man called Laqīt b. Ṣabīra told the Prophet that his wife is aggressive. The Prophet said to him "Divorce her". But, when the man informed the Prophet that he had a son by her, the Prophet advised him to give her a command to punish her leniently, telling him "Do not beat her as you would beat your slave girl".(250)

c. in his farewell speech, the Prophet mentioned many points regarding the rights of a man over his wife. One was the sexual needs of a man.(251) This was considered as a good reason for divorce. Al-Buxārī, mentioned that the Prophet divorced a woman because she disliked having intimacy with him(252), her name was 'Umīma b. Ṣarḥabīl. Also the Prophet allowed divorce from the non-virgin bride, whose groom discovered that she was not a virgin and she got the mahr as the Prophet stated.(253)

d. it was well known that the Prophet himself divorced two women before he had intercourse with them. The first was 'Ibnat Al-Jūn Al-Kilābiya, because of her bad behaviour.(254)

e. the other woman was from bani Kilab also. He divorced her because of illness, after he saw some white spots on her body.(255) 'Omar b. Al-Xattāb made it a sunna, saying that any man who married a woman, suffering from illness, and he divorced her after he had intercourse with her, should pay her all her mahr.(256)

f. a further reason was mentioned in the light of the Sunna of the Prophet. The man might divorce his wife in order to please his father. It was reported that Ibn 'Omar b. Al-Xattāb married a woman whom he loved very much, but his father 'Omar b. Al-Xattāb did not like her. When Omar mentioned to the Prophet he ordered Ibn 'Omar to divorce his wife in order to please his father.(257) Abū Al-Darā narrated that he heard the Prophet saying "The best way to Paradise is to please your father".(258)



## Different Pronouncements of Divorce

Divorce has different formulas, the man can use against his wife. Some of these formulas are considered as a triple divorce others as a single one, following the Sunna or the practice of the Prophet, and are generally agreed.

a. 'Alī b. Abū Tālib said that if a man said to his wife "You are forbidden to me" that means a triple divorce and is irrevocable. Mālik liked this opinion, this sentence is regarded as an original formula for divorce.(259)

b. it was reported that the Prophet divorced his bride 'Omra b. Al-Jūn Al-Kilābiya because when the Prophet tried to have intercourse with her, she told him "I take refuge in God from you", (260) the Prophet told her "You are already tormented by the power of God".(261) He added "Follow your family". (262)

c. another formula of divorce was transmitted by Yahya b. Saād. It is when the husband says to his wife's family "Take your daughter" this means a single divorce.(263)

d. 'Omar b. Al-Xattāb was informed that an Iraqi man said to his wife "Your pregnancy has made you a stranger to me". 'Omar asked the man to meet him in Mecca during the pilgrimage. When he met the man he asked him what he meant. The man said "I want a final divorce". 'Omar said to him "It is as you wanted".(264)

e. Abū Yūsuf, mentioned different formula for divorce such as "Get out", "Go out", "Cover yourself", "You are free", "Hide yourself". All these formulas depend on the man's decision, whether he wants a single or a triple divorce as Abū Yusuf mentioned.(265)

f. Ibn Šihāb mentioned another formula of divorce. It is when a man says to his wife we are free from each other. This is considered a triple divorce batta.(266)

g. Ibn 'Omar added yet another formula of divorce. It is when a man says "you are free". Ibn 'Omar regarded it as a triple divorce(267), while Al-Buxārī



mentioned "It is as the man wants".(268)

h. sometimes the man threatens his wife with divorce if she does certain things and the type of divorce depends on the man's announcement. For instance, Nāfa' narrated that a man threatened his wife with triple divorce if she left the house. Ibn 'Omar said if she did that it meant a final divorce for her. Qutāda, said that the man might say to his wife "If you become pregnant you are divorced by a triple divorce". Others mentioned that the man might say to his wife "I do not need you anymore" the type of divorce depends on the man.(269) Abū Yūsuf said that the man can say to his wife "If you are not pregnant you are divorced.(270) Also, the man can simply say to his wife "I am unlawful for you".(271)

i. Mālik added an unusual sentence of divorce saying that the man can divorce his wife by saying "Your hand, or your foot or your hair is divorced". While Abū Ḥanīfa said that the man can divorce his wife by referring to main parts of the body such as the head, heart or private parts.(272)

However, there were different explanations among the companions and the Sunnī doctrines regarding the types of divorce. Some were fixed while others gave the man the right to decide whether he wanted a single or a triple divorce. It is clear that the Prophet has paid careful attention to the words the man declared and not what he thought.(274)

### **Lawful and Unlawful Divorce**

Some references mentioned that "Divorce is too easy to get".(275) In general, this may be true, but there are some rules for lawful and unlawful divorce and the man should be aware of them:

1. The man cannot divorce his wife during a particular time as the Prophet stated.

Ibn 'Omar reported from the Prophet saying "A man cannot divorce his wife

during her period. If he did so he should take her back and keep her in his house until she is purified, then she must have another period then become purified again. Afterwards he can divorce her before he touches her. This is the 'idda which was ordered by God for any divorced woman".(276) Nāfa', narrated that Ibn 'Omar divorced his wife while she was not purified. The Prophet was angry and he ordered him to take back his wife until she became purified or pregnant,(277) saying "It is an ignorance and stupidity".(278) Ibn 'Omar, explained saying "The divorce of the Sunna is to divorce the woman while she is purified without having sex with her and in the presence of two witnesses.(279)

2. The second rule for lawful divorce is that it should be announced by either a mature man, an understanding and a rational and sane person.(280)

### Unlawful Divorce

1. Ibn Šihāb reported from the Prophet saying "There is no lawful divorce for a minor boy till the age of maturity. The sleeping man until he wakes up and for a mad person till he becomes normal". The Prophet did not accept their divorce regarding it as illegal.(281) Abū Huraira reported a similar hadith from the Prophet saying "Any divorce is valid and lawful except the divorce of the mad and the idiot, who has lost his mind".(282)

2. Another unlawful kind of divorce was mentioned by the Prophet saying "My community is not to be blamed for any mistake, forgetfulness or for what they are forced to do".(283) This related to divorce, means that there is no divorce by force and even if the man pronounced it his wife is still lawful for him. The majority of the jurists of the Sunna held this hadith such as; 'Omar b. Al-Xattāb, Ibn 'Abbās, Ibn 'Omar Mālik and Al-Sāfi ī. Furthermore, 'Alī b. Abū Tālib supported it(284), unlike Abū Ḥanīfa, who accepted divorce by force.(285)

3. 'Āiṣā reported from the Prophet saying "There is no divorce in ʾIḡlāq" and no release of a slave in the case of anger or force". Abū Dāwūd, explained the word ʾIḡlāq saying "I think it means in anger".(286) While Ibn Māja said it is great anger and he added that the majority know it as force.(287) Others said it is a combination of anger and force at the same time.(288)

4. Regarding the divorce of a drunken man, there is no specific Hadith from the Prophet neither did the Koran mention anything about divorce from a drunken man (4:42) saying "Do not pray when you are drunk".

Among the Sunni jurists, there is a difference of opinion about this type of divorce. For instance, the Caliph 'Oṭmān b. 'Affān regarded the divorce of a drunken man as unlawful, because he should be recognised as insane while unable to act properly.(289) Al-Sāfi ḥ held this point(290), while others like Saīd b. Al-Musayyab said that the divorce of the drunken man is lawful and valid because if he kills anyone he will be punished. Mālik adopted this opinion saying "It is our Sunna",(291) adding that a drunken man has full responsibility in divorce and murder, but in the case of marriage or a sale this is not the case. While Abū Ḥanīfa, regarded the drunken man as fully responsible for everything he does.(292) These groups refused to regard a drunken man as being out of his senses and held him as fully responsible.

5. The Prophet considered divorce a serious event, therefore, he was not pleased with the man who always divorces and then takes back his wife just for fun and sometimes to hurt her feelings. Because of that the Prophet declared that "who divorced his wife, just for fun, his divorce is lawful".(293) Abū Huraira narrated from the Prophet saying "there are three things: which whether done in fun shall be considered serious and effective, namely; marriage, divorce and taking back a wife".(294)

6. The Caliph 'Oṭmān b. 'Affān mentioned a new belief concerning the divorce of the sick man. Ibn Ṣihāb narrated that 'Abd Al-Raḥmān b. 'Awf, who was a very rich man, divorced his wife triple while he was very ill and after a short time he died. 'Oṭmān b.



‘Affān allowed his wife to inherit from her husband after the end of her ‘idda.<sup>(295)</sup> Also, ‘Oṭmān allowed the wives of Ibn Makmal to inherit from him, because he divorced them during his sickness.<sup>(296)</sup> Ibn Ṣihāb<sup>v</sup> regarded this as a Sunna saying that "if a man divorced his wife while he was sick, a short time before he died, she has the right to inherit from him".<sup>(297)</sup> Mālik said that if the man divorced his bride before he had intercourse with her, a short time before he died, she has the right to have half of her mahr as the Koran said (2:236) and to inherit from him as Mālik mentioned.<sup>(298)</sup> The reason behind this judgment is that sometimes the man decides to divorce his wife in order to prevent her from inheriting as in the case of illness. However, Abū Hanīfa and Al-Ṣāfi<sup>v</sup> reject this right for the woman after the ‘idda while Ibn Ḥanbal accepted if the widow remains unmarried\*.

### The Forms of Divorce

There are three ways for a man to announce divorce:

- a. by different sentences of divorce (see above)
- b. by writing
- c. by a gesture

b. by writing, if a man writes his divorce in his own hand, it is a legal divorce. Also, he can divorce his wife by asking another man from his relatives or his friend to divorce his wife on his behalf: that means that the man can give "Tawkīl" to his representative to act instead of him.<sup>(299)</sup> Abū Baker b. Ṣayba<sup>v</sup> said that the man can divorce his wife while he is away from her. It was reported that a woman called Fāṭima b. Qais was divorced when her husband was away in another country and the Prophet did not refuse this divorce.<sup>(300)</sup>

c. by a gesture, a dumb man can divorce his wife by a sign and also by writing, if he can write.<sup>(301)</sup>



#### Chapter Four - Notes

1. Mālik, Ch.25, H70, p.582, Book No. 29.
2. Ibn Rushd, p.51.
3. Al-Šāfi'ī, Kitāb Ahkām Al-Koṛān, p.200.
4. Robson, p.711.
5. Ibn Rushd, p.76.
6. Op cit., p.78.
7. Op cit., p.70-71.
8. Sābiq, Al-Sayed, Fiqh Al-Sunna, p.270-275.
9. Ibn Rushd, p.70.
10. Bu, Ch.24, p.480.
11. Mālik, Ch.20, H25, p.576.
12. Ibn Rushd, p.71.
13. Ibid.
14. Ibn Rushd, p.70.
15. Tir, Ch.16, H1192, p.497.
16. I.M., Ch.1, H2017, p.650.
17. V.R. & L. Bevan Jones, p.148. Sābiq, p.267.
18. Robson, p.696.
19. Abū Dāwūd, Ch. 717-H2200, p.351.
20. Muslim, Ch.2, H16, p.1099.
21. Op cit., Ch.2, H15, p.1099, Book No. 18.
22. Ibid.
23. Sābiq, p. 270.
24. Op cit., p.269.
25. Op cit., p.272.
26. Op cit., p.268-269.
27. Tir, Ch.2, H1177, p.480.
28. Sābiq, p.269.
29. Robson, p.698.
29. Mālik, Ch.1, H1, p.550.
30. Op cit., Ch.1, H1-2-3, p.550.
31. Muslim, Ch.6, H36-41, p.1114-1116.
32. Robson, p.708.
33. Stern, p.137.
34. Muslim, Ch.6, H36, p.1114.
35. Op cit., Ch.6, H38, p.1115.

36. Stern, p.139.
37. Abū Dāwūd, Ch.747, H2293, p.386.
38. Muslim, Ch.7, H53, p.1121.
39. Abū Dāwūd, Ch.747, H2292, 93, p.386.
40. Bu, Ch.41, p.479.
41. Abū Dāwūd, Ch.747, H2286.
42. Op cit., Ch.747, H2282, p.383.
43. ibid.
44. Abū Dāwūd, p.383.
45. Muslim, Ch.6, H41, p.1117.
46. ibid.
47. Tir, Ch.5, H1180, p.484.
48. Al-Šafi'ī, Aḥkām Al-Korān, p.255.
49. Abū Dāwūd, p.383.
50. Sābiq, p.183.
51. Schacht, J., The Legacy of Islām, p.96.
52. Abū Dāwūd, p.383.
53. Mālik, Ch.23, H68, p.58.  
Al-Šafi'ī, Aḥkām Al-Korān, p.262.
54. Tir, Ch.5, H1180, p.484.
55. Muslim, Ch.6, H43, p.1118. His first name was 'Omar or 'Abd allāh
56. Mālik, Ch.23, H68, p.580-581.
57. Op cit., Ch.23, H67, p.581.
58. Al-Našā'ī, p.81.
59. Tir, Ch.11, H1175, p.478-479.
60. Muslim, Ch.6, H41, p.1117.
61. Mālik, Ch23, H78, p.581.
62. Ibn Rushd, p.79.
63. Op cit., p.77.
64. I.M., Ch.6, H2026, p.653.
65. Ibn Rushd, p.47.
66. Mālik, Ch.16, H44, p.573.
67. Op cit., Ch.15, H37, p.570.
68. Op cit., p.570 margin "narrator, means that he narrates stories and wisdom, but he ignores Fiqh".
69. Mālik, Ch.15, H38, p.570.
70. Op cit., Ch.15, H39, p.570.
71. Op cit., Ch.11, H31-32, p.564, margin.

72. Stern, p.130.
73. Abū Dāwūd, p.361 margin.
74. Sābiq, p.285.
75. I.M., Ch22, H2056, p.663.
76. Op cit., Ch.22, H2057, p.663.
77. Stern, p.130.
78. I.M., p.663, "a = Jamīla b. Sallul for religious reason", b = Habība b. Sahl because he was ugly,  
c = Marīan al-muḡāliya.
78. Stern, p.131, a = Habība b. Sahl could not cope with him, b = Jamīla b. Sallul because he was ugly  
and for religious reason.
79. Tir, Ch.3, H1178, p.448.
80. Robson, p.697, Sabiq, p.298.
81. Tir, Ch.11, H1186, p.492.
82. Ibn Rushd, p.56.
83. Mālik, Ch.11, H31, p.564.
84. Sābiq, p.298.
85. Abū Dāwūd, p.360.
86. Ibn Rushd, p.55.
87. Mālik, Ch.11, H22, p.565, Al-Šafi ĩ, p.87.
88. Watt, p.228.
89. Ibn Rushd, p.56.
90. Mālik, Ch.11, H32, p.565.
91. Stern, p.131.
92. Abū Yūsuf, p.47.
93. Mālik, Ch.11, H32, p.565.
94. Ibn Rushd, p.57.
95. Abū Dāwūd, Ch.725, H2228, p.361.
96. Ibn Rushd, p.57.
97. Sābiq, p.306.
98. Ibn Rushd, p.55.
99. Sābiq, p.301.
100. Ibn Rushd, p.57.
101. Sābiq, p.301.
102. Mālik, Ch.12, H33, p.565 + Ibn Rushd, p.56.
103. Abū Dāwūd, Ch.725, H2229, p.361.
104. Mālik, Ch.12, H33, p.565.
104. Tir, Ch.11, H1186, p.492.

- 105.I.M., Ch.23, H2058, p.664.
- 106.Abū Dāwūd, ch.725, H2227, p.360.
- 107.Mālik, Ch.11, H31, p.564.
- 108.Stern, p.134.
- 109.Ibn Rushd, p.56-57.
- 110.Robson, p.697.
- 111.Ibn Rushd, p.57.
- 112.Bu, Ch.13, p.465.
- 113.Ibn Rushd, p.57.
- 114.Ibid.
- 115.Muslim, Ch.18, H14, p.1139, Book No. 19.
- 116.Bu, Ch.29-30, p.474, Book No. 68.
- 117.Sābiq, p.321.
- 118.Abū Dāwūd, Ch.1070, H2907, p.172, Book No. 12.
- 119.Al-Šāfi'ī, Akhām Al-Koḥān, p.37.
- 120.Bu, Ch.30, p.474.
- 121.Muslim, Ch.3, p.1130.
- 122.Bu, Ch.30, p.474.
- 123.I.M., Ch.31, H2599, p.867, Book No. 20.
- 124.Sābiq, p.321.
- 125.Karīm, p.696.
- 126.Mālik, Ch.13, H35, p.567.
- 127.A.b.H., 6 : 4477.
- 128.Mālik, Ch.12, H34, p.567.
- 129.Al-Šāfi'ī, p.240.
- 130.Sābiq, p.323.
- 131.Bu, Ch.31, p.475.
- 132.Op cit., Ch.36, p.477.
- 133.Robson, p.701.
- 134.Ibid.
- 135.Abū Dāwūd, p.370.
- 136.Mālik, Ch.13, H34, p.566-567.
- 136.Bu, Ch.27, p.473.
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141. Abū Dāwūd, p.370.
142. Bu, Ch.32, p.476.
143. Sābiq, 9, 323-324.
144. Abū Yūsuf, p.49, "She can inherit if he cursed her while he was sick then died".
145. Abū Dāwūd, Ch.1070, H2907, p.172.
146. A.b.H. 4 : 2199.
147. I.M. Ch.27, H2070, p.669.
148. A.b.H. 4 : 2199.
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150. Robson, J. p.702.
151. Al-Šāfi ī, Akhām Al-Korān, p.239.
152. I.M. Ch.217, H2071, p.
153. Sābiq, p.319.
154. Ibn Rushd, p.98.
155. Op cit., 98
156. Karīm, p.696.
157. Mālik, Ch.8, H20, p.559-560. Al-Šāfi ī, p.234 (Zihār, from back Zahr).
158. Levy, R, p.238.
159. Op cit., p.238 & Al-Šāfi ī, p.234.
160. Sābiq, p.310.
161. Ibn Rushd, p.86.
162. Abū Dāwūd, Ch.724, H2213, p.356 "The narrow mind and bad opinions among you and the generous and good opinion from the prophet who gave me Sadaqa".
163. Sābiq, p.310.
164. Abū Dāwūd, Ch.723, H2210, p.355.
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172. Sābiq, p.187.
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175. Ibn Rushd, p.85.
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179. Al-Našā'ī, p.38.
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183. Muslim, Ch.4-5, H22, 29, p.1103.
184. Op cit., Ch.4, p.1103.  
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186. Muslim, Ch.5, H24, p.1103.
187. A.b.H., 2 : 588.
188. Muslim, Ch.4, H22, p.1103.
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190. Muslim, Ch.5, H31, p.1108.
191. Stern, p.149.
192. Sawar, H.G, *Muhammad the Holy Prophet*, p.22.
193. Āli, M.M., *The Life of Muḥammad*, p.238.
194. I.M., Ch1, H216, p.650.
195. Muslim, Ch.5, H31, 34D. 1110-1111-1108.
196. Stern, p.147.
- [Sawda, some said that the prophet divorced her by an irrevocable divorce, while most of the books of Hadith mentioned that she gave her day with the prophet to 'Āiṣa. Raiḥāna, her position was not clear. The majority reported that she remained as a concubine. She did not convert to Islam until her later days before the passing of the prophet (Sābiq, p.653).
197. Muslim, Ch.5, Book No.
198. Tir, Ch.4, H1179, p.483.
199. Sābiq, p.282.
200. Mālik, Ch.10, H30, p.563.
201. Sābiq, p.282.
202. Abū Yūsuf, p.42.
203. Levy, p.243.
204. Sābiq, p.284.
205. Levy, p.284.
206. Ibn Rushd, p.59.
207. Sābiq, p.282.
208. Abū Dāwūd, Ch.720, H2204, p.353.

- 209.Ibn Rushd, p.60.
- 210.Tir, Ch.3, H1178, p.481.
- 211.Mālik, Ch.4, H13, p.554.
- 212.Op cit., Ch.3, H11, p.553.
- 213.Op cit., Ch.3, H10, p.553.
- 214.Ibn Rushd, p.60.
- 215.Mālik, Ch.5, H16, p.555.
- 216.Sābiq, p.284.
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- 220.Mālik, Ch1, H28, p.563.
- 221.V.R. & L. Benan Jones, p.162.
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- 225.Al-Nasā'i, p.112.
- 226.I.M. Ch.12, H1873-1874, p.602-603.
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- 230.Mālik, Ch.28, H74, p.585.
- 231.Āli, M.M., p.555.
- 232.Mālik, Ch.28, H75, p.586.
- 233.Āli M.M., p.555.
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- 238.Op cit., Ch.11, H32, p.565.
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- 242.Al-Nasā'i, p.525.
- 245.Op cit., p.469.
- 246.Mālik, Ch.29, H82, p.589.

247. Al-Nasā'ī, p.470.  
 248. Abū Dāwūd, Ch.810, H2177, p.342.  
 249. Op cit., Ch.661, H2049, p.297.  
 250. Robson, p.692.  
 251. Qutub, M., Islām, p.205.  
 252. Bu, Ch.3, p.459.  
 253. Abū Dāwūd, Ch.695, H2131, p.325.  
 259. Al-Nasā'ī, p.157.  
 255. Op cit., p.72.  
 256. Mālik, Ch.3, H9, p.526.  
 257. Tir, Ch.13, H1189, p.494.  
 258. I.M., Ch.36, H2089, p.675.  
 259. Mālik, Ch.2, H6, p.552.  
 260. V.R. & L. Bevan Jones, p.149.  
 261. I.M., Ch.11, H2037, p.657.  
 262. Al-Nasā'ī, p.39.  
 263. Mālik, Ch.2, H8, p.552.  
 264. Op cit., Ch.5, p.551.  
 265. Abū Yūsuf, p.43.  
 266. Mālik, Ch.2, H2, p.552.  
 267. Op cit., Ch.2, H7, p.552.

"You are free to go anywhere and do anything you want, this sentence is used for women and camel".

268. Bu, Ch.9, H461.  
 269. Op cit., Ch.11, H464.  
 270. Abū Yūsuf, p.40.  
 271. Op cit., p.38-45.  
 272. Ibn Rushd, p.66.  
 273. Bu, Ch.12, p.464.  
 274. Tri, Ch.8, H1183, p.449.

(The Koran mentions three words - a. divorce, b. separation, c. release - to describe the subject of divorce as Al-Sāfi'ī said (Sābiq, p.253).

275. Hughes, p.88.  
 276. Muslim, Ch.1, H2, p.1094.  
 277. Abū Dāwūd, ch.711, H2181, p.343.  
 278. I.M., Ch.2, H2022, p.651.  
 279. Bu, Ch1, p.458.



- 280.Ibn Rushd, p.67.
- 281.I.M., Ch.15, H2041-2042, p.658-659 & Hughes, p.88.
- 282.Tir, Ch.15, H1191, p.496.
- 283.I.M. Ch.16, H2042, p.558.
- 284.Ibn Rushd, p.67.
- 285.Sābiq, p.248.
- 286.Abū Dāwūd, Ch.715, H2193, p.348.
- 287.I.M., p.660, margin.
- 288.Sābiq, p.249.
- 289.Op cit., p.248.
- 290.Ibn Rushd, p.68.
- 291.Mālik, Ch.29, H82, p.588.
- 292.Ibn Rushd, p.68.
- 293.I.M., Ch.1, H2018, p.650.
- 294.Abū Dāwūd, Ch.716, H2194, p.348.
- 295.Mālik, Ch.16-H40-42, p.571.
- 296.Op cit., Ch.16, H41, p.572.
- 297.Op cit., Ch.16, H44, p.572.
- 298.Op cit., p.573.
- Ibn Rushd, p.68-70.
- 299.Hughes, p.88.
- 300.I.M., Ch.4, H2024, p.652.
- 301.Bu, Ch.25, p.972.

## CHAPTER FIVE

### THE WIDOW (Al-'Armala)

According to Ibn Qutaiba a widow is a woman who has no husband, in other words, whose husband is dead or who is a spinster or she has left him. Her status as a widow is linked with the fact that she is poor and has lost her source of income with the death of her husband. The expression "armal Al-Zāwi" means, therefore, the loss of provision.<sup>(1)</sup>

Thus, the word widow "armala"<sup>(2)</sup> in the Hadith denotes a wider meaning, implying that she is a woman who needs help and support, and hence the Prophet and his companions were concerned about her protection and well-being.

Al-Miqdām reported that the Prophet said "I am nearer to every believer than himself, so if anyone leaves a debt or a helpless family I shall be responsible".<sup>(3)</sup> In addition, the Prophet encouraged Muslim people to support and help the widow, saying that their kindness would be rewarded and that it is a religious duty for any Muslim.<sup>(4)</sup> 'Ā'īṣa, the wife of the Prophet, described the widow as a helpless person who lost her shelter when she lost her husband.<sup>(5)</sup> Furthermore, 'Omar b. Al-Khaṭṭāb, the second Caliph, showed his concern for the widow as it was reported that he swore if he could, he would help the widows of Iraq till they did not need any help from any man.<sup>(6)</sup>

In the Hadith there are many rules and conditions which constitute duties and rights for the widows for themselves and for Muslim society. Their duties are: mourning and observing the waiting period (Idda), whereas their rights are; marriage, inheritance, dower and maintenance.

### The mourning of the widow (ʿIdād)

Mourning is one of the main duties of the widow towards her dead husband. In the Hadith, it is clear that the time limit of mourning for the widow, is the same as her waiting period, in other words, it is four months and ten days.<sup>(7)</sup> The majority of Sunni doctrines say that she should go into mourning from the date of the death; others, like Ḥazrat ʿAlī (Siḥa) stated that her mourning should begin from the date when the widow comes to know of the death of her husband.<sup>(8)</sup>

The main Hadith on this subject were transmitted by Zaineb bint Abī Salma, who mentioned three traditions ascribed to the wives of the Prophet, from her mother, ʿUmm Salma, from Zaineb Bint Jaḥṣ and from ʿUmm Ḥabība,<sup>(9)</sup> in addition to a hadith which was transmitted by ʿUmm ʿAtīya.<sup>(10)</sup>

Zaineb b. Abī Salma reported that ʿUmm Ḥabība and Zaineb b. Jaḥṣ related that the Prophet said "It is not lawful for a woman, who believes in Allāh and the Last Day, to observe mourning for any person who has been dead more than three nights, except for four months and ten days in the case of a husband".<sup>(11)</sup> According to this hadith, ʿUmm Ḥabība observed mourning for three nights when her father Abū Sufyān died. Also Zeinab b. Jaḥṣ went into mourning for only three nights when her brother died and both umm Ḥabība and Zaineb b. Jaḥṣ applied perfume after three days<sup>(12)</sup>.

The third hadith, which was transmitted by Zaineb b. Abī Salma, was from her mother, ʿUmm Salma, the Prophet's wife, who reported that a woman came to the Prophet telling him that her daughter, who had recently lost her husband, was suffering from eye trouble and she asked the prophet if they could apply collyrium to it. The Prophet replied "No" three times then he said "It is four months and ten days".<sup>(13)</sup>

According to the Hadith, the widow should avoid any kind of make-up while mourning<sup>(14)</sup>. Whatever the reason, Mālik said that "the widow should avoid everything, which could encourage cohabitation by displaying her charms".<sup>(15)</sup> However, there is another hadith regarding the medical reason. It was transmitted by

Umm Salma, who reported that the Prophet allowed the widow to use a special collyrium during the night because of illness in her eyes, but on condition that she removed it during the day. Mālik said that the widow is allowed to use collyrium, on medical ground even if it is with perfume, but he prefers it without perfume and only when absolutely necessary, saying that "Religion is to make things easy".(16)

To support this opinion, there is a hadith from 'Umm Salma who said that the Prophet visited her while she was mourning for her husband, Abī Salma. The Prophet noticed that she applied ointment containing no perfume, but he recommended her to apply it only at night and to remove it during the day time, because it made her look younger. Furthermore, she reported that the Prophet ordered her not to comb her hair and he told her to use late tree leaves and to smear her head copiously with them.

Another hadith was transmitted by 'Umm Salma, which states that the Prophet said "Widows should not wear garments dyed with Zāfarān or red or wear jewels and use collyrium in their eyes".(117) The same hadith was mentioned by Abū Dāwūd, who reported that 'Umm Salma reported that the Prophet said "Widows should not wear sky-coloured robes or dyed clothes or ornaments or dye their hair or apply eye-paint".(18) 'Umm 'Aṭīya reported another hadith which refers to the Prophet as having said that "widows should not wear a dyed garment except one of the types made of dyed yarn".(19) Mālik added that the widow who goes into mourning for her husband should not wear any rings or bracelets (ankle chains) nor should she wear any brightly coloured dresses, but only black.(20) However it was reported that the Prophet preferred white clothes to be worn by dead people and their relatives.(21)

As for the use of perfumes and toilet things or anything that makes her look younger and attractive, there is a hadith by the Prophet who allowed the widow to use perfumes of costus (azfār) in small quantities when she was purified after her period.(22)

Zaineb b. Abī Salma gives some idea of the mourning of the widow in



pre-Islamic times. She says that the widow used to go into mourning for one year by staying in a dirty house and wearing the worst dress and never touching perfumes during this period. At the end of the year, she would fetch any kind of animal for example a sheep, a bird or a donkey and then put her hand on the animal several times. She then used to clean herself with water until she became as pure as silver which signified the end of her mourning when she could marry again.(23)

The same story, with certain differences is found in Muslim's 'Saḥīḥ' and Mālik's 'Muwatta''. It has been reported by Zaineb b. Abī Salma that the widow used to go into mourning in a small cottage and didn't perform or wear perfumes, and at the end of the year, she would sacrifice an animal.(24) Mālik says that she would smear her skin with the blood of this animal, although Ibn Wahab says that she would put her hand on the animal.(25) On the other hand, Karīm in Miṣqāt . Al-Maṣābiḥ says that she used to sacrifice the animal and smear her private parts with the blood which signalled the end of her mourning.(26)

The Prophet also mentioned something related to this story when he spoke to the woman who wanted to apply eye paint for her daughter who had just lost her husband. He told her "verily there are four months and ten days.(27) Surely one of you used to throw dung in the days of ignorance (Al-Jāhiliya), at the beginning of a year". Muslim says that the meaning of the cited hadith is that mourning in Islām is very short when compared with mourning in the Jāhiliya.(28)

There are different opinions on the matter among the Sunnī doctrines, especially between Mālik, Abū Ḥanīfa and Al-Šāfi'ī about the women or the widow who should go into mourning:

- Muslim and non Muslim
- Young and adult
- Slave and free

Mālik says that only a married woman should mourn whether she is Muslim or non-Muslim, and the young and grown up and a free woman should mourn.(29) However, the slave girl (Umm Al-Walad), who has lost her master does not have to go into mourning, because she is not considered to be a married woman, while the married slave woman has to mourn her husband for two months and five days.(30) However, Abū Ḥanīfa and Al-Sāfi says that mourning is not a duty for non-Muslim women. In addition, Abū Ḥanīfa believed that both the young and the slave woman, should not mourn for many reasons:

a. the non-Muslim woman cannot go into mourning because mourning is a religious belief, the duration of which was fixed by the prophet, who went on to say that "For a woman who believes in Allāh and the Last Day".

b. Abū Ḥanīfa says that a young woman should not go into mourning because she would not attract men.(31)

c. no mourning applies to a slave woman because the Idda of the widow contains two elements; first the mourning, second her staying at home during this period while the slave must work and serve her master. In her case she has to go out, and she may continue using toilet things.(32)

In addition to the rules concerning the appearance of the widow, the Prophet also mentioned some certain rules about her behaviour and her attitude. There are some Hadiths which show that her sadness should be reasonable and modest. There is a hadith about Hanna b. Jaḥsh who, when she was informed that her father and her maternal uncle had died, said "It is God's will", but when she knew that her husband Muṣāb b. ʿOmīr had died she cried. It has been reported that the prophet said "this woman loves her husband and he has a special position in her life".(33) Another hadith of the prophet was transmitted by Al-Xudari who reported that the Prophet saw a widow crying beside her husband's grave. He told her "Fear God and be patient"(34) patience in the face of death brings good rewards. Umm ʿAtīya transmitted some Hadiths. She said that the

Prophet had received a promise from the women in the Oath of allegiance, not to wail or to weep loudly at funerals and she said that only five women fulfilled this promise.(35)

Furthermore, Umm 'Aṭīya reported that the prophet did not invite women to funerals and that he disliked them following the funerals.(36) From Ahmad b. Yūsuf there is a hadith which refers to the prophet saying that he cursed women who visited the graves.(37) There are two opinions about this hadith: the first opinion says that the visiting the graves by women was not generally approved of because they are very weak in heart, but it is not strictly prohibited.(38) When the prophet allowed visiting the graves for Muslims, he allowed both men and women equally.(39)

According to the traditions the Prophet did not forbid crying because it was reported that when 'Omar b. Al-Xattāb saw some women crying at a funeral, and scolded them. The Prophet told him "Omar leave them, verily the eye is shedding tears, the heart has been pierced and promise is near".(40) It was also narrated that the Prophet said that "dead people suffer in their grave as much as their parents cry over them".(41) This hadith was transmitted by 'Omar b. Al-Xattāb and by his son 'Abd Allāh, but 'Āiṣa denied it and declared that the Prophet did not mention this hadith.(42) Al-Wāqidi mentioned that the Prophet cried when he was informed that Ḥamza b. Abū Tālib had been killed. Also the Prophet cried when his son 'Ibrāhīm died.(43)

However, it is certain that the Prophet cursed and forbade wailers and mourners to come to funerals and particularly female mourners and female hearer of mourning.(44) Ibn Maṣūd reported that the Prophet said "None of us should beat face and tear up shirt or cry aloud like the crying in the days of Al-Jāhiliya".(45)

There was a Sunna during the time of the Prophet, who asked his wives to cook food for Jāfar's family, when he was informed that Jāfar had been killed. He said "Prepare food for the family of Jāfar and there has indeed come to them what has kept them engaged".(46) 'Abd Allāh b. Baker said " the Cooking of food for the family of a dead person was a sunna during the time of the Prophet, but since then it has been



abandoned.(47) Al-Šāfi'ī however encourages this practice and says "It is preferable to send food for the family of the dead person".(48) Others said that food should be supplied for three days since the period of mourning legally lasts three days.(49)

### The Waiting Period (Idda)

Widow's Idda lasts for four months and ten days. It is a period of time to ensure that the woman is not pregnant by her late husband, as the Koran stated (2:233)

A hadith transmitted by Abū Baker b. Šayba, regulates where the widow should spend her idda, and reports that Zaineb b. Kāb b. 'Ajra came to the Prophet telling him that her husband had been killed and that he had not left her a house,(50) or any maintenance or any inheritance. Therefore, she asked the Prophet if she could join her family who lived far away from her. At first, the Prophet allowed her to leave her house, but after a while he recalled her, and telling her to stay in her husband's house till the end of her Idda.(51)

This hadith shows that the Prophet preferred the widow not to move from her husband's house during her Idda. However we have another hadith which shows that he allowed the widow to leave her house during this time, but only for good reasons and during the day. Sufyān b. Wāqī reported that the Prophet allowed a widow to go out to pick fruit from palm trees telling her "You might give Sadaqa or do an act of kindness".(52) It may be concluded that some doctrines referred to this incident to prove that a widow, just like the triple divorced woman, can leave her husband's house. Ibn 'Abbās said that there is no fixed place for the Idda and the widow can spend it with her family or in any place she wants.(53) Hisām b. 'Qrwa says that the Bedouin widows spend their Idda with their families and Mālik in his 'Muwatta'' agreed with this and said "that it has been our way".(54) It was said that her Idda should be in the house of her husband's family, but if she wants to leave it there is no harm. The Koran also



advocates the same practice (2:239).(55) While others said that a widow should sleep in her house during the 'Idda, also referring to the Koran in order to support their opinion; saying that the widow should stay in house of her husband's family till the end of 'Idda. Ibn 'Omar was of the companion who supported this principle, and who insisted that she should stay in her house and never leave it.(65) 'Oṭmān b. 'Affān also held the same idea, and was further supported by Al-Šāfi'ī and Aḥmad b. Ḥanbal. Furthermore, Al-Tirmidī mentioned that the majority of people adopted this opinion.(57)

The Hadith on the status of the slave widow, were generally stated by the companions of the Prophet. There are two conflicting opinions about how long the 'Idda should last: 'Omar b. Al-'Āṣ said "Do not spoil the sunna of our Prophet Muhammad, as the 'Idda of Umm Al-Walad last for four months and ten days".(58) This means that the slave woman, who has children from her dead master is in the same position as the free widow. But, Mālik has a different opinion. He said that 'Umm Al-Walad is not a married woman(59) therefore her 'Idda if her master died is one course or one month, saying "It has been our way", he added that for one who does not have menstruation her 'Idda should be three months.(60) In case of the married slave widow, Saīd b. Al-Musayyab says "The 'Idda of the slave widow is two months and five nights".(61)

### The Marriage of the Widow

The widow has the right to marry again after the end of the 'Idda period. But the pregnant widow is allowed to marry again as soon as she gives birth without awaiting the end of her 'Idda. The hadith about Subay'ā Al-Islāmiya confirms that she was a widow who had lost her husband. She was pregnant and after a few days gave birth. After a while she prepared herself for a new marriage.(62) Some of her relatives believed that she should not remarry until the end of her 'Idda as a widow.

When she asked the Prophet he gave her permission to marry.(63) The

authorisation for the widow to remarry is based upon this hadith.<sup>(64)</sup> Therefore, the majority supported the idea of her marriage immediately after giving birth to her child. In her case it was just a few days after the death of her husband. 'Omar b. Al-Xattāb said "If a widow gives birth she can marry again even if her husband's body has not yet been buried", and Mālik agreed upon this and said "It is our Sunna".<sup>(65)</sup> Abū Huraira also supports this idea.<sup>(66)</sup> Only Ibn'Abbās holds the opposite idea that the pregnant widow should wait till the end of her 'idda and that if she gives birth she should observe two periods of 'idda.

a. the 'idda of pregnancy

b. the 'idda of the widow

Ibn'Abbās said "at the end of two periods of 'idda, she is allowed to marry again".<sup>(67)</sup> There is no mention of whom the widow should remarry as the Prophet only said "A good man", and the majority of people say that she should marry a man who is able to protect her.<sup>(68)</sup>

'Āiṣa explained the reason for the remarriage of the widow, namely after the Battle of 'Uhud during which many men were killed and left widows and orphans without protection or shelter.<sup>(69)</sup> She said "If a man cannot do justice to orphans, he should marry the mother of the orphans," and she added that "Even if a widow has to share her new husband with other wives, half a home is better than none".<sup>(70)</sup>

The remarriage of the widow was recognised in the Koran (2:233-234) and in the Sunna of the Prophet. Watt mentioned that though the majority of the wives of the Prophet were widows, and most of them were not poor widows or in need of support or maintenance,<sup>(71)</sup> the Prophet disliked the idea of a woman or a widow being alone without a man. Watt mentioned that some widows devoted themselves to the Prophet e.g. Xawla b. Al-Hakam, who devoted herself to the Prophet after losing her husband in the Battle of 'Uhud, but the Prophet did not marry her,<sup>(72)</sup> nevertheless he gave her

shelter under his roof, and this supports the reason mentioned above.

The reasons for the marriage of the widows were moral, physical and religious. Because when the widows get guardians by marrying again, "which provides them with maintenance and comforts, the new husbands stand as pillars for the protection of their life and honour".(73) In the absence of a widow's marriage, Society still has a moral problem because the natural sexual appetite of the widows and the divorced women is not satisfied. Therefore, the main aim is to protect the widow from adultery and prostitution, as Qutb said.(74) Moreover, it is said that polygamy was encouraged in Islam because of the widows in order to provide them with shelter and a house, since they were destitute after losing their husbands.(75)

If the husband disappeared or got lost, Omar b. Al-Xattāb said that the woman should wait four years for her husband, and then she should observe her Idda. After that she could remarry".(76) Moreover, Saīd b. Al-Musayyab said "If a man dies in battle, his wife should wait one year before remarrying. During this time the widow may not remarry and his money should not be divided".(77)

However, in pre-Islamic times the widow had to marry the nearest male in her husband's family. Even his son, and they could give her in marriage to anyone they wanted or they could keep her unmarried.(78)

### The Dower (Mahr)

The dower of the widow is one of the main rights, and if the groom pays all the mahr or a portion of it, the unpaid portion, which was fixed, should be paid when the husband dies.

However, in the hadith of the Prophet there is evidence that the mahr might not be fixed, in other words, the amount of it was not mentioned in the marriage contract. This fact was emphasised by Ā'īṣa the wife of the Prophet, who said that the Prophet ordered

her to give a girl in marriage to her groom even if he did not give or fix anything for her.(79)

It would be interesting to know, what positions of the widow would be, and what happens to her right to mahr, which has not fixed, in the event of her husband's death. Among the companions there were two opinions. Some such as 'Alī b. Abī Ṭālib, Ibn 'Abbās<sup>(80)</sup> and Zaid b. Ṭābit believed that "If a man dies without announcing the mahr of his wife, his widow does not have the right to claim or to ask for her mahr and in this case she can inherit from him, but there is no mahr for her". Ibn 'Omar, denied any right for the widow to her mahr if it was not fixed before the death of her husband.<sup>(81)</sup> However, Ibn Maṣūḍ Al-Anṣārī, believed that any woman whose husband died before he had had sexual intercourse with her, or had not announced her mahr, has the right to her mahr.<sup>(82)</sup>

There is only one hadith referring to the Prophet in this matter, and it can be used as a model or solution to solve this problem. This hadith is about a widow called Barwū' b. Wāṭiq. It was reported that she declared to the Prophet, that her husband had died before fixing her mahr. The Prophet's judgement was that she has the right to her mahr and that she can inherit from her husband, and that she should stay in his house for her 'Idda".<sup>(83)</sup> Al-Tirmidī reported that Ibn maṣūḍ was happy when he heard this hadith.<sup>(84)</sup>

In the case of the widow, she can have the copy dower (mahr al-mit' l), this means that the amount of mahr should be similar to the mahr of women in her family, such as her sisters, cousins, aunts,<sup>(85)</sup> In other words her mahr should reflect her family's position and wealth.<sup>(86)</sup>



### The Inheritance (mīrāt)

The widow has the right to inherit from her husband. If he did not leave children she has 1/4, but if he left children she has 1/8 as stated in the Koran (4:11). There is a hadith transmitted by Jābir reporting that the widow of Saād b. ʿAl-Rabī declared to the Prophet that after the death of her husband, who was killed as a martyr in the Battle of ʿUhud, his brother had taken everything and left her and her two daughters destitute.

The Prophet gave his judgment according to the Koran by "giving the widow 1/8 and her daughters 2/3 and the remainder to the paternal uncle".(87)

In general, there is no doubt about the right of the widow to her inheritance and that she can claim the half of what a widower would receive under the same circumstances. According to the Koran (4:11) since the male has the right to twice as much as a female.(88)

According to the Prophet, the widow can also receive her husband's blood-money.(89) There is a hadith transmitted by ʿAl-Ḍahāk b. Sufyān which says that the Prophet wrote to him telling him to include the wife of ʿĀṣ̣im d. ʿAl-Ḍihabī among the beneficiaries of the blood-money paid for her husband.(90)

Before the pronouncement of this hadith, ʿOmar b. ʿAl-Xaṭṭāb used to say that the widow had no right to her husband's blood-money, but after this announcement from ʿAl-Ḍahāk, the payment of the blood-money to the widow became a rule.(91)

Mālik says that a slave widow cannot have the blood-money for her husband, because slaves are not entitled to blood-money. They only receive the price which is paid to their masters.(92) However, compensation is paid to the widow under certain conditions; if she did not kill her husband, because in this case, she could not inherit anything; if she killed him by accident, she would inherit his property, but she could not receive his blood-money.(93)

Abū Dāwūd mentioned that a man married a woman without fixing her mahr, but before he died, he announced that the mahr would be in his share of Xeiber as declared by the Prophet. When the man died, the Prophet gave his share of booty to the widow.<sup>(94)</sup>

It was mentioned that the widows of Al-Muhājirūn inherited their husband's houses.<sup>(95)</sup> Abū Baker b. dasa reported that the women of Al-Muhājim complained that they were not allowed to remain in their houses after the death of their husbands and because of that the Prophet allowed the women of Al-Muhājirūn who were cut-off from their families,<sup>(96)</sup> to inherit their husband's houses. This recommendation became a Sunna. Therefore, when the companion Abd Allāh b. Māsūd died, his widow inherited his house in Al-Medīna.<sup>(97)</sup>

Stern mentioned that when Ḥafṣa b. 'Omar b. Al-Xaṭṭāb lost her husband she inherited his house, and then when she married, the Prophet she left this house to her brother. Also, Sawda as a widow inherited her husband's house, then leaving it to 'Āiṣa. It is well known that after the death of the Prophet, all of his wives remained in their houses, and regular maintenance, but none of the Prophet's widows claimed for inheritance, which was 1/8. <sup>\*(98)</sup>

It was mentioned that widows in the Jāhiliya did not inherit from their blood relations<sup>(9)</sup>, but only from their husbands. Stern said that Xadija, the first wife of the Prophet, inherited from her two husbands who were quite wealthy so that when she married the Prophet, she was very rich.<sup>(100)</sup>

### The Maintenance

The widow can receive her mahr and inherit from her husband as some widows need help and support. Abū Huraira reported that the Prophet said "A giver of maintenance to the widows and the poor is like one who fights in the way of God and is

a reciter of prayers all night and is constantly fasts".(101)

The Prophet considered the widows to be the first who deserved help and sponsors, therefore, he used to keep a portion of Za:kāt for the widows, which is normally distributed among poor Muslims. This charity consists of 1/5, and belongs to the Prophet.(102)

After the Prophet passed away, his successors took on this responsibility, especially 'Omar b. Al-Xattāb, who was concerned about the position of widows, and who fixed a regular amount of maintenance money for all the widows of the Prophet called "the mothers of the believers". He gave each one of them 12 thousand dirhams and later, another 10 thousand to each one of them except 'Āiṣa who recieved 12 thousand dirhams.(103)

### Chapter Five - Notes.

1. Muslim, p.2286 margin, book No. 53.
2. Hughes, T.P. Dictionary of Islām, p.666.
3. Robson, Kitāb Miṣqāt al-Maṣābiḥ, p.651.
4. I.M, Ch.6 - H3679 - p.1213, Book No. 33.
5. 'Alī, M.M., The Religion of Islām, p.525.
6. Bu, Ch.8, p.431, Book No. 62.
7. Tir, Ch.18, H1195-1196, p.500-501, Book No.11.
8. Karim, Kitāb Miṣqāt Al-Maṣābiḥ, p.70.
8. Hughes, p.673.
9. Tir, Ch.18, H1195-1196-1197, p.500-501.
10. Robson, p.709.
11. Muslim, ch.18, H58, p.1123, Book No.18.
12. Tir, Ch.18, H1195-96, p.500-501.
13. Mālik, Kitāb Al-Mawuṭṭā', Ch.35, H103, p.596, Book No. 29.
14. Al-Nawawī, Kitāb Al-Ṣāliḥīn, p.284.
15. Mālik, p.596 margin.
16. Op cit., Ch.35, H106, p.598.
17. Op. cit., Ch.35, H108-109, p.598-600.
17. Robson, p.710.
18. Karim, p.70.
19. Robson, p.709, "Yarn is a type of garment from the Yemen which made of cloth and which was dyed before being woven".
20. Mālik, Ch.35, H107, p.599, Book No. 29.
21. Op cit., Ch.2, H5-6, p.223-224. Book No. 16.
22. Robson, p.709.
23. Mālik, Ch.35, H103, p.597-598.
24. Muslim, Ch.8, H1488-1489, p.1124-1125.  
"Cottage near the beach where fish can be caught".
25. Mālik, Ch.35, p.598 margin.
26. Karim, p.69, Ch.57V "She closed herself in a small dungeon and had to keep her hair short even sometimes she preferred death".
27. Tir, Ch.8, H1198, p.501.
28. Muslim, p.1124 margin, Book No. 11.
29. Ibn Rushd, p.101.
30. Mālik, Ch.35, H108, p.600.



31. Ibn Rushd, p.102.
32. Op cit., p.103.
33. Ibn Ishaq, p.586.
34. Bu, Ch.7, p.316, Book No. 23.
35. Op cit., Ch.46, p.329.
36. I.M., Ch.51, H1583, p.1592, Book No. 6.
37. Tir, Ch.61, H1056, p.371. Book No. 8.
38. Karīm, p.57.
39. Tir, Ch.61, H1054, p.370-371.
40. Karīm, p.67.
41. Tir, Ch.24, H1002, p.326.
42. Op cit., Ch.25, H1006, p.329.
43. Op cit., Ch.25 - H1005 - p.329 - Al-Wāqidī, p.284.
44. Op cit., Ch.22, H999, p.324.
45. I.M., Ch.52, H1584-85, p.504-505.
46. Karīm, p.63.
47. I.M., Ch.59, H1611, p.514.
48. Tir, Ch.21, H998, p.323.
49. Karīm, p.63.
50. Mālik, Ch.31, H87, p.591.
51. I.M., Ch.8, H2031, p.654.
52. Robson, p.709.
53. Bu, Ch.50, p.483, Book No. 68.
54. Mālik, Ch.31, H89, p.492.
55. Bu, Ch.50, p.483.
56. Mālik, Ch.31, H88, p.592.
57. Tir, ch.23, H1204, p.508-509.
58. I.M., Ch.33, H2083, p.673.
59. Mālik, Ch.32, H81, p.593.
60. Op cit., Ch.32, H82, p.593.
61. Op cit., Ch.33, H93, p.593.
62. Tir, Ch.17, H1193, p.498. (After 3, 20 or 25 days).
63. Mālik, Ch.30, H83, p.589.
64. Bu, Ch.39, p.478, (After 10 days).
65. Mālik, Ch.30, H84, p.589.
66. Muslim, Ch.9, H57, p.1123.
67. Op cit., p.1123, margin, Book No. 19.

68. Al-Maqdisi, Kitāb Al-funūn by Ibn 'Aqīl, p.332.
69. Watt, W.M., Muhammad At Medīna, p.276.
70. 'Alī, M.M., The Religion of Islām, p.525.
71. Watt, p.287-288.
72. Op cit., 399.
73. Karīm, p.718.
74. Qutub, M, Islām p.219. "Widow is a social moral".
75. 'Alī, M.M., p.525.
76. Mālik, Ch.20, H52, p.575.
77. Bu, Ch.22, p.469, Book No. 68.
78. Op cit., Ch.6, p.224-225, Book No. 65.
78. Sawar, H.G., Muhammad the Holy Prophet, p.22.
78. Abū Dāwūd, Ch.693, H2128, p.324.
80. Tir, ch.44, H1145, p.451.
81. Mālik, Ch.3, H10, p.527, Book No. 28.
82. Tir, Ch.44, H1145, p.450. Book No. 8.
83. I.M., Ch.18, H1891, p.609, Book No. 9.
84. Tir, Ch.44, H1145, p.450.
85. A.b.H., 6 : 4089, p.74.
86. Schacht, J. 'Nikāh', Encyclopaedia of Islām V3, p.826-829.
87. I.M., Ch.2, H2720, p. , Book No. 23.
87. Muir, M., The Life of Muhammad, p.274.
88. V.R. & Bevan Jones, Women in Islām, p.241.
89. I.M., Ch.8, H2736, p. , Book No. 23.
90. Mālik, Ch.17, H8, p.860, Book No. 43.
91. I.M., Ch.12, H2642, p.886.
92. Mālik, Ch.4, p.882, Book No. 44.
93. I.M., Ch.8, H2736.
94. Abū Dāwūd, Ch.688, H2117, p.320.
95. Al-Nasāi, p.60.
96. Stern, p.177.
97. Al-Nasāi, p.60.
98. Stern, G.H., Marriage in Early Islām, p.164.
99. Ahmmed 'Alī S., A, Kitāb Muḥādarāt fī Tarīx Al-'Arab, p.120.
100. Stern, p.159-161.
101. Bu, Ch.2, H91, Book No. 53.
102. Al-Wāqidi, p.92.

103. Abū Yūsuf, Kitāb Al-Xarāj, p.24-25.

## **CHAPTER SIX**

### **THE SLAVE WOMAN**

Levy, said "the Prophet took over the slavery system upon which ancient society was based, seemingly without question and regarding it as a part of the mutual order of the universe".(1)

#### **Slavery during the time of the Prophet**

Although neither the Koran or the Prophet mentioned that the obligation of slavery was intended or it was declared as forbidden, as it was in pre-Islamic time. Slavery was an institution, which existed and was recognised by people.(2) But, according to the hadith of the Prophet and his companions as well as the opinions of the Sunni doctrines, we notice some new elements were added and gave the slavery system new aspects not considered before Islam.

It is worth mentioning that the new conditions were instigated by the Prophet and regarded as Sunna;

1. Limiting the sources of slave class
2. Good treatment for slaves

#### **1. Limiting the sources of slave class**

The Prophet limited the slave class when he allowed only two sources of slaves as lawful

- i. a person born of slave parents, in other words, whose parents were both slaves, is considered a slave.
- ii. war captures, this excluded any Muslim believers who were made



captive. A new statement was made that there was to be no enslavement of Muslim Arabs.(3)

According to the Prophet, the persons, who could be legally enslaved, were non believers captured in hostile territory. Therefore, they could be sold and purchased in the same way as any goods. Within these categories, there were certain exceptions; that of:

a. in the case of Umm Al-Walad(4)

b. the captive, who had the mean to buy his/ her freedom.

c. the captive who had embraced Islam remained free [Islam]

d. parents were forbidden to sell their children. Mecca was the main place for bying and selling slaves in the open market, where slaves were brought from different places they were a mixture of those born of slave parents, captives and those stolen from their families or husbands. Even some poor parents used to sell their children. The time of the pilgrimage was the best time for the slavery business.

e. women had another opportunity to be set free by their owners when they became concubines.

### **By purchasing**

It was well known that some of the prophet's wives owned male and female slaves. For example, Umm Salma had two slave men and who were allowed to enter in the presence of the prophet's wives, but once they had bought their freedom, the wives were secluded from them. This is related by the Prophet, who said "If a slave has concluded on agreement to purchase his freedom, and has money of his own, he should not mix with his owner's wives".(5) So, as long as he was owned by his master he could mix with the women.

'Anas narrated that the Prophet gave his daughter Fāṭima a slave boy and when she

was embarrassed to try on a short dress in his presence the Prophet told her "Do not feel shy. I am your father and this is your boy".(6)

When a slave pays a sum of money from his or her own earnings, he or she acquires his/ her freedom. 'Omar b. Ṣihāb narrated from the Prophet saying "If a slave agreed to purchase his or her freedom with one hundred uqqīya and pays ten less, he or she remains a slave until the whole sum has been paid".(7) 'Ā'īṣa, had a slave girl called Barira. She bought her, and then set her free. The Prophet's opinion was that the owner, who bought and set free the slave could have access to the slave's property, while the one who sold him could not".(8)

Muḥammad b. Yaḥya said to the Prophet that " He, who sets free a slave without mentioning money is implying that the slave can keep his money for himself".(9) This supported the idea that the slave can have, and can earn money with which to buy his freedom, but when he or she worked in some business or other that money belonged to the master unless the master wanted to give them his money. This was as Ibn 'Omar narrated it from the Prophet.(10) Mālik reported from Ibn Ṣihāb, who said "As a Sunna, if a slave is set free he can own his money."(11)

The Prophet encouraged Muslim people and especially his wives, to release their slaves without demanding money and even to help them financially upon setting them free.(12) The prophet said that such an action would earn them Paradise.

Abū 'Abd al-Raḥmān narrated that his owner 'Umm Salma, set him free on the condition that he would serve the Prophet as long as he lived.(13) Also, Majmūna set her slave girl free without demanding money.(14) Xadija, the Prophet's first wife, had captive slave called Zaid b. al-Ḥārith, whom the Prophet set free, and then adopted and married off to his cousin Zaineb b. Jaḥṣ.(15) Yaḥya b. Sa'ād, reported that when 'Abd al-Raḥmān b. Abū Baker died, his sister 'Ā'īṣa, set many slaves free. Mālik said "This is the best I heard".

In his late days, the Prophet refused to give his daughter, Fātima, a slave to help

her in the house; instead, he advised her to pray and to mention God several times. This would be better for her.(17)

The prophet's policy with the tribes, especially the Jewish tribes like the Al-Mustaliq, involved the paying of ransoms. Many, captured by Muslim soldiers, were set free after their tribes had paid ransoms, which were not only in the form of money, but could be any kind of good, or animal.

### Islam

Actually, Mālik made Islam the first reason saying "Freedom should be a duty towards believers as mentioned in the Koran. Also, the poor people who are fed in atonement must be Muslims and not non-Muslims". He added "the best kind of freedom he had heard was towards Muslim slaves, and to set Christians, Jews, Magons, Umm Al-Walad and blind people free. There was no obligation, therefore to set the non-Muslim: this was done by choice. Since God mentioned in his Book (Koran) that they could either be set free or ransomed".(18)

The Koran mentioned that it was a duty to set a believer's neck free (4:91). In addition, there are some hadith, related to the Prophet that mention that by setting a believer's neck free, one can reap for a big reward. It was reported that the Prophet said "the release of a Muslim slave, protects you from fire".(19) Hilāl b.'Usāma narrated that 'Omar b. Al-Hakam came to the Prophet telling him that he had a shepherd's slave girl. One day he lost some sheep and when he asked her about them she said that the Wolf had eaten them. He had not believed her and had beaten her. So he asked the Prophet if he should set her free. The Prophet asked her "Where is God"? She replied "in the sky", then he asked her "who am I"? She said "the Prophet of God". Finally, the Prophet however told Ibn Al-Hakam to set her free.(20)

Furthermore, Ibn Šihāb narrated that a man from Al-Anṣār brought his black



slave girl with him to the Prophet telling him "I have to set a believer's neck free, so if you think that she is a believer, release her". The Prophet asked her "Do you believe in the one true God"? She said "yes" then he asked her "Do you believe that Muḥammad is the Prophet of God?" She replied "Yes", finally, he asked her "Do you believe in life after death"? She said "Yes". The Prophet ordered her to be set free.(21)

According to companions, such as Abū Huraira and Faḍālah b. 'Ubīd al-'Anṣārī, the child conceived through adultery could be released in exchange for a reward. Also, it was narrated that Ibn 'Omar released an adulteress, slave woman and her son.(22) However, this report is unreliable, not sure if we go by on I. M, who mentioned that the Prophet disliked this act and rejected it".(23) saying "A pair of shoes for which I will fight are better than setting the son of an adulteress free". A slave could be set free as a compensation for an accidental killing. There was no difference between a boy or girl as is mentioned in the Koran (4:92). Also, the Prophet used to set free any slave who could teach ten Muslims how to read and write.(24)

Another way, mentioned in the Koran, whereby the slave could obtain freedom was through the Zihār formula (25:2) as an atonement achieved by setting a believer's neck free. In addition, if a man swore by God that he would do something, but the subsequently did not do it; he must either set a slave free, fast for three days, or feed ten poor people (20:88).

Al-Qāsim b. Muḥammad narrated that Saīd b. 'Abāda told the Prophet that his mother had died; and that he was wondering whether it would be good for her if he set a slave free on her behalf. The Prophet said "Yes"(25). This is stated as a Sunna to set free a slave on behalf of dead people.

Setting a believer's neck free was according to the Koran and the prophet, regarded as a kind of charity "Ṣadaqa" (124:59). 'Āiṣa, narrated that the Prophet was asked about the most valuable neck. He said "It is the most expensive and the dearest for their owners".(26) 'Āiṣa, added that the Prophet advised her that if she wanted to set



a married slave couple free, she should set free the husband first then the wife.(27)

### **Freedom of a slave girl**

Apart from the condition of Umm Al-Walad, a slave girl had a chance to obtain her freedom if a free man married her. This marriage was mentioned both in the Koran (2:220) and by the Prophet who said "He, who has a slave girl and educates her, who rears her well, and then marries her, will be rewarded twice". For three reasons, marrying, educating and setting her free.(28)

It is worth mentioning that concerning this marriage a Muslim slave was preferred according to the Koran and the Prophet, and so by marrying a slave who was a believer, the owner would reap religious rewards.

## **2. Good treatment of slaves**

The second main change in the slave system was enforced by the Koran and is to be found in the hadith.

Concerning the slave girl, the Koran forbids the master to use his slave girl as a prostitute in order to bring him money,(29) but he was allowed to enjoy himself with her. The Prophet, was concerned about slaves in general to ensure good treatment for them as human beings. Abū Huraira narrated that the Prophet said "A slave is entitled to his food and clothing and should have imposed upon him only such work as he is capable of doing".(30) A similar hadith was recalled by Abū Huraira saying that the Prophet said "You should feed and clothe your slave and seat him beside you or give him one or two mouthfuls of food in his hand if the quantity of food is small".(31) Ibn 'Omar related another hadith from the Prophet saying "Your servants are your brothers, God put them between your hands. He, who has a servant or a brother under his hand

has to feed him as he feeds himself and to clothe him as he clothes himself, and must not ask him to do more than he himself can do, and if you do, you should help him".(32)

The slave girl was mentioned directly by the Caliph 'Otmān b. 'Affān who said "Do not ask the slave girl to do more than she is capable of doing, otherwise she will turn to prostitution".(33)

The Prophet disliked anyone to beat his slave severely saying "If they do not please you, sell them, but do not punish God's creatures".(34) Ibn 'Omar reported that the prophet's solution for anyone who beat his or her slave, was to release the slave in question.(35) Ibn Māsūd Al-Anṣārī supported this by narrating his story. He said "When I was beating my slave, I heard the Prophet telling me "You know that God is stronger than you". I said "He is free for the sake of God". The Prophet said "If you do not set him free you will be burnt by the fire of Hell".(36)

This act became a Sunna following the Prophet, when 'Omar b. Al-Xattāb set free a slave woman when she complained that her master beat her and burnt her with fire".(37) Mālik mentioned that 'Omar used to visit the suburb of Al-Medīna every Saturday and if he found a slave who was being exploited, he used to order him to leave his work.(38) In addition, the Prophet avoided using the word "slave". A hadith from him states "None of you may call them slaves, but instead must call them my boy or girl".(39)

So, in general it is clear that slavery as seen in the hadith was not forbidden, but was modified in accordance with new principles, such as those of treating slaves well and giving them a chance to be freed under certain circumstances. The main idea was to encourage the freedom of the Muslim slave as a religious duty. Abū Huraira related to the Prophet saying "Whoever sets the neck of a Muslim free will have a limb redeemed from the fire, by Allah in exchange for every limb of the slave".(40)

At the same time, slaves must obey their masters, following the teaching of the Prophet. Abū Mūsā transmitted that "Any slave observing his God's requirement and his

master's right has two rewards".(41) Also, Jābir narrated that the Prophet said "There are but three people whose prayer is not accepted, nor their virtues taken into account: and one of them is the fugitive slave, till he returns to his master and places his hand in his hands".(42)

Slaves were often sold without conditions except that if a slave was born and brought up in his master's house he or she was never sold unless he committed a sin such as adultery or was perpetually drunk.(43) In this case, they could be punished and beaten by their masters. Concerning this matter the Prophet said "If you beat your slave avoid beating his face." Also, he mentioned the difference between beating a slave and a wife saying "Do not beat your wife as you beat your slave".(44)

A slave girl usually did the housework and looked after her master inside the house, also she could work outside her master's house as a shepherd or doing other outside jobs. In addition, a slave woman did not wear the face veil, like the free woman, seeing as the veil used to be the mark of high-ranking woman. Therefore, a slave woman could walk around the street without covering her face with a veil.(45) Mālik, said that a slave woman could also apply make-up and if she was a widow she need not mourn.(46)

Concerning the veil regarding the slave woman in Islamic times. Al-Wāqidi mentioned that "people were wondering whether the Prophet would marry the captive woman "Ṣafiyya" or take her as his concubine, and when the Prophet made her cover her face they knew that he had married her.(47)

However, it should be remembered that it first became a religious duty for the Prophet's wives and daughters to veil themselves, as laid down by the Koran (33:58) this order was later to include the women of the believers; therefore, slave women believers had to cover themselves as well as free women, but we cannot give general judgment since reliable information is scarce.

## The Slave Woman

There were three categories of slave women:

1. The first category was as a concubine for her master.
2. The second category was when she bore a child for her master and became 'Umm al-Walad, which was the best category for a slave woman, as it compared many advantages.
3. A married slave woman was the third category, where the woman was already married to a slave or a free man and her children belonged to her master. Her position was then that of a servant to her master. She could be a household slave or an outdoor slave.

There were conditions for each category particularly those involving her relationship with her master. Usually, most slaves were employed in wealthy households for domestic service and entertainment.

## Concubines

There were two kinds of women in this position:

- a. A slave girl, who was originally a slave born of slave parents.
- b. A captive woman, who was originally free, but was then enslaved when their tribes were defeated in war.

Both types of women became concubines without any exceptions. Islam allowed cohabitation with slave women along side normal marriage (4:2-23) (24:32). In fact, concubines were owned by masters, who had either bought, captured or received them as a present.<sup>(48)</sup> Their owners had the right to have sexual intercourse with them and these affairs were never regarded as adulterous or sinful. This kind of relationship was practised among the Arabs before Islam and it was legalised during Islamic times with



new elements and conditions.

The Koran mentioned these groups of women, calling them "imā īmalakat 'aymānukum" or what your right hand possessed. But, these women were never described as prostitutes, since the Koran itself forbade the master to force his slave girl to be a prostitute (24:32) because this had been the general practice in pre-Islamic times the majority of prostitutes were slave women.(49)

Unlike the number of legal wives, who were limited to four only (4:2) there was no legal limit to the number of concubines. Therefore, the man could have any number, without conditions, depending on his wealth, as many as he could buy or could own, in addition to his four legal wives.(50)

However, as with the rules of marriage, the master was tied by some conditions he had to obey as stated in the Koran and the Sunna. Some of these rules were made by the Prophet and others by his companions as well as the Sunni Doctrines.

a. the master could not cohabit with a slave woman, who was already married. This meant she had to either be a virgin, divorced or widowed to be his concubine because it is forbidden to have sex with a married woman (4:22).

(Al-Muḥaṣanāt)

b. as in marriage the man or the master could not join with two or more, who were sisters. Since it was also forbidden to marry them. The Prophet received two Christian slave girls, who were captives. They were a present from Egypt. Māriya and her sister Liā(51) or Sirīn.(52) according to another reference, the Prophet chose Māriya and sent her sister away.

c. the master could not have a concubine, who was an idolateress. Mālik said "She can never be a concubine for her master, only Christians and Jews are allowed for him, apart from Muslims.(53)

d. although, the main relationship with the master and his concubines was a sexual affair, the master could not allow his concubine to have

relations with another man.(54)

e. the Sunna laid down another condition. Yahya b. Mālik narrated that 'Omar b. 'Al-Xattāb gave his son a slave girl, and told him "Do not touch her, because I have seen her body".(55) Furthermore, Mālik mentioned that Sālam b. 'Abd Allah, gave his son a slave girl and told him "Do not have intercourse with her because I wished to cohabit with her, but I could not do it".(56)

It was reported that 'Abd 'Al-Malik b. Marwān mentioned that a man gave his son his slave girl to his son in order that he might enjoy himself with her. 'Abd 'Al-Malik said to the man "My father was more pious than you because when he gave his slave girl to his son, he told him "Do not touch her because I have seen her legs".(57) So, cohabitation with a concubine is similar to the unlawful relationship between the father and his daughter-in-law (when marriage is forbidden), thus the son cannot marry his stepmother or cohabit with his father's concubine.

Mālik added another condition for the master saying that he could not cohabit with his son's or his daughter's slave girl, but that if he did, there was no punishment for him and in the case of the slave girl becoming pregnant, the child belonged to him.(58) In addition, a man could have intercourse with his wife's slave girl on the condition, that his wife had given her to him as a present. It was narrated that a woman complained to the Caliph 'Omar b. 'Al-Xattāb that her husband had had intercourse with her slave girl. When 'Omar looked into the matter, the man said that his wife had given the slave to him. When 'Omar threatened him with stoning, his wife confessed that she had indeed given the girl to her husband, but that later she had felt jealous.(59)

f. Ibn 'Omar, mentioned that the master could not have intercourse with his slave girl unless he could sell her or give her as a gift and could do anything he liked with her, without any restrictions, because if he could not that meant that he did not own her completely.(60)

It was narrated that 'Abd Allāh b. Masūd bought a slave girl from his wife, who

made one condition for him; that if he resold the slave to his wife, the price must remain the same. When the man asked 'Omar b. Al-Xattāb about this agreement, he told him "Do not touch her if there is a condition attached to her".(61)

In addition, if the master shared a slave girl with another partner, he had to pay her price so that she would belong only to him. Even if he had intercourse with her during this time there was no punishment for him, but her child was considered to be his, and therefore, had a responsibility towards his slave. Mālik said "It is our custom".(62)

g. there are other rules, which did not exist in marriage but were only concerned with the new slave girl whose master had bought her or received her, as a present. The master could not cohabit with her until she had had one period "Istebrā" in order that she should be purified.

This is according to Ibn 'Omar, who reported that the Prophet declared that any new slave woman or captive woman, had to spend this period of 'Idda. After that her master could have intercourse with her, whether she was widowed or divorced.

The pregnant slave woman was prohibited to her master until she gave birth, otherwise the child would belong to him; on this subject the Prophet stated that "If a man has a sexual intercourse with a captive pregnant woman, will also own, the child.(63)

So, these are the rules which regulated affairs between a master and his slave girl or concubine. A slave girl, apart from 'Umm Al-Walad, is the one who did not bear her master's child. As a concubine, her master owned her completely. He could sell her or give her away as a gift. The concubine could not own property, because her master owned everything, although she could carry out a trade or business by herself. Levy described the concubine saying "She has no more right than other chattels".(64) She could be paid compensation for an attack, which resulted in the death of a baby.(65) Also her master could pass her on to his heir as an inheritance.(65) Even though, the destiny of a slave girl was in the hand of her master, she had some protection. For



instance, no one could attack or rape her. Nāfi' narrated that a slave man raped a slave girl during 'Omar b. Al-Xattāb's reign. This man was punished when 'Omar had him flogged and exiled from his town,<sup>(66)</sup> but he did not stone him because stoning is only for free people.

This event followed the Sunna of the Prophet, who punished a rapist by ordering him to be beaten with the branch of a palm tree. He was beaten a hundred times and struck once.<sup>(67)</sup> If the slave girl committed a crime, her owner had the right to punish her, but if in case she was raped, Mālik said "her master received an amount equivalent to her loss in value. If the rapist was a slave his master could either punish him or send him away to be punished by another authority."<sup>(68)</sup>

Abū Huraira, reported from the Prophet said "If a slave girl has committed adultery and she has not been married yet, flogg her and if she does it again flogg her again; if she then dose it another two or three times and she will not stop, she must be sold even for a rope of hair".<sup>(69)</sup>

'Alī b. Abū Tālib said "Masters should punish their adulterous slaves whether they are married or not". A slave girl committed adultery during the Prophet's time. He told 'Alī to punish her but not to death as the girl had recently given birth. therefore, 'Alī waited for a short time saying that had he beaten her beforehand, she might have died. When the Prophet heard about this, he said "Well done 'Alī".<sup>(70)</sup>

### Captive Women

These types of women were originally free, but because their tribe was defeated in war, all the women of the tribe were taken as captives of war. They became the slaves of the soldiers, who were permitted to own them as their own slaves. Their price was usually calculated according to their age, beauty and rank. Among these women, there were usually the wives, the daughters and other relatives of the chief of the tribe and the



most wealthy clans. These women became part of the booty.

During the Prophet's life, and after any expedition, there was a ransom for each woman. The Prophet often made an agreement with some of the tribes to restore their captured women. For instance, the tribe of Hawāzin paid six camels as a ransom for each woman thus saving their women from slavery.<sup>(71)</sup>

Ṣafīyya b. Ḥayya, was a captive woman, and the daughter of the chief of Qurīẓa and the Al-Nadīr, the Jewish tribe that was defeated by the Prophet. After she had lost her husband it has been said that the Prophet bought Ṣafīyya for seven sheep.<sup>(72)</sup> Only and especially for the Prophet, Ṣafīyya's mahr was her freedom. After she had been set free and married to him this act became a Sunna for this type of marriage.<sup>(74)</sup> Ṣafīyya became one of the mothers of the believers. The other captive woman was Jūwā'riya b. Al-Hārit from bani Al-Muṣṭaliq, another Jewish tribe, that was defeated by the Prophet. It was reported that when her father tried to pay her ransom he became Muslim together with his son. The Prophet proposed to her and give her a mahr of four hundred dirhams.<sup>(75)</sup> However, other references mention that her ransom was nine ounces of gold and that the Prophet paid this amount.<sup>(76)</sup> When the Prophet married her, he released one hundred members of her family. Jūwā'riya was also a widow, who had lost her husband in battle<sup>(77)</sup>, so she became the Prophet's wife with the same standing as his other wives.

It seems likely that it was due to this very incident Levy, said "Captive women might be treated with great regard and consideration during the prophet's time".<sup>(78)</sup> This was because of these two marriages between the Prophet and two captive Jewish women, who were set free because they embraced Islam and then accepted the Prophet's proposal of marriage. If they had refused marriage with him they would simply have remained as concubines.

The third captive woman in the life of the Prophet was Raiḥāna b. 'Omar b. Janāfa from Qurīẓa. She was also Jewish and a widow. There was doubt about her position

because some references mention that the Prophet married and gave her a mahr of twelve and half ḥuqīyya, while others more correctly state that she did not convert to Islam immediately, but remained as a concubine, to the Prophet and only in her later days did she embrace Islam, dying one year before the Prophet.<sup>(79)</sup> Her name was not mentioned along with those of the Prophet's wives.

The fourth captive woman was Māriya Al-Qubṭiyya, the Christian slave who was sent to the Prophet from Al-Muqawqas of Egypt. She was a concubine for the Prophet and the only woman who bore him a child after Xadija. She became Umm Al-Walad, and in some references she was referred to as Umm'Ibrāhīm.<sup>(79)</sup>

Those were the most fortunate captive women, who held high a position in the life of the Prophet. Therefore, it can be said that the destiny of a captive woman depended on two points:

- a. if her tribe was able to pay the ransom
- b. if she was married to her captor.

Sometimes neither of these events might occur and therefore the woman suffered and was humiliated because her captor or the one who bought her, had control of both her body and her life. He might keep her as a concubine if she was beautiful and young, or might use her as a servant if she was old and ugly. He had the right to sell her to anyone who was willing to pay her price. On this account some references mentioned captives, who committed suicide.<sup>(80)</sup>

Muslim believe that the Prophet worried about this category of this woman, this is why in his farewell speech he mentioned captive women and said to Muslim men "They are captive (ʿAwān) between your had and asked them to treat women kindly and to fear God in their dealings with them" (81).

## 'Umm Al-Walad

'Umm Al-Walad is the title given to a slave woman, who is a concubine of her master, and who has gave birth to a child for him.

In the Hadith, there is some confusion as to her position during the life time of the prophet. Jābir b. 'Abd Allāh, reported that "During the time of the Prophet and of Abū Bakr, 'Umm Al-Walad could be sold, though this practice continued for a while during part of 'Omar b. Al-Xattāb's reign it was subsequently banned, and after that everyone stopped selling 'Umm Al-Walad".(82) This hadith was mentioned in most of the books of Hadith, therefore, some references mentioned that 'Omar b. Al-Xattāb and 'Otmān b. 'Affān announced officially that 'Umm Al-Walad could not be sold and that she automatically gains her freedom, when her master dies.(82)

Jābir, also mentioned that companions, such as Abū Bakr, Ibn 'Abbās and Abū Saīd Al-Xudari allowed 'Umm Al-Walad to be sold and believed that it caused no harm.(83) But, concerning Jābir's hadith, there is some evidence that the Prophet did not allow the selling of 'Umm Al-Walad.

'Abd Allāh Muḥammad Al-Naflī, reported that Salma b. Māqal was one of 'Abd Al-Raḥmān b. Al-Ḥabāb's slave girl, and that she bore him a boy. After his death, his relatives wanted to sell her in order to have money to settle debts. However, she complained to the Prophet, who then ordered her master's brother to release her, and the Prophet promised to send him another slave, in her stead; she was set free.(84)

This hadith shows that the Prophet gave new rules for 'Umm Al-Walad who gained two advantages: she could not be sold; she had to be set free after the death of her master.

Ibn Māja mentioned that the Prophet sold a slave boy, who was set free in accordance with his master's will because the master left a debt and did not have any possessions besides this slave.(85) This hadith proves that 'Umm Al-Walad is in a



special category.

Also, according to Ibn 'Abbās the Prophet said "she who has given her master a child will be set free after his death".(86) Ibn 'Abbās also said that when Mārīya the concubine of the Prophet, bore him his son 'Ibrāhīm, the Prophet said "Her child sets her free".(87)

Mālik whose woman was also 'Umm Al-Walad, and had bore him three children(88) was very concerned about this subject. He said that "the master cannot sell 'Umm Al-Walad or give her as a gift or pass her on to his relatives. He can only enjoy himself with her, till his death when she will be set free".(89)

In fact, having a child by her master did not mean that she became free, but she could be set free or she might remain in an intermediate position between slavery and freedom. Although she was classified as a slave till the death of her master, she would at such a time, become an unconditionally free woman. But, she was never considered to be a legal wife or a free woman.(91)

Hughes, mentioned that the position of 'Umm Al-Walad was regarded as a good one for a slave woman in Islam.(92) Nevertheless, some references gave conditions for 'Umm Al-Walad similar to those for the wife. For example, they said that she has to go into mourning and to observe the 'Idda, as 'Amr b. Al-'Āṣ said "Her mourning and her 'idda should be four months and ten days, long as with the free woman, and this is the Sunna of the Prophet."(93) But Mālik reported that Ibn 'Omar saying that she can remarry one month after the death of her master, therefore, her 'idda is only one month long. Mālik agreed saying "It is our custom".(94) Because she was not considered to be equal to a married woman.(95) Furthermore, others mentioned that she cannot inherit anything from her master.

Muslim, believe that it is the child of 'Umm Al-Walad that benefits most from her position, as it is regarded as a legal child, who is free and can inherit from the father,



upon the latter's death.

This fact was reported by Nafla, whose grandfather, narrated that the Prophet allowed the child of 'Umm Al-Walad to inherit from the master, only a part of the inheritance that had not already been apportioned.<sup>(96)</sup> So, this child was considered to be legitimate and had the same rights as the child of a free person after the death of the mother's master,<sup>(97)</sup> and had the same status as those who were born to the legal wives.<sup>(98)</sup>

Some references mentioned that this new status for the child of the slave woman encountered opposition from some Arabs. It was mainly upper-class Arabs who fought against it, and who refused the child of 'Umm Al-Walad right to claim nobility particularly when the mother was a negro-slave.<sup>(99)</sup> This was because as the Prophet had declared, this status allowed the child to be equal in all respects in Muslim society.

All these advantages for a slave woman or 'Umm al-Walad depended on one special condition, namely that the child should be the child of her owner.<sup>(100)</sup> Mālik said "If a man had intercourse with a slave girl who then bore him a child and it was only later that he bought her, this slave girl cannot be 'Umm Al-Walad, because when he had intercourse with her she belonged to another master. So she must bear his child while she belongs completely to him. But, if he bought her while she was pregnant by him, and later, the child was born in his house, she is considered 'Umm al-Walad". Mālik added "God knows" while Abū Ḥanifa said "The slave girl is considered as 'Umm Al-Walad whether her master owned her before or after she bore him a child".<sup>(101)</sup>

On the other hand, 'Abd allāh b. 'Omar reported that his father 'Omar b. Al-Xattāb, was angry with men, who had intercourse with their slave girls and then ignored this issue. So he declared that "Any slave girl whose master admits that he had intercourse with her, will be considered to be the father of her child, so do not ejaculate inside her and do not have intercourse with her".<sup>(102)</sup>

Actually, 'Omar b. Al-Xattāb gave 'Umm Al-Walad a very important advantage

when he set her free during the life of her master. It was reported that he set free 'Umm Al-Walad because her master had burnt her.(103) This was a new practice.

Muslim have to say that being 'Umm Al-Walad was an ambiguous situation to be in as it included both elements of freedom and slavery.

a. freedom, because she was protected against being sold. This low emerged was because a man could not sell the mother of his child, and the Prophet was also against the idea of separating the mother from her child. Her freedom was also assured after the death of her master.

b. slavery; because she was still bound by the same rules as slaves; for instance, compensation still had to be paid if she killed or injured any one, and the punishment remained the same if she committed a crime, such as adultery. In such instances 'Omar b. Al-Xattāb stated that she would be treated like any other slave girl, and thus could be sold; therefore, she loses all the rights, which she possessed according to the Sunna of the Prophet and successors such as 'Omar b. Al-Xattāb.(104)

### The married slave woman

The third category of slave woman was the married slave woman. A slave woman had the same right to marry as a free woman. In general, it was the same as the legal marriage, but with certain differences.

a. according to the Hadith, if the slave's master was a Muslim he could give her in marriage without her consent.(105) It made no difference whether she was a virgin or a non-virgin unlike the free woman. However, her consent had to be obtained, if her master, having set her free, then marry her (106) Al-Šāfi'ī did not consider this a legal marriage unless the slave girl was set free before the marriage contract,(107) as the Prophet did with Šafiyya and Jūwāiriyya.(108)

b. Her wali was her owner and she could not marry without his

permission, thus, if a slave married without his or her master's consent the marriage was considered unlawful and the master could separate the couple.(109) This fact was reported by Ibn 'Omar, who narrated that the Prophet described the slave, who married without the master's consent, as an adulteress and prostitute, and declared the marriage to be invalid.

In one word, it can be said that the marriage is held by the master's hand.

c. as in the case of the free woman a slave woman had the right to a mahr, paid for by the groom. The mahr was to be from what he earned by his own labour. However, as a slave, she can not keep the mahr, as a free woman, would do because her master receives her mahr and it then becomes his property.(110)

Ibn 'Abbās, reported another fact saying that a master can marry his slave boy to his slave girl without mahr and he added "God knows".(111) 'Anas narrated that when the Prophet married Ṣafīyya he gave her her freedom as her mahr. But surely, this fact was not a Sunna to be followed.(112) Others considered her ransom, which the Prophet paid, as her mahr.(113)

When the Prophet married his second captive woman, Jūwā'iryya, some references said that he paid her ransom,(114) others mentioned that her mahr was her freedom and the freedom of one hundred members of her tribe.(115) While Ibn 'Ishāq mentioned this was when the slave girl married a free man or in other words married her owner. But when she married a slave or any other free man, who did not own her, her master decided her mahr.

d. a slave girl had the right on her wedding day to borrow perfumes from other women and to adorn herself.(116)

### **Marriage between slaves and free men**

The Koran, encouraged a man to marry his slave girl on certain conditions (4:24):



- a. if she was of his own faith "A believer".
- b. if the man was poor and, therefore, could not pay the same amount of mahr as a free woman.
- c. if he was afraid of being unchaste.

The Prophet held these points and added another condition. He disliked and forbade the idea of having a slave wife and a free wife at the same time.<sup>(117)</sup> The companions Ibn 'Omar and Ibn 'Abbās adopted this hadith. Ibn 'Abbās said "When a free man marries a free woman that means that he divorces his slave wife and, therefore, he should separate from the slave wife".<sup>(118)</sup> The majority did not allow a free man from having a slave wife if he already had a free wife.<sup>(119)</sup> Mālik mentioned that a free woman and a slave woman should not be joined together by a man.<sup>(120)</sup> Furthermore, the jurists refused the idea of having two slave wives at the same time. Ibn 'Abbās said "A free man can marry only one slave woman, not more and he cannot marry a slave woman if he already has a slave wife."<sup>(121)</sup> Mālik supported this opinion.<sup>(122)</sup>

In the case of a man marrying a free woman while already having a slave wife. 'Alī b. Abī Tālib said that the free wife should have 1/3 of his time which meant two days for her and one day for the slave wife.<sup>(123)</sup> Instead, Saīd b. al-Musayyab said that the man should not marry a slave woman unless his free wife accepted, and if the free wife accepted should have 2/3 of his time.<sup>(124)</sup>

On the other hand, there is another opinion related to 'Omar bin al-Xattāb from the Prophet saying that the man may use contraception with his slave wife without asking for her acceptance, but in the case where his wife was a free woman, he should ask her permission.<sup>(125)</sup>

It is worth mentioning that marriage between the free man and the slave girl was encouraged under normal circumstances, meaning only if the man could not marry a free woman. Some of the Sunni Doctrines were strict about marriage between a free man and



a non-Muslim slave woman. Mālik, gave his opinion in accordance with the Koran saying that it is unlawful to marry a Jewish or a Christian slave woman. Mālik, added that the Koran mentioned the believing slave only. In this case the man could marry a free woman from "Ahl Al-Kitāb". He, therefore, believed that Jewish and Christian slave women were lawful as concubines, but not as wives, while the idolateress was not lawful even as a concubine.(126)

Al-Šāfiʿi believed that the Koran allowed Muslim men to marry the woman from Ahl Al-Kitāb and forbade marriage from non-believers.(124) This opinion was generally agreed among the Sunni rites as in the case of Abū Ḥanīfa and Aḥmad b. Ḥanbal(128) who said that a man could marry Christians and Jews. Abū Ḥanīfa mentioned one condition saying that a man could marry his non Muslim concubine as long as he has not got a free wife.(129) While the companion, Ibn ʿOmar rejected this marriage completely, especially with the Christian woman.(130)

### **The Relationship between the Married Slave Woman and her Master**

- a. when she was a slave
- b. when she was set free

a. a married slave woman had the same rights and protection as the free woman, meaning she was only lawful for her husband. Only in the case of captive married woman, Abū Saīd Al-Xudārī narrated, that these women were lawful for Muslims, even if they were married, because their husbands were pagans and they fought against Islam.(131)

Abū Daraʿ reported that the Prophet was angry when a man had intercourse with a pregnant slave woman and he said "I am inclined to invoke a curse on him, which will enter his grave with him. How can he do this, when it is not lawful for him.(132)

Therefore, the Prophet forbade Muslim soldiers to have intercourse with pregnant captives until they had born their babies.

But, our concern is for the married slave woman whose master owns her, and who at the same time, already has a husband. Her situation was completely different from that of the other slave woman such as the concubines and 'Umm Al-walad. She might be married to a slave or a free man and so she was in duty bound towards her master, who could sell her or give her away, as a present and could pass her on to his heir.

The vital point about the position of the married slave is her relationship with her master. She is a servant for him only. Ibn Šihāb, narrated that 'Abd allāh b. 'Omr bought a married slave woman and sent her as a present to 'Otmān b. 'Affān who said "I would not touch her unless her husband leaves her". 'Omar compensated her husband and he divorced her.<sup>(133)</sup> Mālik mentioned similar story about 'Abd Al-Raḥmān b. 'Awf, who bought a slave woman and when he knew that she was married he gave her back.<sup>(134)</sup>

This means that a married slave woman was not in the category of "mā malakat 'aymānukum" as long as she had a husband. But, as Al-Šāfi'ī said, if he divorced her she became lawful for her master.<sup>(135)</sup> If she had children, whether her husband was a free man or a slave, her children always belonged to her master which means they were slaves as long as her husband did not own her because the children became the property of her master.<sup>(136)</sup>

Furthermore, the married slave was bound by the same rules as the free woman in the matter of chastity that is if she committed adultery she would be punished, as mentioned in the Koran (4:2) which stated that she should suffer the half punishment, which meant that while she would not be stoned, she would be flogged fifty strokes though not a hundred. However, she was considered to be the same as the free woman if she had a child outside marriage, whether she committed adultery with a slave or a free man, her child was regarded as illegitimate<sup>(137)</sup> and the Prophet stated that the child

should follow its mother and could inherit from her(138), and her master owned him.(139)

Stern presumed that a married slave had the right to own her property, saying that a slave called Umm Qais, possessed sixty heads of cattle on which she was exempt from paying Zakāt. He added that Barira, ʿĀiṣa's slave, must have owned some property to have occasioned the dispute as to who were her legal heirs.(140)

In addition, the Prophet declared that like the free woman, a married slave could give Ṣadaqa (charity) with her husband's permission and the reward would be shared equally between them (141).

b. when a married slave woman is set free

Barira, the slave of ʿĀiṣa, is a good illustration of this point. The Prophet made it a Sunna for any married slave. He said that if the married slave is set free she has the right to choose either to stay with her husband or to leave him, and that her loyalty should be to the one, who set her free".(142) In this hadith, the Prophet did not mention whether the husband was a free man or a slave. Therefore, there is some confusion about Barira's husband because there were two opinions about him from ʿĀiṣa.(143) Ibn Ruṣd, mentioned that Ahl Al-Medīna, Mālik, Al-Ṣāfiʿī and Aḥmad b. Ḥanbal said that if the husband was a free man the slave woman could not choose. Unlike Abū Hanīfa, who gave her the right to stay or to leave her husband as soon as she was set free whether her husband was a free man or a slave.(144) It is not certain as whether Barira's husband was a slave or a free man, since we have two different stories about him. First, it was said that he was a free man and then it was reported that he was a slave man.(145) The author believe that the second report was more accurate, according to Ibn ʿAbbās, who confirmed that Barira's husband, whose name was Muḡit, was a black slave of the Banī Al-Muḡira, and when Barira chose to leave him after she had been freed, he cried and begged her not to leave him.(146) It was reported that the Prophet tried to help him



and he asked Barira to stay with him. Barira asked the Prophet "Do you order me not to leave him"? The Prophet said "No, I do not, but it would be nice"(147).

It is vital to say that this right of the slave woman was governed by one condition mentioned by Hafsa the prophet's wife and Ibn 'Omar and Malik described it as Sunna. It has been mentioned that, Zabra' was a married slave woman and when her owner set her free it was said that Hafsa, sent for her and told her "It is your decision, if your husband touches you, you cannot have the right to choose". The slave woman replied "I want divorce, divorce, divorce" and she left her husband.(148)

Ibn 'Omar said "If her husband had intercourse with her, after she was set free, she would lose the right of choosing and she could not leave him if she wanted". He added that even if the slave woman complained that she did not know this rule, then no one would believe her and she would remain with her husband.(149) Malike Al-Safi'i held this opinion(150) Ibn 'Abbās said that if a married slave woman herself chooses to leave her husband she cannot ask for her mahr, because it was the woman's choice.(151) Therefore, it was considered as a separation more than a divorce. However, Malik said that if she chose to leave her husband and he did not touch her after her release it was a divorce and there is no mahr for her, saying "It is our custom" and her 'idda should be two months long (152).

### Divorce of the Slave Woman

The Prophet allowed the masters to control the marriage of their slaves, but in the case of divorce it is the slave man's decision and his master has no power over him. Ibn 'Abbās narrated that the Prophet, said that a slave man complained to him that his master forced him to divorce his wife after he had given him the permission to marry her. So the Prophet said to him "He cannot, because divorce is your right, not his".(153)



However, there is a difference between the slave and the free woman in divorce. ʿĀiṣa<sup>v</sup>, reported that the Prophet said "The divorce of a slave woman is by two pronouncements and her'idda is two months:(154) if her husband wants to take her back after the second one he cannot do so unless by "Muḥallil" the same as the free couple.(155) Also, Ibn 'Abbās was asked whether a slave man who had divorced his wife by two pronouncements, thereby setting them both free, could then remarry his wife Ibn'Abbās replied "Yes he could because the Prophet allowed them".(156)

On the other hand, Saīd b. Al-Musayyab was asked whether a slave man divorced his slave wife by two pronouncements or irrevocable divorce, and if his master then gave her to him, could she be lawful for him as what the hand possesses. He said "No, they need "Muḥallil" to make her lawful for him".(157)

Zaid b. Tābit used to say that if a free man divorced his slave wife a triple divorce or final and then he bought her, she is unlawful for him unless by "Muḥallil".(158) Mālik asked Ibn Ṣihāb<sup>v</sup>, if a free man divorced his slave wife by a single divorce and then bought her from her owner whether she lawful for him as what his hand possesses? Ibn Ṣihāb<sup>v</sup> said "Yes". While in the case of triple divorce, they need "Muḥallil".(159)

### The Rights of the Divorced Slave Woman

It is worth mentioning that there are few hadiths from the Prophet concerning this subject. Therefore, nearly all the information we have comes from the companions, their successors and the Sunnī jurists.

It should be said that if her husband was a free man her irrevocable divorce is a triple one and if he was a slave man her final divorce is a double one.(160) If she was divorced by a single divorce Mālik allowed her to have maintenance during her'idda. As mentioned by Ibn Ṣihāb<sup>v</sup> and her husband has the right over her during the'idda and if he wants to take her back,(161) the same applies as in the case of the free woman. If the

woman was divorced by a triple divorce, Mālik said that she has no right to maintenance even if she was pregnant and regardless of whether her husband was a free man or a slave man.(162)

Regarding the idda of the slave woman, ʿĀiṣā narrated that the Prophet said "The idda of a divorced slave woman should last two menstrual periods".(163) Mālik mentioned her idda saying "Her idda is for two periods and if she is divorced and then set free, her idda will still be the same and nothing can change her situation. Even if her husband is a free man her idda still lasts for two periods as she is a slave woman.(164) Al-Ṣāfiʿī said "if she does not have a period her idda is one month and a half.(165)

The idda was required for the slave woman in two cases:

- a. when she was divorced
- b. when set free in case she chose to leave her husband.

As with the free woman the slave woman had the right to inherit from her husband and in the case of divorce, she could not marry during her idda. She also has the right to her mahr.(166) Apart from where she was set free and chose to leave her husband with no mahr.(167) It was not clear whether she or her owner received the mahr, this depends on the view that some believed the slave can own property(168) while others did not, as Al-Ṣāfiʿī, who said "The slave does not own money because his money is for his master's money".(169) Al-Ṣāfiʿī based his opinion on the Koran and the Sunna saying "Slaves could not own anything, because they had been owned".(170) Therefore, we can say that the mahr and anything the slave woman received from her husband belonged to her master and not to her.

The children of a slave woman belonged completely to her master and became his slaves. Her husband cannot support them as long as they are the slaves of their mother's master.(171) In the case of divorce, the general opinion of the Sunni jurists was that slaves were not to be regarded as guardians because they were bound to their owners,

who could sell them at anytime. Mālik gave the slave woman the right to be a guardian for her child, but she might be sold by her master.(172)

### The Slave Widow

Within the Sunni jurists there was almost general agreement that a slave woman does not have to mourn for her husband. Abū Ḥanīfa explained, saying "the married slave woman should not mourn for one vital reason: she has to serve her master, which means that she has to go out of the house. This fact cuts across the principle of mourning, meaning that, she could wear make-up.(173) Although, others mentioned Umm Al-Walad, but she is not regarded as a married woman as Mālik reported.(174)

Furthermore, unlike the free widow, the slave widow could not have the blood-money for her husband if he was killed by accident or murdered because if her husband was a slave, his master received the compensation.(175) Also, we ignore her rights when her husband was a free man.

Concerning her'idda, Saīd Al-Musayyab said her'idda should be two months and five days, meaning half the'idda of a free widow. In addition, Ibn Ṣihāb mentioned that if her husband divorced her once then he died her'idda is as for any slave widow. But if he died after she was set free, her'idda is four months and ten days long like that of a free widow. Mālik supported this opinion saying "It is our custom".(176)

### Reasons for Divorce

A slave woman might be sold to other masters several times, but this fact did not affect her marriage.(178) Slave couples had special conditions for divorce unlike those of free couples. Their divorce is dependent on their freedom and the conditions of slavery.



a. according to the Prophet, the slave woman can be separated from her husband if she is set free.(179)

b. if a slave wife becomes the property of her slave husband, divorce should take place.(180) Mālik said that this is a separation rather than a divorce and, if the couple want to remarry they can do so under a new marriage contract. Mālik, believed that the slave couple could not own each other if they were married.(181) Even a free woman cannot own her slave husband. If he was given to her as a present their marriage should be dissolved.(182)

### Types of Divorce

As a divorced woman we might ask about the position of slave women in Xal', Zihār, Liān and 'ilā'. It seems that there is lack of hadith from the Prophet about these cases, all we have is the judgment of the Sunni jurists.

a. Xal': The majority allowed the married slave woman to ask for Xal' from her husband in the same way as any other free woman. But, this right was tied to the acceptance of her owner. The author believe this was to ensure that the slave woman could not deal with any payments or money in general, without her master's permission.

b. Zihār: these are two different opinions within the Sunni rites. For instance, Mālik included the slave couple in the Zihār formula, making no differentiation between them and free people. While the other three Imāms of the Sunni rites disapproved of this, regarding Zihār as applicable only to a free married woman. Ibn Ruṣd, mentioned that Mālik based his judgment on the verse of the Koran (58:1) mentioning that the men who pronounce the Zihār formula against their women, without specifying the type of woman. Therefore, a slave woman should be included.(183) The other group denied this argument. Mālik said that he asked Ibn Ṣihāb for his opinion was told that the Zihār of the slave man is the same as the Zihār of the free man,



"Therefore, Mālik added that the formula of Zihār is a duty for a slave and his fasting should last for two months like the free man.(184)

c. Liān : The Sunni Doctrines were also divided upon this issue: while Mālik and Al-Sāfi'i allowed both free couples and slave couples to perform Liān; Abū Ḥanifa did not accept Liān from a slave couple.(185) Abū Ḥanifa and his supporters relied on a hadith which was transmitted by 'Omar b. Sa'yfa from his grandfather, who narrated that the Prophet forbade four people from Liān. They were the slave couple and the pagan couple. Also Abū Ḥanifa said that as long as a slave could not be stoned, he could not take part in Liān.(186) Although Mālik gave the slave couple the right to perform Liān, he said that there is no punishment for the one who assaulted her after Liān.(186) While in the case of a free woman, the punishment is eighty strokes.(187) In addition, Mālik named only the Muslim slave woman beside the free Christian and Jewish women who could perform Liān against their free husbands. He said "It is our custom". Also, a slave man could curse his wife whether she was a captive Muslim or a free Muslim, a free Christian or a free Jewess. As with the free couple, Mālik said that Liān is a terminal separation and the couple can never come together again. If a man cursed his wife then bought her, he cannot have intercourse with her even if he owns her as a concubine. Mālik concluded the matter by saying "It is our Sunna".(188)

d. 'ilā': The majority of people allowed the slave man to practise the action of 'ilā' whether his wife was a free woman or a slave. But the duration of 'ilā' was not the same. Abū Ḥanifa considered 'Ila' according to the woman and whether she was a free woman or a slave, giving no notice to the man. Therefore, he said that if a slave man enacted 'ilā' with his free wife the time of 'ilā' had to be the same as for the free couple, meaning that the period was limited to four months. But if the wife was a slave, 'ilā' should be half the time of free people, meaning two months only. Mālik, explained this point of view saying that 'ilā' should be the same as the punishment and the divorce

of the slave unlike Al-Šāfiʿī, who made no distinction between slaves or free people in ʿilāʿ, and allowed the slave man to enact as the free man, meaning four months. If the slave woman was set free while her husband was enacting ʿilāʿ against her, Abū Ḥanīfa said that she became a free woman, so the ʿilāʿ should be for four months, contrarily to Mālik, who believed that even if she became a free woman nothing would change and the ʿilāʿ had to be the same, that is two months if her husband is a slave man. (190)

### Chapter Six - Notes

1. Levy, p.73.
2. 'Alī, M.M., The Religion of Islām, p.543.
3. Levy, p.42.
4. See'Umm Al-Walad.
5. Stern, p.119.
6. Al-Nasā'ī, p.95.
7. I.M., Ch.3, H2519, p.842. Ch.8, H2529, p.845.
8. Mālik, Ch.10, H17-19, p.780.
9. I.M., Ch.8, p.2530, p.845.
10. Op cit., Ch.8, H2529, p.845.
11. Mālik, Ch.4, H5, p.775.
12. I.M., Ch.42, H1950, p.629.
13. Op cit., Ch.6, H2526, p.844.
14. Abū Dāwūd, Ch.555, H1690, p.177.
15. Stern, p.166.
16. Mālik, Ch.8, H14, p.779.
17. A.b.H., 2 : 1312.
18. Mālik, Ch.7, H12, p.788, Book No. 38.
19. I.M., Ch.4, H2522, p.842.
20. Mālik, Ch.6, H8, p.776.
21. Op cit., Ch.6, H9, p.777.
22. Op cit., Ch.6, H10-11, p.777-778.
23. I.M., Ch.9, H2531, p.846.
24. Qutub, M., Islām, p.75.
25. Mālik, Ch.8, H13, p.779.
26. Op cit., Ch.9, H15, p.779.
27. I.M., Ch.10, H2532, p.846.
28. Bu, Ch.16, p.134.
29. Levy, p.80.
30. Mālik, Ch.16, H40, p.980.
31. Robson, p.714.
32. Sābiq, Al-Sayed, Fiqah Al-Sunna, p.689.
33. Mālik, Ch.16, H42, p.982.
34. Robson, J. p.714.

35. Sābiq, p.689.
36. Op cit.,
37. Mālik, Ch.5, H7, p.776.
38. Op cit., Ch.16, H41, p.980.
39. Sābiq, p.689.
40. Karīm, p.469.
41. Bu, Ch.16, p.134.
42. Karīm, 221.
43. Levy, p.77.
44. Al-'Aqqād. M, Al-marā' fi Al-Korān.
45. Levy, p.124.
46. Muslim, p.1124 margin.
47. Al-Wāqidi, Kitāb Al-Magāzi, p.399.  
Bu, Ch. 13, p.315.
48. Robson, p.713.
49. Al-'Alī, S. p.130.
50. Muir, p.631.
51. Ibn'Ishāq, p.47.  
Al-Šafi'ī, Al-Risala, N. 169, p.564.
52. Muir, p.631.
53. Mālik, Ch.16, p.541.  
Tir, Ch.35, H1131, p.437.
54. Levy, p.45.
55. Mālik, Ch.15, H36, p.539.
56. Ibid.
57. Op cit., Ch15, H38, p.540.
58. Op cit., Ch.6, p.830, Book No. 41.
59. Op cit., Ch.6, H20, p.831.
60. Op cit., Ch.5, H6, p.616.
61. Op cit., Ch.5, H5, p.616, Book No. 31.
62. Op cit., Ch.6, p.830.  
Tir, ch.35, H1131, p.437.
63. Ibn'Ishāq, p.178.
64. Levy, p.93.
65. Robson, J. p.742.  
V.R. & Bevan Jones, p.16.



66. Mālik, Ch.3, H15, p.827.
67. Robson, p.763.
68. Mālik, Ch.16, H14, p.734. Book No. 36.
69. Abū Dāwūd, Ch.1637, H4464, p.223, Book No. 23.
70. A.b.H., 2 : 278, 2 : 1142.
71. V.R. & L. Bevan Jones, p.16.
72. Muslim, Ch.14, H86, p.1046.
73. Bu, Ch.13, p.315.
74. Op cit., Ch.13, p.316.
75. Ibn'Ishāq, p.730.
76. Muir, p.298.
77. Ibn'Ishāq, p.739.
78. Levy, p.91-92.
79. Stern, p.148.  
Ibn'Ishāq, p.693.
79. Muir, p.536.
80. V.R. & L. Bevan Jones, p.15.
81. Ibn'Ishāq, p.969  
'Awān "capture of war"  
Concubines "were not hid behind curtain or used veil"  
Muslim, Ch.14, H86, p.1046  
Bu, Ch.13, p.315.
82. Abū Dāwūd, Ch.1491, H3954, p.36.
82. Ibn Rushd, p.329.
83. I.M. Ch.2, H2517, p.841.
84. Abū Dāwūd, ch.1491, H3953, p.36.
85. I.M. Ch.9, H2512, p.840, Book No. 19.
86. Op cit., Ch.2, H2515, p.840.
87. Op cit., Ch.2, H2516, p.840.
88. Al-Sharbāsi, Mālik "Chapter Two".
89. Mālik, Ch.5, H6, p.776.
91. Levy, p.45-46.
92. Hughes, p.680.
93. I.M., Ch.33, H2083, p.673, Book No.10.
94. Mālik, Ch.32, H91, p.592.
95. Levy, p.78.

95. Mālik, Ch.32, H81, p.592.
96. A.b.H, 12 : 7042.
97. Stern, p.166.
98. Levy, p.46.
99. V.R. & L. Bevan Jones, p.26.
100. A.b.H, 12 : 7042.
101. Mālik, Ch.13, H32, p.538.
101. Ibn Rushd, p.330.
102. Mālik, Ch.23, H24, p.743, Book No. 36.
103. Op cit., Ch.5, H7, p.779, Book No.
104. Ibn Rushd, p.330.
105. Levy, p.80.
106. Op cit., P.105.
108. Abū Dāwūd, Ch.663, H2054, p.298.
108. Mālik, Ch.19, H43, p.543.
109. Tir, Ch.12, H1112, p.420.
110. Abū Dāwūd, Ch.679, H2078, p.307, Levy, p.79.
111. Al-Nasāi, p.127.
112. Op cit., p.56.
113. I.M., Ch.14, H68, p.1046 (7 cheep)
114. Muir, p.288.
115. Stern, p.51.
115. Ibn Ishāq, p.730.
116. Stern, p.87.
117. Al-Nasāi, p.175.
118. Op cit., p.176.
119. Op cit., Masruq, Al-Baihaqi, Jābir b. Abd allāh Al-Mazni Al-Hassan, p.175-176.
120. Mālik, Ch.12, H28, p.536.
121. Al-Nasāi, p.175.
122. Mālik, p.537.
123. Al-Nasāi, p.175.
124. Mālik, Ch.12, p.536.
125. I.M, Ch.30 - H1428, p.620.
126. Mālik, Ch.16, p.540.
- The Koran (5:5).
127. Al-Sāfi i, Ahkām Al-Korān, p.187.

128. Sābiq, p.105.
129. Levy, p.103.
130. Bu, Ch.18, p.467.
131. Robson, p.673-5.
132. Muslim, Ch.23, H138, p.1066.  
 "This unborn baby will be his child while in fact he is not".
133. Mālik, Ch.6, H7, p.617.
134. Op cit., Ch.6, H8, p.617.
135. Al-Šāfi'ī, Aḥkām Al-Koraṅ, p.184.
136. Levy, p.79.
137. I.M., Ch.14, H2745, p.917, Book No. 23.
138. A.b.H, 12 : 7042.
139. Stern, p.118.
190. Op cit., p.168.
141. Robson, p.414.
142. Mālik, Ch.10, H25, p.562.
143. Tir, Ch.7, H1155, p.461, Book No. 10.
144. Ibn Rushd, p.44.
145. Tir, Ch.7, H1155, p.461.
146. Op cit., Ch.7, H1156, p.462.
147. Bu, Ch.16, p.467.
148. Mālik, Ch.10, H27, p.563.
149. Al-Nasā'ī, p.225.
150. Ibn Rushd, p.44.
151. Al-Nasā'ī, p.226.
152. Mālik, Ch.10, H29, p.563.
153. Sābiq, p.257.
154. Tir, Ch.7, H1182, p.488.  
 Abū Dāwūd, Ch.713, H2189, p.346.
155. Op cit., p.345, margin.
156. Op cit., Ch.713, H2187, p.345.
157. Mālik, Ch.13, H31, p.537.
158. Op cit., Ch.13, H30, p.537, Book No. 28.
159. Op cit., Ch.13, H32, p.538.
160. Op cit., Ch.18, p.575.
161. Op cit., Ch.33, H94, p.594.

162. Op cit., Ch.24, H68, p.581.
163. Abū Dāwūd, Ch.713, H2189, p.346.
169. Mālik, Ch.24, H68, p.581, 82.
165. Al-Naṣā'ī, p.158.
166. Stern, p.166.
167. Mālik, Ch.10, H29, p.563.
168. Levy, p.87.  
Stern, p.168.
168. Al-Šāfi'ī, Aḥkām Al-Korān, p.169-170, 180.
170. Op cit., p.176.
171. Mālik, Ch.18, p.575.
172. Sābiq, p.344.
173. Ibn Rushd, p.101.
174. Mālik, Ch.5, p.883, Book No. 44.
175. Ibid.
176. Op cit., Ch.33, H94, p.594.
178. Bu, Ch.14, p.466, Book No. 68.
179. A.b.H, 6 : 170.
180. Levy, p.123.
181. Mālik, Ch.18, H43, p.543.
182. Hughes, p.88
183. Ibn Rushd, p.89
184. Mālik, Ch.8, H24, p.561, Book No. 29.
185. Ibn Rushd, p.98.
186. Mālik, Ch.14, H35, p.568.
187. A.b.H, 11 : 207.
188. Mālik, Ch.13, H35, Book No. 29, p.568-569.
189. Ibn Rushd, p.98.
190. Op cit., p.85.



## CONCLUSION

The Role of the Hadith is not only to explain the verses of the Koran, which is the main reason for its existence, but, became the basis of the system of law, theology and customs which developed and which is Islam, as Guillaume said.<sup>(1)</sup> The important achievement of Hadith appears in the subjects upon which the Koran throws little light or which were not mentioned at all.

### 1. The young girl

a. the Prophet encouraged Muslim men to treat their sisters and daughters well until they married. He regarded this as a religious duty which would be rewarded in paradise.<sup>(2)</sup>

b. he insisted on equality between the boy and the girl in treatment and in gifts.<sup>(3)</sup>

### 2. Marriage

The vital change appeared in the marriage system. The Prophet established three principles regarding the lawful marriage (ḥalāl) and if they were not present the marriage was unlawful (ḥarām).

a. guardian (walī)

b. witnesses (shūḥūd)

c. announcement of marriage (iḥlāl)

d. dower (mahr)

*mahr* is likely to be mentioned in the marriage contract, but, it is not important that the amount should be fixed, since the Prophet allowed the man to marry without

paying his bride mahr as 'Āiṣā narrated.<sup>(4)</sup> However, the Prophet safeguarded the woman's right in obtaining her mahr in the case of divorce or if the man died. The copy or a similar dower (mahr Al-Mitl). The woman can obtain mahr similar to that of her sister, cousin or aunt, in other words, similar to the mahr of the woman in her family.

e. the consent of the women (qubūl).

The Prophet mentioned the consent of the woman in marriage saying that the consent of a virgin is her silence and the non-virgin woman can express her acceptance. The main point concerning consent is that the Prophet refused marriage by force especially if the woman rejected it. Therefore, he dissolved many marriages for both virgin and non-virgin women<sup>(5)</sup>. However, the custom of arranging the marriage by the family did not change.

f. additional to the Koran, concerning the subject of women, who are unlawful for the man, (4:21-22) the Prophet added that the aunt and her niece cannot marry the same man at the same time.<sup>(6)</sup>

Among the new principles of lawful marriage, as laid down by the Prophet, was his rejection of any marriage lacking these basic principles. He cancelled the following forms of marriage:

- a. the marriage of Ṣigār. Because it prevents the woman from obtaining her mahr.
- b. the marriage of mut'a. Because it is a temporary marriage, the woman has no right to claim inheritance from her husband as there is no walī, no witnesses and no announcement. Therefore, this marriage is regarded as a secret marriage. However, the Prophet allowed it for a while then he forbade it before he passed away.
- c. the marriage of muhrim or the marriage during the time of the pilgrimage (Hajj).
- d. the marriage of muhallil. The Prophet did not forbid it since the Koran allows it (2:228) but, he disliked it because its main reason is to marry a woman in order to make

her lawful for her first husband, and therefore this marriage is regarded as a trick.

## 2. Polygamy

The Prophet mentioned some practical ways of ensuring the equality between the four wives:

a. the man has to divide his days between his wives. The Prophet used to draw lots among his wives in order to take some of them with him on a journey. Therefore, it was not according to the man feelings. The Prophet did not mention a distinction between slaves and the free wives as regards treatment and equality unlike 'Alī b. Abū Tālib and the successor, Saīd b. Al-musayyab.

b. according to Al-Tirmidī's Sunna, it is a sunna if the man marries a new virgin woman he has to stay with her seven days, and if he marries a non-virgin woman he has to stay three days with her then he can divide his time equally between all of his wives. However, 'Umm Salma's hadith indicated that the Prophet asked her if she wanted him to stay with her three or seven days and She replied "three days". This means that the Prophet did not differentiate between the virgin and the non-virgin wife. (8)

## 3. The Married Woman.

a. the Prophet mentioned the duty of the married woman towards her own parents during their lifetime and after their death. He laid down some religious and moral duties in addition to good treatment.

b. at the same time the Prophet either by his Sunna or Hadith showed the ideal relationship between the parents and their married daughter regarding moral and even financial support.

c. the Prophet mentioned the duties of the mother towards her children from religious and moral points of view. (9)

#### **4. Divorce**

The new principles in the matter of divorce were fewer than those in marriage, the new points were;

a. the triple divorce or final divorce. The man has to divorce his wife three times in order to make her unlawful for him. The Koran says that it is twice to make the woman unlawful for her husband (2:228).

b. the Prophet gave some conditions for both lawful and unlawful divorce. For instance:

- divorce is not acceptable if the woman is not in a state of purity.
- divorce by force or in anger is not lawful on the other hand however, the Prophet did accept some kinds of divorce such as:
  - from the mature and rational man.
  - divorce from a wife just for fun. The Prophet accepted this divorce as a kind of punishment for the man.
  - he man may divorce his wife in order to please his father.(10)

#### **The Divorced Woman**

a. the Prophet stated that the divorced mother has the right to keep her baby with her as long as she remains unmarried. If she remarries, she cannot keep the baby with her.

b. he gave the child the right to choose between his father and his mother even if his mother was a non-Muslim.(11)

c. the Prophet mentioned the parents' responsibility towards their



divorced daughter and her right to be maintained and supported the same way as before marriage.(12)

## 5. The Widow

The Prophet attended to several aspects of the status of widows:

a. he laid down the rules of mourning for any widow; as regards her appearance: no perfume, no make-up, and no bright clothes in order to avoid being attractive to the opposite sex. Her attitude: The Prophet forbade wailing, beating the face and tearing clothes.

b. concerning the widow's right to obtain her mahr, the Prophet allowed a widow to have her husband's share of booty as her mahr. Also, he gave her the right to receive the blood money. Concerning the poor widow, the Prophet undertook full responsibility for her and her orphans regarding this as his duty. One-fifths of his share of booty was for supporting widows and orphans.(13) In addition, he allowed the widow of (Al-Muhājirīn) to inherit her husband's house in Al-Medīna as Al-Nasā'ī and Ahmad b. Hanbal reported. Furthermore, the Prophet gave the widow the right to marry as soon as she gave birth without observing the 'idda.

c. he raised the status of the widow who devoted herself to bringing up her offspring orphans.(14)

## 6. The Slave Woman.

Basically, the slavery system did not alter a great deal between pre-Islamic and Islamic times, but the Prophet added many rules for dealing with slaves with justice. Also, he made rules for the slave women, dividing them into three categories.

a. the concubines or "What your right hand possesses" who are the

slave women whom the man was allowed to have a sexual relationship with besides his legal wives. The conditions were similar to those of marriage to some extent.

b. 'Umm Al-Walad was the slave woman who had a baby from her master. The Prophet forbade her owner from selling her and from passing her on to his heirs as with the other slave women. Also, her freedom was due when her master died and her baby was considered free and legitimate.

c. the married slave woman.

The Prophet dealt with the married slave woman as he dealt with the free married woman. In that he considered her lawful only for her husband and, in the case of adultery, punishment should take place as the Koran stated (4:24). However, the Prophet gave the married slave woman a new right when he allowed her to choose either to leave her husband or to stay with him. If she was set free at any time, she could not have her mahr.

## 7. Punishment

The Prophet distinguished between adultery between married couples and sexual relationships between unmarried couples:

a. he adopted the Koran's verse concerning the punishment for an unmarried adulterer and an adulteress (2:24). They should be punished by one hundred stripes, and the Prophet added exile for the man for one year.

b. for the married adulterer and adulteress, the Prophet regarded their crime as unforgiveable, therefore, he stated that their punishment should be stoning to death.

c. the Prophet included both Muslim and Non-Muslims in the punishment of stoning since he ordered two Jewish couples who committed adultery to be stoned.

d. concerning the slave woman, the Prophet stated that there was no stoning for them, but they could be punished by fifty stripes as the Koran stated (2:24). The Prophet deferred the punishment of the married woman, who committed adultery and who gave birth to an illegitimate child, until she had weaned her baby.(15)

The question which many references were concerned about, was whether or not the Prophet built a new system of social security and a new family structure, which was completely different from pre-Islamic times.

One would agree with Hughes(16)and Watt(17) in saying that the Prophet did make a new foundation for Muslim society. In addition, he changed some customs from their original form in pre-Islamic times. For instance, he changed the period of the mourning for the widow to four months and ten days instead of one year. He forbade her to wail and scream and to sacrifice an animal at the end of her mourning. The Prophet adopted the wedding feast (walīma) with only a slight change when he preferred it to be for one or two days and according to the groom's financial means. 'Aqīqa is also a custom which has survived from pre-Islamic times. The Prophet said "Along with a baby there is an 'aqqīqa that is to shed blood on his behalf and remove injury from him". An animal has to be sacrificed then the baby's hair should be shaved, and, finally, the baby should be given a name. What the Prophet changed was the act of smearing the baby's head with blood.(18)

On the other hand, the Prophet adopted some customs without any change, such as self-redemption (Kalāf), which was practised during pre-Islamic times, when a woman could get a divorce if she gave back her husband all of his gifts.

Finally, concerning the customs from pre-Islamic times which the Prophet cancelled he said "I forbid what the Koran forbids".(19) However he cancelled for instance the marriage of mut'a and the marriage of Šigār and forbade the mature woman to give herself in marriage without the presence of her walī.

One may conclude by saying that when the Prophet built the structure of Muslim

society, he based it on the teaching of the Koran and his own judgment. Any adoption from pre-Islamic times was definitely in harmony with these two sources.

The most significant point about Hadith and Sunna is that they became the law which must be obeyed by the whole Muslim community as in the past, and in the present and in the future. Within this Islamic law known as (Šarī'a), alternatively analogy (qiyās), consensus (Ijmā') and the independent disciplined reasoning of the jurists (Ijtihād) had an effective role until Aḥmad b. Ḥanbal's time 855 when it was ended.<sup>(20)</sup> These principles played an important part, as well as the Koran and Sunna, in that many judgments and statements from Imāms or jurists became parts of Islamic law.

Therefore, it was important to follow the development of some Hadiths from the Prophet and to examine the changes which were brought about either by the companions or the jurists in general. Also, to show the difference between the basic theory of Hadith and the practice concerning some vital women's rights.

a. the disobedient woman (Al-mā'siz)

Basically, the Koran states as punishment she shall be beaten until she relents and obeys her husband (4:33). The Prophet adopted this verse and explained it saying that the man who beats his wife should avoid her face and not curse or insult her. Aḥmad b. Ḥanbal reported one case saying that the Prophet asked the man not to beat his wife, who left her house because she regretted it and pleaded to the Prophet to save her from her husband's punishment. However, the Prophet was not pleased about her attitude.<sup>(21)</sup> Both Lommens and Hughes confirmed that the Prophet was not keen on the idea of beating the woman.<sup>(22)</sup> In addition, as a Sunna, 'Āiṣā narrated that the Prophet never beat any of his wives. When he had a dispute with them, and they were considered mā'siz especially 'Āiṣā and Ḥafṣa, the Prophet simply gave them the right to stay with him or to ask for divorce.



As a law, it ended with "Bayt Al-Ṭā'a", which is a temporary place for Al-māšiz, where her husband has the right to keep her in isolation and under specific conditions, meant to humiliate and hurt her feelings and dignity until she gives up being disobedient or until he decides to divorce her. In fact, the roots of "Bayt Al-Ṭā'a" were mentioned in the Koran (4:14) which allows the man to keep his adulteress wife indoors until she dies or he divorces her. However, the vital point is that Al-māšiz is not an adulteress, she is simply stubborn. Sometimes she is aggressive and guilty of neglect by not paying attention to her husband's orders and wishes or sharing his bed with him, leaving the house, wearing make-up or doing something which makes him angry. In addition, the Koran says that the man should either keep or divorce his wife, but to treat her with kindness (2:230) and that he cannot force his wife to live with him against her will.

#### b. self-redemption (Ḫal<sup>ḫ</sup>)

The woman who can no longer live with her husband for different reasons. The Koran allows her to purchase her divorce from her husband. It did not fix any amount, but, it is by the mutual agreement of the couple. The Prophet stated that a woman can return her mahr only as a price for her divorce, and he was very understanding and reasonable with the woman who demanded Ḫal<sup>ḫ</sup>. On the other hand, among the companions such as 'Otmān b. 'Affān, a man was allowed to ask for everything his wife owned in order to divorce her. Ibn 'Omar also supported this idea, while the Imām Mālik and Al-Šāfi'ī allowed the man to take more or less than the mahr, also the kind of payment changed. Besides the mahr, it could be money, property, fruit, animals and a slave or even the guardian's right. Others like Towbān were very strict with a woman, asking for Ḫal<sup>ḫ</sup>, describing her as a hypocrite and demanding serious reasons for Ḫal<sup>ḫ</sup>, while the Koran mentions general reasons, which are religious ones, the Prophet did not ask for or investigate the reasons. This does not mean that he encouraged the woman to ask for Ḫal<sup>ḫ</sup> since there is a clear hadith saying that the woman who asked for Ḫal<sup>ḫ</sup> without reason would not go to paradise, but, he listened to the woman and considered her feelings.(24)

### c. the consent of the woman

Although the Prophet's Hadith was not clear enough regarding the consent of the virgin in marriage, which is her silence, he was clear about the consent of the non-virgin woman. The Prophet did not accept the idea of forcing women to marry without their acceptance because he dissolved many marriages in accordance with the requests of some virgin and non-virgin women, not differentiating between them. Some jurists such as Imām Mālik accepted and practice the idea of (Al-Jabr) or the right of the father to force his virgin daughter.(25)

### d. triple divorce

During the Prophet's time triple divorce used to be brought about by mentioning the word divorce three times within a certain period. However, 'Omar b. Al-Xaṭṭāb made one sentence uttered at the same time as a kind of punishment for men.(26)

### c. praying in the mosque

The Prophet's Hadith was clear about the right of women to pray in the mosque daily, in the evening, if she wants to do so. During his life-time women used to pray regularly in a special place in the mosque. After the passing of the Prophet, there was a general feeling among some of the companions against the idea of women praying in the mosque. 'Āiṣa mentioned the reason saying that it was because of the bad behaviour of women, who started to apply perfume when they were going to the mosque. Therefore, the idea was to encourage women to pray in their homes instead and even in their own rooms. Zineb b. Jaḥṣ, the Prophet's wife, said "her house is her mosque".\* This was unlike Ibn 'Omar and Al-Ṣāfi'ī who stated that it is a Sunna and the Prophet allowed the women to go to the mosque.(27)

### f. the right of women to possess their own money

The Koran allows orphans (male and female) to control their own money at the age of maturity on condition that they are rational and able to deal with it (4:5). The decision is for the wali (guardian) only. Also, the Koran gives her the right to keep her

mahr for herself. The Prophet, in all his Hadith, kept using the word "his money", saying that the woman cannot deal with her husband's money unless she has his permission. Some of the companions such as Ibn 'Omar, narrated that the Prophet said that the woman cannot control her own money if she is married. Abū Dāwūd and Al-Nasā'ī in their books, "Al-Sunan" denied this Hadith saying that if the Prophet mentioned anything like that, he meant the minor wife, who cannot deal properly with her own money. However mature women have the same right as the man as Al-Nasā'ī said. Abū Dāwūd believed that a woman can ask for her husband's advice and opinion concerning her money, out of politeness, and not as an obligation. Al-Nasā'ī reported that the Prophet's wives used to deal with their money and properties without the Prophet's permission, mentioning Ma'jūna's name as an example, saying that she set free her slave girl without asking or telling the Prophet. It should be noted that most of the Prophet's wives were richer than him. Al-Shāfi'ī supported this idea saying that the woman has the right to control her own money.(28) However, Ibn Ḥanbal mentioned the opposite opinion.(28) In addition, in the oath of allegiance, the Prophet asked the women to give gifts (ṣadaqa), and at the same meeting women started to give jewellery immediately without asking for their husband's permission(30)

To conclude, one can say that Hadith lay great stress on the position of women and the attitude to them. Hence we find many references to the Muslim and non-Muslim woman. Women are in need of protection by men, and therefore there are what one may regard as restrictions, which are all aimed at providing women with their needs and protection. In this respect, the Prophet encouraged the woman to marry because he disliked the idea of the woman living alone without a man as 'Ā'īsa said.(31)

The general picture may occasionally give the impression that women do not have many rights. However, a detailed investigation into the Hadith and their philosophy in

this respect may often show the opposite. The life of the Muslim woman, according to the Hadith, is restricted. Whether in certain areas the attitude to women is questionable, then the fault is not with the Hadith, but, with the individuals interpretation, which may be totally wrong.



## Conclusion - Notes

1. Guillaume, A., The Tradition of Islam, p.15.
2. Abū Dāwūd, Ch.1838 - H5148, p. 459, Book No. 35.
3. Op cit., Ch.1838 - H5146, p.458.
4. Op cit., Ch.693 - H2128, p.324.
5. Al-Nasā'ī, p.113- 114.
6. Muslim, Ch.4 -H33, p.1028.
7. Hughes, p.671 (wives).
8. See the chapter of Marriage (Ploygomy).
9. See the chapter of Married woman.
10. See the chapter of Divorce.
11. See the chapter of Married Woman (Gaurdain).
12. See the chapter of Married Woman.
13. Al-Wāqidi, Magāzī, p.92.
14. See the chapter of Widow.
15. See the chapter of Marriage.
16. Hughes, p.680.
17. Watt W. M., Muhammad at Al-Madīna, p.332.
18. See the chapter of Young girl (Aqīqa).
19. Ibn Isbaq, p.1010.
20. Levy, p.180 - Al-Sālih, p.200.
21. See the chapter of Married Woman (Al-Nāsiz).
22. Lemmans, H., Islam, p.81.  
Hughes, p.671.
23. Al-Aqqād, A. M., Al-Marā' fi Al-Islām.
24. See the chapter of Divorce (Xalḥ)
25. See the chapter of Marriage (consent).
26. See the chapter of Divorce.  
Muslim, Ch.15- H89, p.1048.
27. See the chapter of Married Woman.
28. Al-Nasā'ī, p.59 - 61.
29. A.b.H, 12 : 7058 -p.18.
30. Bu, Ch.59 - p.93, Book No. 77.  
Ch.32 - p.37, Book No. 3.
31. A.b.H, 15 : 7878 - p.10.

## INDEXES

## Arabic Terminology Used in the Thesis

The following are the terminology used throughout the thesis.

**Ahl Al-Kūfa**, Kūfa is a city in Iraq where some jurists were involved in religious discussion and argument.

**Ahl Al-Kitāb**, (the people of the Holy Book) i.e. the Jews and Christians.

**Al-'Anṣār**, are the people of Al-Medīna, who welcomed the Prophet when he emigrated from his city of Mecca, to Al-Medīna (16 July 622). They were called Al-'Anṣār or the helpers because they supported Islam and the Prophet, and took part in all the Muslim expeditions.

**Al-Muhājirūn**, were the first to embrace Islam, and emigrate with the Prophet to Al-Medīna thus leaving their properties and part of their families behind in order to escape from Mecca where they were being persecuted.

**Al-Nāṣiz**, a disobedient woman. It is a title for the married woman who neither obeys or respects her husband's desires and wishes. This term refers particularly to the woman who abandons her home family.

**Al-Taxyīr (choice)**, when the man gives his wife the right to choose either stay with him or to ask for divorce and get her mahr.

**ʾAṭar**, is a tradition usually referring to the Hadith of the prophet and sometimes used of the hadith of the companions.

**Ḡayer**, a woman who is jealous and proud of herself. When the Prophet was asked why he would not marry any of Al-'Anṣār woman he replies they were ḡayer.

**Ḡīla**, used for the woman who suckles her newborn baby and has sexual

intercourse with her husband.

**Ḥarām**, unlawful for any Muslim to do, say, eat and believe. It is concept found not only in the Koran and the Sunna but also in ʿIjmāʿ, qiyās or Islamic law in general.

**ʿIdda**, a period of time fixed by the Koran for any divorced woman or widow. It should be observed to ensure that the woman is not pregnant. It is three months for the divorced woman and four months and ten days for the widow.

**ʿIḥbār**, announcement of marriage to the public can be made through the holding of:

- a. wedding party
- b. wedding feast (walima).

**Jabr**, some jurists believed that the father has the right to force his non-virgin daughter to marry without her consent.

**Jihāz**, trousseau or bottom drawer or outfit of clothing or any other presents which could be paid for by the groom or the family of the bride.

**Kafaʿ**, the quality of the groom and the bride on many points, such as those of:

- a. religion
- b. family rank - back ground.
- c. social position, money, and power.
- d. honesty, dignity and good manners.

**Liʿān**, literally means mutual cursing technically it signifies a form of divorce which consists in working such as; when the husband accuses his wife of adultery, but has no witnesses to prove it and the wife denies it. Both husband and wife make the mutual cursing before a judge.

**Mā Malakat ʿAjmānukūm**, "what your right hand possesses". They are the women with whom men can have sexual relationships as well as with their legal wives. They were usually slaves and captives, and were called concubines.

**Mahr Al-Mitl**, alternative to dower or similar to dower given to the wife if the

amount of mahr was not fixed in the marriage contract and the husband dies or divorces his wife. The woman has a right to the same mahr as her sisters, cousins or aunts.

**Mahr**, all brides should receive a present from her groom. It can be in the form of money or any kind of property. Mahr should be paid when the woman asks for it. In the case of poor groom, it can be given in two instalments:

- a. mu'ajjal (prompt) should be paid before the marriage
- b. mū'ajjal (delayed) which has to be paid in the case of divorce or the death of the husband.

**Maḥram**, is a man who can lawfully visit, mix with and travel with a married woman besides her husband, such as; a father, brother, nephew, son, father-in-law and foster father.

**Muḥrim**, is a man who is preparing to perform the pilgrimage (Hajj).

**Mut'a**, is a temporary marriage limited to a specific period of time which is agreed upon by both the man and the woman. No guardian witnesses or announcement are necessary of the marriage is called, a secret marriage (Nikāh Al-Sir).

**Nafaqa**, is a maintenance paid by the husband. It is a right for every married woman and also for the divorced woman during the 'idda and for the pregnant divorced woman until her delivery.

**Qirā't Al-Fātiḥa**, reading of the first sura in the Korān, by the Imām before the couple announce their engagement.

**Ṣadaqa** (charity), which is a duty for any Muslim to give.

**Ṣiga**, is a title for a woman involved in the type of mut'a marriage.

**Ṣigār**, is an exchange between the two men: the idea being that they should marry the daughter or sister of the other, and that by so doing neither bride needs to be given a mahr. It was called Ṣigār because the mahr had been omitted from the marriage agreement.



**Sahāba**, the companions of the prophet, who were very close to him. They lived near the Prophet in Al-Medīna. They numbered nearly 3000 and some of them were illiterate. We know that some such as 'Abd Allāh Ibn 'Omar b. Al-'Aṣ were able to read and write. They retained the prophetic traditions and they were regarded as the models of Muḥammad as Ibn Ḥanbal said.

**Šiites**, a group of Muslims, who supported 'Alī b. Abū Ṭālīb, the Prophet's son-in-law and believed him to be the only successor to the prophet. The word Šiites means the followers today, they number between 29 or 35 million and they have their own books of Hadith and rite. They only follow the Koran and their traditions.

**Sinn Al-Bulūg**, is the age of maturity when girls and boys can marry and also can deal with their own money.

**Šawwāl**, the tenth month of the lunar year. It was a favoured month for marriage according to 'Aīša because the prophet married her in this month. Also married 'Umm Salma in Šawwāl.

**Siwāk**, a kind of toothbrush made of wood that the Prophet preferred.

**Sunni Madāhib**, Sunni rites or schools. These were the four orthodox schools studied the tradition of the Prophet and his companions. They called themselves Ahl Al-Sunna. Each rite has its own law, head and members who numbered between 300 and 365 million. They considered the Koran, the Prophet tradition; the Ijmā' (the general agreement of the early Muslim community) and qiyās (analogy) to be the main source of Islamic law (Šari'a).

**The founders of the Sunna schools:**

1. **Abū Ḥanīfa Al-Nūmān (699- 767)** was of Persian origin and lived and died in Al-Iraq. He founded the Ḥanifite School which was called the rite of Rāy because he dealt with the Hadith according to his personal opinion, instead of accepting the words of Hadith at face value, in other words in accordance with the spirit and the intention of the Hadith. Furthermore, Abū Ḥanīfa preferred the Hadith of the Prophet to that of the companions. He refused to cooperate with the 'Abbāsī Authorities which caused him to be put in prison, where he was to die before having written anything down; however, his disciples, Abū Yūsuf and Al-Šaybānī explained and published his ideas. The

Hanifite Rite was adopted as the official rite of the 'Ottomān Empire and still has many followers in central Asia and the continent of India to this day.

2. *Mālik b. Anas* (715 - 795) was born in Al-Medina. He founded the Mālikite School and his book 'Al-Muwattā'' is regarded as the basic of his rite. Mālik had a great influence on the Al-Šāfi'ite and Hanblite Sunni Madāhib as Al-Šāfi'ī and Hanbal were his disciples. Mālik held opinions that conflicted with those of Abū Ḥanīfa concerning the Hadiths since he adapted 'Ijmā' and Qiyās as only in the absence of the Koran and the Sunna. Also, he avoided the personal opinion (Rāy). Moreover, he had a great respect for the tradition of the companions. His school is located in North-Westren Africa and in Sudan.

3. *Al-Šāfi'ī Muhammad b. Idrīs*. (767 -820) was born in Ġaza in Palastine. He spent his last years in Egypt where he died and was buried. Al-Šāfi'ī principles are mixed between Al-Madina since he was Mālik's disciple and he mixed with the jurists of Al-Iraq especially Al-Šaybānī, Abū Ḥanīfa's disciple. He founded Al-Šāfi'ite's rite which was described as the golden mean between the Sunni Madāhib. He wrote many books 'Al-Umm', 'Al-Risāla' and 'Ahkām Al-Korān'. His school is mainly followed in Lower Egypt, the Persian Gulf, Southern Arabia, Paleastine and East Africa.

4. *Aḥmad b. Hanbal* (780 - 855) was born in Baġdād and lived in Al-Bašra. His book 'Al-Musand' is considered as the most important book of Hadith. He was Mālik's disciple and firmly supported his teachings. He adopted the Hadith without becoming involved in discussion or expressing his own opinions (Rāy), he also looked upon the companions of the Prophet with deep respect. He founded the Hanbalite School, whose principles were adopted by Al-Wahābiyīn in Northern and Central Aribia. Some references believed that differences between the Sunni rites were serious while others described the relationship between Abū Ḥanīfa and Mālik saying "they had the same results and were different in detail along". It is important to note that they both considered the Sunna of the Prophet and his companions to be the basic of Islamic law. However, Ahl Al-Iraq (Abū Ḥanīfa, and Abū Yūsuf) thought Rāy and Qiyās to be necessary, and preferred the Hadith of the Prophet to that of the companions. Ahl Al-Hijaz (Mālik, Aḥmad b. Hanbal to some extent Al-Šāfi'ī) genereally adopted 'Ijmā' and Qiyās, avoiding Rāy. Furthermore, they regarded the Hadith of the companions to be similar to the Hadith of the Prophet. These constituted the main points of contention between the different schools.

**Tābiūn**, the successors, who were the disciples of the companions. They learned from them and transmitted the Hadith relying on their authority.

**Tamlik Al-Talaq**, the right to divorce him at anytime she so decides, this agreement can be made before the marriage ceremony has taken place.

**Umm Al-Walad**, is the title given to a slave girl when she bears a baby for her master.

**Waada**, it is a kind of gentleman's agreement between two families. The father promises to give his daughter in marriage when she reaches the age of maturity, whenever that might be.

**Wajib**, is a duty which should be done such as, pilgrimage, paying, fasting.

**Wali**, is a person who can play two different roles:

- a. that of guardian in case of marriage, his presence is vital.
- b. that of guardian in the case of an orphan or child of a broken marriage.

**Walima**, is a wedding feast or marriage festivities, organised by the groom on the occasion of his marriage. The type of food depends on the groom's financial position. According to the Sunna, **Walima** should be held for two days.

**Xabar**, is news sometimes used of traditions from the prophet and sometimes from the companions or the successors.

**Xal'**(self redemption), is a kind of divorce or separation which is always in accordance with the woman's demand. **Xal'** is practiced on moral, religious or emotional, grounds and allows the woman under this circumstances ask her husband to release her from the marriage tie. However, the woman then has to redeem herself by repaying her dower and even more.

**Zina (adultery)**, any sexual intercourse between a man and a woman outside Marriage is considered to be adultery, therefore, the couple should be punished.

**Zihār**, is when a woman says to his wife "you are to me as zihar (back) of my mother". After this pronouncement, it is unlawful for the husband to have sexual intercourse with his wife, unless he atone for his wrong doing. He can do this either by freeing slave, or by fasting two consecutive months, or by feeding 60 needy people.



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